



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

MCPB No. 17-125
Forest Conservation Plan No. S-2290
1220 Briggs Chaney Road
Date of Hearing: December 21, 2017

JAN 03 2018

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on May 16, 2017, M-NCPPC Pampas Garden Landscaping, LLC (“Applicant”) filed an application for approval of a forest conservation plan amendment on approximately 2.46 acres of land located at 1220 Briggs Chaney Road (“Subject Property”) in the Cloverly Policy Area and Cloverly Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan amendment application was designated Forest Conservation Plan No. S-2290, 1220 Briggs Chaney Road (“Forest Conservation Plan” or “Application”); and

WHEREAS, the Forest Conservation Plan is amending Forest Conservation Plan S-2290, approved on May 8, 1998, as part of a Special Exception for a landscape contractor use.

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 December 8, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 21, 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, the Planning Board approved the Application subject to certain conditions, by the vote certified below.

Approved as to
Legal Sufficiency:

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. S-2290 on the Subject Property, subject to the following conditions:¹

1. The Applicant must plant twenty-four native canopy trees on the Property to satisfy the 0.49-acre afforestation requirement as shown on the approved Forest Conservation Plan. The planting locations of these trees and any substitution of species from what is shown on the approved FCP are subject to the approval of the M-NCPPC forest conservation inspector.
2. Prior to the start of any clearing, grading, or demolition on the Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the trees proposed to meet the 0.49-acre afforestation requirement, in a form acceptable to the Commission's Office of the General Counsel.
3. Prior to the start of any clearing, grading, or demolition on the Property, the Applicant must provide a Maintenance and Management Agreement to the M-NCPPC Planning Department for the trees proposed to meet the 0.49-acre reforestation planting requirement, and the Agreement must be in such a form as to be acceptable to the Department, as the designee/representative of the Planning Board.
4. Mitigation must be provided on the Property for the removal of one variance tree. Mitigation must be provided in the form of planting four native canopy trees with a minimum planting stock size of three caliper inches as shown on the approved Forest Conservation Plan. The planting locations of these trees and any substitution of species from what is shown on the approved FCP are subject to the approval of the M-NCPPC forest conservation inspector.
5. The Applicant must complete all afforestation planting and tree variance mitigation planting within 150 days of the pre-construction meeting.
6. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
7. The limits of disturbance on the Final Sediment and Erosion Control Plan must be consistent with the limits of disturbance on the approved Forest Conservation Plan.

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

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.

(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 ensures 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.

The Application, located within the Upper Paint Branch Special Protection Area, is for the relocation of the existing driveway, reconfiguration of the existing parking area, and demolition and replacement of the existing garage/storage building. There are no forest, streams, wetlands, stream buffers, 100-year floodplain, steep slopes, or highly erodible soils on the Property. There are several large trees located on and adjacent to the Property. The Application results in an afforestation requirement of 0.49 acres. The 0.49-acre afforestation requirement will be satisfied through credit for the projected canopy of newly planted trees. The existing Category II conservation easement covering the entire Property will remain.

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 (3) 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 disturbance to the Protected Trees is due to a reasonable desire to make modifications to the existing features on the

Property to better serve the operation of the existing landscape contractor business and to implement required stormwater management measures to treat the impervious surfaces in this sensitive watershed. The Protected Trees are located adjacent to existing impervious surfaces that require stormwater management measures in close proximity. Any re-development or modifications considered for this Property would be faced with the same considerations of needing to provide stormwater management measures. Granting a variance to allow land disturbance within the Property is not unique to this Applicant. The Planning Board finds 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing conditions on the Property, including the location of the Protected Trees within the developable area of the Property and the requirement that stormwater management measures be provided for the development on the Property.

- 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 need for a variance is a result of the existing conditions and the desire of the Applicant to reconfigure existing features to better serve his business, satisfy stormwater management requirements, and the requirements of the Upper Paint Branch Overlay Zone.

- 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. No trees located within a stream buffer or wetland will be impacted or removed as part of this Application. One tree in moderate - poor condition is proposed to be removed and two trees will be impacted. This approval is conditioned on mitigation that approximates the form and function of the tree removed. Therefore, the removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide. In addition, Montgomery County Department of Permitting Services has required

sediment control measures during the land disturbance and stormwater management measures that will ultimately result in conditions that closely mimic predeveloped conditions as outlined in a letter dated November 3, 2017.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approves replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of three caliper inches in size. The Application proposes to remove 44 inches in diameter at breast height resulting in a mitigation requirement of 11 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. The FCP includes the planting of four native, canopy trees as mitigation for the removal of one Protected Tree. 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 JAN 03 2018 (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 Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, December 21, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board