



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

MCPB No. 21-021
Preliminary Plan No. 11994011D
Smalls Nursery, 15702 Thistlebridge Drive
Date of Hearing: March 11, 2021

MAR 18 2021

RESOLUTION

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

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on January 4, 1995, the Planning Board, by Resolution, approved Preliminary Plan No. 119940110, creating 180 lots on 180.2 acres of land in the RE-1 zone, located on the west side of Georgia Ave. ("MD 97"), 1,200 feet north of the intersection of Georgia Ave. and Norbeck Rd.; and

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

WHEREAS, on February 20, 2001, the Planning Board, by Resolution, approved Preliminary Plan No. 11994011R, to limit development to a maximum of 175 dwelling units; and

WHEREAS, on May 9, 2002, the Planning Board approved an amendment to Preliminary Plan 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; and

WHEREAS, on May 22, 2009, the Planning Board approved an amendment to Preliminary Plan No. 11994011B for Forest Conservation Plan purposes (MCPB No. 09-44) to create MD 200 right-of-way and to remove Category I Conservation Easements within that right-of-way; and

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M-NCPPC Legal Department

WHEREAS, on November 23, 2010, the Planning Board approved an amendment to Preliminary Plan No. 11994011C for Forest Conservation Plan purposes (MCPB No. 10-91) to remove 0.25 acres of an existing Category I Conservation Easement; and

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

WHEREAS, on October 20, 2020, Pallas Chiogioji ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to remove a Category I Conservation Easement on 15702 Thistlebridge Dr., Lot 44, Block A ("Subject Property" or "Property") in the Smalls Nursery Subdivision; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 11994011D, Chiogioji Property ("Preliminary Plan," "Amendment," 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 February 26, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 11, 2021, the Planning Board held a public hearing on the Application at which it 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 certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 11994011D to remove a Category I Conservation Easement on the Subject Property by adding the following conditions:¹

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 Category I Conservation Easement recorded located on the property located at 15702

¹ 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.

Thistlebridge Drive, 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.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and 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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan or as amended, and all findings not specifically addressed remain in full force and effect.

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 located at 15702 Thistlebridge Drive, Lot 44, Block A. Although this submittal is considered a minor amendment under Section 22A.00.01.13.A(1) of the Forest Conservation Regulations ("FCR"), it has been Planning Board practice to review all plans that remove or significantly change any conservation easement.

The proposed 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

Staff finds that 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 Final Forest Conservation Plan 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 the Subject Property 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. 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, 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 is in compliance with the Montgomery County Planning Department's Environmental Guidelines.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is **MAR 18 2021** (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).

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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 Verma, seconded by Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor, at its regular meeting held on Thursday, March 11, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board