

OCT 10 2011



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

MCPB No. 10-169
Forest Conservation Plan No. MR2010737
Town of Somerset Bathhouse
Date of Hearing: December 2, 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 30, 2010, Town of Somerset ("Applicant"), filed an application for approval of a preliminary forest conservation plan on approximately 6.0 acres of land located at the intersection of Falstone and Warwick Avenues ("Property" or "Subject Property"), in the Bethesda-Chevy Chase master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. MR2010737, Town of Somerset Bathhouse ("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 21, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, the Planning Board held a public hearing on the Application (the "Hearing") on December 2, 2010; and

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

WHEREAS, on December 2, 2010, the Planning Board approved the Forest Conservation Plan subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Alfandre; with a vote of 4-0, Commissioners Carrier, Wells-Harley, Presley, and Alfandre voting in favor.

Approved as to
Legal Sufficiency:

Christina Sonnet 1/5/11

8787 Georgia Avenue, MNCPPC Legal Department 2010 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 Forest Conservation Plan No. MR2010737 on the Property, subject to the following conditions:

1. Applicant must record a Category I conservation easement over all areas of forest retention prior to any clearing or grading occurring onsite.

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, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Applicant has met all criteria required to grant a variance to Section 5-1607(c) of the Natural Resources Article, MD Ann. Code in accordance with Section 22A-21 of the Montgomery County Code.*

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 these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The following trees require a variance for disturbance within their critical root zone:

Tree #	Species	Diameter (inches)	Condition	Disposition	CRZ Area (sq ft)	CRZ Impacts (sq ft)	CRZ Impacts (%)
4	Liriodendron tulipifera	35" DBH	Good	Save	8659	1049	12.11%
6	Fagus grandifolia	34" DBH	Good	Save	8171	600	7.34%
8	Quercus rubra	40" DBH	Good	Save	11310	600	5.31%
13	Liriodendron tulipifera	36" DBH	Good	Save	9161	2001	21.84%
14	Quercus falcata	31" DBH	Good	Save	6793	23	0.34%
15	Quercus rubra	30.5" DBH	Poor	Save	5346	1175	21.98%
17	Quercus alba	45" DBH	Good	Save	14314	306	2.14%
18	Fagus grandifolia	44" DBH	Good	Save	13685	974	7.12%
19	Metsasequoia glyptostroboides	45" DBH	Good	Save	14314	1673	11.69%
27	Platanus occidentalis	38" DBH	Good	Save	10207	1940	19.01%

In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the following criteria required to grant the variance.

- a. *Will not confer on the Applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the Applicant any special privileges that would be denied to other applicants. The Applicant is voluntarily adding stormwater management features to a site that currently has none.

b Is not based on conditions or circumstances which are the result of the actions by the Applicant.

The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The site was initially developed with the swimming pool in the stream valley. The Applicant cannot move the existing pool but is trying to improve water quality by compensating for the existing development. The Applicant is taking steps to minimize the damage to the trees as part of the Forest Conservation Plan.

c 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 site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

d. Will not violate Site 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. While some trees are proposed to be impacted are within the stream valley buffer, the site currently has no stormwater management controls on it. On balance, development of this site should be a positive contribution to water quality, even with the impact on the critical root zones.

2. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and Forest Conservation Regulations Section 1.09(B) (COMCOR 22a.00.01.09B).

The Applicant is removing 0.18 acres of forest and retaining 4.06 acres in order to incorporate stormwater management facilities on a site that currently has none. While the forest is high priority and located within the stream valley buffer, the Board finds that the addition of stormwater

management on the site is a positive contribution to water quality and will more than off-set the loss of forest. In addition, the Forest Conservation Plan protects 4.06 acres of forest in a Category I Easement. The Planning Board finds that the Application satisfies the applicable requirements of the Forest Conservation Law.

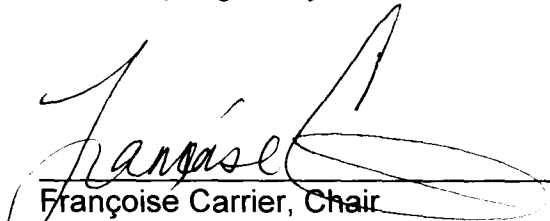
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is OCT 10 2011 (which is the date that this Resolution is mailed to all parties of record); and

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).

* * * * *

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 Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present, and voting in favor of the motion, at its regular meeting held on Thursday, January 13, 2011, in Silver Spring, Maryland.


Françoise Carrier, Chair
Montgomery County Planning Board