

Kingsview Station, Preliminary Forest Conservation Plan H-131

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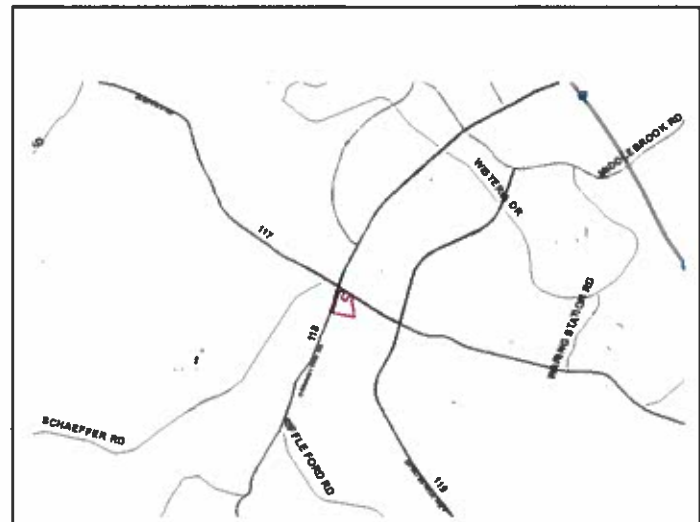
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Description

Preliminary Forest Conservation Plan in conjunction with Local Map Amendment H-131; a reclassification of 6 parcels (N210, P220, P274, PT P322, PT P330, P536) and Liberty Mill Road right-of-way with a combined total of 10.27 acres of land from R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' zone for a proposed development of 61 townhouse living units and 12,000 square feet of commercial use; located at the southwest corner of the intersection of Clopper Road (MD 117) and Germantown Road (MD 118). 1989 Germantown Master Plan.



Submittal Date: March 6, 2019

Applicant: Kingsview Station Joint Venture

Review Basis: Montgomery County Code Chapter 22A

Staff Recommendation: Approval of the Preliminary Forest Conservation Plan with conditions

Summary

Preliminary Forest Conservation Plan for a Local Map Amendment (LMA) to apply a floating zone to seven parcels, converting them from the R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' zone for a proposed development of 61 townhouse living units and 12,000 square feet of commercial use. This plan is required under Chapter 22A.

Conditions:

Forest Conservation

The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. H-131.

- a) The Applicant must submit and obtain approval of a Final Forest Conservation Plan at the time of Preliminary Plan that includes the following:
 - i. Corrected delineation of streams, wetlands and their buffers.
 - ii. Corrected areas excluded from net tract area
 - iii. Corrected areas of forest planting
 - iv. Corrected areas of existing forest
 - v. Corrected areas of proposed Category I easement
 - vi. Structures and stormwater management removed from environmental buffers
 - vii. Easement encroachment mitigation located outside normal environmental buffers.
 - viii. Mitigation trees for the loss of variance trees
- b) The Applicant must submit and obtain approval of a revision to FFCP 81997007A prior to or concurrent with the preliminary plan of subdivision.
- c) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
- d) Mitigation for the removal of Variance trees will be accomplished with the planting of eleven, three-inch caliper shade trees.
- e) The Applicant must provide financial surety to the M-NCPPC Planning Department, in a form approved by M-NCPPC Office of the General Counsel for the new forest planting as determined by the Final Forest Conservation plan prior to the start of any demolition, clearing, or grading on the Property.
- f) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property.
- g) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
- h) Afforestation plantings that are located outside the limits of disturbance must occur within the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance must occur in the first planting season following the stabilization of the applicable disturbed area.
- i) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.

SITE DESCRIPTION

The 10.27-acre property is located in the southeast quadrant of Clopper Road and MD 118 in Germantown. The property is currently vacant. See Figure 1.

The topography generally slopes down from north to south. Stream valleys exist on the southeastern and southwestern property boundaries. There are streams, wetlands, floodplains, and environmental buffers on the site. There are also three forest stands on site.

Environmental

Natural Resource Inventory/Forest Stand Delineation

Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420182510 for this Property was approved on July 24, 2018. The NRI/FSD identifies 3.52 acres as forested. Stream valleys, wetlands and sensitive areas dominate parts of the site. There are no rare, threatened, or endangered species within the boundaries of the proposed project.



Figure 1

Forest Conservation Plan

A Preliminary Forest Conservation Plan (PFCP) H-131 for the Application was submitted as part of the Application (Attachment A and Figure 2)

This Applicant requests the CRNF Zone, which is assigned a Land Use Category of Mixed-Use Development Areas (MDP) in the Land Use Table of the Trees Technical Manual. This gives the Property an afforestation requirement of 15 percent of the net tract and a conservation threshold of 20 percent.

The NRI/FSD delineated 3.52 acres of forest within the tract area. The PFCP proposes 0.67 acres of forest retention. Some areas of forest are within existing and future utility corridors. These forested areas are not able to be permanently protected and must be considered forest loss. Mitigation should take place on site where possible. A wetland that is more than an acre in size has been delineated in the southwest quadrant of the site. Although the applicant proposes forest mitigation within this wetland, its saturated nature makes it unlikely that planted trees will survive. The specific afforestation/reforestation acreage will be determined in the Final Forest Conservation Plan as part of preliminary and site plan process. All environmentally sensitive areas retained forest and planted forest areas on the Property will be placed in Category I conservation easement.



Figure 2

Existing Easement Encroachment

In 2005, FFCP 81997007A, located directly south of the subject property, was amended to allow permanent structural sensitive area impacts. These impacts were mitigated offsite on the subject property. See Figure 3. The mitigation consisted of a 0.54-acre conservation easement that was delineated beyond the assumed future sensitive area buffer on the east side of the subject property. The applicant proposes to impact this mitigation area for their entrance from Leaman Farm Road and for stormwater management. This proposed impact must be addressed as part of another revision to FFCP 81997007A. Mitigation should take place on the subject property or within this stream system on a one-to-one basis as sensitive area protection that is in addition to normal protective measures.

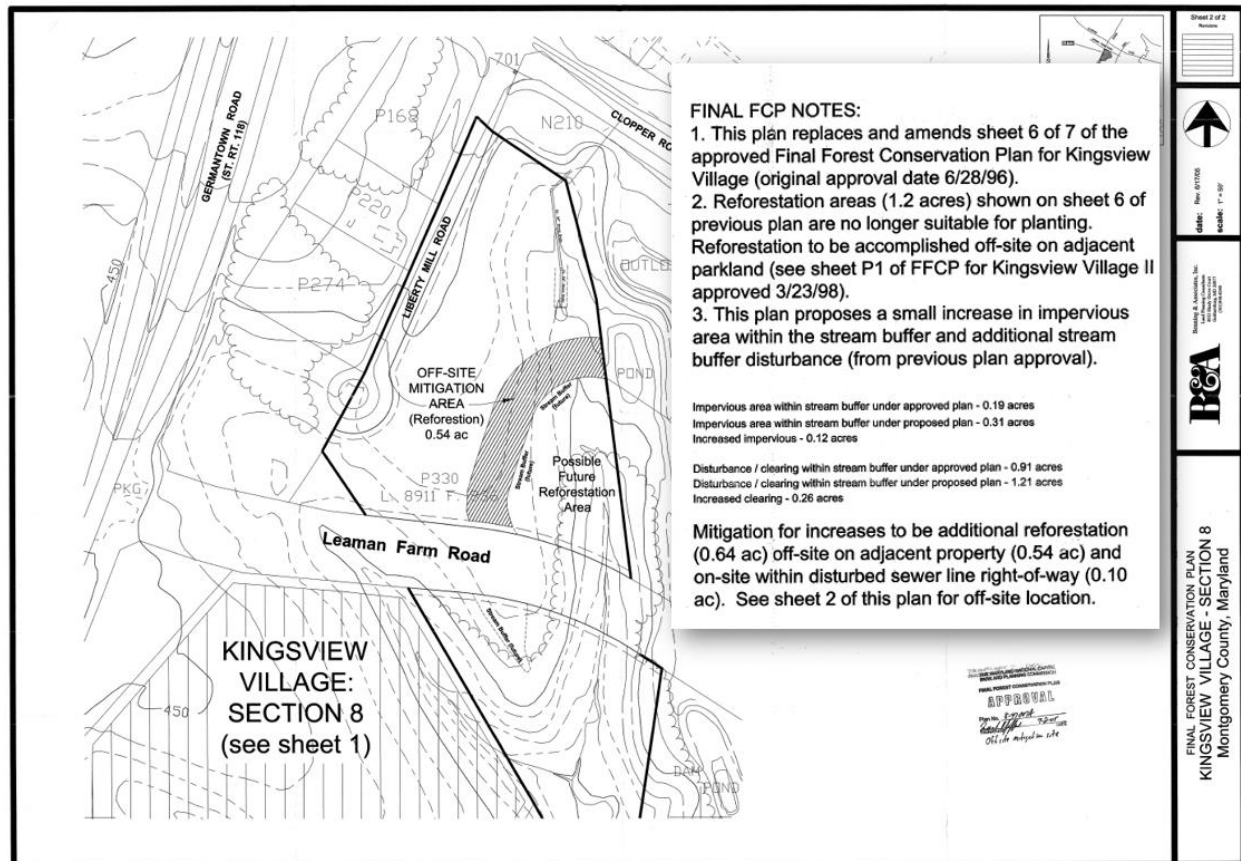


Figure 3

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an

historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated December 26, 2018 See Attachment B. The Applicant proposes to remove three (3) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Trees to be removed:

Tree Number	Species	DBH Inches	Status
1	Red Mulberry (Morris rubra)	31"	To construct an entrance road, internal public road and town homes.
5	Black Cherry (Prunus serotina)	31"	To construct an entrance road and town homes.
9	Black Cherry* (Prunus serotina)	54.5"	To construct an entrance road, parking lot and town homes.

*Montgomery County Champion Tree

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of the property. In this case, the unwarranted hardship is caused by the high-density recommendation of the 1989 Germantown Master Plan. This increase in zoning leaves very little space outside the environmentally sensitive areas for improvements. Therefore, the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate for a variance to be granted.

Variance Findings - The following determination has been made based on the required findings that granting of the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal of the trees is necessary to build the entrance road and develop the site. Therefore, the granting of this variance is not a special privilege that would be denied to other applicants.

2. *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 requested variance is based on existing site conditions and the need to build an entrance road, internal road, parking lot and townhomes.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions on the subject property and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The existing wetland will not be disturbed, and the stream valleys will be left in their natural condition. In addition, there will be a stormwater management plan for the entire site. Therefore, the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - Mitigation for the loss of Variance trees will be eleven three-inch caliper shade trees planted outside rights of way, utility easements and forest mitigation areas. These will be shown on the Final Forest Conservation Plan.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. In a letter dated August 27, 2019, the County Arborist concurred with the recommendation to grant the variance. See Attachment C.

Letter from the Montgomery County Forestry Board

On October 7, 2019 the Montgomery County Forest Conservancy District Board wrote the Montgomery County Planning Board and to the Montgomery County Board of Appeals to request that the 54.5-inch Black Cherry Tree be considered for preservation (See Attachment D). This Board is the Chapter 22A designated "keeper" of the Champion Tree database and list used by those who implement the Forest Conservation Law. They disagree the tree is in poor condition as alleged by the applicant. They argue that most older trees are not in perfect condition, but that they can be maintained in a way that is safe for people and structures. They go on to list the many benefits of older trees as compared to the younger trees that will be planted to replace them.

Variance Recommendation - The Montgomery County Forestry Board's description of the condition and value of Tree #9, the 54.5-inch Champion Cherry Tree is correct. The difficulty with development of this site is that there are many constraints. These include the following:

- Bounded on two sides by major highways, limiting access points.

- The presence of two significant stream valleys
- The presence of a very large wetland that is part of those stream systems
- The presences of Old MD 118 (Liberty Mill Road bisecting the property with pavement water mains and overhead utilities.
- The Potomac Electric Power Company parcel in an awkward location within the site areas

These constraints are immovable, as is the Black Cherry Tree. It would take a major change of building type or a significant loss of town home units to design a community around all of these constrains as well as the tree. Therefore, staff recommends approval of the variance request.

CONCLUSION

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

Attachments

Attachment A – Preliminary Forest Conservation Plan

Attachment B – Tree Variance Request Letter

Attachment C – Arborist Response to Variance Request

Attachment D -Montgomery County Forestry Board Letter