



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

MCPB No. 20-116
Forest Conservation Plan No. CU202007
Metro Grounds
Date of Hearing: October 22, 2020

NOV 04 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 13, 2020, Metro Grounds Management, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 30.9 acres of land located at 3731 Damascus Road ("Subject Property") in the Olney Policy Area and the 2005 Olney *Master Plan* area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU202007, Metro Grounds ("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 October 9, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 22, 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.

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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU202007 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 and approval prior to issuance of a Sediment Control Permit or at the time of a Preliminary Plan of Subdivision, whichever comes first.
2. The FFCP must be consistent with the final approved PFCP.
3. Prior to any clearing, grading, or demolition, 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 retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement 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 the start of any demolition, clearing, or grading on the Subject Property. If the Property goes through a Preliminary Plan of Subdivision, the subsequent record plat must reflect Book and Page numbers for the easement.
5. 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.
6. 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 ensures the protection of environmentally sensitive features.*

A. Forest Conservation

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.

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

A Preliminary Forest Conservation Plan (PFCP) was prepared for the Property as part of this Conditional Use application. The Land Use category is an Agricultural and Resource Area (ARA), requiring a 20% Afforestation and 50% Conservation threshold for mitigation. Approximately 10.86 acres of forest exist onsite.

The PFCP is currently taking a net tract area deduction for lands to remain in agriculture, for which the Applicant has executed an agricultural Declaration of Intent (DOI) to keep the land in agricultural production. The total tract area for the Application is 30.94 acres with 0.09 acres of offsite improvements. The Applicant is requesting 0.59 acres of deduction for right-of-way not being improved and 11.75 acres of land to remain in agriculture. This brings the net tract area for forest conservation to 18.69 acres. Currently the agriculture deduction is only allowed on areas not proposed on a recorded lot. No lot is proposed with the Conditional Use but will be required at the time of Preliminary Plan of Subdivision. The Applicant is proposing to build in phases and will not require a Preliminary Plan until they seek a Building permit. However, any land disturbing activity will require a Final forest Conservation Plan to be approved before either issuance of a sediment control permit or approval of a Preliminary Plan of Subdivision, whichever comes first. The Final Forest Conservation Plan will have to meet all applicable requirements at time of submission. The Applicant understands that the FCP might need to be amended at time of Preliminary Plan to meet all applicable requirements.

The afforestation and conservation thresholds are currently calculated at 6.07 acres and 15.18 acres respectively. All forest will be preserved within a Category I Conservation Easement and posts will demarcate the limits on the Property, thereby retaining 4.79 acres of forest above the required afforestation threshold. No additional planting is required.

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 three Protected Trees 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 the three trees is due to the location to the trees and necessary site design requirements. Therefore, the Planning 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 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. No trees are being removed as part of this request. Therefore, the Planning Board finds that the project will not violate State water quality standards or cause measurable degradation in water quality.

No mitigation is required for trees that are impacted but retained. All trees impacted are being proposed for retention.

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 ~~NOV 04 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 Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson and Verma voting in favor of the motion, at its regular meeting held on Thursday, October 22, 2020, in Wheaton, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board