



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

MCPB No. 16-128

Forest Conservation Plan No. CU 17-04

DEC - 7 2016

Parkview at Aspen Hill

Date of Hearing: December 1, 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 August 22, 2016, Pennrose Properties, LLC and the Housing Opportunities Commission ("Applicant") filed an application for approval of a forest conservation plan on approximately 11.70 acres of land located at 3132 Bel Pre Road ("Subject Property") in the 1994 Approved and Adopted Aspen Hill Master Plan ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU 17-04, Parkview at Aspen Hill ("Forest Conservation 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 November 16, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 1, 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 approved the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. CU 17-04 on the Subject Property, subject to the following conditions:¹

1. The Applicant must submit a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan at the time of Preliminary Plan.

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.

Approved as to
Legal Sufficiency:

Christina Sount 11/22/16
M-NCPPC Legal Department

2. The Final Forest Conservation Plan must include detailed and specific tree protection measures, invasive species management measures, and supplementary planting details.
3. The Applicant must place a Category I Conservation Easement over approximately 2.01 acres of forest retention and planting as shown on the Preliminary Forest Conservation Plan. Prior to any demolition, clearing, or grading, the easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records. The liber and folio of the recorded easement must be referenced on the record plat.
4. The Applicant must plant a minimum total of 31-caliper inches of native canopy trees as mitigation for the tree variance impacts on the site within one calendar year or two growing seasons after completion of building construction. The trees must be a minimum of three-inch caliper each.

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, 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

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

There is a 2.18-acre reforestation and afforestation requirement. The Applicant proposes to meet this requirement through 0.8 acres of supplemental planting and invasive species management within existing tree cover areas, 0.9 acres of forest planting, and 0.06 acres of landscape credit. The remaining 0.42 acres of reforestation and afforestation will be met off-site through purchase of credits in a forest conservation bank.

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 three trees and CRZ impact to nine 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 requested Variance is necessary because of the need to locate this development and all related parking and stormwater management facilities behind the existing church. Additionally, the location of the floodplain and existing forest also constrain the location of the development.

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 this variance will not confer a special privilege on the Applicant as disturbance of the Protected Trees in the developable portions of the site and the need to provide access to the existing church and proposed independent living facility. Disturbance has been minimized using a compact development form that is designed to fit with the shape and topography of the site. The size and configuration of the site preclude alternative site designs that would allow the Protected Trees to remain undisturbed.

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 that are the result of actions by the Applicant. It is based on the locations of the trees in the most reasonable place for new development and the minimum disturbance required to develop the property with safe access and adequate stormwater facilities.

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 the proposed layout of the independent living facility on the property in the most reasonable

location where protected trees are located 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 proposed development does not impact environmental buffers and provides mitigation plantings for trees the size and function of the trees lost. Additionally, the Applicant is providing invasive species management and supplemental plantings within the environmental buffer, which will have water quality benefits. The requested variance will not violate State water quality standards or cause a measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees with 11 3-inch caliper native shade trees. 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 DEC - 7 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).

* * * * *

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 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, December 1, 2016, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board