



APR 19 2012

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

MCPB No. 11-117
Forest Conservation Plan No. S-2819
Olney Assisted Living
Date of Hearing: November 17, 2011

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 October 5, 2011 Olney Assisted Living Partners, LLC ("Applicant"), filed an application for approval of a Forest Conservation Plan on 3.59 acres of land located on Parcel P707, in the 17000 block of Georgia Avenue (MD 97), approximately 640 feet south of its intersection with Old Baltimore Road ("Property" or "Subject Property"), in the Olney master plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No.S-2819¹, Olney Assisted Living ("Forest Conservation Plan" or "Application"); and


WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated November 4, 2011, setting forth its analysis, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on November 17, 2011, the Planning Board held a public hearing on the Application (the "Hearing") and at the Hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on November 17, 2011, the Planning Board approved the Forest Conservation Plan subject to certain conditions, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson,

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to
Legal Sufficiency:

 3/26/12

8787 Georgia Avenue, Suite 200, P.O. Box 10700, Bethesda, Maryland 20810 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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Carrier, Dreyfuss, and Wells-Harley voting in favor, with Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Forest Conservation Plan No. S-2819 located on the Subject Property, in the Olney master plan area subject to the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated October 20, 2011. The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services ("MCDPS") issuance of sediment and erosion control permit(s), as appropriate, including:
 - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
 - b. The Final Forest Conservation Plan must include a planting plan for the onsite forest planting area.
 - c. The Final Forest Conservation Plan must include eleven (11) native canopy trees with a minimum size of 3 inches in diameter at breast height (DBH) (or native canopy trees with a 33-inch cumulative DBH, individual trees with a minimum size of 3 inches DBH) as mitigation for the loss of specimen trees.
 - d. The Sediment Control Plan must be consistent with final limits of disturbance as approved by the Staff.
2. The record plat must show a Category I conservation easement over all retained and planted forest as specified on the approved Forest Conservation Plan prior to clearing and grading occurring onsite.
3. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the forest conservation easements.

BE IT FURTHER RESOLVED that, having given full consideration to 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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

A. Forest Conservation

There are approximately 2.47 acres of forest on the Property. The Applicant will retain 0.16 acres of forest and plant an additional 0.07 acres of forest onsite. The remaining 1.54 acres of forest planting requirement will be satisfied at an approved off-site forest mitigation bank.

B. 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 Application requires the removal of twelve (12) Protected Trees and impact to four (4) Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees survive anticipated construction impacts, the variance is required for these trees simply due to the impacts. Staff concluded that the Applicant met the specific submittal requirements of the variance request.

The Board made the following findings necessary to grant the Tree Variance:

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

Removal of the twelve Protected Trees and the impacts to the four Protected Trees is due to the development constraints of the Property. The 3.75-acre Property contains 2.47 acres of forest. The Protected Trees are located throughout the Property, both within and outside the forest, but all within the developable area of the site. Granting a variance to allow land disturbance within the developable portion of the site is not a unique privilege for this Applicant. The Planning Board has determined that the impacts and removal of the Protected Trees cannot be avoided.

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

The variance is based upon existing site conditions.

- iii. *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 variance is necessary because of the existing site conditions and the approved site design and layout on the subject property, not as a result of land or building use on a neighboring property.

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

The Protected Trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Sediment Control Plan and Stormwater Management Plan will be approved by the MCDPS prior to any land disturbing activity on the Property.

C. Forest Conservation Variance mitigation

Eight of the twelve Protected Trees to be removed are located within the existing forest, and mitigation for their loss is included in the reforestation requirement as determined by the worksheet. Mitigation for removal of the remaining four Protected Trees (#34, #39, #40, and #41 as indicated in the Staff Report) will be through replacement at a ratio of approximately one inch Diameter at Breast Height ("DBH") for every four inches DBH removed, using trees that are a minimum of three inches DBH, above and beyond the base reforestation requirement. Applicant will plant eleven native, canopy trees with a minimum size of three inches DBH on the site. No mitigation is necessary for trees impacted but retained, although efforts will be made to assure their protection during construction.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 19 2012 (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 an Order adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and Commissioner Anderson absent at its regular meeting held on Thursday, April 5, 2012, in Silver Spring, Maryland.



Françoise Carrier, Chair
Montgomery County Planning Board