

JUN 29 2011



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

MCPB No. 10-161
Forest Conservation Plan No. MR2010731
North Potomac Recreation Center
Date of Hearing: November 18, 2010

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 August 23, 2010, Montgomery County Department of General Services ("Applicant"), filed an application for approval of a preliminary forest conservation plan on 17.14 acres of land located on the northeast quadrant of the intersection of Travilah Road and Patrick Avenue, North Potomac, Maryland ("Property" or "Subject Property"), in the Potomac Subregion master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Preliminary Forest Conservation Plan No. MR2010731, North Potomac Recreation Center ("Preliminary Forest Conservation Plan" or "Application"); and


WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated November 5, 2010, setting forth its analysis, and recommendation for approval with conditions of the Application ("Staff Report"); and

WHEREAS, on November 18, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

WHEREAS, on November 18, 2010, the Planning Board approved the Preliminary Forest Conservation Plan, on motion of Commissioner Dreyfuss and seconded by Commissioner Wells-Harley; with a vote of 5-0, with Commissioners Alfandre, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:

5/26/11

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NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Preliminary Forest Conservation Plan No. MR2010731 on the Property, subject to the following conditions:

1. Submission and approval of a final forest conservation plan prior to any land disturbing activities.
2. Applicant must record a Category I forest conservation easement over all forest plantings, retained forests, and environmental buffers prior to any 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 (except as modified herein) and upon consideration of the entire record, the Montgomery County 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 the protection of environmentally sensitive features:*

A. Forest Conservation

The submitted preliminary forest conservation plan (PFCP) shows 4.10 acres of forest removal and 6.27 acres of retention of forest. The project does not generate a planting requirement. Even though the forest conservation plan does not generate any forest planting requirements the applicant is proposing to replant 0.56 acres of the stream valley buffer (SVB) to mitigate for temporary disturbances within the SVB.

B. Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code 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) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require seventeen Protected Trees, 30 inches and greater DBH to be removed. Further,

the project will impact nine Protected Trees. Therefore, a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, the variance is required simply due to the impact.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is often necessary and unavoidable in order to develop this property for the intended public use and benefit. The size and scope of this facility has been drastically reduced from the original designs to conform with the environmental constraints of the site. The development of this lot is consistent with the County's General plan and Potomac Sub-region Master Plan.

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

The Potomac Subregion Master Plan recommends "Acquire property on the 13800 Block of Travilah Road for the North Potomac Community Recreation Center, the precise acreage to be determined by the Department of Recreation's facility planning study. The site must be adequate for a 24,000 net square foot facility and necessary parking." The applicant was following the recommendations of the master plan in both selection of the site and in the amount of proposed development. Therefore, the conditions or circumstances are not a direct result of the actions of the applicant.

- iii. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. A Stormwater Management Plan will

be approved by Montgomery County. As a part of the stormwater management plan the applicant proposes to use approximately 22,000 square feet of green roof and fourteen bio-retention facilities to meet Environmental Site Design (ESD) criteria.

C. Forest Conservation Variance mitigation

The applicant is providing 0.56 acres of on-site planting as mitigation for required work within the SVB and in this particular case staff believes the 0.56 acres of SVB planting as proposed by the applicant should also be used to mitigate for the impact to the specimen trees outside of existing forest. Additionally, the applicant is planting 181 canopy trees, thirteen different species, as part of the landscaping plan for the project.

The proposed plantings both within the SVB and as shown on the landscaping plan are more than adequate to mitigate for the proposed specimen tree impacts and losses

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

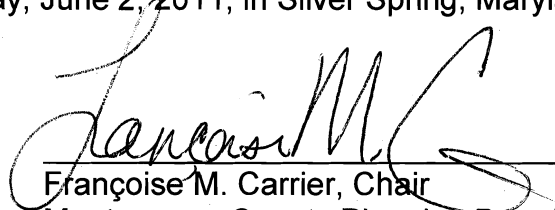
BE IT FURTHER RESOLVED, that this constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 29 2011 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 Dreyfuss, with Chair Carrier, Commissioners Dreyfuss and Presley present and voting

in favor of the motion, and Vice Chair Wells-Harley, and Commissioner Alfandre absent at its regular meeting held on Thursday, June 2, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board