



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

MCPB No. 20-060
Forest Conservation Plan No. SC2020008
Glenstone Foundation
Date of Hearing: July 9, 2020

SEP 09 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 18, 2020, the Glenstone Foundation ("Applicant") filed an application for approval to amend a Forest Conservation Plan that would remove two areas of Category I Conservation Easement and revise the limits of disturbance ("LOD") on the property located at 11800 and 11900 Glen Road, Potomac, MD ("Subject Property"), in the 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan amendment application was designated Forest Conservation Plan No. SC2020008, Glenstone Foundation ("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 June 26, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 9, 2020, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, on motion of Commissioner Verma, seconded by Commissioner Fani-Gonzalez, 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 the Forest Conservation Plan Amendment No. SC2020008 to remove a part of the Category I Conservation Easement on the Subject Properties and to revise the limits of disturbance to building the Four Rounds Pavilion on Lot 1 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(s) in interest to the terms of this approval.

- 1) All other conditions of Forest Conservation Plan No. SC2020008 as contained in the Planning Department's approval letter dated June 12, 2017 that were not modified herein, remain in full force and effect.
- 2) The Applicant must comply with the following conditions of approval for the Amended Final Forest Conservation Plan No. SC2020008 ("FFCP"):
 - a) Within sixty (60) days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan, the Applicant must record a new Category I Conservation Easement reflecting the entire easement area including the area that is not authorized to be removed. The new easement agreement must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed prior to recordation of the deed of abandonment for the existing conservation easement. The entirety of the existing easement remains in full force and effect until the abandonment document and the revised easement have been approved and recorded in the Montgomery County Land Records.
 - b) Within sixty (60) days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan, the Applicant must abandon the entirety of the original Category I Conservation Easements recorded among the County Land Records in Book 54505, Page 149 in a form approved by M-NCPPC. The abandonment document must be recorded in the Montgomery County Land Records by deed.
 - c) Within ninety (90) days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan, the Applicant must submit a complete record plat application that delineates the revised Building Restriction Line.
 - d) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - e) 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 Inspection Staff.
 - f) Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - g) The revised Record Plat must be recorded in the Montgomery County Land Records within 365 days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan.
 - h) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

- i) Correct the Forest Conservation worksheet to include the offsite disturbance in the net tract area.

BE IT FURTHER RESOLVED that having considered 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.*

A. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), an amended FFCP for the project was submitted as part of the Application. The 0.38 acres of Category I Conservation Easement removal as a result of this Amendment must be satisfied by the Applicant by Placing an additional 0.52 acres of Category I Conservation Easement onsite.

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

B. Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated April 23, 2020. The Applicant proposes to remove one (1) tree that is 30 inches or greater DBH and to impact two (2) trees, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Unwarranted Hardship Basis

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 an unwarranted hardship, denying the Applicant reasonable and significant use of its property. The Four Rounds Pavilion was strategically sited in coordination with MNCPPC staff. The location of the Pavilion in the woods is in a preexisting sizable clearing, on the old footprint of a barn. Numerous studies were made to evaluate orientation, elevation and exact placement of the pavilion within that footprint, avoiding impact to the stream floodplain and keeping grading to the minimum necessary. The intended design of the project is nesting the pavilion in the woods, integrated and screened by existing large canopy trees, and therefore preserving as many trees as possible. Moving the Pavilion further from the existing tree proposed to be removed would have necessitated the removal of another large existing tree located north of the pavilion and over six additional medium sized trees. A second consideration was creating a comfortable access to the pavilion for visitors, including ADA requirements. The boardwalk that leads to the entrance has gentle slope, making it an easy reach, and minimizing its impact by avoiding tree critical root zones and allowing visitors to enjoy and appreciate the existing trees.

Therefore, the Planning Board finds that the Applicant has a sufficient unwarranted hardship to justify granting 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.

Variance Findings -

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 and impact to the tree is necessary to develop the site on the old barn foundation. Therefore, the Planning Board finds that 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 which are the result of actions by the Applicant. The requested variance is based on existing site conditions.

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 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. This is a very minimal building and entrance road and will include a stormwater management plan. The trail will be raised above the floodplain and allow natural flow during flood conditions. Therefore, the Planning Board finds that the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision -Mitigation for the removal of Variance trees is not required as the existing tree is within a forested area that is currently within the easement that is proposed for removal.

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

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 09 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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 30, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board