



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 10-156**  
**Preliminary Plan No. 11998004A**  
**Seneca Meadows Corporate Center**  
**Date of Hearing: November 4, 2010**

**JAN 13 2011**

## 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 July 16, 2010, Minkoff Development Corporation ("Applicant"), filed an application for approval of a preliminary plan amendment to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, ("Property" or "Subject Property"), within the Germantown Employment Area Sector Plan ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11998004A, Seneca Meadows Corporate Center ("Preliminary Plan" or "Application"); and


WHEREAS, Staff issued a memorandum to the Planning Board, dated October 24, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff"), and the staff of other governmental agencies, on November 4, 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 November 4, 2010, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor, with Commissioner Presley abstaining and Commissioner Alfandre absent.

Approved as to  
Legal Sufficiency:

 12/22/10

8787 Georgia Avenue, N. MNCPPC Legal Department 2010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 11998004A to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, within the Sector Plan Area, subject to the following conditions:

- 1) Approval under this Preliminary Plan amendment is limited to 1,319,700 square feet of R&D office use and 206,570 square feet of retail use.
- 2) Applicant must address Forest Conservation encroachment issues outlined in the Staff Report as detailed in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.
- 3) The Applicant must submit a revised Final Forest Conservation Plan for Phase 4 to address Staff comments dated October 19, 2010.
- 4) The Category I Easement area on proposed Lot 11 must be recorded on a plat prior to release of any building permits.
- 5) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated October 13, 2010. These conditions may be amended by MCDPS, provided any modifications do not conflict with any other condition of the preliminary plan approval.
- 7) The record plat(s) for proposed Lots 11 and 12, and Parcel L, will note that these properties are subject to a covenant with Montgomery County regarding use of, and future access to, Parcel L by Lots 11 and 12. The text of the covenant to be recorded covering the properties will be in accordance with terms and conditions contained in an MCDOT letter dated October 5, 2010. The Liber and Folio of the recorded covenant must be placed on the record plat(s).
- 8) Site Plan # 820100140 must be approved by the Board and certified by the Development Review Division prior to the approval of the record plat.
- 9) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Phase 4 Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices on Lot 11.
- 10) All previous conditions of Preliminary Plan No. 119980040 remain in full force and effect unless specifically amended by this approval.
- 11) The Adequate Public Facility (APF) review for the Preliminary Plan remains valid per the original plan approval until January 22, 2012.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The Subject Property is located in the Seneca Meadows/Milestone District of the Sector Plan. The original Preliminary Plan covered approximately a third of the Seneca Meadows/Milestone District and was approved in December 1997 prior to the adoption of the Sector Plan in September 2009. The Preliminary Plan Amendment, by necessity covers the same area that was originally approved in the 1997 Preliminary Plan, but the lot that is undergoing development is only a fraction of that area and the Seneca Meadows/Milestone District. Although the Preliminary Plan covers this large area, the Planning Board focused its review on the new development of Lot 11 that affects the current composition of the Seneca Meadows/Milestone District for this finding. Based on its review, the Planning Board finds that the development of Lot 11 substantially conforms to the Sector Plan and begins the transition for the Preliminary Plan to ultimately fulfill the Sector Plan recommendations for the Seneca Meadows/Milestone District. The Sector Plan makes the following recommendations for the Subject Property:

**“Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary.”**

The Sector Plan recommends concentrated mixed-use development at the proposed transit station with an average density of 1.0 FAR for the Seneca Meadows property north of the Crystal Rock tributary (“northern Seneca Meadows property”). The higher density is to be located at the proposed transit station, which has a proposed location to the west of the Subject Property and is adjacent to two undeveloped lots. Although the Subject Property has a 0.26 FAR, it achieves a higher density than what currently exists in the northern Seneca Meadows property. Further, it is expected that the average FAR of the northern Seneca Meadows property will increase significantly when the proposed transit station is built and full development build out is achieved. The Application also increases the mix of uses with Lot 11 providing a mixed use development of retail and office. It is expected that the mix of uses will continue to increase on the lots closer to the proposed transit station. The Planning Board finds that the Application is a mixed use development that increases the density of what currently exists on the northern Seneca Meadows property and provides a solid transition for this part of the Seneca Meadows/Milestone District to fulfill the Sector Plan recommendations.

**“To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include limited street level retail and a maximum of 30 percent residential uses.”**

The Application proposes 206,570 SF of commercial/retail space, which is a small amount of the total possible development for the northern Seneca Meadows property. Although Lot 11 that will contain a Wegman’s store will have a high percentage of retail, it represents a small amount of the overall development of the northern Seneca Meadows property. The mix of uses as proposed for Lot 11 will include office, retail, and service, which is in conformance with the Sector Plan’s land use designation for the Subject Property of “Commercial Mixed Use” (office, retail, service, housing). The Planning Board finds that 206,570 SF of commercial/retail space is in conformance with the Sector Plan’s recommendation of limited retail use and that all of the proposed uses generate employment. It is also important to note that Wegman’s is not a typical grocery store in terms of employment. Wegman’s is considered a high employment retailer with a wide array of employment opportunities at both entry and advanced levels. Further, the mix of uses in the northern Seneca Meadows property will continue to be refined by further phases, which should include residential and other commercial uses.

**“Concentrate a limited amount of street retail near the transit station. Big Box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing Seneca Meadows Parkway and Observation Drive”**

The proposed retail on Lot 11 is a few blocks east of the proposed transit station. The Planning Board finds that the location of retail on Lot 11 substantially conforms to the Sector Plan’s recommendation for retail “near the transit station”. The Planning Board applied the Sector Plan’s recommendation for “Big Box retailers” to the Wegman’s grocery store. It is important to understand that the land use recommendations in master plans do not, and cannot specify all development possibilities, particularly commitment to a particular design detail until the physical limitations of a site are understood. There are many site specific reasons why locating the retail uses on Seneca Meadows Parkway and Observation Drive was not feasible for this Property. First, development of this site under the new Environmental Site Design features of the new Stormwater Management Regulations requires the Applicant to essentially use every green area to take in water. This site drains naturally to the intersection of Seneca Meadows Parkway and Observation Drive. One of the low points for this site happens to be at the corner of Seneca Meadows Parkway and Observation Drive where the Sector Plan has called for retail frontage. Second, the grades at that intersection make it difficult to front buildings there, and in order to accommodate the topographical limitations of the site, these retail buildings have been fronted on an interior street.

The orientation of buildings and layout of the internal street network were heavily considered in this Application. The Applicant did front retail buildings on Seneca Meadows Parkway and Observation Drive per the Sector Plan's recommendations where the topography is flat enough. The Applicant sited two buildings as an entrance to the development on Observation Drive that act as a gateway into the site. Likewise a separate building has been fronted on Seneca Meadows Parkway at the opposite entrance point to the site. For the rest of the development, the Applicant ultimately established a network of internal streets with smaller blocks that are pedestrian oriented as envisioned by the Sector Plan. Views and pedestrian relationships along each frontage street have been designed to begin the transformation of this environment to the urban form recommended in the Sector Plan. Due to the constraints of the Subject Property, the Planning Board finds that the retail's frontage on an internal network of streets relatively near the proposed transit station substantially conforms to the Sector Plan.

**“Street level retail must conform to the Plan's urban design guidance.”**

The Sector Plan also calls for street level retail to conform to its design guidance. The urban design recommendations of the Sector Plan include the call for street-oriented development, public amenities including plazas and gathering places, and the creation of vibrant pedestrian spaces. The Application consists of a street network of smaller internal streets that will fulfill the Sector Plan's recommendation for urban form better than fronting retail along Seneca Meadows Parkway and Observation Drive at this location. Grading, drainage, and existing conditions do not currently promote the location of retail fronts on Seneca Meadows Parkway and Observation Drive. Future development phases that will occur to the west of the Subject Property will be better able to utilize Seneca Meadows Parkway itself for street activation. However, locating retail on Observation Drive and Seneca Meadows Parkway at this point in the development in this area will not likely translate into viable retail.

In keeping with the urban design recommendations, the Application focuses the entry of the Wegman's to Seneca Meadows Parkway as much as possible. The open space where a café and clock tower are located have been pulled close to Seneca Meadows Parkway. The placement of the structure, along with the primary entrance and outdoor seating courtyard allows for direct pedestrian access from the Parkway, the internal street, and parking areas. In addition, unlike most development of this density and in this context, much of the parking will be structured which serves to decrease the impermeable footprint that is typically created by a standard big box store and gives the development more of the urban form that the Sector Plan calls for.

Several plazas and open spaces have been built in along the interior streets of this Application. Rather than one large open space area or plaza that would work well

with an office development, numerous smaller areas have been programmed throughout the development to connect the retail spaces. The smaller plazas and open spaces work better for the smaller buildings and smaller street frontages. The plazas and open space provide pedestrian friendly public amenities throughout the Subject Property.

The Application provides for pedestrian crossings and streets that are very pedestrian oriented. The Applicant used the guidance on street-level retail design in the Sector Plan to create a more urban atmosphere within the site rather than at its edges. In this case, the proposed retail uses are organized along an internal primary street and on secondary drives between buildings and parking. The Applicant has also provided streetscape improvements on Observation Drive and Seneca Meadows Parkway. The Application creates a streetscape for a smaller street on the internal street rather than concentrating seating, street trees, and amenities on Observation Drive. The street activation is better focused internally to create a vibrant, pedestrian friendly, urban atmosphere.

The Planning Board finds that the Application substantially conforms to the recommendations of the Sector Plan for urban design and that this Application will transition the Seneca Meadows/Milestone District towards implementing the Sector Plan's vision. Later phases will build on this development and allow Seneca Meadows Parkway and other streets to take on the desired character of a more urban, walkable place.

- 2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

### Roads and Transportation Facilities

Adequate vehicular access to the site is provided by a full-movement driveway connection to Seneca Meadows Parkway and Observation Drive. A separate loading and unloading full-movement driveway is provided for trucks from Seneca Meadows Parkway near the west side of the Subject Property. The general traffic access point already exists on Seneca Meadows Parkway as does a 5-foot wide sidewalk on Seneca Meadows Parkway. Observation Drive has an existing 8-foot wide sidewalk. The internal vehicular facilities have not yet been constructed. Primary pedestrian access is provided via 8-foot wide sidewalks, which connect to the existing sidewalks along the street frontage, and will provide pedestrian access throughout the entire site.

### Adequate Public Facility (APF) Analysis

An APF analysis, which was conducted at the time of the original preliminary plan for 1,577,000 SF of office and 83,000 SF of retail, concluded that the project would

meet the transportation APF requirements after providing specific roadway improvements. These improvements have been provided, and the previous APF approval remains valid. Up to this point, 701,332 square feet of office and none of the retail have been constructed.

Under this Application, the Applicant proposes a reduction of 257,300 square feet of the approved but un-built office use, and an addition of 123,570 square feet of new retail. This will result in a total of 1,319,700 SF of approved R&D office use and a total of 206,570 SF of retail use over the entire Preliminary Plan area. All of the new retail would be constructed as part of the site plan on proposed Lot 11. Based on the traffic statement submitted by the Applicant and reviewed by Staff, the 257,300 square feet of previously approved office development would generate approximately the same amount of peak hour trips as will be generated by the 123,570 square-feet of proposed retail development. Therefore, a reduction of 257,300 square feet of office space will accommodate the proposed addition of 123,570 square feet of retail space. It should be noted that in estimating trips for the proposed retail development, actual surveyed trips generated by existing Wegman's stores in other locations have been used. Therefore, in order for the Applicant to meet the requirements of the APF approval in place, the Applicant is required to reduce 257,300 square feet of office space from the originally approved preliminary plan to accommodate the proposed total of 206,570 square feet of retail use.

#### Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy resolution currently in effect. Electrical, gas, and telecommunications services are available to serve the Property.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the TMX-2 zone as specified in the Zoning Ordinance. The proposed lots meet the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended



approval of the Preliminary Plan. Therefore, the Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

### Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the Subject Property (Lot 11 only) and was approved by Environmental Planning staff in November of 1997. As previously stated, with the exception of approximately 3.6 acres of forest, there are no regulated environmental features onsite such as streams, wetlands, 100-year floodplain, environmental buffers, steep slopes, or highly erodible soils. Therefore, the Application complies with the Montgomery County Environmental Guidelines.

### Forest Conservation

The proposed development is the 4<sup>th</sup> and final phase of the Forest Conservation Plan for the entire Preliminary Plan area, which covers approximately 156 acres. The site is located within a *use class IV/ IV-P* portion of Little Seneca Creek watershed. The site is not within a Special Protection Area.

The current Application and site plan address forest conservation requirements and tree save issues for the development of the proposed uses and the associated parking lots and infrastructure. Lot 10 and Parcel P125 are also included under the current phase.

The current phase has approximately 3.6 acres of existing forest which contains a number of significant and specimen trees. No other environmentally sensitive features occur on-site for this phase. Approximately 2.2 acres of forest clearing is proposed, which was conceptually approved during the earlier phases. An onsite buffer strip of forest retention/planting area is proposed within a new Category I easement on proposed Lot 11 along Ridge Road. The new easement area will buffer Ridge Road and the confronting residents from the proposed grocery store and parking structure. Compared to the previously approved concept, some portions of the proposed buffer have been widened while other areas have been narrowed. The easement area is less than 50' wide in some sections, but meets the overall intent of the previously proposed easement since the total area placed in easement is approximately equal in size.

The overall site contains existing recorded Category I and Category II Forest Conservation Easement areas which satisfied earlier phases of the projects (the



easements are also connected with the current proposal). A number of encroachment issues and concerns with the existing easement areas surfaced during the review of the current Application. These encroachments will be address by the Applicant as outlined in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.

### Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires mitigation for any impacts to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. This project did have a Preliminary Forest Conservation Plan prior to the October 1, 2009 effective date. However the approved plan showed an LOD that resulted in only minor impact to the subject tree. The current proposal shifts the LOD approximately 20' feet closer to the subject tree, creating new impacts (which would also necessitate removal of the tree). The newly proposed impacts to this greater than 30" DBH tree trigger the variance requirement.

Other trees on site which are 30" or greater were either previously approved for removal or will actually experience lesser impacts than previously approved (due to LOD changes). The additional impacts subject to the variance requirements are limited to the one tree.

In accordance with Section 22A-21(e), the Planning Board must find that the Applicant has met all criteria required to grant the variance. The Board finds the Applicant has satisfied the requirements for a Forest Conservation Variance for the following reasons:

- a) The variance will not confer on the Applicant a special privilege that would be denied to other applicants.

The Subject Property is located in the Sector Plan and the property is zoned TMX-2. The location of the proposed development is strategic in that it is easily accessible from I-270, several State roads (MD-27, MD-355, MD-118), and the future Corridor Cities Transitway (CCT). Granting the variance will allow the Sector Plan for this property to be implemented (which would be an expected outcome for other applicants and therefore not a special privilege).

b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The Applicant has utilized structured parking and integrated Stormwater Management (SWM) facilities into the surface parking areas. These measures have reduced the overall footprint of the development to the maximum extent practical, and enabled additional forest save measures in other areas when compared with the preliminary forest conservation plan. The impact to T62 is necessary and unavoidable to implement the Application as proposed. Staff believes the variance can be granted under this condition if mitigation for the 31" DBH tree is provided. Staff recommends that 31 four to six foot tall holly trees be planted within the proposed easement area, as mitigation for the resource removed. The evergreen plantings will enhance the ultimate effectiveness of the buffer screen (from which the subject tree is proposed for removal). Final locations of the plantings will be determined by the forest conservation inspector.

c) The need for the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The site is the subject of Stormwater Management and Sediment Control Plans affiliated with development applications 11998004A and 820100140. The Department of Permitting Services is satisfied that the Application meets sediment control and water quality requirements. The location of the subject tree is not directly associated with a stream, floodplain, or wetland. State water quality standards would not be violated by the impact or removal of the 31" tree, and no measurable degradation of water quality would occur.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance to remove one tree associated with the site.

Therefore, the Board finds that the Application satisfies the Forest Conservation Law and the Environmental Guidelines.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting*

*Services ("MCDPS") that the Stormwater Management Concept Plan approval meets MCDPS' standards.*

The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved the stormwater management concept for the project on October 13, 2010. The stormwater management concept consists of utilizing Environmental Site Design (ESD) to the maximum extent practicable in accordance with Chapter 19 of the County Code. Runoff that is not managed by onsite ESD practices will be managed in existing regional ponds.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

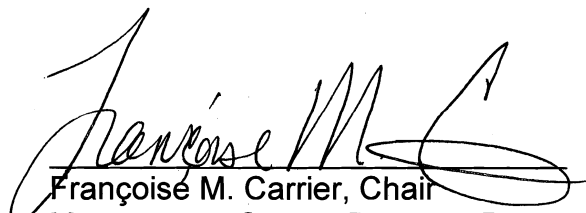
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is \_\_\_\_\_ **JAN 13 2011** (which is the date that this Resolution is mailed to all parties of record); and

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 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



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Hannah Murray  
Rodgers Consulting  
19847 Century Boulevard  
Germantown, MD 20874

October 19, 2010

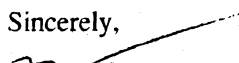
Re: Preliminary Plan 11998004A & Final Forest Conservation Plan 820100140  
Name of Plan: The Shops at Seneca Meadows

Based on the review by Environmental Planning staff of the Montgomery County Planning Department, the Final Forest Conservation Plan submitted to M-NCPPC on September 21, 2010 for the plan identified above, is rejected for the following reasons:

1. Clarify/revise plans to remove the additional planting credits sought within the supplemental planting area (shown on sheet FC-3). The area was already credited as reforestation under an earlier phase, and cannot be used for additional credit. Provide any required credits in other areas of the site. New comment based on new information.
2. The new detailed information provided on the 50 scale drawing has revealed that portions of the easement area (near Observation Drive) contain proposed grading in excess of 3:1. The steep slopes proposed are not acceptable within the easement area. Adjust grading, utilize retaining wall and/or adjust easement footprint as appropriate.
3. Adjust locations of newly proposed permanent boundary posts to correspond with each corner of the Category I Easement area including the north side of boundary). Provide additional posts along boundary lines so that the spacing does not exceed approximately 125'.
4. The legend item for the proposed Category I easement has been deleted since the previous submission. Provide graphics and corresponding legend item to clearly identify the boundary of the proposed easement. Distinguish the currently proposed easement from the conceptually approved easement shown from the 11/5/1998 plan.
5. Correct the size of the newly shown tree #63.
6. Coordinate with staff regarding minor adjustments/clarifications to be made on notes and details.
7. Note: plans will require further revisions to address any changes in easement boundary, restoration of easement areas and/or other conditions of approval that are adopted by the Planning Board. Staff recommendations for conditions of approval will be issued under separate cover and/or within the pending staff report.

If you have any questions regarding these comments, please feel free to contact me at (301) 495-4521 or at [marco.fuster@mncppc-mc.org](mailto:marco.fuster@mncppc-mc.org).

Sincerely,

  
Marco Fuster, Senior Planner  
Environmental Planning Division  
M-NCPPC



LAW OFFICES  
**MILLER, MILLER & CANBY**

CHARTERED

PATRICK C. McKEEVER (DC)  
JAMES L. THOMPSON (DC)  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
MAURY S. EPNER (DC)  
JOSEPH P. SUNTUM

200-B MONROE STREET  
ROCKVILLE, MARYLAND 20850  
(301) 762-5212  
FAX (301) 424-9673  
WWW.MILLERMILLERCANBY.COM

SUSAN W. CARTER  
ROBERT E. GOUGH  
DONNA E. McBRIDE (DC)  
GLENN M. ANDERSON (FL)  
MICHAEL G. CAMPBELL (DC, VA)  
SOO LEE CHO (CA)  
AMY C. GRASSO

*\* All attorneys admitted in Maryland and where indicated*

JSKLINE@MMCANBY.COM

November 4, 2010

Ms. Rose Krasnow  
Chief, Development Review Division  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Preliminary Plan Amendment Application No. 119980004A,  
Site Plan Application No. 820100140;  
Seneca Meadows Corporate Center

Dear Ms. Krasnow:

As a follow-up to our discussions over the past four days, the Applicant in the above-referenced preliminary plan amendment and site plan applications, Minkoff Development Corporation, submits the following plan of action to address encroachments into recorded forest conservation easement areas which are the subject of Preliminary Plan Conditions 2 through 6 in the Staff Report and Recommendation dated October 24, 2010.

The Plan of Action which we agreed upon with Staff is described as follows:

1. By January 1, 2011, representatives of the Applicant and Staff will meet at the Seneca Meadows site to inspect the features which were described in Conditions numbered 2 through 6 in the Staff Report dated October 24, 2010 ("Section 3: Preliminary Plan Recommendations and Conditions", page 15).
2. Prior to the site visit the applicant must accurately demark in the field all existing easements that overlap with the conservation easement including stormwater management easements, WSSC easements and any other easement that may restrict the planting of forest and trees and the stream valley buffer.

3. Prior to the site visit the applicant must calculate, identify and delineate:
  - a. the total acreage of conservation easements;
  - b. total acreage of forest saved (as shown on the approved final forest conservation plans);
  - c. the total acreage of forest planted (as shown on the approved final forest conservation plans);
  - d. the total acreage of landscape planting (as shown on the approved final forest conservation plans) that are within the category I conservation easement areas; and
  - e. the total acreage of naturally regenerated forest that is outside of “b”, “c”, and “d” above.
  
4. After the site visit Applicant will amend the Forest Conservation Plan to:
  - A. Remove the encroachment area from the Conservation Easement to eliminate the generator and concrete vault as encroachments; and
    - (1) The record plat covering the areas where the generator and concrete vault are located must be re-recorded to accurately display the boundaries of the revised Conservation Easement area.
  
  - B. To address the treatment of concrete pad(s) supporting picnic tables located in the conservation easement.
    - (1) A determination will be made during the site visit if the concrete pad(s) are to be removed or if they will be allowed to remain and the area of the conservation easement will be modified to exclude the area of encroachment of the concrete pad(s), in which event the record plat must be amended to reflect any change in the boundaries of the conservation easement.
  
  - C. Allow the asphalt path to remain within the Conservation Easement and request approval for such pathway to remain as shown on the Forest Conservation Plan.
  
  - D. Areas that are currently within the conservation easement that are allowed to remain being mowed will be excluded from the conservation easement area and the record plat covering such area must be re-recorded to accurately display the boundaries of the revised conservation easement.

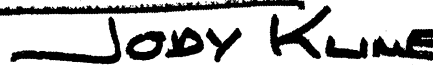
5. Applicant must submit an application within 120 days following the site visit described in paragraph numbered 1 above for an amended preliminary plan of subdivision, amended Forest Conservation Plan, and an administrative amendment to the site plan to reconcile conditions of preliminary and site plan approvals with the terms and conditions of this Plan of Action and must obtain approval from the Montgomery Planning Board on the preliminary and Forest Conservation plans prior to submitting revised record plats.
6. For the asphalt path remaining in the existing Conservation Easement areas, and for reductions in the Conservation Easement due to carving out the generator and concrete vault, and for any other mitigation situation, mitigation of the area impacted by the encroachments will be provided by the Applicant in the following manner.
  - A. Applicant will undertake forest planting at a replacement rate of 1:1 in areas that are within the boundaries of the conservation easement but were not previously shown on the approved Forest Conservation Plan for forest planting, landscape planting, forest retention, or have not naturally regenerated since the approval of the forest conservation plan.
    - (1) Staff will determine during the site visit and inspection whether the “surplus” conservation area described above is appropriate for forest planting or whether the area has so regenerated in natural growth that using the area for mitigation purposes would be inappropriate.
  - B. Alternatively, Applicant and Maryland-National Capital Park and Planning Commission (“M-NCPPC”) Staff will identify new areas to be subjected to the Conservation Easement at a replacement rate of 2:1 and will plant such areas.
    - (1) Any changes to the Conservation Easement, including additions, must be reflected on the revised plats and recorded by the Applicant.
7. Any revised plats to be recorded will be submitted to M-NCPPC within 90 days of the mailing date of the Planning Board’s resolution for the Preliminary Plan Amendment referenced in paragraph numbered 5 above.
8. Applicant must enter into a 2 year Maintenance and Management Agreement with a surety for any planting required by the revised Forest Conservation Plan. The maintenance and management agreement must be submitted and approved by M-NCPPC prior to any planting occurring.
9. Any required planting must occur within the first planting season after Planning Board approval of the amended preliminary plan of subdivision referenced in paragraph 5.



10. During the site visit, the parties will determine what areas, if any, may continue to be mowed. The area within the conservation easement that will continue to be mowed must be the subject of mitigation measures specified in paragraph 6 above. Areas that will continue to be mowed must be removed from the conservation easement pursuant to the provisions of Paragraphs 4 and 7.
11. Applicant must remove nonnative and invasive vegetation, such as Canadian Thistle, by the means directed by a governmental agency that will cause the least damage to the conservation easement and will allow for natural regeneration to occur within the easement area.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a bold, slightly slanted, sans-serif font. A horizontal line is drawn through the signature, extending slightly beyond the left and right edges of the text.

Jody S. Kline

JSK/dlt

cc: Rollin Stanley  
Mark Pfefferle  
Cathy Conlon  
Patrick Butler  
Robert Kronenberg  
Josh Sloan  
Carol Rubin, Esquire  
Christina Sorrento, Esquire  
Paul Chod  
Bradley Chod  
Andy Chod  
Gary Unterberg  
Kim McCary