

APR 2 2 2019

MCPB No. 13-27 Forest Conservation Plan No. MR2013019 Stringtown Road Date of Hearing: February 28, 2013

Approved as to Legal Sufficiency:

## **RESOLUTION**

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

WHEREAS, on December 28, 2012, the Montgomery County Department of Transportation ("Applicant") filed an application for approval of a forest conservation plan on approximately 4.6 acres of land located along Stringtown Road between Overlook Park Drive and Gate Rail Road ("Subject Property") in the Clarksburg Master Plan area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2013019, Stringtown Road ("Forest Conservation Plan" or "Application"); 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 February 14, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 28, 2013, 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, on motion of Commissioner Wells-Harley, seconded by Commissioner Anderson, with Commissioners Carrier and Dreyfuss, voted 4-0 to approve the Application subject to certain conditions. Commissioner Presley was absent.

<sup>&</sup>lt;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.

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NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2013019 subject to the following conditions:

- Prior to Right-of-Way plat recordation for this project, the Applicant must execute a Partial Release and Amendment to Forest Conservation Easement Agreement to be approved by the M-NCPPC staff and recorded in the land records. Liber and Folio reference to the recorded Agreement must be shown on the Right-of-Way plat(s).
- 2. The Applicant must mitigate forest loss within the Seneca Creek watershed.
- 3. The Applicant must obtain a permit from Department of Parks for disturbance within parkland.

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.

## A. Forest Conservation

The Board finds that the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

This 4.6-acre project is subject to the Montgomery County Forest Conservation law. The road edge is currently forested. The road widening proposes to remove all 0.5 acres of forest located within the project area.

The 0.5 acres of forest mitigation will take place offsite at the Department of Transportation's planted forest mitigation bank in the Seneca Creek watershed. Thie Applicant has already performed the required mitigation.

## **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 or CRZ impact to 20 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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.

Granting the variance will not confer a special privilege on the Applicant as disturbance and/or removal of trees is due to the widening of Stringtown Road. The trees and/or their critical root zones lie within the right-of-way and construction area.

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

The Applicant has prepared and submitted plans which meet all applicable master plan, and forest conservation requirements. The Variance is based upon existing site conditions, with very limited opportunity to adjust the design, particularly since this project is to widen an existing roadway.

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 not a result of land or building use on a neighboring property.

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

Stormwater Management Concept Plan has been accepted by the MCDPS – Stormwater Management Section. In accordance with that approval, the concept design will satisfy the quality, quantity and recharge requirements to maintain appropriate water quality standards.

Mitigation for Trees Subject to the Variance Provisions – Five (5) trees proposed for removal by Variance are located within the minimum limits of

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disturbance required for the road improvements. Their removal is accounted for in the forest clearing calculations. Additional mitigation for the removal of trees that are accounted for in the forest clearing calculations is not required.

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 \_\_\_\_\_\_\_\_\_ (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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley, voting in favor at its regular meeting held on Thursday, April 11, 2013, in Silver Spring, Maryland.

Françoise M. Carrier, Chair

Montgomery County Planning Board