



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

**MCPB No. 11-18**  
**Forest Conservation Plan No. MR2011302**  
**Rockville Water Treatment Plant**  
**Date of Hearing: February 17, 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, the Mayor and Council of Rockville ("Applicant") own 5.51 acres of land located 10930 Sandy Landing Road, Potomac, Maryland ("Property" or "Subject Property"), within the Potomac Subregion master plan area improved with a water treatment plant to serve the residents of the City of Rockville; and

WHEREAS, a forest conservation plan for the Property was administratively approved on July 9, 2008, and administratively amended on August 17, 2009 and August 18, 2010 (collectively, "Original Forest Conservation Plan"); and

WHEREAS, on December 10, 2010, Applicant submitted a 25-year facility master plan for full build out of the water treatment plant<sup>1</sup> for mandatory referral review by the Planning Board together with an application for approval of an amendment to the Original Forest Conservation Plan<sup>2</sup>; and

WHEREAS, Applicant's forest conservation plan amendment application was designated Forest Conservation Plan No. MR2011302, Rockville Water Treatment Plant ("Forest Conservation Plan Amendment" or "Application"); and

WHEREAS, Applicant proposed the removal of portions of a Category I forest conservation easement that was to be placed on the Property in accordance with the Original Forest Conservation Plan; and

<sup>1</sup> The facility master plan is intended to be implemented in phases.

<sup>2</sup> In accordance with Sec. 22A-11(e)(2) of the Montgomery County Code the Planning Board must consider a forest conservation plan when reviewing a mandatory referral application.

Approved as to  
Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

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 February 4, 2011 ("Staff Report"), setting forth its analysis, and recommendation for approval of the Application with conditions ; and

WHEREAS, on February 17, 2011, 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 February 17, 2011, the Planning Board approved the Forest Conservation Plan Amendment, on motion of Commissioner Dreyfuss and seconded by Commissioner Presley; with a vote of 4-0, with Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor. Commissioner Alfandre was absent from the Hearing.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Forest Conservation Plan No. MR2011302, subject to the following conditions:

1. Within 90 days of the mailing date of the Planning Board Resolution, Applicant will record Category I conservation easements (FCEs) over those areas shown on the November 23, 2010 Forest Conservation Plan drawing submitted as part of the Application, revised in accordance with Condition #3. The FCE over the southernmost area designated in crosshatch pattern on the November 23, 2010 drawing shall contain a provision for automatic release in accordance with Condition #4, if Applicant determines that any portion of the Property subject to the easement is needed for the expansion of the water treatment plant.
2. The boundary of the FCEs as shown on the November 23, 2010 Forest Conservation Plan drawing must be adjusted to protect the entire Critical Root Zone for tree #113 as designated on the drawing.
3. All areas identified on the Application to be removed from the FCE as shown on the approved August 17, 2009 Forest Conservation Plan, other than the area to be covered by the releasable FCE, must be mitigated at a 2:1 ratio. The method of mitigation must be submitted in the form of a revised forest conservation plan to M-NCPPC technical staff within 90 days of the mailing date of the Planning Board Resolution. The approved method of mitigation must be implemented prior to recordation of the FCEs; provided however, if the mitigation is by planting, such planting shall be completed by the end of the next planting cycle and Applicant will enter into a Maintenance and Management Agreement with M-NCPPC as approved by M-NCPPC technical staff and the Office of General Counsel.

4. The Applicant may effectuate an automatic release of any portion of the FCE by completing the following:
  - a. Applicant shall submit to M-NCPPC Staff an amendment to the Forest Conservation Plan showing that portion of the FCE to be released; and
  - b. All areas to be released from the FCE must be mitigated by off-site replanting at a 2:1 ratio (or by preservation in a forest conservation bank at a 4:1 ratio); and
  - c. The City shall record among the Land Records of Montgomery County, Maryland a partial release with a revised description and sketch of the Property attached, showing the areas that continue to be encumbered by the Easement so that the amended Easement area is clearly delineated.
  - d. No further action by the Planning Board or M-NCPPC Staff is necessary to effectuate the automatic release.

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 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

With the Original Forest Conservation Plan, Applicant showed 3.91 acres of the high priority forest to be retained on-site and required removal of 0.16 acres of forest, but there were no planting requirements associated with the forest removal. This Forest Conservation Plan Amendment proposes removal of some additional high priority forest. The City of Rockville needs to expand their water treatment plant to meet increasing needs of its residents and comply with new regulations. Since the majority of the site is within the forested stream valley buffer, there are no alternatives to the removal of high priority forest. Applicant has minimized the amount of high priority forest loss while maintaining the flexibility it needs to upgrade and maintain the water treatment facility.

The Planning Board adopted a policy in November of 2008 which sets the minimum replacement ratio for removal of any conservation easement at 2:1, in-kind, regardless of whether the forest removal is above or below the conservation threshold. In accordance with Chapter 22A-12(e)(2)(B) - *Protection of existing off-site forest*, acquisition of an off-site protective easement for existing forested

areas not currently protected is an acceptable mitigation technique instead of off-site afforestation or reforestation planting, but the forest cover protected must be 2 times the afforestation and reforestation requirements. With the conditions of approval, Applicant will conform to the Board's policy for replacement of protected forest.

B. Forest Conservation Variance

1. *Applicant has met all criteria required to grant a variance to Section 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 (Protected Trees). As more specifically identified in the Staff Report, this project will require two Protected Trees to be removed. The Applicant has demonstrated that reasonable efforts have been made to protect them, but the proposed development plan cannot be otherwise reasonably altered to avoid any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone. Therefore, a variance under Section 22A-12(b)(3) of the County Code is required.

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 of the specimen trees noted above are the minimum necessary in order to develop the Property as illustrated on the plan for the intended public benefit to serve the growing needs of the City of Rockville

- 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 requested variance is not based on conditions or circumstances which are the result of actions of the Applicant. The variance is based upon the required future expansions to maintain adequate public water supply to the City of Rockville and meet future regulations to which the water treatment plant will be subject. The water treatment plant has been located on this site for many years, and any expansion or upgrade of the facility would necessitate impact to Protected Trees, however, Applicant has designed the improvements to minimize such impact.

- 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 Concept Plan has been approved by the Montgomery County Department of Permitting Services.

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 SEP 19 2011 (which is the date that this Resolution is mailed to all parties of record); and

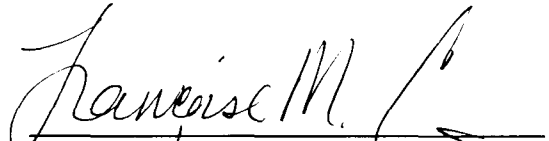
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland 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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners

Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, September 8, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board