

DEC 22 2011



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-122

Respondent(s): Michael and Linda Sandler

Violation of Forest Conservation Plan 120020730

Date of Hearing: April 14, 2011

ORDER

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is vested with primary authority to enforce the Montgomery County Forest Conservation Law; and

WHEREAS, on November 19, 2010, the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission issued a Notice of Hearing to Michael and Linda Sandler (Respondents), alleging that the Respondents violated the Montgomery County Forest Conservation Law as a result of continual grass cutting in a Category I Forest Conservation Easement, installation of an asphalt driveway in a Category I Forest Conservation Easement, and maintaining a garden in a Category I Forest Conservation Easement that is located on property owned by the Respondents; and

WHEREAS, on January 11, 2011 Administrative Law Judge Lorraine E. Fraser, of the Maryland Office of Administrative Hearings, held a hearing at 8787 Georgia Avenue, Silver Spring, Maryland 20910; and

WHEREAS, on February 8, 2011, the Administrative Law Judge filed a Recommended Order, attached herein, proposing that the Planning Board hold that Respondents violated a Category I Conservation Easement and order that:

1. Respondents pay an administrative civil penalty of \$2,472.50;
2. Respondents take corrective actions, including having a professional survey conducted at Respondents' expense showing the boundaries of the Category I Forest Conservation Easement on the Property; installing 6-inch x 6-inch corner posts and signage marking the easement boundaries; removing the grass and garden in the easement and replacing them with wood mulch; removing the portion of the driveway within the easement; and planting four two-inch caliper native trees in the easement; and that
3. The records and publications of the Montgomery County Planning Department and the Maryland-National Capital Park and Planning Commission reflect this decision; and

WHEREAS, following review and analysis of the Recommended Order by Planning Board staff and the staff of other governmental agencies, on April 14, 2011 the

A handwritten signature in black ink, appearing to be the name of the Chairman.

Planning Board held a public hearing ("the Hearing") to review the Recommended Order; and

WHEREAS, at the Hearing, the Planning Board heard arguments concerning the Recommended Order; and

WHEREAS, on April 14, 2011 the Planning Board adopted the Recommended Order subject to certain modifications, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board hereby orders Respondents to comply with one of the following two alternatives:

1. Alternative One:

- a. The Respondents must comply with the recommendation and analysis set forth in the Recommended Order except that the requirement to conduct a professional survey is waived;
- b. No later than 60 days from the mailing date of this resolution, the Respondents must pay the administrative civil penalty, install the 6" x 6" corner posts and signage marking the easement boundaries, remove the portion of the driveway within the easement, remove the garden, and remove the grass in the easement and replace it with wood mulch; and
- c. The Respondents must plant four two-inch caliper native trees in the easement in the next planting period from the date of this order, which is March 1, 2012 to April 30, 2012.

2. Alternative Two:

- a. No later than 60 days from the mailing date of this order, the Respondents must file an application for a limited preliminary plan amendment modifying the Category I Conservation Easement located on their property to a Category II Conservation Easement, removing the area currently covered by a driveway from the easement area, and providing for offsite planting in an approved forest mitigation bank at a 2:1 ratio for the entire area removed from Category I Easement;
- b. No later than 120 days of the mailing date of this order, Respondents must obtain Board approval of the limited preliminary plan amendment. If the 120 the Respondents fail to obtain Board approval of the proposed amendment within after 120 days, the Respondents must comply with the requirements of Alternative One, Paragraph b in no later than 60 days, and must comply with

- the planting requirements of Alternative One during the next planting period;
- c. The filing fees to be incurred by Respondents associated with the limited preliminary plan amendment as well as additional platting fees are waived; and
 - d. The administrative civil penalty incurred by Respondents will be offset by the cost of offsite planting up to the amount of the entire penalty. The Board will determine the appropriate amount of offset at the time of the limited preliminary plan amendment, at which time the Respondents must document the cost of the offsite planting.

BE IT FURTHER RESOLVED that in the event Respondents choose Alternative two but fail to comply with the requirements of Alternative Two, Respondents must comply with Alternative One no later than 60 days from the deadline of compliance with the requirements of Alternative Two; provided however the planting requirements must be met at the next planting period.

BE IT FURTHER RESOLVED that this resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

DEC 22 2011 BE IT FURTHER RESOLVED that the mailing date of this Resolution is _____; 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).

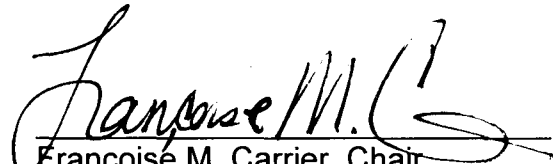
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CERTIFICATION

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss present and voting in favor of the motion, and Commissioner

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Presley absent, at its regular meeting held on Thursday, December 15, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board