



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-71

SEP 24 2010

Forest Conservation Plan No. MR 2008901

Lower Booze Creek Stabilization

Date of Hearings: October 23, 2008 and May 20, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on June 27, 2008, the Montgomery County Department of Environmental Protection ("Applicant") filed an application for approval of a Preliminary Forest Conservation Plan on 23 acres of M-NCPPC parkland located within Booze Creek Stream Valley Park between River Road and the Cabin John Parkway. ("Property" or "Subject Property") in the Bethesda-Chevy Chase Master Plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Preliminary Forest Conservation Plan No. MR2008901, Lower Booze Creek Stabilization ("Preliminary Forest Conservation Plan" or "Application"). The Application is associated with the Lower Booze Creek Stream Restoration Project - Mandatory Referral No. 2008901; and

WHEREAS, Staff issued a memorandum to the Planning Board, dated October 10, 2008 setting forth its analysis, and recommendation for approval of the Application subject to a certain condition ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, the Planning Board held a public hearing on the Application (the "Hearing") on October 23, 2008, and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on October 23, 2008, the Planning Board approved the Preliminary Forest Conservation Plan subject to a certain condition, on motion of Commissioner

Approved as to
Legal Sufficiency:

 9/8/10

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Alfandre; seconded by Commissioner Cryor; with a vote of 4-0; Alfandre, Cryor, Hanson, and Presley voting in favor; and Robinson absent; and

WHEREAS, prior to drafting a resolution of the Board's action of October 23, 2008, an error was discovered in the clearing acreage presented to the Planning Board. The discrepancy increased the forest clearing acreage by an additional amount greater than 5,000 square feet, therefore requiring Planning Board approval of that change; and

WHEREAS, on January 21, 2009, the Applicant filed an application for approval of a Final Forest Conservation Plan for the Subject Property which included corrected acreage of forest clearing and a Forest Conservation Variance request. Staff issued a memorandum to the Planning Board, dated May 7, 2010 setting forth its analysis, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, the Planning Board approved the Final Forest Conservation Plan on May 20, 2010, superseding the prior action and including a variance request subject to certain conditions on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0; Alfandre, Dreyfus, Hanson, Presley and Wells-Harley voting in favor; and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Final Forest Conservation Plan No. MR2008901 on 23 acres of M-NCPPC parkland located within Booze Creek Stream Valley Park, between River Road and the Cabin John Parkway ("Property" or "Subject Property"), in the Bethesda-Chevy Chase Master Plan area ("Master Plan"); and subject to the following conditions:

- 1. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the save trees.*
- 2. The final sediment and erosion control plan must match the limit of disturbance as shown on the Final Forest Conservation Plan and be consistent with its recommendations for tree protection.*
- 3. Prior to any clearing and/or grading on parkland, DEP must obtain a Park Permit from M-NCPPC. All proposed construction activity must be consistent with the approved final forest conservation plan.*

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 and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

The Forest Conservation Plan will remove 5.42 acres of forest. There is no forest conservation planting requirement for this project, although approximately 3.61 acres of reforestation is proposed for environmental enhancement and restoration of forested stream buffer. The plantings also serve as mitigation for removal and impacts to trees which are subject to the variance requirements. All retained and planted forest will be protected within the existing conservation park.

Forest Conservation Variance Request

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since this project did not obtain formal approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the FCP proposes to impact 33 trees \geq 30 inches DBH (two of which are possible removals), a variance is required.

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies on May 3, 2010 for a written recommendation prior to acting on the request. The County Arborist responded on May 4, 2010 and will not provide a recommendation since they believe the tree variance provision does not apply to development applications submitted before October 1, 2009.

The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

The Planning Board finds as follows:

- a) *The variance will not confer on the applicant a special privilege that would be denied to other applicants.* The maintenance and rehabilitation of public water resources, as well as public sewer infrastructure, is the responsibility of public

agencies in executing their duties to the public. Therefore this is not a special privilege to be conferred on the Applicant.

- b) *The variance is not based on conditions or circumstances which are the result of the action by the Applicant.* Extensive measures have been taken to minimize impacts as much as possible and in some cases the Applicant redesigned access routes at great expense and additional process to shift impacts to highly degraded areas (e.g. obtaining federal and state highway permits to shift access from Royal Dominion Drive to the Cabin John Parkway).
- c) *The variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.* The requested variance is a result of the proposed restoration work and infrastructure repair and maintenance on the Subject Property and not as a result of land or building use on a neighboring property.
- d) *The variance will not violate State water quality standards or cause measurable degradation in water quality.* Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. Rather the project is designed to improve water quality by reducing bank erosion and rehabilitating exposed and aging sanitary sewer mains within the floodplain and stream channel (preventing potential failure of the systems which would result in severe water quality degradation). All stream channel work will be carried out using a stream flow pump-around to minimize erosion and maximize sediment control by working in dry stream channels. All disturbed areas will be stabilized with permanent seeding and matting. All activities in these areas will be conducted in accordance with appropriate permits, processes, and guidelines.

Therefore, the Planning Board finds that the Application satisfies all applicable requirements of the Forest Conservation Law.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and that the date of this Resolution is SEP 24 2010 (which is the date that this Resolution is mailed to all parties of record); and

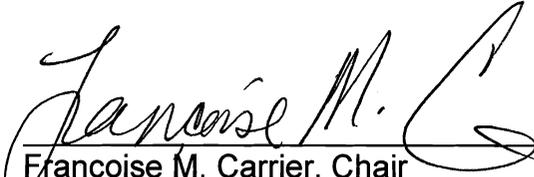
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of

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 Dreyfuss, seconded by Commissioner Presley, with Vice Chair Wells-Harley, Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, and Chair Carrier abstaining, at its regular meeting held on Thursday, September 23, 2010, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board