



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

MCPB No. 19-130
Preliminary Forest Conservation Plan No. H-131
Kingsview Station
Date of Hearing: December 5, 2019

FFR 03 2020

RESOLUTION

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

WHEREAS, on March 6, 2019, Kingsview Station Joint Venture ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 10.27 acres of land located at the southeast corner of the intersection of Clopper Road (MD 117) and Germantown Road (MD 118) ("Subject Property") in the Germantown Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. H-131 Kingsview Station ("Preliminary Forest Conservation Plan" or "Application"); and

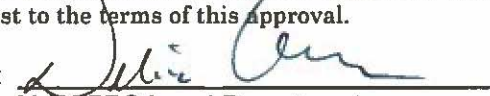
WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff"), Staff issued a memorandum to the Planning Board dated November 20, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 5, 2019, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board 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 Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Forest Conservation Plan No. H-131 on the Subject Property, subject to the following conditions:¹

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.

Approved as to
Legal Sufficiency: 

- 1) 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 areas excluded from net tract area
 - ii. Corrected areas of forest planting
 - iii. Corrected areas of existing forest
 - iv. Corrected areas of proposed Category I easement
 - v. Stormwater management and grading to be removed from environmental buffers, to the extent practicable.
 - vi. Easement encroachment mitigation may be located within corrected normal environmental buffers.
 - b) The Final Forest Conservation Plan must reference by notation the amendment to FCP No. 81997007A
 - 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) 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.
 - e) 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.
 - f) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.

- g) 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.
- h) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.

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, and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features.

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on July 24, 2018. A Preliminary Forest Conservation Plan 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.

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.

As discussed in the Forest Conservation Plan Staff Report, a Forest Conservation Variance (Tree Variance) was required because development of the Subject Property for the proposed use would impact vegetation (trees) afforded protection under Section 22A-12(b)(3) of the Forest Conservation Law. This Section requires that there be no impact to any protected vegetation identified in the Law. Should impacts be unavoidable, a Tree Variance must be submitted for Planning Board consideration. Because of unavoidable grading impacts to a total of three (3) trees identified as having a high priority for retention under the Law, the Applicant submitted a request for a Tree Variance. A Tree Variance may only be granted after the Planning Board determines that strict enforcement of the protection measures afforded under the Law would impose an unwarranted hardship on the property owner that would deprive the property owner of reasonable and significant use of the property. A Tree Variance may only be granted after an unwarranted hardship is demonstrated.

The Staff Report for the Preliminary Forest Conservation Plan (PFCP) detailed the necessary findings to the Planning Board to allow granting of a Tree Variance for all of the protected trees.

Unwarranted Hardship

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.

In addition to a determination of an unwarranted hardship, the Planning Board must also consider the following in their deliberations of a Tree Variance.

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.

The Planning Board has determined the Applicant satisfied the required findings to allow a variance for the three protected trees and that the local map amendment fully complies with Chapter 22A – The Forest Conservation Law.

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 FEB 03 2020 (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 Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, January 9, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board