



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

MCPB No. 17-020
Preliminary Plan No. 11998050A
North Glen Hills
Date of Hearing: March 30, 2017

APR 27 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 January 17, 2017, Ryan Mollet and Katie Mollet ("Applicant") filed an application for approval to amend a Preliminary Plan for Forest Conservation Plan Purposes that would remove a Category II Conservation Easement and revise the limits of disturbance from the property located at 12925 Circle Drive, Rockville, MD, Lot 21, Block 7 ("Subject Property") in the in the 2002 Potomac Subregion Master Plan ("Master Sector Plan") area; and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 11998050A, North Glen Hills ("Preliminary Plan" or "Application"); and

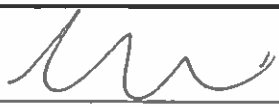
WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated March 16, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 30, 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 on March 30, 2017 the Planning Board voted to approve the Application, subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Wells-Harley, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez and Wells-Harley voting in favor, with Commissioner Dreyfuss being absent; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES the Preliminary Plan No. 11998050A to remove the Category II Conservation Easement and to revise the limits of disturbance 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(s) in interest to the terms of this approval.

Approved as to
Legal Sufficiency: 

- 1) All other conditions of Preliminary Plan No. 119980500 as contained in the Planning Board's Resolution mailed May 6, 1998 that were not modified herein, remain in full force and effect.
- 2) The Applicant must comply with the following conditions of approval for the Amended Final Forest Conservation Plan No. 11998050A ("FFCP"):
 - a. Applicant must install the eight 3" caliper mitigation trees shown on the amended FFCP by May 15, 2017.
 - b. Applicant must install permanent forest conservation easement signage along the perimeter of the existing Category I Conservation Easements by May 15, 2017 at the direction of the M-NCPPC Forest Conservation Inspector.
 - c. Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - d. Prior to any clearing, grading or construction on the project site the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank for a total of 24,938 square feet.
 - e. The 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.
 - f. The limits of disturbance on the Final Sediment and Erosion Control Plan must be consistent with the limits of disturbance shown on the approved Amended Final Forest Conservation Plan.

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. *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 12,496 square feet (0.3 acres) of reforestation required as a result of this amendment will be satisfied by the Applicant by purchasing the necessary forest credits in an off-site forest bank at a 2:1 rate resulting in a total of 24,992 square feet of forest bank credit.

The Board finds that 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 removal or CRZ impact to three 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 removal of the one tree and impact to two others is due to the location of the trees and necessary site design requirements. The Applicant proposes removal of the one tree 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 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 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. *The variance 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 as a result of land or building use on a neighboring property.

4. *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 tree being removed is not located within a stream buffer. The Application proposes mitigation for the removal of this one tree by planting three larger caliper trees on-site. The three mitigation trees will eventually

provide more shade and more groundwater uptake than what the existing tree currently provide. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There are two trees to be impacted and one proposed to be removed in this variance request. M-NCPPC does not require replacement mitigation for specimen trees that are impacted. However, there is one (1) tree proposed for removal in this variance request resulting in a total of 33 inches Diameter Breast Height ("DBH") of tree being removed. For removal of specimen trees associated with a variance request, Staff recommends mitigation for the tree loss by replacing the total number of DBH removed with $\frac{1}{4}$ of the number of inches replanted. This results in a total mitigation of 8.25 inches of replanted trees. In this case, the Applicant proposes to plant three 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements.

The amended FFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve Applicant's request for a variance from Chapter 22A and approve the FFCP with the conditions cited in this Staff Report.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 27 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 Commissioner Fani-González, seconded by Commissioner Cichy, with Vice Chair Wells-Harley and Commissioners Fani-González and Cichy voting in favor, and Chair Anderson and Commissioner Dreyfuss absent at its regular meeting held on Thursday, April 20, 2017, in Silver Spring, Maryland.


Marlye Wells-Harley, Vice Chair
Montgomery County Planning Board