



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

MCPB No. 19-017
Site Plan No. 82013025F
Black Hill
Date of Hearing: February 7, 2019

MAR 19 2019

RESOLUTION

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014; and

WHEREAS, on August 1, 2013, the Planning Board, by Resolution MCPB No. 13-93, approved Infrastructure Site Plan No. 820130250 to construct Crystal Rock Drive and Century Boulevard and public utilities, ahead of the development of buildings and other structures on 108 acres of Transit Mixed Use ("TMX-2") zoned-land, located approximately 1.5 miles north of the Germantown Town Center and 0.6 miles north of the interchange of Ridge Road/Father Hurley Boulevard (MD27) and I-270 ("Subject Property"), in the Germantown Employment Area Sector Plan ("Sector Plan") area; and

WHEREAS, on December 30, 2015, the Planning Board approved an amendment to the previously approved Infrastructure Site Plan, designated Infrastructure Site Plan No. 82013025B (MCPB No. 15-151), to reflect the disturbance for the Dorsey Mill Road interchange where it encroached on the Subject Property; and

WHEREAS, on May 3, 2016, the Planning Board approved an amendment to the previously approved Infrastructure Site Plan, designated Infrastructure Site Plan No. 82013025A (MCPB No. 16-027), to reflect the grading and construction for the Black Hill Phase IIA development on the Subject Property; and

WHEREAS, on August 1, 2017, the Planning Board approved an amendment to the previously approved Infrastructure Site Plan, designated Infrastructure Site Plan No. 82013025D (MCPB 17-076), to relocate 0.58 acres of Category I conservation easement on the Subject Property; and

Approved as to

Legal Sufficiency

Christina J. [Signature] 3/7/19
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WHEREAS, on July 3, 2018, the Planning Board approved an infrastructure site plan amendment to the previously approved Infrastructure Site Plan, designated Infrastructure Site Plan No. 82013025C (MCPB 18-051), to update the Forest Conservation Plan to reflect the grading and construction of the Black Hill - Thrive Assisted Living Facility on the Subject Property; and

WHEREAS, on July 25, 2018, the Planning Board approved an amendment to the previously approved Infrastructure Site Plan, designated Infrastructure Site Plan No. 82013025E (MCPB No. 18-072), to update the Final Forest Conservation Plan to show final grading and design of a new structure and to allow for non-standard improvements within a portion of the public right-of-way for Century Boulevard on the Subject Property; and

WHEREAS, on November 28, 2018, Lerner Enterprises, LLC (“Applicant”) filed an application for approval of an amendment to the previously approved site plan(s) to amend the Final Forest conservation Plan to reflect the Potomac Edison Substation and remove 0.02 acres of Category I conservation easement on the Subject Property; and

WHEREAS, Applicant’s application to amend the site plan was designated Site Plan No. 82013025F, Black Hill (“Site 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 January 25, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 7, 2019, 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 February 7, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Patterson, seconded by Commissioner Dreyfuss, with a vote of [4-0]; Commissioners Anderson, Dreyfuss, Fani-Gonzalez and Patterson voting in favor with Commissioner Cichy being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan No. 82013025F for amending the Final Forest conservation Plan to reflect the

Potomac Edison Substation and remove 0.02 acres of Category I conservation easement on the Subject Property by adding the following conditions:¹

1. Prior to any clearing, grading or construction on the Subject Property, the Applicant must abandon the 0.02 acres of Category I easement shown on the amended FFCP of the original Category I Conservation Easement recorded among the County Land Records in Liber 47964 at Folio 231. The abandonment document must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
2. Prior to any clearing, grading or construction on the site, the Applicant must provide the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.04-acre requirement.
3. Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
4. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspector.
5. The limits of disturbance ("LOD") on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Amended Final Forest Conservation Plan.

BE IT FURTHER RESOLVED that all other site plan conditions of approval for this project remain valid, unchanged and in full force and effect

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Black Hill 82003025F, submitted via ePlans to the M-NCPPC as of the date of the Staff Report are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning 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. *Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan and as revised by*

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

previous amendments, and all findings not specifically addressed remain in effect.

- 5. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable laws.*

The Planning Board approved a Final Forest Conservation Plan (FFCP) 820130250 for the Black Hill Public Roads Infrastructure Plan encompassing approximately 108 acres of land that was part of the NRI/FSD approval. The FFCP included 65.10 acres of existing forest, 31.07 acres of forest clearing, and 34.03 acres of forest retention which is protected in Category I conservation easements.

This amendment 82013025F is for a small reduction (0.02 acre) of the Category I Conservation Easement to allow for the proposed substation to safely connect into the existing overhead power lines that cross I-270. The existing overhead electric supply lines are already in place. To maintain safe clearances while connecting to the fixed point any connection would impact the recorded easement. This location minimizes the impact to trees, forest, easements, and aesthetics.

The resulting forest clearing therefore increases to 31.09 acres, the forest retention decreases to 33.86 which will remain in Category I easement.

Additionally, by mitigating the easement removal via fee-in-lieu payment, at a 2:1 rate, will ensure the FFCP requirements for the overall original development will remain satisfied and additionally meet the Board's policy on easement removal.

The revised Site Plan Amendment for Forest Conservation Plan purposes meets all applicable requirements and intents of Chapter 22A regarding forest conservation. The FFCP requirements associated with the original site plan 820130250 have not been altered as a result of this application.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is ~~MAR 19 2019~~ (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 and Cichy voting in favor, and Vice Chair Dreyfuss and Commissioner Patterson absent at its regular meeting held on Thursday, March 14, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board