



MCPB No. 17-043
Forest Conservation Plan No. PP2017001
14911 Good Hope Road
Date of Hearing: June 1, 2017

JUN 08 2017

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 21, 2016, M-NCPPC Montgomery County Department of Parks ("Applicant") filed an application for approval of a forest conservation plan amendment on approximately 6.03 acres of land located at 14911 Good Hope Road ("Subject Property") in the Cloverly Policy Area and Cloverly Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan amendment application was designated Forest Conservation Plan No. PP2017001, 14911 Good Hope Road ("Forest Conservation Plan" or "Application"); and

WHEREAS, the Forest Conservation Plan is amending Forest Conservation Plan CBA1201A, approved on September 9, 2002, as part of a Special Exception for a horticulture nursery and landscape contractor use.

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 May 18, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 1, 2017, the Planning Board held a public hearing on the Application at which it 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 certified below.

Approved as to
Legal Sufficiency:

Christina Louente
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Director's Office: 301.495-4500 Fax: 301.495-1310

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. PP2017001 on the Subject Property, subject to the following conditions:¹

1. The Applicant must plant three, 3-inch caliper native canopy trees on the Property as shown on the approved Forest Conservation Plan within one year or two growing seasons after the impervious surface removal and land reclamation on the Property is complete.
2. The Final Sediment Control Plan must depict the limits of disturbance consistent with the limits of disturbance on the approved Forest Conservation Plan.
3. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.

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 (except as modified herein), 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 ensures the protection of environmentally sensitive features.*

A. Forest Conservation

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

The Application is for the removal of all the existing impervious surfaces and restoration of the Property to a pervious, natural condition to be maintained as an M-NCPPC Department of Parks conservation park within the Upper Paint Branch Special Protection Area and Upper Paint Branch Overlay Zone. There are approximately 2.52 acres of forest including a stream buffer associated with an offsite stream located within the Upper Paint Branch Stream Valley Park to the south, on the Subject Property. The Application retains all the forest, there are no forest planting requirements, and there are no impacts proposed to the stream buffer.

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.

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 CRZ impact to fourteen (14) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to a reasonable desire to restore the Property to a natural condition as a conservation park. The Protected Trees are located adjacent to and within the debris and impervious surfaces on the Property to be removed. Any development or restoration plan considered for this Property, would be faced with the same considerations of needing to remove the existing materials. The removal of existing debris and impervious surfaces resulting in impacts to Protected Trees is necessary to comply with the goals of the Upper Paint Branch Special Protection Area and Overlay Zone, and achieve the desired conservation park in this sensitive watershed. Granting a variance to allow land disturbance within the Property and removal of debris and existing impervious surfaces is not unique to this Applicant. The Planning Board finds that the granting of 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing conditions on the Property, including

the location of the Protected Trees adjacent to and within the debris, fill, and impervious surfaces proposed for removal to meet the goals of the Upper Paint Branch Overlay Zone.

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 need for a variance is a result of the existing conditions and the proposed goal of restoring the Property and maintaining it as a conservation park, and 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 variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer or wetland will be impacted or removed as part of this Application. One tree in fair condition is proposed to be removed during the removal of the fill material and debris that is currently stacked around the tree and covering the entire critical root zone, and thirteen trees will be impacted during the removal of impervious surfaces from their critical root zones. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, the removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide. The conditions immediately surrounding these Protected trees will likely be improved. The Property will ultimately be free of all impervious surfaces, planted with native vegetation, and will likely result in an improvement in water quality. In addition, Montgomery County Department of Permitting Services has required sediment control measures during the restoration of the Property and they've determined the stabilization and replanting of the Property will ultimately result in conditions that closely mimic predeveloped conditions as outlined in a letter dated May 15, 2017.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approves replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of three caliper inches in size. The Application proposes to remove 39 inches in diameter at breast

height resulting in a mitigation requirement of 10 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. The FCP includes the planting of three native, canopy trees as mitigation for the removal of one Protected Tree. 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 JUN 08 2017 (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 Dreyfuss, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Fani-González voting in favor, and Commissioner Cichy absent at its regular meeting held on Thursday, June 1, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board