



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

MCPB No. 16-094
Forest Conservation Plan No. CU201614
Brightview Grosvenor Preliminary Forest Conservation Plan
Date of Hearing: September 15, 2016

SEP 19 2016

RESOLUTION

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

WHEREAS, on June 3, 2016, Shelter Development, LLC (“Applicant”) filed an application for approval of a preliminary forest conservation plan on approximately 2.67 acres of land located at 5510 Grosvenor Lane, Bethesda (“Subject Property”) in the North Bethesda/Garrett Park Master Plan (“Master Plan”) area; and

WHEREAS, the Applicant’s preliminary forest conservation plan application was designated Forest Conservation Plan No. CU201614 (“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 August 26, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 15, 2016, 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 approved the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU201614 on the Subject Property, subject to the following conditions:¹

¹ 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.

Approved as to
Legal Sufficiency: 

1. A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be approved with the Preliminary Plan approval, or with the Site Plan approval if a Site Plan is required.
2. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must record a Category I Conservation Easement over reforestation/afforestation and retention areas credited toward the forest conservation requirements as shown on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be recorded in the Montgomery County Land Records in the form of a deed approved by the M-NCPCC Office of the General Counsel, and the Liber Folio for the easement must be referenced on the record plat.
3. During the development of the Final Forest Conservation Plan, the Applicant must re-examine, and reduce if possible, impacts to specimen trees, with the goal of saving additional trees.
4. Mitigation must be provided for specimen trees removed at the rate of one inch replaced for every four inches (dbh) removed, using planting stock no smaller than three inches caliper. This equates to 20 three-inch caliper trees. Larger planting stock may be used as long as the planting totals at least 60 caliper-inches of tree planting. These trees must be shown on the Final Forest Conservation Plan, and on the Landscape Plan if one is required.
5. This PFCP approval is contingent on approval by the Hearing Examiner of Conditional Use No. CU2016-14.

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 Planning Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application proposes to clear 0.65 acres of forest and to retain 0.33 acres. Based on the approved zoning for the Subject Property, this results in a planting requirement of 0.49 acres. The Application as submitted conforms with the requirements of Chapter 22A. Final requirements for fulfillment of the planting requirement will be determined at the time of Final Forest Conservation Plan (FFCP) approval.

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 or CRZ impact to 18 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agrees that the Applicant would suffer unwarranted hardship if denied reasonable and significant use of the Subject Property without the Variance. A residential care facility for more than 16 persons is permitted as a conditional use in the R-90 zone, and the North Bethesda/Garrett Park Master Plan supports conditional uses that contribute to the housing objectives of the plan, including provision of elderly housing and group homes that are compatible with nearby land uses. Such a facility cannot reasonably be constructed on this site without significant disturbance to the Protected Trees.

The Board makes 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.*

The Applicant has worked to preserve as many trees as possible on the Subject Property, including specimen trees that are included in the wooded buffer being retained where the site fronts Grosvenor Lane. To minimize additional tree loss through this buffer, the existing entrance drive is being used, but it must be upgraded to standards sufficient for fire and rescue access. Two of the specimen trees are being removed due to unavoidable impacts of the entry drive widening. The remainder of the specimen trees to be removed are within the forest being cleared to make room for the building, parking, and stormwater management. Two additional trees on the adjacent

historic property are being removed because they are too close to the bamboo stand that must be removed. The impacts to the Protected Trees cannot be avoided in this case, and granting this variance is not a special privilege that would be denied to other applicants.

- 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 not based on conditions or circumstances which are the result of actions by the Applicant, but on environmental, engineering, and site constraints.

- 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 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.*

The Protected Trees requested for removal are not located in an environmental buffer or special protection area. The trees being removed will be mitigated by the planting of replacement trees that will, in time, replace the lost water quality functions of the removed trees. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately one caliper inch of replacement trees for every four inches dbh (diameter at breast height) removed, using planting stock of at least 3 inches caliper. 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 SEP 19 2016 (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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, September 15, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board