



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

MCPB No. 18-030
Forest Conservation Plan No. CU201716
Layhill Property LLC
Date of Hearing: April 12, 2018

APR 18 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 2, 2017, Layhill Property LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 4.22 acres of land located at 14041 Layhill Road (“Subject Property”) in the 1994 Aspen Hill Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. CU201716 (“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 April 2, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 12, 2018, 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.

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: 

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU201716 on the Subject Property, subject to the following conditions:²

1. A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be submitted and approved with a future Preliminary Plan.
2. Forest retention and forest planting areas must be placed in a Category I Forest Conservation Easement.
3. The Category I easements must be shown on the FFCP and must be recorded in the County Land Records by deed. The recorded conservation easement must be referenced on the record plat.
4. The Final Forest Conservation Plan must show the planting of three native shade trees, of at least three inches caliper each, to mitigate for the removal of one specimen tree on the site. The trees must be planted within one year of construction completion.
5. The Applicant must submit a forest conservation maintenance and management agreement as part of the Final Forest Conservation Plan.
6. This PFCP approval is contingent on approval by the Hearing Examiner of Conditional Use No. CU2017-16.

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 (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.

6,602 square feet of Category I easement being removed will be replaced on site within the new Category I easement being created on the property. The total area required to be in easement to fulfill the

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.

forest conservation requirements is 1.32 acres (57499.2 square feet) to satisfy the forest retention requirement, plus 6,602 square feet to replace the existing Cat. I easement being removed, for a total of 64,101.2 square feet required. The area being provided in Cat. I easement is 20,463 square feet of retained easement, plus 44,428 square feet of new easement, for a total of 64,891 square feet.

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 two 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.*

Of the five specimen trees on the property, only two will be impacted. The others are not affected. Due to the location of one specimen tree on the site in the only feasible access route, along with other site constraints and development requirements, Staff has determined that the impact to the tree subject to the variance requirement cannot be avoided. The Critical Root Zone (CRZ) of the second tree will receive minor impacts, but the tree will be saved. Therefore, Staff 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant, but on environmental, engineering and site constraints.

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.*

The Protected Tree requested for removal is not located in an environmental buffer or special protection area. The tree being removed will be mitigated by the planting of 3 replacement trees of at least 3 inches caliper, each. These replacement trees will, in time, replace the lost water quality functions of the removed tree. The tree being preserved will continue to provide water quality benefits as before. Therefore, the project 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 approves replacement of Protected Trees at a ratio of approximately one inch (caliper) of replacement trees for every four inches (diameter at breast height) of Protected Trees removed. 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 APR 18 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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, April 12, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board