



JUN 1 2012

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

**MCPB No. 11-118**  
**Forest Conservation Plan No. MR2010006**  
**Hollywood Branch Stream Restoration**  
**Date of Hearing: November 17, 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 December 16, 2010, the Montgomery County Department of Environmental Protection ("Applicant"), filed an application for approval of a forest conservation plan on approximately 6.48 acres of land located between Midland Road and Cannon Road ("Property" or "Subject Property") in the White Oak Master Plan area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2010006, Hollywood Branch Stream Restoration ("Forest Conservation Plan" or "Application")<sup>1</sup>; 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 3, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, the Planning Board held a public hearing on the Application (the "Hearing") on November 17, 2011; and

<sup>1</sup> 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:

*[Handwritten signature]* 5/11/12  
M-NCPPC Legal Department

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WHEREAS, 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 preliminary Forest Conservation Plan subject to certain conditions, on motion of Commissioner Anderson; seconded by Commissioner Wells-Harley with a vote of 4-0, Commissioners Carrier, Wells-Harley, Anderson, and Dreyfuss voting in favor and 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 preliminary Forest Conservation Plan No. MR2010006 subject to the following conditions:

1. The development shall comply with the conditions of the preliminary Forest Conservation Plan. The Applicant shall satisfy all conditions prior to Montgomery County Department of Permitting Services ("MCDPS") issuance of sediment and erosion control permits.
2. Revise the preliminary Forest Conservation Plan to meet all technical requirements of COMCOR 22A.00.01 - Forest Conservation Regulations, and to correct discrepancies between the Natural Resource Inventory/Forest Stand Delineation #420100340 approved by Staff ("NRI/FSD") and the preliminary Forest Conservation Plan.
3. Revise NRI/FSD to meet all technical requirements of COMCOR 22A.00.01- Forest Conservation Regulations and the Planning Board's Environmental Guidelines.
4. Approval of final Forest Conservation Plan must be consistent with the approved preliminary Forest Conservation Plan and the requirements of the Park Permit, prior to any clearing, grading or demolition on the site.
5. Final Forest Conservation Plan must include a minimum of 27- 2.5" DBH native canopy trees in addition to required forest planting areas.
6. Required site inspections by M-NCPPC monitoring staff must occur as specified in the "Trees Technical Manual".

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; 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

The Board finds that with the conditions imposed by this Resolution, the preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

The Applicant is clearing 3.00 acres of forest in order to restore a stream channel. The Applicant is planting 0.68 acres of forest on-site, and 0.29 acres of shrubs over rights-of-way. The Planning Board finds that the Application satisfies the applicable requirements of the Forest Conservation Law.

#### B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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 (Tree Variance"). The Applicant requested a Tree Variance to remove 10 Protected Trees, and impact, but not remove 38 Protected Trees as identified in the Staff Report, on pages 5-8 in Table 1: Trees to be removed or potentially removed and Table 2: Trees to be affected but retained.

The Board finds that without the Tree Variance, the Applicant would suffer unwarranted hardship and would be denied reasonable and significant use of the Property. The Board made the following findings necessary to grant the Tree Variance:

- i. In accordance with Section 22A-21(a), the Applicant has shown that failure to grant the Tree Variance would result in unwarranted hardship due to special conditions peculiar to the property.

The Protected Trees are located directly adjacent to the stream, and the Critical Root Zones ("CRZs") extend into the channels. It is not possible for the Applicant to avoid affecting many of the Protected Trees while restoring the stream. Access routes and storage areas have been designed to minimize disturbance. Thus, the special conditions peculiar to the Property provide reasonable justification for the Board to consider the Tree Variance in order to avoid an unwarranted hardship to the Applicant.

- ii. In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the following criteria required to grant the Tree Variance.

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

Granting the variance will not confer a special privilege on the Applicant, as disturbance of the Protected Trees is due to the approved restoration of the streams. The Protected Trees and/or their CRZs are directly adjacent to the streams. Granting the Tree Variance to allow disturbance to the CRZs of the trees for the purposes of stream restoration would not be unique to the Applicant, as the work is necessary to achieve the County goal of improving water quality.

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

The impact to Protected Trees arises from the storm water management improvements, as well as implementation of techniques necessary to restore the stream.

- c. *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 based on the locations of the trees and the techniques necessary to restore the stream, not on a condition located on a neighboring property.

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

The stream restoration will improve water quality by reducing erosion, improving floodplain access, and enhancing the stream valley buffer area.

BE IT FURTHER RESOLVED that for the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor in interest to the terms of this approval.

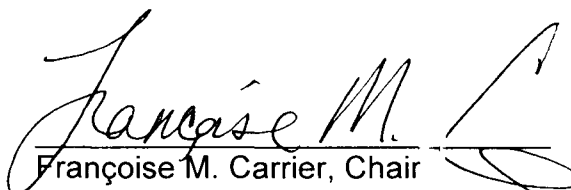
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 11 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 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 Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, May 24, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board