



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

MCPB No. 20-095

Forest Conservation Plan No. CU202008

8901 and 8907 Colesville Road

Date of Hearing: September 24, 2020

OCT 06 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 May 22, 2020, Martha B. Gudelsky Child Development Center, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 2.2 acres of land located at 8901 and 8907 Colesville Road ("Subject Property") in the Silver Spring/Takoma Park Policy Area and 2000 North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU202008, 8901 and 8907 Colesville Road ("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 September 14, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 24, 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. CU202008 on the Subject Property, subject to the following conditions:²

1. Prior to any clearing, grading, or demolition on the site, the Applicant must submit and receive approval of a Final Forest Conservation Plan, which must be consistent with the approved Preliminary Forest Conservation Plan and associated conditions.
2. Prior to demolition or any land disturbing activities occurring onsite, the Applicant must receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.33 acres or as determined by the Final Forest Conservation Plan.
3. The development must comply with the Final Forest Conservation Plan which is to include a Tree Save Plan prepared by an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert. Additionally, as part of the preconstruction activities, the Applicant must enter into a contract with the tree care professional to implement a five-year maintenance and management plan for Tree 8. Mitigation plantings will be required if the tree dies or severely declines within the five-year timeframe as a result of Applicant's construction of its facilities or its operations, as determined by M-NCPPC Staff.
4. Any proposed activity that triggers the requirements of a Forest Conservation Variance must be addressed per Section 22A-21 of the County Forest Conservation Law.

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.*

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.

A. Forest Conservation

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

Although there is no forest on-site, this Application is subject to Chapter 22A Forest Conservation Law and has included a Preliminary Forest Conservation Plan with this Application. The Forest Conservation Worksheet shows a calculated Afforestation Requirement of 0.33-acres, which the Planning Board recommends be met through credits purchased from an off-site Forest Conservation Bank.

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 four Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance. The mature trees existing onsite are associated with an older defunct facility in need of repurposing; the impacts to the subject trees are due to construction and demolition activities for this proposed redevelopment and are unavoidable if this building and site are to be refitted for future use. The proposed layout, which has been coordinated between the Applicant and MNCPPC Staff, as conditioned, has been established to minimize CRZ impacts to existing specimen trees by utilizing specialized construction techniques, minimizing limits of disturbance as feasible and implementing a five-year maintenance and management plan for the tree which is most impacted (Tree #8). Given these onsite factors, 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.*

The Applicant's reuse and expansion of the existing building onsite greatly reduces the impacts that would otherwise occur if the

Applicant proposed demolition of the existing building and construction of a completely new building and infrastructure. Further, this development will provide a use cited by the Master Plan as a fulfilling a need for this community. With these factors considered, the Planning Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

As stated above, the requested variance and associated tree impacts are due to the programmatic concerns related to the improvement of the site and existing building which are essential to the rejuvenation of the existing structures included in the development. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees which provide shade and buffering from adjacent uses. Without this flexibility in the design and construction, far greater subject tree impacts would be expected. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 site design and layout on the Subject Property 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 Subject Property does not currently contain any stormwater management features. The Applicant's development will meet current State and local stormwater management standards; this will be verified by the submission of a Stormwater Management Plan to the Department of Permitting Services. A measurable degradation in water quality is not anticipated as the development will provide Best Management Practices (BMP) areas to meet ESD requirements for the site in order to achieve water quality standards. This Application contains limited additional impervious surfaces, as the building addition falls mainly on the existing parking lot. This development will also provide stormwater management on-site, where there are

currently no such measures. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. However, the subject Application contains no subject removals and will impact but retain four Protected Trees. No mitigation is required for Protected Trees impacted but retained.

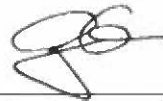
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is OCT 06 2020 (which is the date that this Resolution is mailed to all parties of record); and

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 Vice Chair Fani-González and Commissioner Patterson absent at its regular meeting held on Thursday, September 24, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board