



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

'JUL 25 2018

MCPB No. 18-063
Forest Conservation Plan No. MR2000201
Grosvenor-Strathmore WMATA Garage Expansion
Date of Hearing: July 19, 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 22, 2002, staff approved Final Forest Conservation Plan MR2000201 for the Grosvenor Metro Station; and

WHEREAS, on May 9, 2018, Washington Metropolitan Area Transit Authority ("Applicant") filed an application for approval of an amended forest conservation plan on approximately 14.58 acres of land located at 10300 Rockville Pike, North Bethesda, Maryland ("Subject Property") in the Grosvenor-Strathmore Metro Area Minor Master Plan Amendment area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2000201 ("Forest Conservation Plan," "Amendment," 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 July 5, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 19, 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.

Approved as to
Legal Sufficiency:

M-NCPPC Legal Department
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2000201 on the Subject Property, subject to the following conditions:¹

1. The proposed development shall comply with all of the conditions of the Final Forest Conservation Plan as amended. All conditions shall be met prior to the issuance of sediment and erosion control permits by the Montgomery County Department of Permitting Services.
2. Prior to release of permits for clearing and grading, documentation must be provided demonstrating that the requirement for an additional 1.40 acres of afforestation/reforestation has been fulfilled, along with payment of a fee-in-lieu for an additional 0.26 acres of reforestation.
3. Any future plan that shows removal of the approved, but unrecorded, Category I Conservation Easement must replace this forest with 3.28 acres of off-site forest planting, plus an additional 0.10 acres to provide 2:1 replacement for the forest previously removed, for a total of 3.38 acres of off-site forest planting, or 6.76 acres of existing forest preserved, in an approved off-site forest conservation bank.
4. Limits of disturbance shown on the Sediment Control Plan must match the limits of disturbance shown on the Amended Final Forest Conservation Plan.
5. Site inspections must be performed by M-NCPPC inspectors as specified in the "Trees Technical Manual."

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 Amendment increases the Net Tract Area to 14.60 acres and reflects the additional 0.10 acres removed when the stairway was constructed. It

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.

also removes the credit for 0.06 acres of on-site tree canopy planting. These changes increase the total mitigation requirement to 1.66 acres of forest planting (or 3.32 acres of forest preservation).

A letter in the FFCP file shows that the Montgomery County Department of Public Works and Transportation committed to providing the 1.40 acres of reforestation required under the original FFCP approval. Documentation that this requirement has been fulfilled must be provided, along with payment of a fee-in-lieu for the additional 0.26 acres of reforestation, prior to release of permits for clearing and grading.

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 seven 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 requested variance is necessary to implement the larger-scale, future redevelopment recommended for the Subject Property in the Approved and Adopted Grosvenor Strathmore Metro Area Minor Master Plan. Given the urban and transit-oriented nature of the Subject Property, the currently proposed infrastructure improvements (e.g. expansion to the existing garage, reconfiguration of the Kiss and Ride parking facilities, addition of a bike share station, renovation of the existing Artswalk, a pedestrian corridor that connects the site to the Music Center at Strathmore, and associated upgrades), which are necessary to implement the mixed-use, pedestrian friendly, transit-oriented development recommended in the Master Plan, simply cannot be accommodated if the Subject Trees could not be removed. Not permitting impacts to the CRZ of the variance trees would create an unwarranted hardship for redevelopment of the Subject Property.

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.*

The Subject Property is already developed, and redevelopment is confined to the existing development envelope. The trees being impacted are in or along the edges of the existing development, by sidewalks, access roads, and in traffic islands in the parking lot. The site constraints are numerous and substantial. The impacts to the trees subject to the variance requirement cannot be avoided. Therefore, 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 engineering and site constraints, and on the compact, transit-oriented development recommended by the Master Plan.

- 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.*

Three of the impacted trees are being retained and will continue to perform water quality functions as before. The four trees to be removed are being replaced according to a formula that requires one caliper-inch of replacement trees planted for every four inches diameter removed, using planting stock of no less than 3 inches caliper. This project will remove 134 diameter inches of specimen trees, which will be mitigated by planting one four-inch caliper tree and 10 three-inch caliper trees, for a total of 34 caliper-inches of new trees planted. The canopy produced by these trees will replace the form and function from the removed trees with a few years, thereby restoring the water quality functions formerly performed by the trees removed. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

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 JUL 25 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).

* * * * *

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, July 19, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board