



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

MCPB No. 17-005
Forest Conservation Plan No. MR2016010
Seneca Valley High School
Date of Hearing: January 26, 2017

MAR - 1 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 November 5, 2015, Montgomery County Public Schools (“Applicant”) filed an application for approval of a forest conservation plan on approximately 29.32 acres of land located at 19401 Crystal Rock Drive, Germantown (“Subject Property”) in the Germantown Policy Area and 2009 Germantown Employment Area Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. MR2016010 Seneca Valley High School (“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 January 13, 2017, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 26, 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, on January 26, 2017, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; seconded by Commissioner Mary

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:  2/13/17
M-NCPPC Legal Department

Wells-Harley; with a vote of 5-0, Commissioners Anderson, Dreyfuss, and Fani-Gonzalez voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2016010 on the Subject Property, subject to the following conditions:²

1. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. MR2016010:
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to the issuance of the Sediment and Erosion Control Permit and address the following conditions:
 - i. The Final Forest Conservation plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. The Final Forest Conservation Plan must include a worksheet that includes all areas of offsite limits of disturbance in the net tract area.
 - iii. The Final Forest Conservation Plan must identify the final location of the trees planted as mitigation for the tree variance.
 - b. Mitigation for the removal of ten (10) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 79 caliper inches, with a minimum size of three (3) caliper inches. The trees must be planted in final locations to be shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.
 - c. 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.
 - d. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.

² 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.

- e. 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 approved 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, 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 Preliminary Forest Conservation Plan proposes no forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A, is 29.71 acres, which includes 0.39 acre of offsite improvements. The proposed development on the Property generates a 4.46-acre afforestation planting requirement. The afforestation planting requirement is generated because the Property contains no existing forest and, under the Institutional Development Areas land use category, the Property has a 15 percent afforestation threshold for the net tract area. The Applicant proposes to meet the planting requirement through 2.46 acres of onsite landscaping credit and 2.0 acres of Mitigation Credit in an offsite 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 or CRZ impact to ten 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 the reasonable development of the Property and the unique slope conditions. The Protected Trees are in the developable area of the Property, outside of any environmental buffers. Granting a variance to allow land disturbance within the developable portion of the site is not unique to this Applicant. 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 site conditions, including the location of the Protected Trees within the developable area of the Site.

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 proposed design and layout of the Property, and not a result of land or building use on a neighboring property. The surrounding land uses (residences/private club) do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

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. The Property does not currently contain any forest;

however, the Application proposes to provide approximately 2.46 acres of landscape trees on site. These planted trees in addition to mitigation trees will replace many of the functions provided by the Protected Trees to be removed. These trees will help reduce the amount of runoff generated by this subdivision. In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

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 MAR - 1 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 Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Fani-González voting in favor, and Commissioner Cichy absent at its regular meeting held on Thursday, February 16, 2017, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board