



NOV 13 2012

MCPB No. 12-123
Forest Conservation Plan No. MR2010815
Shawnee Lane
Date of Hearing: October 25, 2012

RESOLUTION

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

WHEREAS, on September 14, 2012, *Miller & Smith Eastside, LLC* ("Applicant") filed an application for approval of a forest conservation plan on approximately 11.2 acres of land for expansion of the existing Shawnee Lane between Gateway Center Drive and MD355 ("Subject Property") in the Clarksburg special protection area within the Clarksburg master plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2010815, Shawnee Lane ("Forest Conservation Plan" or "Application");¹ 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 October 12, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 25, 2012, 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.

¹ 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

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2010815, Shawnee Lane on the Subject Property, subject to the following condition:²

Prior to any land disturbing activities, Applicant shall submit and receive Staff approval of a final forest conservation plan that shall include the following:

- a. Final mitigation calculations in accordance with the Planning Board's approved methodology; and
- b. Method and location of off-site forest mitigation either within the Clarksburg Special Protection Area, or within the Seneca Creek Watershed.

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 condition 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.

This 11.2-acre project is subject to the Montgomery County Forest Conservation law. Approximately 53% of the current road edge is forested. The road widening proposes to remove all of the 2.88 acres of forest located within the site area. The Applicant will meet their planting requirement, as will be indicated in the final forest conservation plan, through off-site planting within the Clarksburg special protection area or within the Seneca Creek Watershed.

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

² For the purpose of the condition, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

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 14 Protected Trees as identified in Attachment 4 in the Staff Report (September 13, 2012 letter identified as the Updated Variance Letter). 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 disturbance and/or removal of trees is due to the widening of Shawnee Lane. The trees and/or their critical root zones lie within the right-of-way and construction area.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Applicant has prepared and submitted plans which meet all applicable master plan, and forest conservation requirements. The Variance is based upon existing site conditions, with very limited opportunity to adjust the design, particularly since this project is to widen an existing roadway.

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 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.*

A Stormwater Management Concept Plan has been accepted by the MCDPS – Stormwater Management Section. In accordance with that approval, the concept design will satisfy the quality, quantity and

recharge requirements to maintain appropriate water quality standards.

Mitigation for Trees Subject to the Variance Provisions – Ten (10) trees proposed for removal by this Variance are located within the minimum limits of disturbance required for the road improvements. Their removal is accounted for in the forest clearing calculations. Additional mitigation for the removal of trees that are accounted for in the forest clearing calculations is not required.

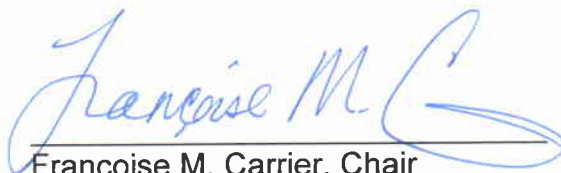
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is NOV 13 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, October 25, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board