



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

MAR 02 2021

MCPB No. 21-016
Preliminary Forest Conservation Plan No. SC2020015
Grosvenor Improvements
Date of Hearing: February 18, 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 April 7, 2020, Montgomery County Department of Transportation, Division of Transportation Engineering ("Applicant") filed an application for approval of a forest conservation plan on approximately 1.15 acres of land located at MD 355 (Rockville Pike) NB from Pooks Hill Rd. to Strathmore Ave. ("Subject Property") in the Kensington/Wheaton Policy Area and Master Plan for the Communities of Kensington-Wheaton ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. SC2020015 Grosvenor Improvements ("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 February 8, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 18, 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

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, on February 18, 2021, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; 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 Forest Conservation Plan No. SC2020015 on the Subject Property, subject to the following conditions:²

1. Prior to issuance of a Sediment Control Permit from the Montgomery County Department of Permitting Services, the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan. The Final Forest Conservation Plan must be numbered with the Mandatory Referral number, MR2021010.
2. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
3. 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.
4. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.13 acres of new forest planting credited toward meeting the requirements of the FCP.
5. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank, provide a fee-in lieu payment, or other means required to satisfy the remaining reforestation requirement for a total of 0.36 acres of mitigation credit, as determined at the time of Final Forest Conservation Plan approval.
6. The Limits of Disturbance on the Final Sediment Control Plan must be consistent with the final Limits of Disturbance as shown on the approved Final Forest Conservation Plan.

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.

7. Prior to any land disturbing activities on Montgomery County Park Property, the Applicant must obtain an approved Park Construction Permit.
8. Prior to any land disturbing activities, the Applicant must hold a pre-construction meeting with the M-NCPPC Forest Conservation Inspector.
9. The Applicant must schedule the required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
10. Prior to certification of the plans, coordinate with M-NCPPC Staff on minor corrections and clarifications as necessary to reflect ongoing changes to the design of the project.

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, 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 net tract area within the Limits of Disturbance is 1.15 acres. The net tract area contains 0.34 acres of forest, which will be cleared for construction of the project. Based on the net tract area, land use designation, and forest clearing proposed, the required afforestation and reforestation mitigation is 0.49 acres. The Applicant proposes to fulfill the afforestation and reforestation requirements by planting 0.13 acres of forest on site and fulfilling the remaining 0.36 acre requirement through payment of a fee-in-lieu, or other means approved by staff in the Final Forest Conservation Plan. The proposed Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law and is in conformance with the *Environmental Guidelines*.

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 two 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 this variance will not confer a special privilege on the Applicant as removal of and disturbance to the specified trees is necessary to construct safety improvements to pedestrian and bicycle transportation facilities.

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 that are the result of actions by the Applicant. The Applicant has minimized disturbance, including substantially redesigning part of the project to minimize harm to the County Champion white oak tree.

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 location of trees near existing roadways and sidewalks, and not a result of characteristics or conditions 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. One specimen tree is being retained and will continue to function to protect water quality as before. No mitigation is required for Protected Trees impacted but retained. The tree being removed is part of a forest removal that requires mitigation by planting new forest to replace the forest lost. This new forest will provide water quality functions that will replace the lost functions of the tree removed. Therefore, Staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

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 MAR 02 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).

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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, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor, at its regular meeting held on Thursday, February 25, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board