



Smalls Nursery, 15702 Thistlebridge Dr.: Preliminary Plan Amendment No. 11994011D and Site Plan Amendment No. 81995015C For Forest Conservation Plan Purposes

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Completed: 2/26/21

Description

A. Smalls Nursery: Preliminary Plan Amendment No. 11994011D:

Request to remove 3,485 sq. ft. (0.08 acres) of a Category I Conservation Easement on the property located at 15702 Thistlebridge Drive, Lot 44, Block A.

B. Smalls Nursery: Site Plan Amendment No. 81995015C: Request to remove 3,485 sq. ft. (0.08 acres) of a Category I Conservation Easement on the property located at 15702 Thistlebridge Drive and to amend the approved Final Forest Conservation Plan.

Location: On the west side of Georgia Ave. 1,200 ft. north of Norbeck Rd., between Norbeck Rd. and the Inter-County Connector ("ICC" or "MD 200")

Master Plan: 2005 Olney Master Plan

Zone: RE-1

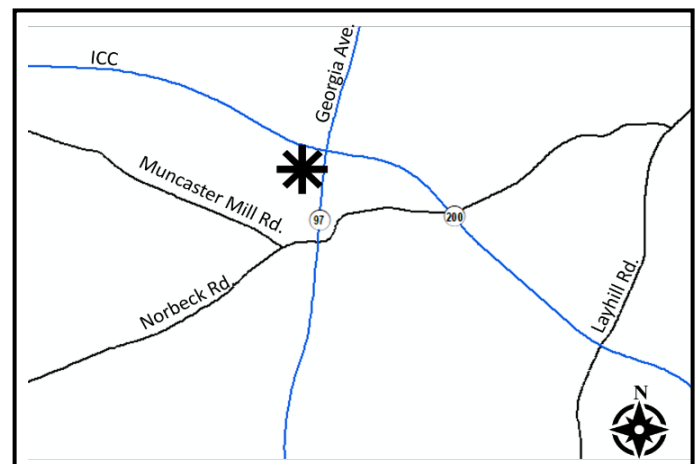
Property Size: +/- 0.46 acres

Applicant: Pallas Chiogioji

Site Plan Acceptance Date: 10/23/2020

Preliminary Plan Acceptance Date: 1/12/2021

Review Basis: Chapter 22A, Chapter 50 and Chapter 59



Summary

- Staff recommends **approval with conditions** of the Preliminary Plan and the Site Plan Amendments for Forest Conservation Plan purposes to amend the approved Final Forest Conservation Plan ("FFCP").
- The Preliminary and Site Plan Amendments are specific to only Lot 44, Block A within the overall Smalls Nursery Subdivision.
- The Preliminary Plan and Site Plan Amendments request removal of 3,485 sq. ft. (0.08 acres) of Category I Conservation Easement on the property located at 15702 Thistlebridge Dr., Lot 44, Block A to create a more useable backyard area.
- The Applicant will mitigate for the Forest Conservation Easement removal, by contributing a forest conservation fee-in-lieu payment for the 6,970 square feet (0.16 acres), a 2:1 compensation rate, of afforestation/reforestation requirement.
- Staff has not received community correspondence for the application.

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SECTION 1 – RECOMMENDATIONS AND CONDITIONS

Preliminary Plan Amendment No. 11994011D

Staff recommends **approval with conditions** of the Preliminary Plan Amendment for Forest Conservation Plan purposes. All other conditions of approval of Preliminary Plan No. 119940110, as amended, remain in full force and effect except as modified below. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

1. Within sixty (60) days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan, the Applicant must submit to M-NCPPC for review and approval the necessary conservation easement abandonment documents to abandon the portion of the recorded Category I Conservation Easement located on the property at 15702 Thistlebridge Dr, Lot 44, Block A. The easement abandonment document must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
2. Within sixty (60) days of M-NCPPC approval of the Category I Conservation Easement Abandonment document, the Applicant must record the abandonment document in the Montgomery County Land Records by deed.

Site Plan Amendment No. 81995015C

Staff recommends **approval with conditions** of the Site Plan Amendment for Forest Conservation Plan purposes. All conditions of approval of Site Plan No. 819950150, as amended, remain in full force and effect except as modified below. All site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions:

1. Prior to extinguishing the existing Category I Conservation Easement on the property at 15702 Thistlebridge Dr., Lot 44, Block A, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 6,970 square feet (0.16 acres), a 2:1 compensation rate, of afforestation/reforestation requirement.

SECTION 2 – SITE LOCATION AND DESCRIPTION

The Subject Property is located at 15702 Thistlebridge Drive, described as Lot 44, Block A, in the Smalls Nursery Subdivision on Plat No. 20382, Tax Map HS342 (Attachment A), with a total lot area of 19,921 square feet (0.46 acres) ("Subject Property" or "Property"). The Property is zoned RE-1 and located in the 2005 *Olney Master Plan* area.

The Property is situated approximately 1,200 feet north of the intersection of Georgia Avenue (MD 97) and Norbeck Road (MD 28). The subdivision in which the Property is located, known as Smalls Nursery, is bounded on the south and west by older single-family residential developments, by MD 200 on the north and by MD 97 on the east. The Property is surrounded by similar one-family detached units within the Smalls Nursery Subdivision. The Property and the surrounding area are zoned RE-1 (Figure 1). The Property currently has a two-story single-family residential structure.

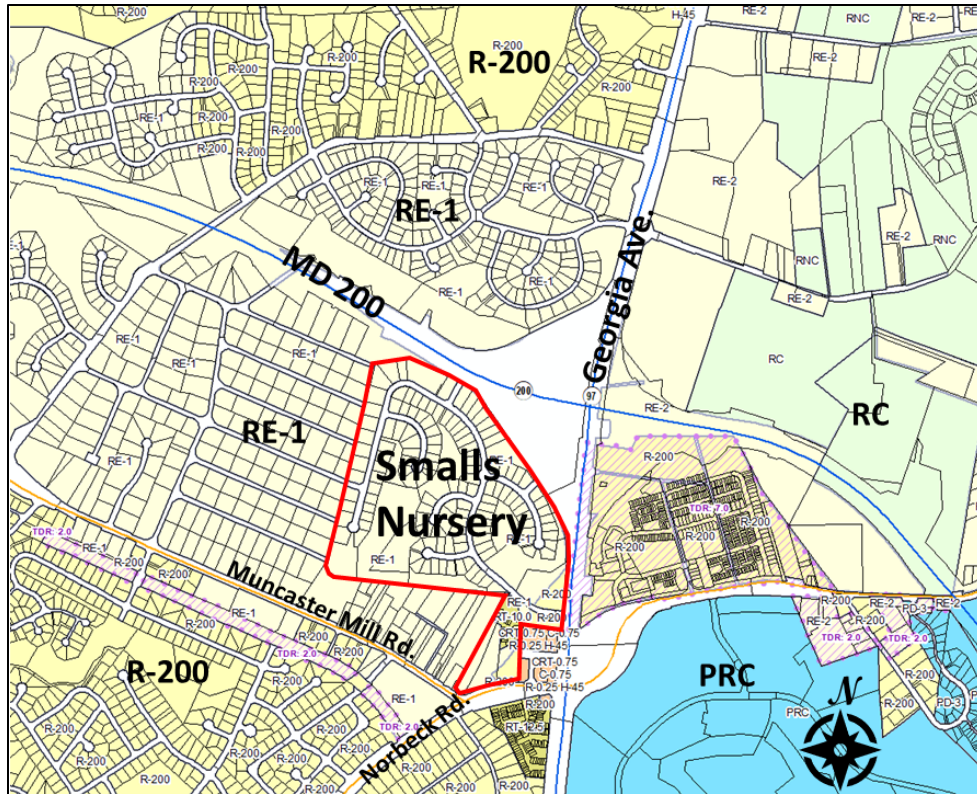


Figure 1 – Site Vicinity

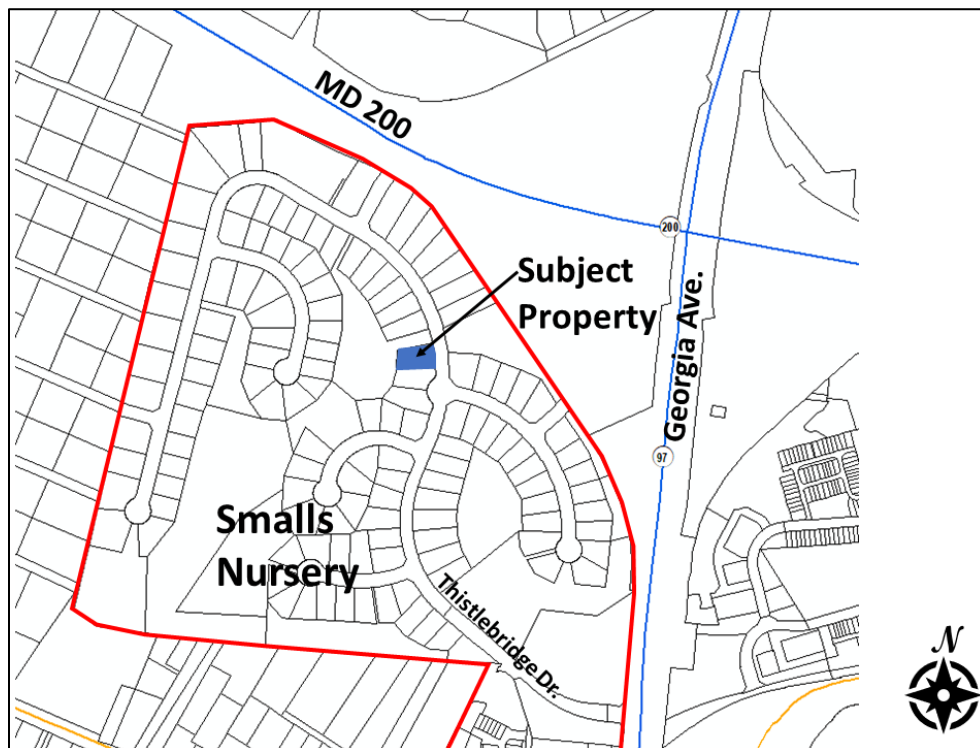


Figure 2 – Subject Property

SECTION 3 – APPLICATIONS AND PROPOSAL

Previous Approvals

Preliminary Plans

Preliminary Plan No. 1199401110 – Small's Nursery

On January 4, 1995, the Planning Board approved Preliminary Plan No. 1199401110 for 100 units on 180.3 acres and 42.5 acres were placed into reservation for the future alignment of the ICC.

Preliminary Plan No. 119940111R – Small's Nursery

On March 5, 1997, the Planning Board approved Preliminary Plan Amendment No. 11994011R for an additional 30 units and 42.5 acres were placed into reservation for the master planned alignment of the ICC.

Preliminary Plan No. 119940111R – Small's Nursery

On February 20, 2001, the Planning Board approved Preliminary Plan Amendment No. 11994011R to limit development to a maximum of 175 dwelling units.

Preliminary Plan No. 119940111A – Small's Nursery

On May 9, 2002, the Planning Board approved Preliminary Plan Amendment No. 11994011A to adjust the timing for completion of required Park Improvements in coordination with MD State Highways Administration intersection improvements and to convey 5.4 acres for public use as park expansion.

Preliminary Plan No. 119940111B – Small's Nursery

On May 22, 2009, the Planning Board approved Preliminary Plan Amendment No. 11994011B, Resolution No. MCPB 09-44, to amend the Final Forest Conservation Plan to create MD 200 right-of-way and to remove Category I Conservation Easements within that right-of-way.

Preliminary Plan No. 119940111C – Small's Nursery

On September 27, 2010, the Planning Board approved Preliminary Plan Amendment No. 11994011C, Resolution No. MCPB 10-91, to remove 0.25 acres of an existing Category I Conservation Easement.

Preliminary Plan No. 120070610 – Townhouses at Small's Nursery

On January 4, 2010, the Planning Board approved Preliminary Plan Amendment No. 120070610 to create 19 lots on 3.11 acres of land in the RT-10 Zone within the Smalls Nursery Subdivision.

Site Plans

Site Plan No. 819950150 – Small's Nursery

On July 20, 1995, the Planning Board approved Site Plan No. 819950150 for 100 units on 180.3 acres.

Site Plan No. 81995015A – Small's Nursery

On May 9, 2002, the Planning Board approved Site Plan Amendment No. 81995015A to adjust the timing for completion of required Park Improvements in coordination with MD State Highways Administration intersection improvements and to convey 5.4 acres for public use as park expansion.

Site Plan No. 81995015B – Small's Nursery

On September 27, 2010, the Planning Board approved Site Plan Amendment No. 81995015B, Resolution No. MCPB 10-91, to remove 0.25 acres of an existing Category I Conservation Easement for the construction of an access road to the adjacent townhomes at Smalls Nursery.

Site Plan No. 820000430 – Small's Nursery, Phase IV

On April 25, 2001, Planning Board approved Site Plan No. 820000430 for 45 single family dwelling units.

Site Plan No. 820100060 – Townhouses at Smalls Nursery

On September 30, 2010, the Planning Board approved Site Plan No. 820100060, Resolution No. MCPB 10-90, for 19 townhouse dwelling units on 3.11 acres in the RT-10 Zone within the Smalls Nursery Subdivision.

Site Plan No. 82010006A – Townhouses at Smalls Nursery

On November 9, 2012, a minor amendment to the Site Plan was approved by the Planning Director, Site Plan No. 82010006A, to adjust the minimum setbacks for townhouse units on individual lots, to change the sidewalk material and parking bays around certain townhouse lots from standard concrete to porous pavers and to change the townhouse units from a second level entry to a first level entry.

Site Plan No. 82010006B – Townhouses at Smalls Nursery

On July 24, 2013, a minor amendment to the Site Plan was approved by the Planning Director, Site Plan No. 82010006B, to revise the community identification signs, to add landscaping in front of the signs and to add 10 White Spruce trees along the south side of the entrance road from Thistlebridge Rd. to screen the adjacent property to the south.

Current Application Proposal

On October 20, 2020, the Applicant filed Preliminary Plan Amendment No. 11994011D and Site Plan Amendment No. 81995015C. The Applicant proposes to remove 3,485 square feet of a Category I Conservation Easement from the rear yard of Lot 44 of Block A to allow for more useable space on their small residential lot by increasing the size of their backyard and expanding their patio. This easement removal request is not the result of a forest conservation violation or an enforcement action, but instead it is a good faith effort on the owner's part proactively seeking to increase the usable backyard space of their property.

The Category I Conservation Easements ("Easements") for the Smalls Nursery subdivision were first approved in 1994 just two years after the adoption of the Forest Conservation Law in Montgomery County. At that time, properties of all sizes were regularly encumbered with Easements. Several years ago, the Planning Board gave Staff specific direction for not recording Conservation Easements on properties that are two acres or less in size. This Amendment aligns with the Planning Board's direction by removing the Conservation Easement from Lot 44.



Figure 3 – Conservation Easements near Subject Property



Figure 4 – Proposed Easement Removal on Lot 44

SECTION 4 – ANALYSIS AND FINDINGS – Preliminary Plan No. 11994011D

Findings – Chapter 50

4. All Forest Conservation Law, Chapter 22A requirements are satisfied

b. Forest Conservation Plan

Planning Board Review Authority

The Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FFCP. COMCOR 22A.00.01.13.A(2), the Forest Conservation Regulations, state:

Major amendments which entail more than a total of 5,000 square feet of additional forest clearing must be approved by the Planning Board or the Planning Director (depending on who approved the original plan).

The Applicant proposes to remove 3,485 square feet (0.08 acres) of Category I Conservation Easement on the Property. Although this submittal is considered a minor amendment under Section 22A.00.01.13.A(1) of the Forest Conservation Regulations, it has been Planning Board practice to review all plans that remove or significantly change any conservation easement.

The Amendment does not alter the original intent and all findings of Preliminary Plan No. 119940110, as amended, remain in full force and effect, except as modified by the findings below.

Forest Conservation Plan

The revised Preliminary Plan and Site Plan Amendments for Forest Conservation Plan purposes meet all applicable requirements and intents of Chapter 22A regarding forest conservation. The FFCP requirements associated with the original Preliminary Plan No. 119940110 and Site Plan No. 819950150 have not been altered as a result of this application. The small reduction of the Category I Conservation Easement on Lot 44 which satisfied a portion of the requirements is being paid by fee-in-lieu at a 2:1 rate satisfying the FFCP requirements for the overall original development.

Staff supports the Applicant's request to remove the Easement on their property for a few reasons. First, the Property is only 0.46 acres (19,920 square feet) in size and approximately one third of the lot is encumbered with an Easement which severely limits the recreational use of the backyard of this Property. Second, this small portion of Easement is only part of a much larger Easement placed on the Homeowner's Association Parcel to the rear of these residential lots (Figure 3). So, removal of this Easement on the Property will have little effect on the larger Easement. Third, the Easement on the Property is primarily open area with only two small diameter trees within the Easement. As a result, this portion of Easement has limited ecological functioning or value at present.

As conditioned, the Applicant will mitigate for the removal of 3,485 square feet of the Category I Conservation Easement (**Figure 4**), by paying a fee-in-lieu in the Forest

Conservation Fund at a 2:1 compensation rate resulting in the payment in fee-in-lieu for 6,970 square feet at the current fee-in-lieu payment level.

The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies with the Montgomery County Planning Department's Environmental Guidelines.

SECTION 5 – ANALYSIS AND FINDINGS - Site Plan No. 81995015C

The proposed Amendment does not alter the original intent and all findings of Site Plan No. 819950150, as amended, remain in full force and effect, except as modified by the findings below.

Findings – Chapter 59.7.3.4.E

2. *To approve a site plan, the Planning Board must find that the proposed development:*

a. *satisfies any previous approval that applies to the site;*

The Site Plan Amendment satisfies the requirements of Preliminary Plan Amendment No. 11994011D, which is being reviewed concurrently.

e. *satisfies the applicable requirements of:*

i. Chapter 22A, Forest Conservation Law

As discussed in the accompanying Preliminary Plan Amendment No. 11994011D findings, the Site Plan Amendment continues to meet the Forest Conservation requirements of Chapter 22A of the County Code and Montgomery County Planning Department's Environmental Guidelines.

SECTION 6 – COMMUNITY CORRESPONDENCE

The Applicant has met all proper signage and noticing requirements for the Preliminary and Site Plan Amendment. As of the date of this Staff Report, Staff has not received any correspondence from the community regarding this application.

SECTION 7 – CONCLUSION

The Preliminary and Site Plan Amendment applications meet all requirements established in the Forest Conservation Law (Chapter 22A) by mitigating for the amount of easement removed, which was used on the originally approved FFCP to satisfy the FCP requirements, by contributing to the Forest Conservation Fund an amount equivalent to 6,970 square feet (2:1 compensation rate). Staff recommends approval with the conditions as stated in the report.

Attachments

Attachment A – Plat 20382

Attachment B – Submitted FFCP Amendment

Attachment C - SOJ

ATTACHMENT B

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L-1.0. AMENDED FINAL FOREST CONSERVATION PLAN - COVER SHEET
L-1.0A. AMENDED FINAL FOREST CONSERVATION PLAN - RESOLUTION SHEET
L-1.0B. AMENDED FINAL FOREST CONSERVATION PLAN - RESOLUTION SHEET
L-1.0C. AMENDED FINAL FOREST CONSERVATION PLAN - RESOLUTION SHEET
L-1.0D. AMENDED FINAL FOREST CONSERVATION PLAN - RESOLUTION SHEET
L-1.1 AMENDED FINAL FOREST CONSERVATION PLAN - CONSERVATION EASEMENT
L-1.2- REDLINE & BLACKLINE OF PREVIOUSLY APPROVED SITE PLAN
-SHEET BEING AMENDED.

LIST OF AMENDMENT ITEMS

1. EXISTING CATEGORY 1 EASEMENT TO BE EXTINGUISHED

[illegible]


DEVELOPER'S CERTIFICATE

The undersigned agrees to provide all features of the Approved Final Forest Plan as shown on the attached map, and to comply with all applicable laws, rules, regulations, standards, and codes.

Developer's Name:	PALLAS GROUNDWATER
Contact Person or Owner:	PALLAS-GROUNDWATER
Printed name:	
Address:	1515 THIRTELEMORE DR ROCKVILL, MD 20853
Phone and Email:	(301) 331-0000 ext 101 mg@pallascert.com
Signature:	<i>Michele Macgregor</i>

CERTIFICATION OF QUALIFIED PROFESSIONAL

I HEREBY CERTIFY THAT THE PLANS SHOWN HEREON HAVE BEEN PREPARED IN ACCORDANCE WITH MARYLAND STATE, FEDERAL AND DISTRICT/COUNTY FOREST CONSERVATION LAWS.



MICHAEL A. NEFF
MEMBER / CHAIRMAN (03-10-2021)
QUALIFIED PROFESSIONAL

1.29.2021

DATE



**Planning Area 35 Division of the Montgomery County Planning Department
The Maryland National Capital Park & Planning Commission**

Property:	CHIOGIOJI PROPERTY, LOT 44
Final Forest Conservation Plan:	81995015C
Tax Map:	HS342
Zone:	RE-1
Owner/Applicants:	Pallas Chiogioji
Submission Date:	October 20, 2020

***STATEMENT OF JUSTIFICATION
& SUMMARY OF APPLICATION
AMENDED SITE PLAN FOR FINAL FOREST
CONSERVATION
Existing Lot 44
15702 Thistlebridge Drive***

**Request to Amend Site Plan #819950150
Smalls Nursery**

**Forest Conservation Plan Application
MNCPPC FILE NO. 81995015C**

Pursuant to the Manual of Development Review Procedures, the Applicant, Pallas Chiogioji, hereby submits this Statement of Justification setting forth the facts and reasons in support of approval of the proposed amendment to approved Final Forest Conservation Plan No. 81995015C Lot 44, among the Land Records for Montgomery County, Maryland ("the Subject Property"). The Subject Property, containing approximately 0.46 acres, has frontage on Thistlebridge Drive in Rockville, Maryland and is currently zoned RE-1.

The requested amendment to the Final Forest Conservation Plan is to eliminate an existing Category 1 Conservation Easement and purchase into an offsite forest bank at the rate of 2:1 to mitigate for the loss of the easement.

The Subject Property

The Subject Property is 0.46 acres comprised of one lot located at 15702 Thistlebridge Rd in Rockville, Montgomery County, Maryland. The site is currently developed with an existing single-family dwelling. The project for which the current amendment is being filed consists of the elimination of the existing easement. The site is surrounded by an existing Forest Conservation area to the west, owned by the local HOA, and residential properties to the north, south and east.

Forest Conservation

Site Plan No. 819950150 identifies one Category 1 Forest Conservation Easement on the west side of the subject property which is part of a much larger easement extending offsite. The applicant is proposing to remove this easement and purchase into an offsite forest bank at the rate of 2:1 to mitigate for the loss of the easement.

Tree Variance

There is no tree variance request for organization of the easements.

Conclusion

For the foregoing reasons, the Applicant respectfully request that the proposed Amended Forest Conservation Plan is approved. Further, on behalf of the Applicants, the undersigned certifies that the information set forth in this Statement of Justification is true, complete, and correct to the best of his knowledge, information, and belief.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Norton', written in a cursive style.

Michael Norton