



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

JUN 19 2009

MCPB No. 09-61
Preliminary Plan and Forest Conservation Plan No. 11996077A
Willson Property
Date of Hearing: February 26, 2009

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 and forest conservation plan applications; and

WHEREAS, on December 16, 2008, the Maryland State Highway Administration ("Applicant"), filed an application to amend on a limited basis a previously approved preliminary plan of subdivision and forest conservation plan that created five lots for five single-family detached houses on 3.46 acres located on the east side of Layhill Road, north of the Inter-County Connector ("Property" or "Subject Property") in the Aspen Hill Master Plan area ("Master Plan"), by creating right-of-way for the Inter-County Connector (ICC) and removing conservation easements within the right-of-way over 0.51 acre of the 3.46-acre subdivision; and

WHEREAS, the ICC is a State project and the Applicant's ICC right-of-way is consistent with the ICC Record of Decision; and

WHEREAS, the conservation easements were created by the forest conservation plan included in the approved preliminary plan of subdivision ("Preliminary Plan") to satisfy the requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code; and

WHEREAS, Applicant's limited preliminary plan amendment and forest conservation plan applications to release that portion of the conservation easements that are within the ICC right-of-way and to provide appropriate mitigation therefore were designated Preliminary Plan and Forest Conservation Plan No. 11996077A ("Application"); and

WHEREAS, the Environmental Planning staff issued a memorandum to the Planning Board, dated February 13, 2009, setting forth a review and analysis by

Approved as to
 Legal Sufficiency:

[Handwritten Signature] 6/3/09

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Planning Board staff ("Staff") and staffs of other governmental agencies, which recommended approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on February 26, 2009, 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 February 26, 2009, the Planning Board adopted the Staff Report and approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Presley; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Limited Preliminary Plan Amendment and Forest Conservation Plan Amendment No. 11996077A to create State Highway Administration Inter-County Connector right-of-way and remove conservation easements within the right-of-way on 0.51 acre of the 3.46-acre subdivision located on the east side of east side of Layhill Road, north of the Inter-County Connector ("Property" or "Subject Property"), in the Aspen Hill Master Plan area ("Master Plan"), subject to the following conditions:

- 1) The State Highway Administration (SHA) must place a Category I conservation easement in a form approved by M-NCPPC for 1.87 acres of existing forest on Parcel 36, Plat Number 17473, Reservation Plat of Land for Public Use, Intercounty Connector, adjacent to Briggs Chaney Road and ICC interchange, and 5.39 acres of existing forest on Cross Creek Property, Map KR61 Parcel P326.¹
- 2) The State Highway Administration (SHA) must place a Category I conservation easement in a form approved by the M-NCPPC on Parcel 36, Plat Number 17473, Reservation Plat of Land for Public Use, Intercounty Connector, adjacent to Briggs Chaney Road and ICC interchange and Cross Creek Property, Map KR61 Parcel P326 and amended conservation easements for affected properties must be shown on the land records for the affected properties. SHA must submit all documents related to these conservation easements no later than June 30,

¹ The total of 7.26 acres of forest protected in conservation easements is mitigation for removal of all conservation easements within the ICC ROW on six properties east of Georgia Avenue. The mitigation for removal of conservation easements on Willson Property is the creation of 0.51 acre of conservation easement on existing forest.

2009 for staff review and approval prior to recording these documents in the land records.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The proposed removal of specific conservation easements within the Subject Property is unavoidable and necessary since the ICC ROW overlaps those portions of the easements to be removed.*
2. *The Application allows the subdivision to continue to satisfy all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The previously approved forest conservation plan satisfied the requirements of the Forest Conservation Law by planting 0.51 acre of forest in a Category I conservation easement. The Board finds that the amended plan will continue to meet the requirements. Existing forest will be protected offsite through the creation of Category I conservation easements at a rate of 2 acres of replacement forest protected offsite per acre of conservation easement removed on the Subject Property. The offsite land will lie within the same watershed as the Subject Property. In addition, Board finds that the rate of forest replacement is consistent with required forest plantings to replace conservation easements that are approved by the Planning Board for abandonment, in limited circumstances, in other private development projects and in County projects.

BE IT FURTHER RESOLVED, that all other conditions contained in the adopted opinion approving Preliminary Plan 119960770 remain in full force and effect.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 19 2009 (which is the date that this Resolution is mailed to all parties of record); and

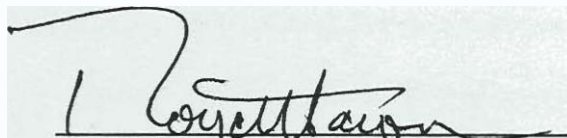
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Cryor, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, and Presley voting in favor of the motion, and Commissioner Alfandre absent, at its regular meeting held on Thursday, June 11, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board