



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 14 - 63
Preliminary Plan No. 11999034C
Alvermar Woods, Lot 17
Date of Hearing: July 17, 2014

NOV '6 2014'

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, by Opinion dated February 4, 1999, the Planning Board, approved Preliminary Plan No. 119990340, creating two lots on 4.17 acres of land in the RE-2 Zone, located at the southwest corner of the intersection of River Road and Riverwood Drive, in the Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on December 16, 2008, Kambiz Kazemi ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan to remove onsite Category I conservation easement from Lot 17, Alvermar Woods known as 10410 Riverwood Drive ("Subject Property"), one of the lots created by Preliminary Plan No. 119990340 and mitigate offsite outside the watershed, which was designated Preliminary Plan No. 11999034A; and

WHEREAS, on July 28, 2011, Planning Board denied Preliminary Plan No. 11999034A (MCPB No. 10-1480); and

WHEREAS, on July 31, 2011, the Applicant filed another application for approval of an amendment to the previously approved preliminary plan to remove onsite Category I conservation easement from the Subject Property, and proposing to mitigate some onsite and some offsite within the same watershed, which was designated Preliminary Plan No. 11999034B, Alvermar Woods, Lot 17 ("Preliminary Plan", "Amendment", or "Application"); and

WHEREAS, on October 16, 2013 the Planning Board approved Preliminary Plan No. 11999034B (MCPB No. 13-148); and

WHEREAS, on April 2, 2014, the Applicant filed another application for approval to amend the previously approved preliminary plan to remove all onsite Category I conservation easement from the Subject Property and mitigate offsite outside the watershed, which was designated Preliminary Plan No. 11999034C; and

Approved as to
Legal Sufficiency:


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WHEREAS, following review and analysis of the Application by the Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated June 26, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 17, 2014, the Planning Board held a public hearing on the Application, and heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, the underlying purpose of removing the easement from the lot is to address an alleged ongoing violation;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board denies Preliminary Plan No. 11999034C to remove a total of 50,458 square feet of Category I Conservation Easement from the Subject Property.

BE IT FURTHER RESOLVED that, considering the entire record in this proceeding, it is inappropriate under the circumstances of this case to approve the proposed amendment.

The Applicant's lot is covered by a forest conservation plan and an associated forest conservation easement covering approximately 1.13 acres. In response to an alleged violation of the easement, the Board approved a preliminary plan amendment in 2013 that allowed the Applicant to remove a certain amount of the easement from his lot, subject to certain conditions, including recording a new plat, providing offsite mitigation, and delineating the new easement boundary with signs.

In October 2013, almost immediately after the Board approved that amendment, the Applicant was cited for another alleged violation of the easement on his lot, outside of the area where the Board approved the easement's removal. Moreover, according to the Planning Department, the Applicant failed to comply with the conditions of approval of the 2013 amendment. Thus, the Planning Department considered the Applicant's initial alleged violations to have continued unremedied. The purpose of this amendment is once again to address the Applicant's alleged violations, including those that the Applicant failed to address when he allegedly did not comply with the conditions of the 2013 amendment. Only this time the Applicant proposes to remove the entire easement from his lot.

The proposed amendment purports to resolve the Applicant's alleged violations of the easement not just by removing it and requiring offsite planting, but also by incorporating a tentative settlement agreement between the Applicant and the Planning Department. The settlement agreement calls, among other things, for the Applicant to

pay an administrative civil penalty of \$10,000. The Board understands that the settlement is intended to resolve all of the violations that the Applicant has been alleged to have committed, and that if the Board were to approve the proposed amendment the Applicant would expect that the Board, which has the primary authority to enforce the forest conservation law violations, would not take any further enforcement action in response to those alleged violations.

The violations alleged by the Planning Department are very serious. However, the Applicant does not concede that he has committed the alleged violations. So the Board is being asked to approve the resolution of alleged violations when the existence and extent of any violations is unclear.

If the Applicant has been as reticent about complying with the easement as the Planning Department alleges, a higher civil administrative penalty than called for in the settlement may be justified, particularly given that the willfulness and recurrent pattern of any violations are among the considerations that the Board must take into account in setting a penalty.

In light of the apparent factual dispute about the alleged violations, and the lack of a record about the issues that the Board must consider in determining how to exercise its enforcement authority, the Board would benefit in this case from an evidentiary record and factual findings of an administrative law judge. The Board's enforcement rules provide for a hearing process where such a record and findings can be developed.

In denying the proposed amendment, the Board notes that neither the Board nor the forest conservation law is indifferent when it comes to removing a recorded conservation easement, in which the Board has a property interest. The forest conservation law prioritizes forest planting and protection onsite. The proposed amendment is inconsistent with that priority. A clearer assessment of the state of the forest and the appropriateness of retaining forest on the Applicant's lot, which could also be developed before an administrative law judge, would assist the Board in determining whether to relinquish its easement interest in the Applicant's lot.

Finally, this denial is without prejudice to the Applicant filing a revised proposal that would more effectively address the enforcement concerns or conservation priorities in this case.


BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 6 2014 (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).

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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 Commissioner Presley, with Chair Anderson, and Commissioners Dreyfuss, Presley, and Fani-Gonzalez voting in favor, and Vice Chair Wells-Harley absent at its regular meeting held on Thursday, October 30, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board