



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

AUG 7 2013

MCPB No. 13-111
Preliminary Plan No. 12002073B
Yetley Property, Lot 44
Date of Hearing: July 22, 2013

RESOLUTION

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

WHEREAS, on August 2, 2002, the Planning Board , approved Preliminary Plan No. 120020730, which included approval of a forest conservation plan, creating five lots on 4.83 acres of land in the R-200 zone, located on Timber View Court, 1300 feet east of Randolph Road and Kemp Mill Road, in the White Oak master plan ("Master Plan") area; and

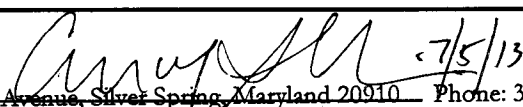
WHEREAS, on November 19, 2010, the Montgomery County Planning Department issued a Notice of Hearing to Michael and Linda Sandler, alleging that they violated the Montgomery County Forest Conservation Law as a result of certain encroachments within a Category I conservation easement on their property known as Lot 44, Yetley Property, one of the lots created by Preliminary Plan No. 120020730; and

WHEREAS, in accordance with the Order MCPB No. 11-122 issued by the Planning Board on March 5, 2012,¹ on April 11, 2013, Michael and Linda Sandler ("Applicant"), filed an application for approval to amend the previously approved preliminary plan and final forest conservation plan² i) to release 736 square feet of Category I conservation easement, ii) to convert the remaining 5,452 square feet of Category I conservation easement to a Category II conservation easement on lot 44 of the Yetley Property ("Subject Property"), and iii) to mitigate the total removal of 6,188 square feet of Category I conservation easement at a ratio of 2:1 at an M-NCPPC approved forest conservation bank within Montgomery County; and

¹ By Order of the Circuit Court in *Michael I. Sandler, et al v. The Montgomery County Planning Board, Case No. 361631-V*, the Planning Board's Order MCPB No. 11-222 finding a violation and ordering certain corrective action was upheld with the dates for compliance extended 60 days from the entry of the Court's Order.

² On October 26, 2012, the Planning Board approved Preliminary Plan 12002073A, amending the previously approved preliminary plan and forest conservation plan covering lot 46 of the Yetley Property.

Approved as to
Legal Sufficiency:

 7/5/13
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M-NCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

WHEREAS, Applicant's application was designated Preliminary Plan No. 12002073B, Yetley Property, Lot 44 ("Amendment," "Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated July 8, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 22, 2013, 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. 12002073B to release 736 square feet of Category I conservation easement and convert the remaining 5,452 square feet of Category I conservation easement to a Category II conservation easement subject to the following conditions:³

1. Within ninety (90) days from the mailing date of this Resolution, Applicant must submit a complete record plat application. The existing easement remains in full force and effect until the new record plat is recorded.

2. As part of the record plat application, the Applicant must submit a Certificate of Compliance using an M-NCPPC approved forest mitigation bank providing a minimum of 12,376 square feet of mitigation credit for the Category I conservation easement released and converted. The Certificate of Compliance must be approved by the M-NCPPC Office of the General Counsel and then be recorded in the Montgomery County Land Records by the Applicant.

3. As part of the record plat application, Applicant must submit a receipt showing the cost of the offsite mitigation. The administrative penalty in the amount of \$2,472.50 incurred by the Applicant will be offset by the cost of offsite mitigation, up to the amount of the entire penalty. Any balance due, if any, must be paid at record plat application.

BE IT FURTHER RESOLVED, that all other conditions of Preliminary Plan No. 120020730, as contained in the Planning Board's Resolution mailed August 2, 2002, as

³ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

amended by Preliminary Plan No. 12002073A, unless modified herein, remain 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. Unless 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 Code, Chapter 22A.

The Applicant is mitigating the removal of 6,188 total square feet of Category I conservation easement at a 2:1 ratio. The Applicant will purchase credits in an off-site forest conservation bank to satisfy all mitigation planting requirements.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its initiation date (as defined in Montgomery County Code Section 50-35(h)), and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is AUG 7 2013 (which is the date that this Resolution is mailed to all parties of record); and

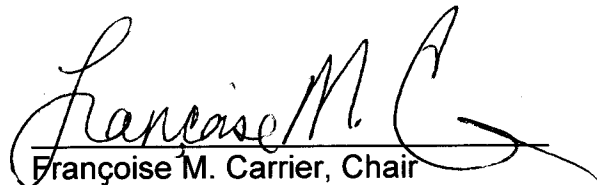
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor, and Commissioner Presley absent, at its regular meeting held on Monday, July 22, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board