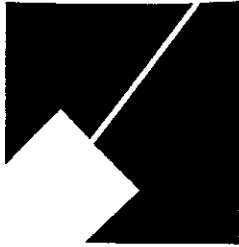


Item #7

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

M E M O R A N D U M

DATE: January 18, 2002
TO: Montgomery County Planning Board
FROM: A. Malcolm Shaneman
Development Review Division
(301) 495-4587
SUBJECT: Informational Maps for Subdivision Items on the
Planning Board's Agenda for January 24, 2002.

Attached are copies of plan drawings for Items #07, #10, #11, #12, #13, #14. These subdivision items are scheduled for Planning Board consideration on January 24, 2002. The items are further identified as follows:

- Agenda Item #07 - Preliminary Plan 1-94011
Smalls Nursery Revision
- Agenda Item #10 - Preliminary Plan 1-98093A
Rock Spring Park Ext. w/SP
- Agenda Item #11 - Preliminary Plan 1-02028
Oakton Associates
- Agenda Item #12 - Preliminary Plan 1-00074
Woodbyrne Farms
- Agenda Item #13 - Preliminary Plan 1-02055
Duvall Property
- Agenda Item #14 - Preliminary Plan 1-02053
John E. Kelly Property

Attachment

VICINITY MAP FOR
SMALL'S NURSERY (1-94011)



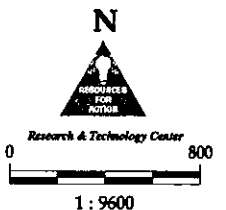
Map compiled on January 17, 2002 at 12:33 PM | Site located on base sheet no - 221NW04

NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



VICINITY MAP FOR
SMALL'S NURSERY (1-94011)



Map compiled on January 17, 2002 at 12:25 PM | Site located on base sheet no - 221NW04

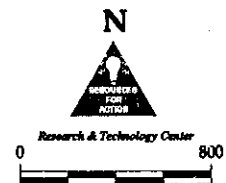
NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

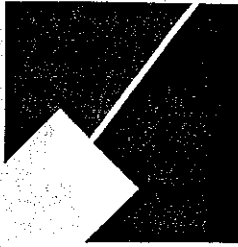
This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

Key Map



Item #7 & 8

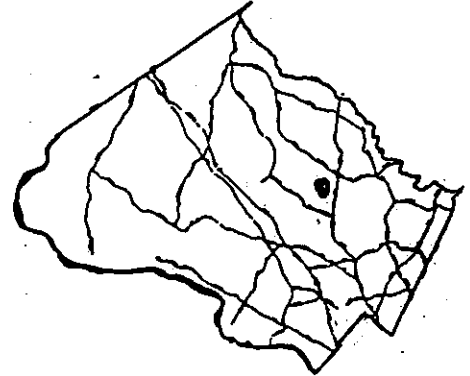
M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760



MEMORANDUM

DATE: January 15, 2002

TO: Montgomery County Planning Board

VIA: Joseph R. Davis ^{JRD} Chief, Development Review Division

FROM: A. Malcolm Shaneman, Supervisor, Development Review Division

REVIEW TYPE : Preliminary Plan of Subdivision and Site Plan Review

APPLYING FOR: Revision to the Previous Conditions of Approval

PROJECT NAME: Small's Nursery

CASE NO. 1-99029 and 8-95015

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: RE-1 Cluster Method

LOCATION: Northwest Corner of Georgia Avenue (MD 97) and Norbeck Road (MD 28), Northeast of Muncaster Mill Road

MASTER PLAN: Olney and Vicinity

APPLICANT: Small's Nursery, LLC

ATTORNEY: Leach Early and Brewer

HEARING DATE: December 2, 1999

STAFF RECOMMENDATION: Grant Request To Revise The Previous Conditions of Approval

PROJECT DESCRIPTION

Prior Planning Board Actions

On June 16, 1994, the Board approved Preliminary Plan #1-94011 for the development of 100 units in the Small's Nursery subdivision, subject to conditions pursuant to the provisions of the 1994 Annual Growth Policy Ceiling Flexibility for Limited Residential Development. As part of the Preliminary Plan approval, the Planning Board indicated the need for additional recreation areas to serve the Olney area. This requirement was based on a finding that the Olney area was deficient of active recreational facilities identified by the Park and Recreation Open Space (PROS) Master Plan. On July 20, 1995, the Board approved Site Plan No. 8-95015. As part of the site plan approval the Planning Board required the applicant to dedicate and provide final grading, suitable for play and gravel parking for a "play field" as a proposed expansion of the Muncaster Road Local Park

In 1997, the Board approved an amendment to the Preliminary Plan to provide the development of an additional thirty (30) units in the Small's Nursery subdivision based on available staging ceiling capacity and conditioned approval, in part, on the previous site plan condition for the applicant to construct a "play field" in the southwest portion of the property, adjacent to the existing local public park.

In November of 2000 the Planning Board staff administratively approved a site plan amendment (Site Plan No. 8-95015A) to reflect the additional units. The Planning Board and the Developer subsequently entered into a Site Plan Enforcement Agreement, which provided that in the event the Parks Department had not timely completed the design of the play field (soccer field) by the contemplated date of issuance of the 101st building permit, the Developer could post a surety bond with the Planning Board to guarantee that the soccer field and associated parking would be built.

On February 20, 2001, the Board approved an amendment to the Preliminary Plan and Site Plan, which permitted the Developer to add an additional forty-five (45) lots in the subdivision. This was intended to be Phase IV of the subdivision. The developer later conveyed that portion of the site to MDSHA which is depicted on the Olney Master Plan as the future right-of-way for the Inter-County Connector. As part of this amendment, the Board revised condition No. 20 of the Preliminary Plan to state:

"Before issuance of the building permits for the 129th and 130th lots, the Applicant shall complete its park site dedication, and shall have

commenced construction pursuant to issued permits for grading, turf establishment and the gravel parking area associated with the park site.

ISSUES TO DATE

In November 2001, the applicant requested the ability to seek the release of building permits for the 129th and 130th lots. The applicant submitted a surety bond estimate for the construction of the soccer field pursuant to the revised site plan enforcement agreement. The surety bond is currently under evaluation by staff to insure that the cost estimate is adequate to fulfill the requirements of construction of the soccer field and related parking. While the applicant's estimate has been determined to be low, staff is working towards finalizing an estimate which should be available at the public hearing.

In September 2001 MDSHA relayed concerns about the timing of construction for of the expanded fields located on the south side of the Small's Nursery site. MDSHA noted that proposed interchange alternatives for the Georgia Avenue (MD 97) and Norbeck Road (MD 28) may impact the proposed "play field". MDSHA is currently reviewing several alternatives and has indicated that they anticipate making a decision on the selection of an alternative by Summer 2002.

In October 2001 the Planning Board responded to MDSHA's request. The Planning Board Chairman advised MDSHA that two of the alternatives would preclude the construction of the soccer field. The Chairman's letter further indicated that, in the event the interchange was not selected, it would be unfair, in terms of time and expense, to require the Developer to come back and construct the soccer field after they have completed construction of the subdivision and removed its equipment from the site. The Chairman recommended that MDSHA coordinate with the Developer because changes would be required to the conditions of subdivision approval.

In a letter addressed to the Chairman, dated December 10, 2001, MDSHA indicated that their engineers have been working with Parks staff in an attempt to devise a solution in which a soccer field could be constructed at the intended location. Parks Staff has developed a conceptual plan, which might permit such a coexistence of the soccer field and any proposed Norbeck Road/Georgia Avenue intersection improvement. MDSHA indicated that they would coordinate with the Developer to discuss issues related to the soccer field.

RECOMMENDATION

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.

Staff recommends that the Planning Board consider removing Condition No. 20 of the Preliminary Plan and amending the remaining conditions of both the Preliminary Plan and Site Plan to incorporate the following:

"The Applicant shall convey or dedicate (to be determined by the Director) the 4.5 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...

"Building permits for lot nos. 129 and 130 may be released to Applicant upon the posting of security in a form approved by Commission legal staff and in an amount to be approved by the director. The security shall cover the cost of grading, turf establishment, stabilization, and parking area with appropriate access from Thislebridge Drive. Such security shall be redeemable by the Commission for improvements to (a) parcel _____ or (b) such alternative site as the director may choose."

...and...

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

Attachments

Vicinity Map	5
Approved Development Drawing	6
Applicant's Request for Revision To the Conditions of Approval	7 – 9
Preliminary Plan Opinion and Site Plan Enforcement Agreement	10 – 13
Summary of Georgia Avenue and Norbeck Road Intersection Improvement Study	14 – 16
Muncaster Mill Park Neighborhood Park Expansion Summary	17 -

VICINITY MAP FOR
SMALL'S NURSERY



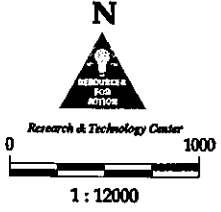
Map compiled on August 28, 2000 at 9:51 AM | Site located on base sheet no - 221NW04

NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

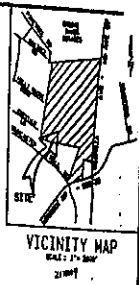
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

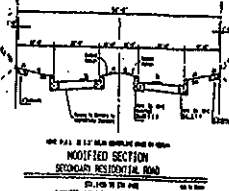
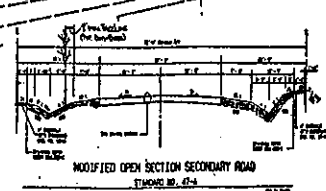


MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

GENERAL DESCRIPTION
 OF PART OF THE PROJECT
 OF PART OF THE PROJECT, THE PROJECTOR HAS BEEN ADVISED BY THE MONTGOMERY COUNTY DEPARTMENT OF PLANNING AND ZONING THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE MONTGOMERY COUNTY DEPARTMENT OF PLANNING AND ZONING REGULATIONS AS THEY EXISTED IN 1941 AND AS AMENDED THEREAFTER. HOWEVER, CERTAIN ASPECTS OF THE PROJECT ARE BEING REVIEWED BY THE MONTGOMERY COUNTY DEPARTMENT OF PLANNING AND ZONING AS THEY EXISTED IN 1941 AND AS AMENDED THEREAFTER.



GENERAL NOTES:
 1. Area of site: 100.0 AC.
 2. Existing zoning of site: R-1
 3. Proposed Development in District: Medium Density Residential
 4. Units allowed: 100 units per acre (100 UPA) = 10,000 units
 5. Units proposed: 100 units per acre (100 UPA) = 10,000 units
 6. Minimum setbacks: 20' front, 10' side, 10' rear
 7. Minimum lot size: 10,000 square feet
 8. Topography from Air Survey, Inc. @ 2 contour interval
 9. Boundary Information from L&N survey
 10. 100-Year Floodplain limits shown from study by L&N, November, 1992.



LOEDERMAN ASSOCIATES, INC.
 CIVIL ENGINEERS
 1000 W. WISCONSIN AVENUE
 SUITE 200
 WASHINGTON, D.C. 20004
 PHONE: (301) 462-1100
 FAX: (301) 462-1101

SMALL'S NURSERY
 8TH ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND
 REVISED PRELIMINARY PLAN
 SCALE: 1" = 100'
 PROJECT NO. 128-102
 PHASE III



ATTORNEYS

ROBERT G. BREWER, JR.

DIRECT 301.657.0165

RGBREWER@LERCHEARLY.COM

January 7, 2002

VIA HAND DELIVERY

Mr. Joseph Davis
Division Chief
Development Review Division
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20901

Re: Small's Nursery
Approved Preliminary Plan 1-94011R

Dear Mr. Davis:

As you know, we represent Small's Nursery, LLC ("Small's Nursery"), the owner of the referenced property. The purpose of this letter is to request the amendment of Condition #20 imposed by the Montgomery County Planning Board (the "Planning Board") pursuant to that certain opinion dated February 20, 2001, a copy of which is attached as Exhibit A, in order to permit a surety bond to be posted pending Small's Nursery's compliance with this condition.

On June 16, 1994, the Planning Board approved the development of 100 dwelling units within Phases I and II of the Small's Nursery project. A condition of this approval was the expansion of an underutilized, inadequately sized local park and the construction of a soccer field thereon. The Site Plan for Phases I and II was approved on July 20, 1995 (#8-95015).

Former Commissioner Hussman took a personal interest in the local park and worked closely with Park Department staff in its planning and design. Unfortunately, those efforts took a considerable length of time. A Site Plan Enforcement Agreement (the "SPEA") was executed on November 11, 1996 by the Planning Board and Small's Nursery to delineate the obligations of the parties with respect to Phases I and II of the project. Pursuant to the development phasing plan attached to the SPEA, the soccer field was to be completed and dedicated no later than Small's Nursery's receipt of the building permit for the 101st lot.

On March 5, 1997, the Planning Board approved the development of an additional thirty dwelling units within the Small's Nursery project (Phase III). At this time, the Park Department's redesign of this park was not complete. Because of concerns that the Park Department's design of the park would not be completed before Small's Nursery was prepared to request the issuance of the 101st building permit and others thereafter, the SPEA was amended on November 17, 2000 to encompass Phase III (the "Amended SPEA") to allow Small's Nursery to post a surety bond to guarantee construction of the soccer field if the park design was not complete when Small's Nursery was ready to request receipt of the 121st building permit.

On February 20, 2001, the Planning Board issued an opinion approving the development of lots 131 through 175 (Phase IV). Condition #20 of the opinion states that "before issuance of the building permits of the 129th and 130th lots, Applicant shall complete its park site dedication, and shall have commenced construction pursuant to issued permits for grading, turf establishment and the gravel parking area associated with the park site". The alternative method of posting a surety bond is not contemplated in the Phase IV opinion, even though the Amended SPEA permitted the posting of a surety bond for Phase III just three months earlier on November 17, 2000. Two months later, in April, 2001, the Phase IV property was conveyed to the Maryland State Highway Administration.

Small's Nursery is now prepared to request building permits for the final two lots of Phase III, the 129th and 130th lots. The Parks Department staff just recently completed the park site design. Small's Nursery's civil engineers, Loiederman Soltesz Associates, have almost completed the drawings and are preparing permit applications for grading and stormwater management. Construction should commence this spring. A deed of dedication and a reciprocal easement agreement have been prepared by Small's Nursery and are pending review at the Planning Board as of November, 2001.

Given all of the design delays, in November, 2001, Small's Nursery prepared a surety bond estimate for the construction of the soccer field, which was approved by the Development Review Division. A surety bond in the approved amount was delivered to Development Review Division shortly thereafter. Small's Nursery is ready to receive the long pending building permits for these two final lots. In fact, the lots are under contract to builders, who have them under contract to home buyers.

The staff of the Development Review Division is now unwilling to issue the final two building permits (despite our compliance with the Amended SPEA) because of concern regarding the apparent lack of consistency between the surety bond concept set forth in the Amended SPEA and Condition #20 set forth in the February 20, 2001 opinion (which does not mention the surety bond concept). To rectify this inconsistency, we respectfully request that condition #20 be deleted and the following text be inserted in place thereof:

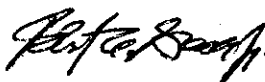
ATTORNEYS

"20. Before issuance of the building permits for the 129th lot, Applicant shall complete its park site dedication, and shall have commenced construction pursuant to issued permits for grading, turf establishment and the gravel parking area associated with the park site. Notwithstanding the foregoing, if the Parks Department design of the soccer field has not been timely completed by the contemplated date of the issuance of the 129th building permit, then the Applicant may post a surety bond with the Planning Board to guarantee its obligations with respect to the soccer field, with the amount of such surety bond estimated by Loiederman Soltesz Associates, Inc. and reasonably approved by the Planning Board Staff. If the park site dedication is completed and construction has commenced on the park site, or if, alternatively, a surety bond is posted, then the Applicant shall be entitled to issuance of all remaining building permits associated with Phase III."

Small's Nursery remains fully committed to the dedication of the park site, as well as to the construction of a soccer field, and will continue to cooperate in the design, planning and construction stages of the same. During the remaining time needed to finish planning the soccer field and complete construction, however, Small's Nursery hopes to continue with the development of Phase III of the project and requests that the revised Condition #20 be adopted to allow it to do so.

If you have any questions or need additional information, please do not hesitate to call me. With best regards.

Very truly yours,



Robert G. Brewer, Jr.

Enclosures

cc: Tariq El-Baba, Esq.
Mr. Malcolm Shaneman
Mr. Larry Ponsford
Mr. Jeffrey Abramson
Arnold J. Kohn, Esq.

G:\Dept\RE\KMS\Small's Nursery - 74286\l.joedavis2.doc

M-NCPPC



Date Mailed: February 20, 2001

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Holmes with a vote of 5-0;
Comms. Bryant, Holmes, Hussmann,
Perdue and Wellington voting in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-94011R
NAME OF PLAN: SMALL'S NURSERY

On 08/17/00, TOWER COMPANY submitted an amendment to the previously approved preliminary plan in the RE-1 zone. The previous application proposed to create 45 lots on 101.6 acres of land. The application was designated Preliminary Plan 1-94011R. On 01/18/01, Preliminary Plan 1-94011R 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 upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-94011R to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-94011R.

Approval, to revise the previous conditions of Planning Board Opinion dated March 5, 1997 as follows:

1. Amend agreement with Planning Board to limit development to maximum 175 dwelling units at this time as follows:
 - a. Enter into agreement with Planning Board and Montgomery County providing for the payment of the Development Approval Payment to the Montgomery County Dept. of Finance for 100 units as required pursuant to FY 94 AGP, prior to receipt of building permits for the units
 - b. Agreement with Planning Board to limit development to a maximum of 175 single-family detached units and provide for the necessary roadway improvements as outlined in the 2-21-97 Transportation Division memo prior to the release of the 101st building permit
2. Compliance with the conditions of approval of preliminary forest conservation plan. Applicant must meet all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permit, as appropriate

3. Access and improvements including directional entrance from Georgia Avenue (MD 97) to site, construction of right-hand lane through site to Norbeck Road (MD Rt 28) and internal road connections as approved by MDSHA and MCDOT
4. Conditions of MCDPS stormwater management approval dated 6-6-94, including issues to be addressed prior to site plan approval
5. Record plat(s) to delineate the areas of 100-year flood-plain, stream valley buffers and conservation easements
6. Dedication of Georgia Avenue (MD Rt 97) for 175' right-of-way
7. Final noise mitigation concept to be approved with site plan
8. No direct access to Holly Ridge Road until a full turning movement intersection opens at Georgia Avenue (MD 97)
9. No clearing, grading or recording of plat(s) prior to site plan approval
10. Final number and location of units to be determined at site plan
11. All construction vehicles to access site via Georgia Avenue (MD Rt 97) only
12. Approval of over-length cul-de-sacs
13. Other necessary easements
14. There will be no direct connection to Pine Tree Road under any circumstances
15. At site plan, a landscape plan for the area along Georgia Avenue (MD 97) shall be provided
16. This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the revised Planning Board opinion. Prior to the expiration of this validity period, a final record plat for all the property must be recorded, or a request for an extension must be filed
17. Thirty Days prior to the submission of any application for building permit(s) approval by the Department of Permitting Services, the applicant must notify, in writing, the Maryland State Highway Administration and M-NCPPC of applicant's intention to apply for building permits for the lots located on Site Plan No. 8-00043
18. The park site and Applicant's dedication for same shall be as conceptually delineated on the Park Department's plan dated January 18, 2001
19. Applicant to provide 50' open space buffer by easement parallel to north side of Rt. 28 between park site and existing commercial property
20. Before issuance of the building permits for the 129th and 130th lots, Applicant shall complete its park site dedication, and shall have commenced construction pursuant to issued permits for grading, turf establishment and the gravel parking area associated with the park site

**SITE PLAN ENFORCEMENT AGREEMENT
AMENDMENT NO. 1
(SMALL'S NURSERY)**

This Site Plan Enforcement Agreement, Amendment No. 1 ("Amendment No. 1") is made as of November 17, 2000, by and between SMALL'S NURSERY, LLC, successor in interest to Small's Nursery Limited Partnership ("Small's Nursery, LLC"), and MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

WHEREAS, the Planning Board and Small's Nursery Limited Partnership executed a Site Plan Enforcement Agreement dated November 11, 1996 ("Agreement") for the first 100 lots (Phases I and II) of the Subject Property (as defined therein) pursuant to Site Plan Application No. 8-95015 ("Site Plan"); and,

WHEREAS, Small's Nursery Limited Partnership has been converted into a Maryland limited liability company under applicable provisions of Maryland law, and a confirmatory deed to the Subject Property from Small's Nursery Limited Partnership to Small's Nursery, LLC was recorded in Liber 15541, folio 454 among the land records of Montgomery County, Maryland; and,

WHEREAS, the Development Phasing Plan attached to the Agreement, in paragraph 1(B) thereof, states that the "soccer field will be completed and turned over no later than the earlier of the receipt of the building permit for the 101st lot/unit." The development of the Subject Property is nearing the issuance of the building permit for the 101st lot, yet the Planning Board Staff has not yet completed its design proposals for the soccer field. In particular, the Planning Board Staff wishes to design a soccer field or other equivalent recreational facilities that maximize the existing local park owned and operated by the Planning Board and must engage in a complex design process in conjunction with Small's Nursery, LLC to do so. The completion of this design process will extend beyond the time for issuance of a building permit for the 101st lot on the Subject Property; and,

WHEREAS, the Planning Board Staff has administratively approved the Site Plan for additional lots in the Subject Property beyond 100, particularly the 101st through the 130th lot (Phase III) and designated it as No. 8-95015A, and a Site Plan Enforcement Agreement is necessary to reflect the development limitations applicable to Phase III; and,

WHEREAS, the parties wish to set forth their agreements for amendment of the soccer field condition and the amendment of the Agreement to reflect its applicability to Phase III of the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1972 (as amended), the parties hereto agree as follows:

1. The parties agree that the terms and conditions of the Agreement shall apply to Phase III of the Subject Property, except as modified by this Amendment No. I. Attached as Exhibit C is the Development Phasing Plan for Phase III, and attached as Exhibit D is the Residential Development Program for Phase III. All references in the Agreement to Site Plan Application No. 8-95015 shall apply to Phase III of the Subject Property (No. 8-95015A), since such Site Plan has been amended by the Planning Board Staff to apply to Phase III. References in the Agreement to Exhibit "B" shall be substituted in this Amendment No. 1 by reference to Exhibits "C" and "D".

2. Small's Nursery, LLC agrees to work constructively with the Staff of the Parks Department to satisfy Condition 9 of the Site Plan relating to the soccer field. Assuming that the Park Department completes its design on a timely basis, Small's Nursery, LLC shall satisfy Condition 9 of the Site Plan on or before the issuance of building permits for the 121st lot of the Subject Property. If the Parks Department design has not been timely completed by the contemplated date of issuance of the 121st building permit, then Small's Nursery, LLC may post a surety bond with the Planning Board to guarantee its performance of Condition 9 of the Site Plan, with the amount of such surety bond estimated by Loiederman Associates, Inc. and reasonably approved by Planning Board Staff. If Condition 9 of the Site Plan is satisfied on or before the time for issuance of the building permit for the 121st lot, or if, alternatively, a surety bond is posted, then Small's Nursery, LLC shall be entitled to issuance of all remaining building permits associated with Phase III of the Subject Property.

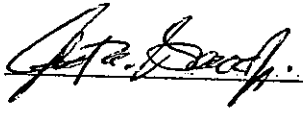
3. Except as set forth above, all terms and conditions of the Agreement remain in full force and effect.

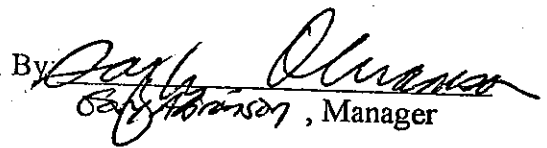
IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date set forth above.

WITNESS:

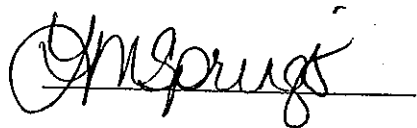
SMALL'S NURSERY, LLC


By: TOWER MD HOLDINGS, LLC, its
Managing Member




By: 
Cary Johnson, Manager

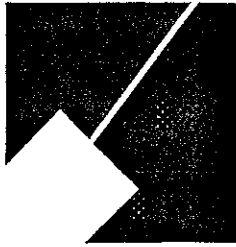
MONTGOMERY COUNTY PLANNING BOARD



BY: 
Joseph R. Davis, Chief
Development Review Division
APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC LEGAL DEPARTMENT

DATE 12/4/00



January 17, 2002

MEMORANDUM

TO: Malcolm Shaneman, Supervisor
Development Review Division

FROM: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning
County-Wide Planning Division

SUBJECT: Summary of MD 97/MD 28 Intersection Improvement Study

This memorandum provides a brief description of the history and current status of the State Highway Administration's (SHA) MD 97/MD 28 Intersection Improvement Study. This study is investigating the feasibility of an interchange at the intersection of Georgia Avenue (MD 97) and Norbeck Road (MD 28).

Relevance to Small's Nursery Subdivision

SHA is investigating five alternative interchange designs that meet the study purpose and need, essentially following one of two basic concepts:

- Relocation of Norbeck Road to cross Georgia Avenue (either above grade or below grade) approximately 200' north of the existing traffic signal. The existing roadways and signalized intersection would be retained and revised slightly to accommodate turning movements. **The alternates following this concept require acquisition of a portion of the land to be dedicated as parkland for use as right-of-way for the relocation of Norbeck Road.** The capital costs for this concept are estimated at **\$35 million to \$40 million.**
- Construction of a single-point urban interchange (SPUI) centered at the location of the existing intersection, with ramps extending along Georgia Avenue. The capital costs for this concept are estimated at **\$75 million to \$80 million.**

Should either the soccer field construction or parkland dedication occur as currently conditioned under Preliminary Plan #1-94011R, these areas would be viewed by the Federal review agencies as Section 4(f) resources, requiring SHA to avoid, minimize, or mitigate impacts to these resources. The community expectations would likely mirror the Federal requirements. The SPUI concept could be viewed as an avoidance option, despite the substantially higher capital cost and other undesirable community impacts.

SHA is interested in deferring either parkland dedication or soccer field construction until an alternate is selected during autumn 2002.

Master Plan References

The intersection of Georgia Avenue and Norbeck Road is on the boundary between the Olney and Aspen Hill Planning Areas. Neither of the two area Master Plans recommends an interchange at this location. The 1994 Aspen Hill Master Plan recommends the addition of right-turn lanes on both Georgia Avenue approaches (subsequently implemented) and a thru lane on westbound Norbeck Road. The Aspen Hill Plan also notes that the transportation recommendations would need to be revisited in the event that a policy decision is made to not construct the Intercounty Connector (ICC).

Each of the build alternates developed for the study has retained the existing 54' median along Georgia Avenue for future implementation of the Georgia Avenue Busway.

Study Background

The MD 97/MD 28 Intersection Improvement Study is part of the Congestion Relief Study (CRS) initiative to provide capacity and safety improvements at intersections in the ICC study area. The 1997 ICC Draft Environmental Impact Statement (DEIS) found that many intersections in the study area were forecast to operate at substandard congestion levels regardless of whether the No-Build Alternate or any of the build alternates were selected. In a preliminary study phase, the CRS initiative examined near-term geometric improvements at approximately 50 intersections in Montgomery County. At four locations, the preliminary analysis indicated that at-grade improvements would not adequately address the congestion problem and the state initiated project planning studies, following National Environmental Policy Act (NEPA) guidelines, to consider grade-separated interchanges. These locations are:

- Georgia Avenue (MD 97) at Norbeck Road (MD 28)
- Georgia Avenue (MD 97) at Randolph Road
- Rockville Pike (MD 355) at Montrose and Randolph Roads
- Rockville Pike (MD 355) at Montgomery Avenue (MD 28) and Veirs Mill Road (MD 586)

Study Timeline

SHA initiated the intersection improvement study during the summer of 1999, establishing a study team including M-NCPPC representation.

SHA formed a focus group of approximately 20 business and civic leaders in spring 2000. The focus group has been meeting about once every two months to review and comment on the study progress

The Alternates Public Workshop was held on September 7, 2000, at which SHA recommended three Alternates Retained for Detailed Study (ARDS):

- No-Build (Alternate 1)
- Urban Diamond (Alternate 2)
- MD 28 Relocated Overpass (Alternate 3, with Options A and B)

Because the master plan recommends only at-grade improvements, SHA agreed to retain an at-grade alternate as one of the ARDS, even though it does not provide sufficient improvement to meet the purpose and need.

Since the Alternates Public Workshop, the study team has been refining the alternatives to reflect focus group comments and address community concerns primarily related to addressing adverse property access and aesthetic impacts. Currently, SHA has six alternates:

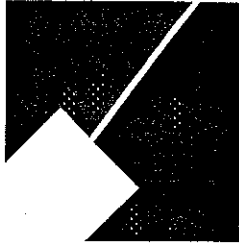
- No-Build (Alternate 1)
- Urban Diamond Interchange, MD 97 Over MD 28 (Alternate 2)
- Relocated MD 28 Over MD 97 (Alternates 3-1 and 3-2, with different treatments for Thistlebridge Drive access)
- Urban Diamond Interchange, MD 97 Under MD 28 (Alternate 4)
- At-Grade Improvement (Alternate 5)
- Relocated MD 28 Under MD 97 (Alternate 6-1)

Concept plans for these alternates are included as an attachment.

SHA anticipates holding the Location and Design Public Hearing during early autumn 2002, after which a preferred alternate will be selected.

DKH:cmd

Summary MD 97-MD 27 Intersection.doc



Memorandum

DATE: January 16, 2002

TO: Malcolm Shaneman, Plan Review Supervisor, Development Review Division

VIA: John E. Hench, ^{JEH}PH.D., Supervisor, Park Planning and Resource Analysis Unit, Countywide Planning Division

From: Rachel Newhouse, ^{RN}Landscape Architect, Park Planning and Resource Analysis Unit, Countywide Planning Division

Re: History of the Norbeck Muncaster Mill Neighborhood Park - Park Expansion and Field Development by the Small's Nursery Development

History

In 1995, the Montgomery County Planning Board required the developer of the Small's Nursery Site Plan to provide a play field on property north of MD Rt. 28 and Muncaster Mill Road near and including a portion of the existing Norbeck Muncaster Mill Neighborhood Park (**Exhibit A – Existing Park**). The existing park includes a recreation center for community and church use, an informal playfield with backstop, a basketball court, recently renovated playground and parking lot with 15 spaces that is shared by the rec center and the church. The developer required field provides a much needed recreational facility for the Olney /Aspen Hill Planning area. The developer was required to provide final grading for the field, establishment of turf suitable for play and a gravel surface parking lot. In exchange, the developer was allowed to design and build a stormwater management pond on park property that would be used to serve the park and the future private development.

Subsequently, at a Planning Board meeting in May 2000, then Chairman of the Planning Board, Bill Hussmann, and the Tower Companies (the developer) agreed that the area being dedicated for a soccer/lacrosse field would be expanded to include additional land for a park (5.4 acres) for a total park acreage of 10.8 acres. The extra acreage allows for the size and types of facilities

needed for a local park development (10 -15acres) and enables the park to serve a larger community.

Finally, at the January 18, 2001 Planning Board meeting, the Board amended the site plan conditions to include the dedication of the park property, the provision for a 50 foot open space buffer by easement along Rt. 28 and the requirement for the applicant to have completed the park site dedication and construction of the field and parking lot before issuance of building permits for lots 129 and 130. The Planning Board also discussed an access road being constructed by the applicant from Thistlebridge Road to the gravel parking area for the park to provide access for the residents of Small's Nursery and would also be the access road to future development by the applicant on that parcel.

On May 28, 2001, plans were submitted by the developers' engineers to MNCPPC showing the land to be given to MNCPPC, the 50 foot vegetative buffer and grading for the soccer/lacrosse field, the gravel parking area, gravel access road, and stormwater management area needed to serve the park and the future private development (**Exhibit B- Current Field Plans**).

On July 28, 2001 MNCPPC staff sent a letter to the developer's engineer with staff comments from a July 10, 2001 Plan Review meeting on the plan and included copies of standard specifications for field construction, seeding and sodding.

In September 2001, park staff learned of the plans by SHA for the widening and improvements to the Georgia Avenue/Norbeck Road intersection through a September 13, 2001 letter from SHA asking MNCPPC to delay the construction of the soccer/lacrosse field for one year to allow SHA the opportunity to study all the various alternatives for the Norbeck Road/Georgia Avenue interchange. After a review of the alternatives, park staff preferred the road alternate 2 that had the least impact to the park and the developer's requirements for construction. The state prefers alternate 3-B, which is less expensive but shows the road going through the new parkland and the proposed soccer/lacrosse field. At this point MNCPPC staff and SHA staff began meeting to look into various alternatives that try to accommodate the new intersection and the new park.

In a letter to Neil Petersen dated October 26, 2001, Chairman Holmes stated that the construction by the developer may be delayed if the state agrees to provide the recreational needs at a mutually agreeable location (**Attachment #1**).

Although a draft concept has been developed that could possibly accommodate the lacrosse/soccer field at the current site (**Exhibit C – Preliminary Concept**), the concept has not been reviewed from an engineering or environmental standpoint and has not solved the problem of access to the park nor the stormwater management requirements. This process is still on going with a meeting planned for January 23, 2002.

The need to accommodate SHA's SWM needs, the park's SWM needs and the need to re-align Thistlebridge Road to access Muncaster Mill Road are all efforts that are impacting the space needed for an adequate park. An alternate park site should be located for the development of the lacrosse/soccer field and the parking lot, if it is determined that the location at Norbeck Road and Georgia Avenue is not large enough.

On January 8, 2002, MNCPPC received final construction drawings from the developer's engineer for the soccer/lacrosse field, gravel access road and gravel parking lot. The engineer estimates that they will complete final Sediment Control and Stormwater Management Plans in early February, obtain plan approval and permits in April and begin construction in April/May 2002. Included with the package was a bond estimate for \$105,350 for the construction of the soccer/lacrosse field and the gravel parking area. The bond estimate did not include the 75,000 estimate for the stormwater management pond that will be bonded with the county nor the cost of the access road, since the road was originally intended to serve the future private development, which is unlikely to occur now that SHA may require that land for the proposed Norbeck/Georgia Avenue interchange. The bond estimate is not enough for MNCPPC to build the field, parking lot and access road as shown by the MNCPPC estimate (**Attachment #2**), if for some reason the developer does not build the park as required. A more accurate estimate is needed from the developer that reflects their actual costs to build the park facilities.