



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

MCPB No. 19-029
Water Quality Plan No. CU-19-07
Potomac Edison Company – Clarksburg Substation
Date of Hearing: March 28, 2019

MAY 16 2019

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 19, Article V, water quality review in Special Protection Areas must be done in conjunction with the review of a development plan, diagrammatic plan, schematic development plan, project plan, preliminary plan of subdivision, site plan, special exception, sketch plan, floating zone plan, mandatory referral, or conditional use; and

WHEREAS, to avoid duplication of effort, the Montgomery County Department of Permitting Services (“DPS”) and the Montgomery County Planning Board each have responsibility for review and approval of different elements of water quality plan applications; and

WHEREAS, the Planning Board is responsible to review water quality plan applications to determine if environmental buffer protection, forest conservation and planting requirements, and site impervious limits have been satisfied; and

WHEREAS, in cooperation with DPS’ review and approval of those elements of the water quality plan for which DPS is authorized, the Planning Board is authorized to take final action on the water quality plan; and

WHEREAS, on December 12, 2018, with authorization from the Montgomery County Department of General Services, Potomac Edison, A First Energy Company (“Applicant”) filed an application for approval of a water quality plan on approximately 12.02 acres of EOF (Employment Office) and Clarksburg West Overlay zoned property located at 22800 Whalen Lane, approximately 100 feet north of its intersection with Clarksburg Road (“Subject Property”) in the Ten Mile Creek Special Protection Area (“SPA”) within the Clarksburg Policy Area and 10 Mile Creek Limited Amendment Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s water quality plan application was designated Water Quality Plan No. CU-19-07, Potomac Edison Company – Clarksburg Substation (“Preliminary/Final Water Quality Plan” or “Application”); and

Approved as to
Legal Sufficiency:

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 March 15, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, the Staff Report included a copy of a letter dated November 1, 2017 from DPS conditionally approving the elements of the Preliminary/Final Water Quality Plan under its purview; and

WHEREAS, on March 28, 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 Patterson, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Dreyfuss, and Patterson voting in favor, and Commissioner Fani-Gonzalez absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary/Final Water Quality Plan No. CU-19-07, Potomac Edison Company – Clarksburg Substation on the Subject Property, subject to the following conditions:¹

1. Impervious surfaces are limited to no more than two percent of the Subject Property within the Clarksburg West Overlay Zone as shown on the Impervious Surface Plan portion of the Preliminary/Final Water Quality Plan.
2. Prior to the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces to no more than two percent of the Subject Property within the Clarksburg West Environmental Overlay Zone and demonstrate conformance to the impervious surface limits. The Agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County land records.
3. Prior to the start of any clearing or grading for the construction of the substation, the Applicant must remove all impervious surfaces and restore these areas to a pervious condition, as shown on the Impervious Surface Plan portion of the Preliminary/Final Water Quality Plan. An M-NCPPC inspector must be present at a pre-work meeting prior to the removal of the impervious surfaces.

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.

4. Prior to the start of any clearing or grading for the construction of the substation, the Applicant must contact an M-NCPPC inspector to conduct a post-work inspection to verify the removal of all impervious surfaces in accordance with the Impervious Surfaces Plan portion of the Preliminary/Final Water Quality Plan.
5. The Applicant must conform to the conditions as stated in the Montgomery County Department of Permitting Service's (MCDPS) Preliminary/Final Water Quality Plan approval letter dated November 1, 2017, unless otherwise amended by MCDPS, provided the amendments do not conflict with other conditions of approval.

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 Montgomery County Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of Montgomery County Code, Chapter 19, Article V – Water Quality Review in Special Protection Areas.

Environmental Buffer Protection

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) #420180400 for the Subject Property was approved by Staff on December 5, 2017. There is a stream that traverses through the northeastern corner of the Subject Property and its associated environmental buffer as well as environmental buffer associated with another off-site stream comprise approximately 3.52 acres of the Subject Property. The Application does not propose any disturbance within the environmental buffers and the unforested portions will be reforested and the entire on-site environmental buffer will be protected by a Category I conservation easement.

Forest Conservation

The Planning Board approved a Preliminary//Final Forest Conservation Plan for the Subject Property alongside this Application. The Forest Conservation Plan shows all existing forest will be retained and there is no planting requirement per the Forest Conservation Law. The Forest Conservation Plan shows all unforested environmental buffers on the Subject Property will be reforested. The result is approximately 4.90 acres of existing forest and 1.37 acres of planted forest on the Subject Property protected in Category I conservation easement.

Impervious Surfaces

Impervious surface restrictions for development projects in this portion of the Ten Mile Creek Special Protection Area are set forth in the Clarksburg West Environmental Overlay Zone. Under Chapter 59, Section 4.9.6, County-owned land that is not managed as parkland by the M-NCPPC may not add any impervious surface and the maximum total impervious surface area for any development after August 4, 2014 is six percent. The Application includes the construction of a substation to serve approved and future proposed development. There is approximately 12,505 square feet of impervious surfaces currently located in the southeastern portion of the Subject Property, adjacent to Whalen Lane. This area consists of compacted aggregate, including gravel. The Application will remove the existing impervious surfaces and decompact the soils. The Application proposes approximately 10,405 square feet of impervious surface related to the substation for a net reduction of 2,100 square feet. The proposed impervious surface consists of the substation and associated pad, and a gravel access road. The Application includes a total of 10,405 square feet of impervious surfaces over a 523,591 square foot net tract area, resulting in two percent imperviousness, as shown on the Impervious Surface Plan portion of the Preliminary/Final Water Quality Plan. The Application is in conformance with the Clarksburg West Environmental Overlay Zone as there will be no additional impervious surfaces on County-owned land and the proposed impervious surface on the Subject Property is less than six percent.

The Application met applicable requirements for environmental buffer protection, forest conservation, and planting requirements under an approved forest conservation plan. As conditioned by this approval, site impervious limits have been satisfied. Therefore, the Application satisfies all the elements of the Preliminary/Final Water Quality Plan under the Board's purview.

The stormwater management plan, sediment and erosion control plan, and the water quality monitoring component have been reviewed and conditionally approved by DPS, in coordination with the Montgomery County Department of Environmental Protection, as the lead agencies for these components of the Water Quality Plan review. Therefore, the Application satisfies all the elements of the Preliminary/Final Water Quality Plan under DPS' purview.

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 Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

MAY 16 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 Vice Chair Dreyfuss, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, April 25, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board