



**MCPB No. 16-109**  
**Forest Conservation Plan No. CU2016-11**  
**Project Name: Cashell Estates**  
**Date of Hearing: October 6, 2016**

OCT 12 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 February 1, 2016, Garrett Gateway Partners, LLC (“Applicant”), filed an application for approval of a Preliminary Forest Conservation Plan for a site located at 7009 Garrett Road, Derwood, MD, identified as Part of 5, Block B, Cashell Estates on Tax Map GT341 (“Subject Property”); situated on the northeast corner of the intersection of Garrett Road and Redland Road. Subject Property is a 2.0-acre Parcel in the RE-1 zone in the Upper Rock Creek Master Plan area; and

WHEREAS, Applicant’s Preliminary Forest Conservation Plan application was designated Forest Conservation Plan No. CU2016-11, Cashell Estates (“Forest Conservation Plan” or “Application”);<sup>1</sup> 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 27, 2016 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 6, 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.

<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.

Approved as to  
 Legal Sufficiency:   
 M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Preliminary Forest Conservation Plan No. CU2016-11 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. Applicant must submit a Final Forest Conservation Plan to M-NCPPC Staff for review and approval at the time of the Preliminary Plan of Subdivision submittal.
2. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
3. Applicant must obtain approval of the Final Forest Conservation Plan prior to recordation of the plat.
4. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank for the total afforestation/reforestation requirement prior to any clearing, grading or demolition on the project site.
5. The Applicant must provide mitigation for the loss of trees requiring a variance in the form of eleven (11) native canopy trees with a minimum size of three (3) caliper inches. The trees must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
6. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
7. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final 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 the protection of environmentally sensitive features.*

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<sup>2</sup> 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.

A. Forest Conservation

The Board finds that 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 420152150) was approved by Staff on June 23, 2015 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 land use category, this results in an afforestation/reforestation requirement of 0.36 acres, which will be met as conditioned.

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 three 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 the removal of the three trees is due to the location of the trees and necessary site design requirement. The Applicant proposes removal of the three trees with mitigation. 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 removed are not located within a stream buffer. The Application proposes mitigation for the removal of these three trees by planting larger caliper trees on-site. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees being removed. The Board approved replacement of the Protected Trees at a ratio of approximately one inch for every four inches removed. The individual replacement trees will be a minimum of 3-inch caliper in size and will be planted on the Subject Property. 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 OCT 12 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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Fani-González, and Cichy voting in favor at its regular meeting held on Thursday, October 6, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board