



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

APR 14 2020

MCPB No. 20-017
Forest Conservation Plan No. MR2020006
PSSM at Black Rock
Date of Hearing: March 26, 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 January 31, 2020, Montgomery County Department of Technology Services (DTS) ("Applicant") filed an application for approval of a forest conservation plan on approximately 16.43 acres of land located at 17410 Black Rock Road in Germantown ("Subject Property") in the Lower Seneca Policy Area and the 1980 Preservation of Agriculture & Rural Open Space Master Plan area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2020006, PSSM at Black Rock ("Forest Conservation Plan" or "Application"); 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 March 13, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 26, 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

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. MR2020006 on the Subject Property, subject to the following conditions:¹

1. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank for the total afforestation/reforestation requirement prior to any clearing, grading or demolition on the project site.
2. The Applicant must install permanent Conservation Easement signage along the perimeter of the conservation easements.
3. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.
4. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.

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

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

The FCP proposes no forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A is 1.14 acres, 15.29 acres will remain in agriculture and is exempt from forest conservation. The proposed development on the Property generates a 0.23-acre planting requirement. The Applicant proposes to meet the planting requirement through Mitigation Credit in an offsite forest conservation bank.

B. Forest Conservation Variance

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.

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.

This Application will require the CRZ impact to one Protected Tree as identified in the Staff Report. The Applicant contends that an unwarranted hardship would be created due to existing conditions on the Site and the need to provide the required stormwater management. If a variance were not considered and the Applicant was not allowed to disturb the tree the development proposal would not be possible; this is a public safety tower needed to complete the County's network. As such, this would cause an unwarranted hardship to the community that it serves. 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 disturbance to the Protected Tree is due to the need to access and to provide stormwater management for the public safety tower. The Board finds 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in relation to site access and stormwater management requirements.

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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

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. No Protected Trees are being removed.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. 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 14 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, Patterson, and Verma voting in favor, and Vice Chair Fani-González abstaining, at its regular meeting held on Thursday, March 26, 2020, in Silver Spring, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board

MR. RICHARD BRUSH, MANAGER
MCDPS-WATER RES. PLAN REVIEW
255 ROCKVILLE PIKE
2ND FLOOR
ROCKVILLE, MD 20850
By email rick.brush@montgomerycountymd.gov

MS. LISA SCHWARTZ
DHCA
100 MARYLAND AENUE
4TH FLOOR
ROCKVILLE, MD 20850
By email lisa.schwartz@montgomerycountymd.gov

MR. MARK BEALL
MCDPS-ZONING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.beall@montgomerycountymd.gov

MR. CHRISTOPHER ANDERSON
MPDU MANAGER, DHCA
100 MARYLAND AVENUE, 4TH FLOOR
ROCKVILLE, MD 20850
By email
Christopher.anderson@montgomerycountymd.gov

SCOTT HARTMAN
MISSED 1 COMMUNICATIONS
4515 S. HIGH SCHOOL ROAD
INDIANAPOLIS, IN 46241

Gerry Adcock
PSSM Radio System Infrastructure Project/
Department of Technology Services
16647 Crabbs Branch Way
Derwood, MD 20855

MR. GREG LECK
MCDOT
101 MONROE ST
10TH FLOOR
ROCKVILLE, MD 20850
By email greg.leck@montgomerycountymd.gov

MR. ATIQ PANJSHIRI
MCDPS-RIGHT-OF-WAY
PERMITTING
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
atiq.panishiri@montgomerycountymd.gov
MS. CHRISTINA CONTRERAS
MCDPS-LAND DEVELOPMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email
christina.contreras@montgomerycountymd.gov

MR. ALAN SOUKUP
MCDDEP-WATER & WASTEWATER POLICY
255 ROCKVILLE PIKE, SUITE 120
ROCKVILLE, MD 20850
By email alan.soukup@montgomerycountymd.gov

Tessia Knight
6095 Marshalee Dr, Suite 300
Elkridge, MD 21075

Don Millner
Motorola/ Developer for DTS
10105 Senate Drive
Lanham, MD 20706

MR. MARK ETHERIDGE, MANAGER
MCDPS-SEDIMENT/STORMWATER
INSPECTION & ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email mark.etheridge@montgomerycountymd.gov

MR. EHSAN MOTAZEDI
MCDPS-SITE PLAN ENFORCEMENT
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email ehsan.motazedi@montgomerycountymd.gov

MR. GENE VON GUNTEN
MCDPS-WELL & SEPTIC
255 ROCKVILLE PIKE, 2ND FLOOR
ROCKVILLE, MD 20850
By email gene.vongunten@montgomerycountymd.gov

JUDY MILLER
DEPT OF TECHNOLOGY SERVICES
16647 CRABBS BRANCH WAY
DERWOOD, MD 20855

Justin Blanset
Network Building + Consulting, Agent for
DTS
6095 Marshalee Drive, Suite 300
Elkridge, MD 21075

Captain Dallas Lipp
14935B Southlawn Lane
Rockville, MD 20850