



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

MCPB No. 20-032
Forest Conservation Plan No. CU 20-02
Milestone Senior Germantown
Date of Hearing: April 23, 2020

APR 30 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 February 12, 2020, Edmondson & Gallagher Property Services, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 2.64 acres of land located on the east side of Frederick Road (MD-355), approximately 0.2 miles north of the intersection of Wheatfield Drive and Frederick Road in Germantown, identified as Parcel 507 (“Subject Property”) in the Germantown Policy Area and 2009 Germantown Employment Area Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. CU 20-02 Milestone Senior Germantown (“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 April 10, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 23, 2020, 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

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.

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU 20-02 on the Subject Property, subject to the following conditions:²

1. The Applicant must submit a Final Forest Conservation Plan ("FFCP") at time of Preliminary Plan of Subdivision application. The FFCP must be in substantial conformance to the approved Preliminary Forest Conservation Plan.
2. The limits of disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the FFCP.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations 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

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

A Preliminary Forest Conservation Plan was submitted as part of this Conditional Use application. The PFCP shows the Net Tract Area on the PFCP Worksheet to be 2.81 acres which consists of the overall parcel size of 2.64 acres plus off-site disturbance of 0.17 acres for right-of-way improvements, pedestrian access, and utility connections. The Subject Property is in the R-90 Zone and is classified as High Density Residential ("HDR") as specified in the Chapter 22A of the County Code Trees Technical Manual. The net tract area of the Property contains 2.29 acres of forest and the Applicant proposes to remove all 2.29 acres. This results in a Total Reforestation/Afforestation requirement of 1.56 acres. The Applicant is proposing to satisfy this requirement by purchasing the appropriate credit in an off-site forest bank.

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.

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").

This Application will require the removal of nine Protected Trees and CRZ impact to one Protected Tree 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.

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 the variance will not confer a special privilege on the Applicant as the impact to one tree and the removal of nine trees is due to the location of the trees and necessary site design requirement. Therefore, Staff concurs that the granting of this variance is not a special privilege that would be denied to other applicants.

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 which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project.

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 existing conditions and not as a result of land or building use on a neighboring property.

4. *Granting the Variance 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. All specimen trees are being mitigated either via the forest conservation worksheet or through Variance Tree Mitigation as described below. While mitigation does not replace the trees being removed, it does provide additional environmental benefits by replacing the form and function of the trees removed. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. All nine trees proposed for removal are located within the existing forest stand on the Subject Property. It has been M-NCPPC policy not to require mitigation for specimen trees removed within forest stands since the removal of the forest stand is compensated for through the Forest Conservation Worksheet. No mitigation is required for Protected Trees impacted but retained.

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 APR 30 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 and Commissioners Cichy and Verma voting in favor, and Commissioner Patterson and Vice Chair Fani-González absent at its regular meeting held on Thursday, April 23, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board