



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

SEP 14 2021

MCPB No. 21-081
Forest Conservation Plan No. MR2021021
Montgomery County Brookville Smart Energy Depot
Date of Hearing: July 15, 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 May 18, 2021, Montgomery County Department of General Services ("Applicant") filed an application for approval of a Final Forest Conservation Plan Amendment, in conjunction with a Mandatory Referral application (MR2021021) for installation of a renewable energy based microgrid system, on approximately 17.47 acres of land located at 8710 Brookville Road, Silver Spring, Maryland ("Subject Property") within the 2017 Greater Lyttonsville Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's Final Forest Conservation Plan (FFCP) Application was designated Forest Conservation Plan Amendment No. MR2021021, Montgomery County Brookville Smart Energy Depot ("Final 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 July 2, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 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, on July 15, 2021, the Planning Board approved the Final Forest Conservation Plan Amendment, subject to certain conditions, on motion of Commissioner Cichy; seconded by Commissioner Patterson; with a vote of 3-0,

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

Commissioners Anderson, Cichy, and Patterson voting in favor, with Commissioners Verma and Fani-Gonzalez absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Final Forest Conservation Plan No. MR2021021 on the Subject Property, subject to the following conditions:¹

1. Prior to any clearing, grading or demolition on the site, the Applicant must submit and receive approval of a Certified Final Forest Conservation Plan Amendment.
2. Prior to plan certification, the Applicant must coordinate with M-NCPPC Staff to address updates and clarifications to the Forest Conservation/Tree Save Plan and associated notes for accuracy across plan sheets.
3. Prior to demolition or any land disturbing activities occurring onsite the Applicant must receive approval of a Certificate of Compliance in a form approved by the M-NCPPC Office of the General Counsel for use of an off-site forest mitigation bank within the same watershed as the subject Property or any watershed within Montgomery County, upon approval, if there are no available credits within the same watershed for an equivalent total credit of 3.83 acres (or as determined on the Certified Final Forest Conservation Plan) unless the Applicant chooses to retain and/or replace trees previously credited to Forest Conservation requirements onsite. The Applicant may satisfy this requirement by making a fee-in-lieu payment if there are no available credits within an approved mitigation bank.
4. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year (5) 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 areas, mitigation tree plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures.
5. The Applicant must install any applicable Afforestation/Reforestation plantings as shown on the Certified FFCP or as directed by the M-NCPPC Forest Conservation Inspector, in the first planting season following stabilization of the applicable disturbed area.
6. The Applicant must comply with all tree protection and tree save measures shown on the Certified 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.

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.

7. 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 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 Amendment complies with the requirements of the Forest Conservation Law.

This site is subject to an existing Final Forest Conservation Plan which was last revised via an application for a Final Forest Conservation Plan Amendment approved administratively in 2017. With the previously approved FFCP, the Applicant maintained onsite planting as well as off-site credit in a Forest Conservation Bank to meet a total of 3.84-acres of forest conservation credit.

As proposed by the current Application, the project will impact 0.11acres of the approximately 0.43 acres of forest onsite. The forest conservation worksheet shows a calculated 2.52-acres of reforestation required for this impact. Portions of the forest proposed to be cleared contain plantings previously credited to forest conservation requirements of the site, however these plantings are now fully incorporated within the forest and thus will be mitigated by the Applicant as part of the required reforestation. In doing so, the site will now fully meet all Forest Conservation Requirements offsite. Staff is supportive of this direction given the constraints onsite which limit the location for plantings to be free of obstructions while simultaneously avoiding shading the proposed solar canopies or impacting the circulation for transit vehicles.

With this Application, there will be no increase in the net tract area associated with this project and construction efforts. As conditioned, this Application meets all applicable requirements of Chapter 22A Forest Conservation Law.

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 SEP 14 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 and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, September 9, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board