



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAY 25 2011

MCPB No. 10-148
Preliminary Plan No. 11994034A
Alvermar Woods, Lot 17
Date of Hearing: October 21, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on January 28, 1999, the Planning Board approved Preliminary Plan No. 119990340 designated as Alvermar Woods ("Approved Preliminary Plan") filed by Kambiz Kazemi, ("Applicant"), which created two lots on 4.17 acres of land located on the southwest corner of the intersection of River Road and Riverwood Drive ("Property" or "Subject Property"), in the Potomac Subregion master plan area ("Master Plan"); and

WHEREAS, the Approved Preliminary Plan was conditioned upon compliance with conditions of approval of the preliminary forest conservation plan; and

WHEREAS, as shown on Plat No. 21237 filed in compliance with the Approved Preliminary Plan, Applicant granted Category I forest conservation easements ("Cat I Easements") over portions of the Property to the Maryland-National Capital Park and Planning Commission ("MNCPPC"); and

WHEREAS, Notices of Violation were issued by MNCPPC to the Applicant on July 14, 2009, and August 28, 2009, for encroachments and mowing within the Cat I Easements in violation of those Cat I Easements; and

WHEREAS, Applicant was directed to i) restore certain areas of the Property covered by the Cat I Easements, and ii) submit a limited amendment to the Approved Preliminary Plan for the purpose of amending the approved forest conservation plan by proposing that the Board release those areas of the Property determined to be incompatible with a Cat I Easement and suggesting mitigation for such release; and

WHEREAS, on December 16, 2008, in response to the Notices of Violation, Applicant, filed a limited amendment application to amend the previous conditions of

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 100, Bethesda, MD 20814 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

approval of the Approved Preliminary Plan for the purpose of amending the forest conservation plan and Cat I Easements; and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No.11999034A, Alvermar Woods – Lot 17 ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 13, 2010, setting forth its analysis and recommendation to deny the Application ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on October 21, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 21, 2010, the Planning Board denied the Application on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Carrier, and Wells-Harley, voting in favor of denial, with Commissioners Dreyfuss and Presley absent.

THEREFORE BE IT RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates into this Resolution, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Application neither satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A, nor the Planning Board's longstanding policy for minimum mitigation for the release of property from an existing Category I Forest Conservation Easement.*

Applicant requested that the Planning Board approve i) the removal of a portion of the Easements (approximately 0.08 acre or 3,500 square feet) where a shed and driveway have been constructed, and ii) replacement of the remaining portion (approximately 1.05 acre or 45,738 square foot) of the Cat I Easements with Category II forest conservation easements. The purpose of a Category I forest conservation easement is to protect naturally regenerating forest by requiring long-term protective measures through strict prohibitions against activities such as the erection or placement of any building or structural improvements on or above ground, and mowing or removal of understory plants. The purpose of a Category II conservation easement is to protect trees and the

canopy created by large tree growth. Much more liberal use of the property encumbered by a Category II easement is allowed, and such an easement is considered more in the nature of landscape than protection of forest.

Applicant's proposal and supporting argument at the Hearing was based largely on its allegation that the Category I Easements were not appropriate for the Property as imposed as conditions of the Approved Preliminary Plan. Applicant suggested i) that there was no forest to protect at the time the Cat I Easements were placed, ii) that as a result, no additional afforestation was required, and iii) that both the Planning Board's mitigation policy at a ratio of 2:1 for release of the Cat I Easements, and the §22A-12(e)(2)(B) of the Forest Conservation Law that requires forest cover protection through forest banks at twice the planting requirement are unconstitutional in its proportionality as a remedy. The Planning Board did not accept Applicant's arguments and found:

- a) that the Cat I Easements were accepted by the Applicant in 1999 when Applicant submitted the Plat in compliance with the Approved Preliminary Plan, and this Application was neither the appropriate time nor venue to challenge what the Applicant accepted more than 10 years ago; and
- b) that the 0.49 acres of offsite afforestation proffered in exchange for the release of the Cat I Easements, even in addition to an exchange for Category II easements were insufficient to meet required mitigation either under the Board's policy, or in accordance with §22A-12(e)(2)(B); and
- c) that the Planning Board need not address Applicant's constitutional challenge.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 25 2011 (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 Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

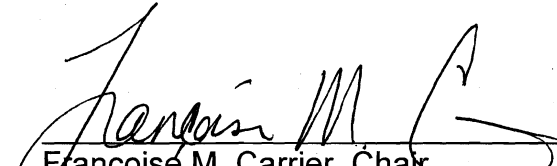
* * * * *

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 Vice Chair Wells-Harley, seconded by

MCPB No. 10-148
Preliminary Plan No. 11994034A
Alvermar Woods, Lot 17
Page 4 of 4

Commissioner Alfandre, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, May 12, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board