



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

MCPB No. 10-99
Forest Conservation Plan No. MR2010801
Brookville Road Sidewalk Improvements
Date of Hearing: July 1, 2010

JAN - 6 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on March 11, 2010, Chevy Chase Village ("Applicant") filed an application for approval of a Final Forest Conservation Plan on approximately 2,600 linear feet of right of way and private land located on and along Brookville Road, between Quincy and Irving Streets ("Property" or "Subject Property") in the Bethesda Chevy Chase Master Plan area ("Master Plan"); and

WHEREAS, the Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2010801, Brookville Road Sidewalk Improvements ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated June 18, 2010 setting forth its analysis and recommendation for approval of the Application, including a variance request for the impact to a total of 169 subject trees, 47 of which are proposed for removal, subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, the Planning Board held a public hearing on the Application (the "Hearing") on July 1, 2010; and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 1, 2010, the Planning Board approved the Forest Conservation Plan including all findings necessary for granting of the variance request, subject to certain conditions, on motion of Commissioner Alfandre and seconded by Commissioner Wells-Harley with a vote of 4 -0; Commissioners Alfandre, Carrier, Presley and Wells-Harley, voting in favor; Commissioner Dreyfuss being absent.

Approved as to
 Legal Sufficiency:

Christina Soren 12/1/10
 MNCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Final Forest Conservation Plan No. MR2010801 on approximately 2,600 linear feet of right of way and private land located on and along Brookville Road, between Quincy and Irving Streets in the Bethesda Chevy Chase Master Plan area, and subject to the following conditions:

1. Applicant to obtain services of a Maryland Licensed Tree Expert to perform the required tree preservation measures and appropriately protect the save trees.
2. Applicant to provide Fee-in-Lieu payment to satisfy forest conservation planting requirements, prior to any clearing, grading or land disturbing activities.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

The Forest Conservation Plan does not include any forest removal and will satisfy the afforestation requirements of 0.10 acres via fee-in-lieu payment. In addition the plan provides for the planting of 19 2"-3" caliper trees which serve as mitigation for removal and impacts to trees which are subject to the variance requirements.

Forest Conservation Variance Request

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the FCP proposes to impact and/or remove trees \geq 30 inches DBH and trees which are part of a historic setting, a variance is required.

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies on May 11, 2010 for a written recommendation prior to acting on the request. The County Arborist responded on May 27, 2010 with a favorable recommendation, on the condition that appropriate mitigation is provided for the resources disturbed.

The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

The Planning Board finds as follows:

- a) *The variance will not confer on the Applicant a special privilege that would be denied to other applicants.* Responsibility for the safety, maintenance, and rehabilitation of public pedestrian routes and infrastructure belongs to government agencies in executing their duties to the public. Therefore this is not a special privilege to be conferred on the Applicant.
- b) *The variance is not based on conditions or circumstances which are the result of the action by the Applicant.* The work stems from a public need for improved pedestrian access and safety. Measures have been taken to minimize impacts as much as possible. The County Arborist has recommended that the variance can be granted under this condition as long as appropriate mitigation is provided for the resources disturbed. The Applicant has provided 19 2-3" caliper tree plantings for this purpose. The proposed plantings are acceptable to the Planning Board.
- c) *The variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.* The requested variance is a result of the proposed sidewalk improvements on the subject project and not as a result of land or building use on a neighboring property.
- d) *The variance will not violate State water quality standards or cause measurable degradation in water quality.* Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The gravel pavement system for the new sidewalk inherently provides storm water quality treatment and storage. Furthermore, the work will be phased to allow only minor areas of disturbance at any given time. The work is not located in or near a stream, wetland, 100 year floodplain or any associated buffers.

Therefore, the Planning Board finds that the Application satisfies all applicable requirements of the 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 JAN - 6 2011 (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 Presley, seconded by Commissioner Alfandre, with Vice Chair Wells-Harley and Commissioners Alfandre and Presley voting in favor of the motion, and with Chair Carrier and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, December 9, 2010, in Silver Spring, Maryland.



Marye Wells-Harley, Vice Chair
Montgomery County Planning Board