

MCPB No. 10-93
 Site Plan No. 81995015B
 Project Name: Small's Nursery (Parcel A)
 Hearing Date: June 24, 2010

JAN 11 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on April 20, 1995, the Planning Board approved Site Plan No. 819950150 (Opinion dated July 20, 1995) for 100 units subject to conditions; and

WHEREAS, on January 24, 2002, the Planning Board approved Site Plan No. 81995015A (Opinion dated May 9, 2002) to adjust the timing for completion of required Park Improvements in coordination with certain State Highway Administration intersection improvements; and

WHEREAS, on March 9, 2010, Tower Company ("Applicant"), filed a site plan amendment application designated 81995015B, Small's Nursery (Parcel A) (the "Amendment") for approval to amend the configuration of an existing forest conservation easement located on a 1.8-acre Homeowners Association parcel identified as Parcel A, Small's Nursery located on the south side of Thistlebridge Drive, approximately 500 feet west of Georgia Avenue ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"); and

WHEREAS, in order to assist the applicant for Townhouses at Small's Nursery (an adjoining development) to meet Condition 4 of its Preliminary Plan approval (MCPB No. 09-155), the Applicant is amending the final forest conservation plan for the Subject Property; and

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staff of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 2, 2010, setting forth its analysis and recommendation for approval of the Amendment subject to certain conditions ("Staff Report"); and

Approved as to
 Legal Sufficiency:

[Handwritten Signature] 12/22/10

8787 Georgia Avenue, Suite 200, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, on June 24, 2010, Staff presented the Amendment to the Planning Board concurrently with the Preliminary Plan Amendment No. 11994011C at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on June 24, 2010, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley; seconded by Commissioner Dreyfuss; with a vote of 4-0, Commissioners Alfandre, Dreyfuss, Presley and Wells-Harley voting in favor, with one seat being vacant.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Applicant must record a new record plat approving the limited amendment to the Site Plan. The record plat must reference the standard Category I conservation easement as recorded in the Land Records for Montgomery County, Maryland at (liber 13178/folio 412).
2. Applicant must receive staff approval of the certificate of compliance for an offsite forest conservation mitigation bank for 0.50 credits prior to Planning Board approval of the record plat.
3. All other conditions of Site Plan No. 819950150, as contained in the Planning Board's Opinion dated July 20, 1995, and all subsequent amendments, including Site Plan No. 81995015A that were not modified herein, remain in full force and effect.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report, except as modified by the Planning Board at the Hearing to amend Condition #1 to eliminate the requirement for the record plat to be recorded within an established time frame, and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that this plan continues to comply with Chapter 22A, the Montgomery County Forest Conservation Law because the Category I easement and forest removed from the site will be mitigated in an off site location, and all site development elements as shown on Smalls Nursery (Parcel A) drawings stamped by the M-NCPPC on March 9, 2010, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

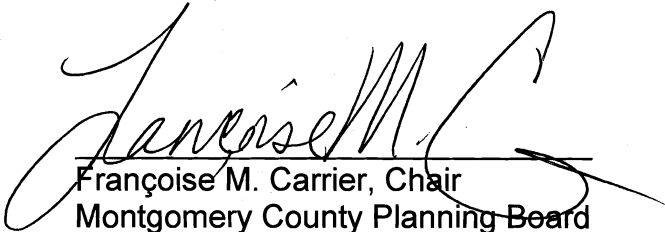
JAN 11 2011 BE IT FURTHER RESOLVED, that the date of this written resolution is _____ (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

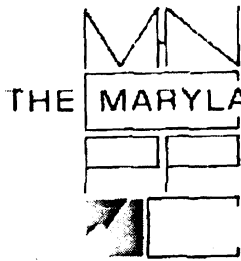
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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, January 6, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

DATE MAILED: July 20, 1995 *RZ*

SITE PLAN REVIEW #8-95015

PROJECT: SMALLS NURSERY

Action: Approval subject to conditions. Motion was made by Commissioner Aron, seconded by Commissioner Richardson, with a vote of 4-1, Commissioners Aron, Richardson, Hussmann and Holmes voting for. Commissioner Baptiste voted against.

The date of this written opinion is July 20, 1995 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before August 19, 1995 (which is thirty days from the date of this written opinion). If no administrative appeal is filed, then this site plan unless otherwise provided for in the adopted Guidelines and Policies for Site Plan Extensions, shall remain valid until January 15, 1998 (which is the date that the validity period associated with the preliminary plan is set to expire as of the date of this opinion).

On October 26, 1994, Tower Companies submitted an application for the approval of a site plan for property in the RE-1 zone. The application was designated Site Plan Review #8-95015.

On April 20, 1995, Site Plan Review #8-95015 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report with modifications to the conditions hereby adopted by the Montgomery County Planning Board, and which is make a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular

circulation systems are adequate, safe, and efficient.

3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8-95015 as follows:

Staff recommends APPROVAL of 100 units subject to the following conditions:

1. Submit a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development. Pathways between units must be completed prior to occupancy of adjacent units.
 - 3) Clearing and grading schedule.
 - b. Homeowners Association documents and marketing materials to alert future owners that Street "H" may connect to Georgia Avenue.
2. Submit a phasing plan as follows:
 - a. Phasing for all clearing and grading that will correspond to the construction schedule and reduce soil erosion;
 - b. Phasing of each section of the development;
 - c. Phasing of stormwater management facilities, recreation facilities, and common open space areas.
3. Incorporate the following items into the signature set landscaping plan:
 - a. Details for recreation areas including cut-sheets of play equipment;
 - b. Landscaping on noise berm behind lots #103-116 to provide year round visual buffer;

4. The following information must be clearly shown on the signature set of site, landscape, and forest conservation plans and must be incorporated into the sediment and erosion control plan for staff review prior to approval by MCDEP:
 - a. Undisturbed stream buffers per the approved NRI/FSD;
 - b. Limit of disturbance line;
 - c. Methods and location of tree protection;
 - d. Forest Conservation areas;
 - e. Conditions of DEP Concept approval letter dated 12/19/94;
 - f. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
 - g. The development program inspection schedule.
5. Compliance with Environmental Planning Division approval regarding the requirements of the Forest Conservation Legislation as part of the site plan. Applicant shall satisfy all conditions prior to recording of plat or MCDEP issuance of sediment and erosion control permit.
6. No clearing or grading prior to Planning Department approval of signature set of plans.
7. Delineate the Type I conservation easement on the site, landscape, and final forest conservation plan and on the record plat. Clearing and grading within the easement will not be permitted unless approved by staff.
8. Provide concrete sidewalks four feet in width as follows:
 - a. both sides of all streets, except Holly Ridge Road;
 - b. on Holly Ridge Road a sidewalk on one side only, both on-site and off-site as far as Sycamore Lane;
 - c. along site's entire MD Rt 28 frontage;
 - d. along shopping center MD Rt 28 frontage to the east as far as the existing bus stop near Georgia Avenue.
9. Provide play field in southern portion of site near intersection of MD Route 28 and Muncaster Mill Road. Field may be located partially on park property, subject to Parks Department approval. Applicant shall provide final grading and establishment of turf suitable for play, and gravel surfacing of parking.

ATTACHMENT TWO

To Small's Nursery (Parcel) A Site Plan
Amendment 81995015B adopted
1/6/2011 - Resolution MCPB No. 10-93



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: May 9, 2002
SITE PLAN REVIEW #: 8-95015A
PROJECT NAME: SMALL'S NURSERY

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 5-0; Commissioners Bryant, Holmes, Perdue, Robinson and Wellington voting in favor.

The date of this written opinion is May 9, 2002, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before June 8, 2002 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #8-95015A is valid, as provided in Section 59-D-3.8.

On January 24, 2002, Site Plan Review #8-95015A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

Staff believes that the applicant has complied with all the conditions imposed by the approval of the associated Preliminary Plan and Site Plans except the obligation of providing for the dedication and construction of the soccer field and related parking facility and the access road. The issue is compounded by MDSHA's current study to design alternatives for the Georgia Avenue (MD 97) and Norbeck Road (MD 28) interchange. The State's desire to delay the construction of the park facility should not adversely affect the applicant's intent to timely complete the residential development and fulfill their responsibilities for providing the new recreational field.

Planning Board approval is subject to the following conditions:
Amendment of the conditions of the previously approved site plan to incorporate the following:

"The Applicant shall convey or dedicate for public use (to be determined by the Director) the 5.4 acre property shown on the approved Site Plan as park expansion area to the Commission or the Maryland Department of Transportation, State Highway Administration (to be determined by the Director) within ninety (90) days of the Planning Board's approval of Applicant's petition to revise this condition."

...and...

The Commission shall release building permits for the 129th and 130th lots upon the Applicant's posting of security in a form approved by Commission's legal staff and in an amount approved by the Director. The security shall cover the cost of grading, turf establishment, stabilization, Stormwater management controls and parking area with appropriate access (together "Park Improvements") from Thistlebridge Drive. The Commission shall release Applicant's security promptly upon (1) Applicant's completion of the Park Improvements to the satisfaction of the Commission, or (2) when the Applicant pays the sum of Two Hundred and Thirty-Four Thousand Dollars (\$234,000.00) ("Construction Costs") to the Commission. If the Commission or the SHA delay the Applicant's efforts to construct the Park Improvements beyond 90 days from the date of the Planning Board's approval of this revised condition ("Start Date"), the Applicant shall pay to the Commission the Construction Costs within fifteen (15) days. If the Commission sends notice to the Applicant at any time that the Commission elects to delay construction of the Park Improvements beyond the Start Date, or elects to construct the Park Improvements at an alternate location, then the Applicant shall pay to the Commission the Construction Costs within fifteen (15) days of the notice."

...and...

"Applicant shall enter into an amended Site Plan Enforcement Agreement with the Planning Board."