



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DEC 12 2011

**MCPB 11-97
Forest Conservation Plan No. MR2009720
Montgomery College Germantown Campus
Date of Hearing: October 20, 2011**

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 14, 2011, Montgomery College ("Applicant"), filed an application for approval of a Forest Conservation Plan amendment on approximately 224.13 acres of land located at 20200 Observation Drive in Germantown) ("Property" or "Subject Property"), in the Germantown master plan area ("Master Plan"); and

WHEREAS, Applicant's Forest Conservation Plan amendment application was designated Forest Conservation Plan No. MR2009720, Montgomery College Germantown Campus ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board dated October 7, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("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 20, 2011; and

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

WHEREAS, on October 20, 2011, the Planning Board approved the Forest Conservation Plan amendment on a motion of Commissioner Dreyfuss; seconded by Vice Chair Wells-Harley, with a vote of 4-0-; Chair Carrier, Vice Chair Wells-Harley and

Approved as to
Legal Sufficiency:

Christina Sonnet 11/30/11

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Commissioners Anderson and Dreyfuss, voting in favor, Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Forest Conservation Plan amendment No. MR2009720.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff 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 Montgomery County Planning Board FINDS that:

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

Forest Conservation

The revised Forest Conservation Plan is in compliance with the Planning Board's previous ruling requiring retention of high priority forest on-site and retains the same easement areas as previously approved. The submitted Forest Conservation Plan Amendment meets all applicable requirements of the Forest Conservation Law, Chapter 22A of the County Code.

Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection (Protected Trees). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require one Protected Tree, 30 inches and greater DBH to be removed. Further, the project will impact one Protected Tree. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

Unwarranted Hardship Basis

The Germantown Sector Plan calls for both: a) the east-west extension of Observation Drive to connect with the north-south extension of Observation

Drive and Goldenrod Lane; and b) the preservation of 46 acres of existing forest below the east-west roadway extension. The forest to be preserved contains wetlands, streams, and their buffers. It is also one of the last remaining large, contiguous tracts of forest in the upper portion of the Gunner's Branch watershed. The specimen tree that the Applicant is seeking permission to remove is outside of forest conservation areas adjacent to the alignment of the east-west extension of Observation Drive. The unique requirements imposed on the College by the Germantown Sector Plan and its use as a public college campus (a permitted use in the R-60 and I-3 zones) are special conditions peculiar to this site. Were the applicant to be denied the requested variance to disturb the critical root zone of tree #414 and the removal of tree #203, it would be unable to proceed with the necessary improvements to the campus and the County road network. As such, this would cause an unwarranted hardship to the College, as well as to the community that the roadway serves.

The Planning Board finds the following:

1. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The use of this site for a public college campus is an established use, permitted in the R-60/I-3 zones, and operated in a manner consistent with that of the other public college campuses operated by Montgomery College. As such, this is not a special privilege being conferred on the Applicant.

2. *The need for the Tree Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

As shown on the proposed plans, the grading for the site and the location of the stormwater facilities seek to minimize the impacts to the existing forest specimen trees on the site. Impact/removal of specimen trees are the unavoidable result of the proposed development, not an inappropriate action taken by the Applicant.

3. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the required infrastructure as well as the proposed site design and layout on the Subject Property, and is not a result of land or building use on a neighboring property.

4. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed roadway construction has an approved Stormwater Management (SWM) Concept Plan, with final SWM Plans under-going review with MCDPS. The project will be developed in accordance with the latest state and local regulations for stormwater management designed to provide sufficient protection of the streams and not violate State water quality standards or cause measurable degradation in water quality

With the above findings, the Planning Board grants the Tree Variance and finds that the Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

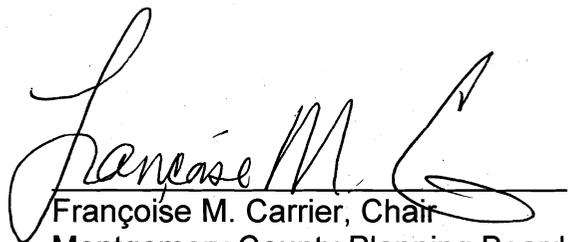
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is DEC 12 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, seconded by Commissioner Presley, with Chair Carrier, Commissioner Anderson, and Commissioner Presley present and voting in favor of the motion, and Vice Chair Wells-Harley and Commissioner Dreyfuss absent at its regular meeting held on Thursday, December 8, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board