



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

MCPB No. 19-026
 Forest Conservation Plan No. PP2019001
 Edith Throckmorton Park
 Date of Hearing: March 7, 2019

MAY 06 2019

RESOLUTION

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

WHEREAS, on December 12, 2018, Montgomery County Parks Department (“Applicant”) filed an application for approval of a forest conservation plan on approximately 0.19 acres of land located at 3925 Hampden Street (“Subject Property”) in the 2012 Kensington Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No PP2019001, Edith Throckmorton Park (“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 February 25, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 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, at the hearing, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner

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:

Fani-Gonzalez, with a vote of 3-0; Commissioners Anderson, Cichy, and Fani-Gonzalez voting in favor, and Commissioners Dreyfuss and Patterson absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. PP2019001 on the Subject Property, subject to the following conditions:²

1. Prior to issuance of a Sediment Control Permit from the Department of Permitting Services, the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
2. The Final Forest Conservation Plan must include details of 0.13 acres of off-site forest planting. The off-site forest planting must occur on adjacent Park property.
3. The Applicant must plant three (3) 3-inch caliper native canopy trees within one year of construction completion as mitigation for tree loss.

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

As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Applicant proposes to clear 0.10 acres of forest (0.02 acres of on-site forest plus 0.08 acres of off-site forest) and plant 0.13 acres of forest on adjacent parkland.

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

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.

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 five (5) 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. Leaving the Protected Trees in an undisturbed state would prevent the Applicant from providing a raised boardwalk access from Mertford Street and from stabilizing the drainage outfall.

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 this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to stabilize the existing drainage outfall and build the raised boardwalk access. The proposed development is the continuation of an existing, reasonable use of the Subject Property and disturbance has been minimized to retain trees where possible.

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 that are the result of actions by the Applicant. The variance is necessary due to the need to stabilize the existing drainage outfall and provide ADA access to the Subject Property.

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 a result of the location of trees and the impacts by the stabilization of the existing drainage outfall and the raised boardwalk, providing ADA access to the Subject Property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides.

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 MAY 06 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).

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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 Cichy, seconded by Commissioner Patterson, with Chair Anderson and Commissioners Cichy and Patterson voting in favor, and Vice Chair Dreyfuss and Commissioner Fani-González absent at its regular meeting held on Thursday, April 4, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board