



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 20-078

Forest Conservation Plan No. MR2020018

Project Name: MD-355 Clarksburg Shared Use Path

Date of Hearing: July 30, 2020

AUG 17 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 April 9, 2020, the Montgomery County Department of Transportation ("Applicant"), filed for approval of a forest conservation plan and a Mandatory Referral application for Construction of a shared use path along the east side of Frederick Road (MD 355) extending from Stringtown Road to Spire Street and then 467 feet north of Clarksburg Road (MD 121) to Snowden Farm Parkway, Clarksburg; 3.58 acres ("Subject Property"); CRT and R-200 Zones and Clarksburg East Environmental Overlay Zone; *Clarksburg Master Plan & Hyattstown Special Study Area* (1994) and *10 Mile Creek Area Limited Amendment Master Plan* (2014) ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2020018, MD-355 Clarksburg Shared Use Path ("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 July 17, 2020 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 30, 2020, 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

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 voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. MR2020018 on the Subject Property, subject to the following conditions:²

1. Applicant must submit a Final Forest Conservation Plan ("FFCP") to M-NCPPC Staff for review prior to issuance of a Sediment Control Permit.
2. The FFCP must be consistent with the final approved PFCP.
3. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP or as determined by the Forest Conservation Inspection Staff.
4. The Applicant must record a Category I Conservation Easement over all areas of forest planting as specified on the approved 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. If the Applicant cannot provide a long-term protective agreement, they must provide the 0.48-acre planting requirement onsite as part of the SPA requirements and take the 0.48-acre forest conservation requirement to an offsite mitigation bank.
5. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, within the first planting season following the release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
6. Within the first planting season following the release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.
7. The Applicant must provide mitigation for the loss of trees per the approved variance in the form of Twenty-nine (29) native canopy trees with a minimum size of three (3) caliper inches. The trees must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The

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.

mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.

8. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement ("MMA") approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the FCP.
9. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record in the Land Records an M-NCPPC approved Certificate of Compliance to use an M-NCPPC approved off-site forest bank within the same watershed to satisfy the reforestation requirement for a total of 1.07 acres of mitigation credit. The offsite requirement may be met by purchasing from a mitigation bank elsewhere in the County, subject to Staff approval, if forest is unavailable for purchase within the same watershed.
10. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
11. 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 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 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 Resources Inventory and Forest Stand Delineation (NRI/FSD 420182000) was approved by Staff on February 8, 2019 and a Forest Conservation Plan for the Subject Property was submitted as part of the Mandatory Referral application. The Subject Property contains approximately 1.18 acres of forest. The Application proposes to remove approximately 1.18 acres of forest and retain no forest, which results in a forest planting requirement of 1.55 acres, which will be met as conditioned.

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.

This Application will require the removal or CRZ impact to 104 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made 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 removal of the seventy-three trees is due to the location of the trees and necessary site design requirement. Therefore, Staff believes 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. The Application proposes mitigation for the removal of these seventy-three trees by planting larger caliper trees on-site. Additionally, stormwater requirements

to the maximum extent possible are being met through the stream restoration project, improving stream health and allowing for improved ecological benefits in the area. Therefore, The Planning Board 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 Tree removed. The Board approved replacement of the Protected Tree at a ratio of approximately one inch for every four inches removed. This results in a total mitigation of 85 inches of replanted trees. In this case, the Applicant proposes to plant 29 3" caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. Additionally, no mitigation is required for the thirty-one trees that are 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 AUG 17 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).

* * * * *

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 Verma, seconded by Vice Chair Fani-González, with Chair Anderson, Vice Chair Fani-González, and Commissioners Patterson and Verma voting in favor, and Commissioner Cichy temporarily absent at its regular meeting held on Thursday, July 30, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board