



MAR 17 2012

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

MCPB No. 12-10
Forest Conservation Plan No. MR2001806
Montrose Parkway West Trail FCP Amendment
Date of Hearing: January 19, 2012

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 August 25, 2011, Montgomery County Department of Transportation (“Applicant”), filed an application for approval of an amendment to a final forest conservation plan on 10.50 acres of land located on the southwest quadrant of the intersection of Montrose Parkway and Tildenwood Drive, Rockville, Maryland (“Property” or “Subject Property”), in the North Bethesda/Garrett Park master plan area (“Master Plan”); and

WHEREAS, Applicant’s amendment to a final forest conservation plan application was designated Forest Conservation Plan No. MR2001806, Montrose Parkway West – Montrose Trail (“Final 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 January 6, 2012, setting forth its analysis, and recommendation for approval with conditions of the Application (“Staff Report”); and

WHEREAS, on January 19, 2012, the Planning Board held a public hearing on the Application (the “Hearing”); and

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

Approved as to
Legal Sufficiency:

Christina S. Smith 2/15/12
MNCPPC Legal Department

8787 Georgia Avenue, Suite 200, Bethesda, Maryland 20814 Chairman’s Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on January 19, 2012, the Planning Board approved the Amendment to Final Forest Conservation Plan, on motion of Commissioner Anderson and seconded by Commissioner Wells-Harley; with a vote of 5-0, with Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES the amendment to Final Forest Conservation Plan No. MR2001806 on the Property subject to the following conditions:

1. The proposed development shall comply with all of the conditions of the Final Forest Conservation Plan as amended. All conditions shall be met prior to the issuance of sediment and erosion control permits by the Montgomery County Department of Permitting Services.
2. Limits of disturbance shown on the Sediment Control Plan must match the limits of disturbance shown on the Final Forest Conservation Plan.
3. Site inspections must be performed by M-NCPPC inspectors as specified in section 22A.00.01.10 of the forest conservation regulation.

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, 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 submitted Final Forest Conservation Plan amendment shows 29.32 acres of forest removal. This includes 28.61 acres already approved for removal in the original Final Forest Conservation Plan for Montrose Parkway West, plus an additional 0.71 acres of forest removal for the trail construction added to the Forest Conservation Plan by this Amendment. Under Section 22A-9 of the Forest Conservation Law, forest removed for County Highway projects is to be replaced at a ratio of 1:1 if the amount of forest cut or cleared is greater than 20,000 square feet. The forest planting requirement is therefore increased from

28.61 acres to 29.32 acres. The planting will be done offsite at the Montgomery County Department of Transportation's forest conservation 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 project will require 6 Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact 3 Protected Trees. Therefore, a variance is required.

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.*

Granting the variance will not confer a special privilege on the Applicant as the impacts to the nine trees are due to the constraints of the site. Granting a variance to allow land disturbance within the developable portion of the site is not unique to this Applicant. Staff has determined that the impacts to the trees subject to the variance requirement cannot be avoided. DOT and Planning Staff have analyzed the pathway alignment that resulted in a relocation of a portion of the path to reduce impacts to specimen trees and reduce the amount of forest loss. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

- 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested 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 requested variance is a result of the proposed development and not 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 Montgomery County Department of Permitting Services (DPS) has found the stormwater management concept for the proposed project to be acceptable and conditionally approved it on June 25, 2001. DPS granted a waiver on September 15, 2011 permitting the project to continue to be covered by the stormwater regulations in place when the original Mandatory Referral and Final Forest Conservation Plan approvals were granted. In addition, the granting of this variance request will not result in the impact or removal of any trees located within environmental buffers. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

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.

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 MAR 17 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).

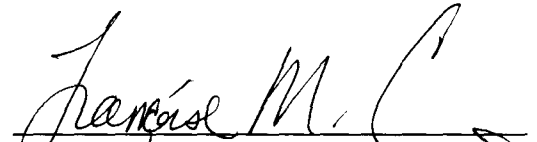
* * * * *

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

MCPB No. 12-10
Forest Conservation Plan No. MR2001806
Montrose Parkway West – Montrose Trail
Page 5

Anderson and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, February 23, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board