



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

MCPB No. 17-057
Preliminary Plan No. 11995016B
Camberwell, Lot 13
Date of Hearing: July 20, 2017

JUL 25 2017

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, the Planning Board, by Opinion mailed February 23, 1995, approved Preliminary Plan No. 119950160 creating 8 lots on 17.54 acres of land in the RE-2 zone; and

WHEREAS, on September 15, 2009, the Planning Board approved an amendment to Preliminary Plan No. 119950160, captioned Preliminary Plan No. 11995016A (MCPB No. 09-97), to revise the conditions of the associated forest conservation plan; and

WHEREAS, on January 6, 2017, Ms. Seema Kakar ("Applicant") filed an application for approval to amend the preliminary plan and associated forest conservation plan to remove a Category I Conservation Easement and revise the limits of disturbance ("LOD") on the property located at 10220 Iron Gate Road, Potomac, MD, Lot 13, Block B ("Subject Property"), in the 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 11995016B, Camberwell, Lot 13 ("Preliminary Plan," "Amendment," 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 July 6, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 20, 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

Approved as to
Legal Sufficiency:

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

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES the Preliminary Plan Amendment for Forest Conservation Plan Purposed, Plan No. 11995016B to remove a Category I Conservation Easement and to revise the limits of disturbance (LOD) on the Subject Property, subject to the following conditions:¹

1. Within sixty (60) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan, the Applicant must extinguish the existing 10,050 square foot Category I Conservation Easement on Lot 13. The extinguishment document must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
2. Within sixty (60) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the mitigation requirement specified on the Approved Amended Final Forest Conservation Plan (FFCP).
3. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Preliminary Plan, the Applicant must submit a complete record plat application that delineates the revised conservation easements and references the Liber/Folio of the recorded deed. The existing easement remains in full force and effect until the existing 10,050 square foot Category I Conservation Easement is recorded as removed.
4. Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
5. Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspector.
6. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Amended FFCP.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

BE IT FURTHER RESOLVED that having 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary as revised by previous amendments, and all findings not specifically addressed remain in effect.*
2. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), an amended FFCP for the project was submitted as part of the Application. The 10,050 square feet (0.23 acres) of Category I Conservation Easement removal allowed by this Amendment must be satisfied by the Applicant purchasing the necessary forest credits in an off-site forest bank at a 2:1 rate, resulting in a total of 20,100 square feet of forest bank credit.

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

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 CRZ impact to two 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. In this case, the unwarranted hardship is a result of necessary county agency setbacks,

public utility easements, and a Category I Forest Conservation Easement which restrict the buildable area of this lot. As a result, the impacts to the two Protected Trees are unavoidable.

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 impact to two protected trees is due to the location of the trees and necessary site design requirements.

2. *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. The requested variance is based upon the existing site conditions and necessary design requirements of this application. The request is based on the fact that the building envelope for the proposed home is constrained with little available space to vary its location.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not a result of land or building use on a neighboring property.

4. *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 Protected Trees being impacted will remain on the Subject Property and continue to provide the same water quality benefits.

Mitigation for Trees Subject to the Variance Provision – No mitigation is required for this variance request. There are two trees to be impacted in this variance request. M-NCPPC does not require replacement mitigation for specimen trees that are impacted.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

JUL 25 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).

* * * * *

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 Fani-González, 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, July 20, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board