



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

MCPB No. 21-035
Preliminary Plan No. 11987244A
Ottinger Property
Date of Hearing: April 15, 2021

MAY 11 2021

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review Preliminary Plan applications; and

WHEREAS, on February 6, 1989, the Planning Board approved Preliminary Plan No. 119872440, creating six lots on 2.84 acres of land in the R-90 zone, located at the southwest quadrant of the intersection of Spring Road and 80th Street in the 1970 *Bethesda-Chevy Chase Master Plan* as amended ("Master Plan") area; and

WHEREAS, on May 26, 2020, Joseph Ottinger ("Applicant") filed an application for approval of an amendment to the previously approved Preliminary Plan to remove a conservation easement and replace it with a smaller, more stringent Category I Easement to allow construction of a new porch and deck at 8006 Spring Road, Bethesda, MD, and recorded among the County Land Records and identified as Lot 127 on Plat 19558 ("Subject Property"); and

WHEREAS, Applicant's application to amend the Preliminary Plan was designated Preliminary Plan No. 11987244A, Ottinger Property ("Preliminary Plan," "Amendment," 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 April 5, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 15, 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 voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES

Preliminary Plan No. 11987244A to remove a conservation easement and replace it with a smaller, more stringent Category I Easement to allow construction of a new porch and deck by superseding condition #5 with the addition of adding the following new conditions:¹

Previous Condition #5 (to be superseded):
Record conservation easement 80' from western property line.

New Conditions:

7. Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must record a new Category I Conservation Easement reflecting the entire easement area as approved. The new easement agreement must be in a form 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 by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records by deed.

8. Prior to the start of any demolition, clearing, grading or construction for the development Application, the Applicant must abandon the entirety of the original Conservation Easement recorded among the County Land Records in Liber 9545, Folio 668 and identified on Plat 19558 on Lot 127 only in a form approved by M-NCPPC Office of the General Counsel. The abandonment document must be recorded in the Montgomery County Land Records by deed.

9. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the amendment to the Preliminary Plan, the Applicant must submit a complete record plat application that delineates the 65' modified BRL, revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement.

10. The revised Record Plat must be recorded in the Montgomery County Land Records prior to demolition, clearing, grading, or construction but no later than 365 days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan.

11. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the

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.

M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the forest planting/enhancement work and the associated 5-year maintenance period.

12. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement fencing/posts/signage along the perimeter of the conservation easements as shown on the Tree Save Plan or as determined by the Forest Conservation Inspection Staff.

13. Except for forest management practices coordinated with Planning Department Staff, the homeowner(s) of lot 127, and/or their successors, agents & assigns shall not perform any clearing, mowing, tree removal or other disturbance within the WSSC easement and portions of the Public Utility Easement which were previously protected by the original conservation easement footprint within the subject property. However, the Grantees rights relative to the utility easements are not diminished in any way and associated utility personnel are not restricted from performing any required work within their respective utility easement.

14. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting/enhancement work. The time period for the MMA will adhere to the requirements in place when the MMA is approved.

15. The Applicant must provide invasive species management control measures within the proposed Category I Conservation Easements at the direction of the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the stream and the sensitive nature of this watershed. The use of herbicides should be avoided where possible. The cost to control non-native invasive species must be incorporated into the forest enhancement financial surety.

16. The initial invasive control, fence work and all plantings required under this amendment shall occur as seasonally appropriate and be accepted by the Forest Conservation Inspector prior to start of construction work.

17. The Applicant must comply with all tree protection and tree save measures shown on the approved Tree Save Plan. Tree save measures not specified on the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

18. 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.

BE IT FURTHER RESOLVED that all other Preliminary Plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved Preliminary Plan, and all findings not specifically addressed remain in effect.

The Bethesda-Chevy Chase Master Plan has extensive recommendations and major goals on the protection of the Palisades' delicate, irreplaceable environmental features such as steeply sloped areas of 25 percent and greater, highly erodible soils, mature trees and streams. These Master Plan goals are being addressed by the numerous environmental enhancements and protections such as the removal of invasive species, planting of supplemental native species, removal of an existing 6'chain-link fence, installation of split-rail fence/signage to delineate and protect the new Category I Easement area (which has more stringent terms than the existing easement) and a modified Building Restriction Line (BRL) to further protect the new easement area from potential future encroachment. Approval of the proposed Preliminary Plan Amendment would not require any changes to the findings made by the Planning Board in the approval of Preliminary Plan No. 119872440 and will result in an enhancement to the currently existing environmentally sensitive resources which would not be required otherwise.

All Forest Conservation Law, Chapter 22A requirements are satisfied

Environmental Guidelines

The Site contains environmentally sensitive areas including forest, mature trees, steep slopes and highly erodible soils. An offsite stream (Potomac Direct watershed, use class 1-P) is located in the adjacent conservation park toward the west and the associated Stream Valley Buffer extends to nearly the entire subject property. There are no known rare, threatened, or endangered species or any historic properties on or near the Site. The setting and extent of the onsite environmentally sensitive resources will be enhanced and better protected over the current conditions.

Forest Conservation

This Application is subject to the Chapter 22A, Montgomery County Forest Conservation Law, but is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(a) of the Forest Conservation Law because the proposed activity is conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner. Additionally the activity: (1) does not require a special exception; (2) does not

result in the cutting, clearing, or grading of: (A) more than a total of 20,000 square feet of forest; (B) any forest in a stream buffer, (C) any forest on property located in a special protection area which must submit a water quality plan, (D) any specimen or champion tree, or (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and (3) is subject to a declaration of intent filed with the Planning Director stating that the Property will conform with the conditions of the Plans for 5 years from the date of the Plans approval. The exemption was confirmed on August 18, 2020. The memo notes that no forest clearing or tree removal will occur as part of the work and that the all the mitigation work associated with application must be implemented and inspected prior to the starting of construction. This requirement is reinforced the recommended conditions of approval.

All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied

The application has a minimal area of disturbance and is not subject to sediment control or stormwater management review.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 11 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 Vice Chair Fani-González, 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, April 15, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board