



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

MCPB No. 21-041

Final Forest Conservation Plan Amendment No. SC2020007

Audubon Naturalist Society Woodend Sanctuary

Date of Hearing: May 27, 2021

JUL 07 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 December 31, 2019, Audubon Naturalist Society Woodend Sanctuary ("Applicant" or "ANS"), filed an application for administrative approval of a Forest Conservation Plan, for stream restoration and an accessible nature trail, on approximately 40.49 acres of land located at 8940 Jones Mill Road ("Subject Property") within the 1990 Bethesda-Chevy Chase Master Plan ("Master Plan") area.

WHEREAS, the Applicant's original Forest Conservation Plan application was designated Forest Conservation Plan No. SC2020007, Audubon Naturalist Society Woodend Sanctuary ("Forest Conservation Plan") and was administratively approved on October 15, 2020. Among other things, the Forest Conservation Plan required the recordation of certain conservation easements associated with the Subject Property. The associated conservation easements were subsequently granted to the Planning Board as recorded in the land records under Liber 62301 Folio 489; and

WHEREAS, on October 19, 2020, the Applicant filed an application for approval of a Final Forest Conservation Plan Amendment for installation of a nature play space and construction of a permeable parking area (the "Project"); and

WHEREAS, Applicant's Final Forest Conservation Plan Amendment Application was designated Final Forest Conservation Plan Amendment No. SC2020007, Audubon Naturalist Society Woodend Sanctuary ("Final Forest Conservation Plan Amendment" or "Application"); and

2425 Reedie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605 Fax: 301.495.1320
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org

Approved as to

Legal Sufficiency: /s/ Delisa Coleman

M-NCPPC Legal Department

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 May 17, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 27, 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, on May 27, 2021, the Planning Board approved the Final Forest Conservation Plan Amendment, subject to certain conditions, on motion of Commissioner Fani-González; seconded by Commissioner Patterson; with a vote of 5-0, Commissioners Anderson, Cichy, Fani-González, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Final Forest Conservation Plan Amendment No. SC2020007 on the Subject Property, subject to the following conditions:¹

1. The Applicant must comply with all tree-protection and tree-save measures shown on the approved Final Forest Conservation Plan (FFCP). Tree-save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
2. Prior to plan certification, the Applicant must update all Forest Conservation Plan graphics, tables, worksheets, notes and references to consistently reflect the site area, Limits of Disturbance (LOD), Right-of-Way dedications, forest conservation credit, and required planting
3. The sediment & erosion control plan must be consistent with the LOD and the associated tree/forest preservation measures of the FFCP.
4. 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.
5. Stormwater Management
The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its Site Development Stormwater Management Plan letter dated January 8, 2020 and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the

¹ 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.

letter, which may be amended by MCDPS-Water Resources Section provided that the amendments do not conflict with other conditions of approval.

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 Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The net tract area within the Limits of Disturbance is 40.20 acres. The net tract area contains 28.07 acres of forest however, no forest will be cleared for construction of the Project. Based on the net tract area, land use designation, forest clearing proposed, and the previously recorded 20.75 acres of Category I Forest Conservation Easements, there is no required afforestation or reforestation mitigation with this Application.

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 CRZ impact to sixteen (16) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance. The extents of impacts to critical root zones vary, as detailed within the associated Final Forest Conservation Plan sheets, however efforts to minimize impacts using tree protection measures have been specified in all plans and notes. Per Section 22A-21, a variance may only be granted if the Director or Planning Board as applicable, finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The Planning Board has determined that the Applicant has shown that enforcement of

the Forest Conservation Law for the designated trees would result in an unwarranted hardship because these trees are proposed for impact due to their proximity to this particular setting of the Subject Property. If proposed elsewhere, the parking area would impact forest and numerous mature trees. Within the currently proposed location, the Applicant has minimized the impact to mature trees and made use of this area's proximity to the nature trail to further reduce the need to expand the LOD in connecting the parking area to a more distant trail location. Further, the proposed parking area will allow access to a new trail which accommodates visitors with disabilities while also maintaining permeability to combat stormwater runoff. In striking the balance between locating the parking area in a place convenient for trail access while also keeping extensive grading and excavation work to a minimum, it is necessary to encroach upon some of the critical root zones of the subject trees as described herein. This Project seeks to provide access to the site for educational purposes integral to the goals of Applicant; avoiding impacts to subject trees would preclude the addition of ADA access which is currently not available. Therefore, the Planning 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.*

The work proposed for the parking area is directly related to Audubon Naturalist Society's proposal to provide access to the trail for those with disabilities. As with any project that must provide grading for ADA access, the scope of work is carefully considered to provide an accessible pathway. ANS has taken this approach, while also providing permeable materials for the parking area which requires further grading for the installation of the necessary drainage work. Although installation of this specific material will have more impact than an impervious surface, the Applicant's effort in this regard helps the Project meet the stormwater management goals and avoid degradation to water quality. Granting the variance will not confer a special privilege on the Applicant as providing equitable access and incorporating stormwater management associated with development are key elements for many applications and often require impacts to subject trees. A variance request would be granted to any Applicant in a similar situation with the proposed protective measures included as a component of construction.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

As stated above, the requested variance and associated tree impacts are due to the limited available locations onsite to provide equitable access to the nature trail while minimizing impacts to the environmental features onsite, which includes three large forest stands with mature and champion trees as well as smaller trees which are subject to the variance provisions of the Forest Conservation Law given the historic setting. The Applicant has located the parking area to avoid impacts to forest completely and does not propose the removal of any trees. The Board finds that the variance request submitted reflects efforts to lessen overall site impacts; and if placed anywhere else on ANS Property, similar, if not greater, impacts would be proposed. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 not at all related to land or building use on a neighboring property. The request is related to work on the Subject Property with the goal of providing safe access to the nature trails.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

While the Subject Property is associated with Rock Creek and "Clean Drinking Stream", the proposed work is not directly adjacent to either bodies of water or their associated buffers and floodplains. As a mostly naturalized site with significant changes in elevation, large forests onsite, and minimal development over the long history of this Property, there has been limited opportunity to provide environmental site design stormwater management practices. The proposed parking area includes the use of permeable pavers to reduce stormwater impacts. Further, the planting plan includes substantial tree and shrub plantings which will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. Therefore, the Application will avoid causing measurable degradation in water quality or a violation of State water quality standards.

Although the Forest Conservation Law requires mitigation for Protected Trees that are removed, the Application proposes to impact, but not remove any Protected Trees. No mitigation is required for Protected Trees impacted but retained. As a result, there is no mitigation requirement for the Application.


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 JUL 07 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 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, July 1, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board