



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

**JUL 19 2012**

**MCPB No. 12-97**  
**Forest Conservation Plan No. MR2012023**  
**Donnybrook Stream Restoration**  
**Date of Hearing: July 12, 2012**

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on April 25, 2012, the Montgomery County Department of Environmental Protection (“Applicant”) filed an application for approval of a forest conservation plan<sup>1</sup> on approximately 3.29 acres of land located at Donnybrook Drive 300’ feet west of Grubb Road, Silver Spring, Maryland (“Subject Property”) in the North and West Silver Spring, 2000 (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. MR2012023 (“Forest Conservation Plan” or “Application”);<sup>2</sup> and

WHEREAS, following review and analysis of the Application by Planning Board Staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board dated June 29, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

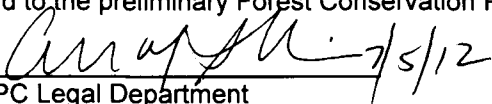
WHEREAS, on July 12, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

<sup>1</sup> The forest conservation plan was filed as part of a mandatory referral review of a stream restoration project.

<sup>2</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:

  
 M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. MR2012023 on the Subject Property, subject to the following conditions:<sup>3</sup>

1. Prior to any clearing, grading, or construction activity on the Subject Property, the Applicant must obtain Staff approval of a final forest conservation plan, which addresses the following items:
  - a. Applicant must plant 1.67 acres of forest to meet its replanting requirement for removal of existing forest and mitigation for the Variance. In addition, the Applicant is obligated to plant eight three-inch caliper trees as compensation for the removal of three Protected Trees outside the forest boundary in accordance with the Variance granted by the Planning Board under Section 22A-12(b)(3) of the Forest Conservation Law.
  - b. The final forest conservation plan must be prepared and signed by a qualified professional.
2. The final forest conservation plan must be consistent with the approved preliminary forest conservation plan and associated conditions.
3. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to recommend and perform the required tree preservation measures to protect the Protected Trees.
4. The final sediment and erosion control plan must match the limits of disturbance as shown on the final forest conservation plan and be consistent with its recommendations for tree protection.

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 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 under the Environmental Guidelines.*

A. Forest Conservation

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<sup>3</sup> 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.

Staff approved the Natural Resource Inventory/Forest Stand Delineation #420110600 ("NRI/FSD") on March 25, 2011. The total tract area of the NRI/FSD was 5.5 acres with five high priority forest stands within the floodplain. In an effort to reduce forest and tree impact, the total tract area was reduced to 3.29 acres, approximately 0.4 linear miles. Impacts have been minimized by providing staging areas outside of the stream valley and minimizing temporary access routes, wherever possible. The preliminary forest conservation plan includes clearing of 0.97 acres of forest with a reforestation requirement of 1.11 acres of forest. Applicant must plant 1.67 acres of forest to meet its replanting requirement for removal of existing forest, which was increased for mitigation due to removal of Protected Trees.

#### 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 under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of ten Protected Trees and CRZ impacts to twenty-seven Protected Trees as identified in the Staff Report. In accordance with Section 22A-21, the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship without the Variance. In fact, the purpose of the project for which the Variance is necessary is to execute a stream restoration project to stabilize the stream banks, provide in-stream measures for directing water flow, improve aquatic and forest habitat, and install low impact development measures to reduce pollutants and runoff velocity of water into the Donnybrook Tributary, identified by the Montgomery County Department of Environmental Protection as a priority stream restoration project in the Rock Creek Watershed Feasibility Study in April, 2001. Without the Variance, this important environmental protection project could not be accomplished.

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

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

Disturbance of the Protected Trees is necessary to implement the stream restoration project to achieve the County goal of improving

water quality. The trees and/or their CRZs lie directly adjacent to the streams. Granting a Variance is not unique to this Applicant.

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

The Variance is based on the locations of the trees directly adjacent to or abutting the stream banks. The bank erosion undercutting, loss of residential land from erosion, and the techniques necessary to restore the stream and stabilize the banks require impact to the trees.

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

The requested variance is a result of the proposed stream restoration on the Subject Property, and in parts will touch on the edges of the abutting properties, and their owners support this stream restoration project. The intention is to stop further loss of land the property owners are now experiencing due to erosion and stream undercutting.

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

The stream restoration plan should improve water quality by reducing erosion, improving floodplain access, and enhancing the stream valley buffer area. The Variance should ultimately improve State water quality standards or reduce degradation in water quality.

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. The Applicant is required to replant 1.67 acres of forest, which includes an additional 0.56 (from the required 1.11 acres) for mitigation for the Variance. In addition, the Applicant is obligated to plant eight three-inch caliper trees as compensation for the removal of three Protected Trees outside the forest boundary. . No mitigation is required for Protected Trees impacted but retained.

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

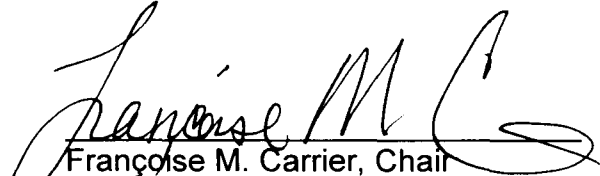
JUL 19 2012 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Vice Chair Wells-Harley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, July 12, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board