



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

FEB 09 2021

MCPB No. 21-006
Forest Conservation Plan No. CBA-1206
Congressional Country Club
Date of Hearing: January 28, 2021

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

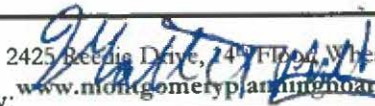
WHEREAS, on September 15, 2020, Congressional Country Club ("Applicant") filed an application for approval of a forest conservation plan on approximately 357.80 acres of land located at 8500 River Road in Bethesda ("Subject Property") in the Potomac Policy Area and Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CBA-1206, Amendment No. 7, Congressional Country Club ("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 January 15, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 28, 2021, 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.

Approved as to Legal Sufficiency:  2425 Beedie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605
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M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CBA-1206 on the Subject Property, subject to the following conditions:

1. 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.
2. 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.
3. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Cabin John Creek watershed to satisfy the reforestation requirement for a total of 1.07 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Cabin John Creek watershed. If there are no credits available for purchase from a mitigation bank, the Applicant may satisfy the 1.07-acre mitigation requirement via fee-in-lieu payment to M-NCPPC.
4. Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must record a new Category II 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.
5. Prior to the start of any demolition, clearing, grading, or construction for the development Application, the Applicant must submit abandonment documents to remove the Category II conservation easements that are being extinguished. The abandonment documents must be in a form approved by the M-NCPPC Office of the General Counsel. Within thirty (30) days of receiving approval of the abandonment documents from M-NCPPC, the Applicant must record the abandonment documents in the Montgomery County Land Records.
6. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling twenty-four caliper inches as shown on the approved Final Forest Conservation Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

7. Within the first planting season following the release of the first 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 approved Final Forest Conservation Plan.
8. 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.

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 amended Final Forest Conservation Plan will remove existing Category II conservation easements, remove, and impact the critical root zones of trees subject to the Tree Variance provision of the Forest Conservation Law, and disturb areas within the stream buffer. The amendment includes the construction of a Performance Center/Training Facility, modifications to the Arrival Area of the Clubhouse, and the stabilization of an eroding stream channel. Currently, there are 53.91 acres of Category I conservation easements and 4.88 acres of Category II conservation easements on the Property. The amended Final Forest Conservation Plan results in the removal of six individual Category II conservation easements, totaling 1.07 acres, for the Performance Center and Arrival Area construction. The amended Final Forest Conservation Plan results in a total of 53.91 acres of Category I conservation easements and 3.81 acres of Category II conservation easements on the Property. The 1.07 acres of Category II conservation easement removal will be mitigated at an off-site location.

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 eleven 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 disturbance to the Protected Trees is due to the need to maintain the existing approved use on the Property. Protected Trees are located throughout the developed areas of the Property. The modifications to the arrival area to improve traffic circulation, stabilization of an eroding stream bank, and consolidation of the training and practice areas and removal of existing maintenance buildings result in unavoidable impacts to Protected Trees. The removal and impacts to Protected Trees are due to improvements necessary to maintain the existing use of the Property within the already developed areas of the site. Granting a variance to allow disturbance within the developed portion of the Property is not unique 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.*

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 upon existing and evolving conditions on the Property, including the location of the Protected Trees within the developable area.

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 need for a variance is a result of the existing conditions and the proposed design and layout of the Property, and not the 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. None of the Protected Trees are located within a Special Protection Area. One of the Protected Trees to be removed is located within the stream buffer. It is located along an eroded stream bank that will be stabilized as part of this Application. The stabilization of this stream bank will reduce erosion and conveyance of sediment into the stream channel, providing a water quality benefit. The other Protected Trees requested for removal are not located within an environmental buffer. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. Six of the Protected Trees to be removed are located within the existing Category II conservation easements that will be removed. The easements and Protected Trees within will be mitigated for by purchasing credits at an offsite forest bank. Two of the Protected Trees to be removed will be mitigated for on the Property. The Board approves replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees with a minimum of 3 caliper inches in size. As conditioned, mitigation totaling 23 caliper inches of native, canopy trees with a minimum size of 3-inch caliper will be planted on the Property. 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 ~~_____~~ **FEB 09 2021** (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 Cichy, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor, at its regular meeting held on Thursday, January 28, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board