



MCPB No. 16-120
Forest Conservation Plan No. CU2017-02
Project Name: Arden Courts of Germantown
Date of Hearing: November 10, 2016

NOV 15 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 July 20, 2016, Arden Courts of Germantown, LLC (“Applicant”) filed an application for approval of a Preliminary Forest Conservation Plan for a site located at 19115 Liberty Mill Road, Germantown, MD, identified as Parcel 515 Chestnut Ridge on Tax Map EU341 (“Subject Property”) and situated on the southeast corner of the intersection of Liberty Mill and Dawson Farm Roads. The Subject Property is a 3.60-acre Parcel in the R-200 zone in the Germantown Master Plan 1989 area; and

WHEREAS, Applicant’s Preliminary Forest Conservation Plan application was designated Forest Conservation Plan No. CU2017-02, Arden Courts of Germantown (“Forest Conservation Plan” or “Application”);¹ 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 October 20, 2016 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 10, 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 voted to approve the Application subject to certain conditions, by the vote as certified below.

¹ 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 APPROVES Preliminary Forest Conservation Plan No. CU2017-02 ("PFCP") on the Subject Property, subject to the following conditions:²

1. The Applicant must submit a Final Forest Conservation Plan ("FFCP") to M-NCPPC Staff for review with the Preliminary Plan submittal.
2. The FFCP must be consistent with the final approved PFCP.
3. The Applicant must obtain approval of the FFCP prior to recordation of the plat.
4. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.

BE IT FURTHER RESOLVED, that having fully considered 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 the protection of environmentally sensitive features.*

A. Forest Conservation

As conditioned, the Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD 420161070) was approved by Staff on February 5, 2016 and a Preliminary Forest Conservation Plan for the Subject Property was submitted as part of the Conditional Use application. The Subject Property contains 0.00 acres of forest. Based on the size of the Subject Property and the forest conservation and use category, this results in an afforestation/reforestation requirement of 0.56 acres, which will be met as conditioned.

² 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.

The Application will result in CRZ impacts to two Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance. The Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance, and further that:

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 removal of the three trees is due to the location of the trees and necessary site design requirement. The Applicant proposes impacts to two trees. Therefore, Staff believes 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project.

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 existing site conditions and not as 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. The specimen trees being impacted are not located within a stream buffer. Therefore,

Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

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 NOV 15 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).

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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 Commissioner Cichy, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley and Commissioners Fani-González voting in favor of the motion, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, November 10, 2016, in Silver Spring, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board