



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

MCPB No. 14 - 117
Preliminary Plan No. 11999034D
Alvermar Woods
Date of Hearing: December 4, 2014

DEC 10 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 an 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 mitigation 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

Approved as to
Legal Sufficiency:


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conservation easement from the Subject Property and mitigate offsite outside the watershed, which was designated Preliminary Plan No. 11999034C; and

WHEREAS, on July 17, 2014 the Planning Board held a public hearing to consider Preliminary Plan No. 11999034C and voted to deny it; and

WHEREAS, on November 6, 2014 the Planning Board issued a resolution denying Preliminary Plan No. 11999034C (MCPB No. 14-63); and

WHEREAS, on October 31, 2014, the Applicant filed another application for approval to amend the previously approved preliminary plan to remove all onsite Category I conservation easement from Lot 16 and 1,008 square feet of Category I conservation easement from Lot 17 and mitigate offsite outside the watershed, which was designated Preliminary Plan No. 11999034D; and

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 November 20, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 4, 2014, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 11999034D to remove a total of 51,466, square feet of Category I Conservation Easement from the Subject Property subject to the following conditions:¹

1. The Applicant must submit a complete record plat application within thirty (30) days of the mailing of the Planning Board Resolution approving the limited amendment to the Preliminary Plan that removes the entire Category I Conservation Easement from lot 17 and from a portion of lot 16. The existing Conservation Easement remains in full force and effect until the record plat is recorded in the Montgomery County Land Records.

¹ For the purposes of these conditions, the term "Applicant" shall also mean the developer, the owner or any successors in interest to the terms of this approval.

2. The Applicant must submit a minor subdivision plan to change the property lines for existing lots 17 and 16. The minor subdivision must be coordinated with the submission of a new record plat that removes the conservation easement.
3. A Category I Conservation easement must be recorded in the Montgomery County Land Records by deed and the Liber Folio for the easement area remaining on existing lot 16 must be referenced on the new record plat. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel before recordation of the easement.
4. The Applicant must submit a Certificate of Compliance to use an M-NCPPC approved offsite forest mitigation bank within thirty (30) days of the mailing of the Planning Board Resolution approving 11999034D. The Certificate of Compliance must provide 102,932 square feet of mitigation credit for the removal of 51,466 square feet of Category I Conservation Easement.
5. All other conditions of Preliminary Plan No. 119990340 and Forest Conservation Plan No. 119990340 that were not modified herein, as contained in the Planning Board's Opinion dated February 4, 1999, remain in full force and effect.
6. The Applicant must comply with the Settlement Agreement between the Applicant and the Planning Department dated October 5, 2014.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. Except as specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.
2. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County, Chapter 22A.

Mitigation offsite equal to twice the area of conservation easement removal and abandonment of existing Category I Conservation Easement, and for Lot 17 will more than compensate for loss of the original forest conservation requirements.

BE IT FURTHER RESOLVED that, subject to the conditions of approval set forth herein, the proposed amendment resolves the Applicant's alleged violations of the easement on his lot both by removing it and requiring offsite planting, and by incorporating a settlement agreement between the Applicant and the Planning Department, which the Applicant must fully comply with as a condition of this approval. The settlement agreement in this case is a very important element of this approval because this amendment is intended to resolve all of the violations that the Applicant has been alleged to have committed, and that the Applicant's compliance with the conditions of approval will eliminate the need for any further enforcement action in response to the alleged violations.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 10 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).

* * * * *

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 Commissioner Dreyfuss, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-Gonzalez voting in favor at its regular meeting held on Thursday, December 4, 2014, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board