



APR 9 2012

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

MCPB No. 12-09
Preliminary Plan No. 11991075A
Strathmore at Bel Pre
Date of Hearing: January 19, 2012

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on October 28, 2010, Wat Thai Washington DC ("Applicant"), filed an application for approval of an amendment to the previously approved Preliminary Plan No. 119910750, to modify the conservation easements on 4.64 acres of land in the R-90 zone, located on the southwest corner of the intersection of Fargrove Lane and Layhill Road (MD 182) ("Property" or "Subject Property"), in the Kensington-Wheaton Master Plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11991075A, Strathmore at Bel Pre ("Preliminary Plan" or "Amendment"); 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 January 6, 2012, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, on January 19, 2012, 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 January 19, 2012, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

Approved as to
Legal Sufficiency:

Christina Sonnet 3/28/12
MNCPPC Legal Department

8787 Georgia Avenue, 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 50, the Planning Board approved Preliminary Plan No. 11991075A to modify the conservation easements on the Subject Property, subject to the following conditions:

1. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan. The Applicant must satisfy all conditions prior to the Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as appropriate.
2. Inspections must occur consistent with Section 22A.00.01.10 of the Forest Conservation Regulations.
3. Final Sediment Control Plan must be consistent with final limits of disturbance as approved by M-NCPPC Staff.
4. The Applicant must place a Category I conservation easement over all areas of forest conservation and environmental buffers that lie outside MCDPS easement and the proposed limits of disturbance, as shown on the approved Final Forest Conservation Plan.
5. The Category I Conservation Easements must be recorded by deed in the land records 90 days from the approval of the Preliminary Plan Resolution.
6. Certificates of Compliance for off-site mitigation bank must be approved by the M-NCPPC General Counsel Office prior to the start of clearing and grading.
7. Compliance with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan.
8. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
9. Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the conservation easements.
10. All other applicable terms, conditions, and findings of the previous preliminary plan approval as contained in the Planning Board Opinion dated December 3, 1993 remain in full force and effect.

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.*

A. Forest Conservation

A Final Forest Conservation Plan was approved as part of the approval of Preliminary Plan No. 119910750. The Final Forest Conservation Plan allowed for forest clearing and included a planting requirement. The retained forest and the planted forest are protected in conservation easements onsite. Per the approved Forest Conservation Plan, there are approximately 2.19 acres of protected forest and 0.01 acres of protected tree cover on the Property. This Amendment removes 0.08 acres of protected forest and 0.01 acres of protected tree cover. The Category I conservation easements on the property are amended to protect the remaining 2.11 acres of existing forest.

Additionally, the Amendment removes 1,435 square feet of impervious area from within the environmental buffer and adds 1,067 square feet of impervious area within the buffer, for a net decrease of 368 square feet of impervious area. The Applicant is mitigating for the removal of the conservation easement areas (0.09 acres) and for the additional impervious area within the buffer (0.02 acres) through a forest bank mechanism. The Applicant will either plant 0.22 acres of forest at an approved forest bank (at a two-to-one ratio) or purchase credits for 0.44 acres of existing forest at an approved forest bank (at a four-to-one ratio).

The Amendment allows for the construction of the stormwater management facilities necessary for the new two-story facility and to comply with the current stormwater management regulations. Additionally, the Amendment revises the 100-year floodplain delineation as updated by the Federal Emergency Management Administration (FEMA) in September 2006.

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 not require any Protected Trees, 30 inches and greater DBH to be removed. However, the project will impact two Protected Trees, therefore; a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Trees survive anticipated construction impacts, the variance is required simply due to the impact. Staff concluded that the Applicant met the specific submittal requirements of the variance request.

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 on the Applicant as disturbance to the tree is due to the development of the site. The Property is currently developed and these trees are located within this developable area of the site (outside of the environmental buffer), and outside of the existing forest. Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this Applicant.

- 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 existing site conditions.

- 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 variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a wetland or a special protection area. The variance request does include impacts to one tree located within the environmental buffer; however, the impacts are due to the removal of existing pavement and should ultimately result in a benefit. A Stormwater Management Concept Plan was conditionally approved by the Montgomery County Department of Permitting Services on August 17, 2010. A Final Sediment Control Plan and Stormwater Management Plan will be approved by the Montgomery County Department of Permitting Services prior to any land disturbing activity on the Property.

C. Forest Conservation Variance Mitigation

The Board agreed with the Staff recommendation that no mitigation is recommended for trees impacted but retained. These trees are candidates for safe retention and will receive adequate tree protection measures.

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

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

A. Roads and Transportation Facilities

This house of worship is exempt from the requirements of Adequate Public Facilities (APF) review under Section 50-35(k)(6) because the use does not generate peak hour trips.

B. Other Public Facilities and Services

While exempt from APF review, the Planning Board finds that all local utilities, including water, sewer, telecommunications and electrical service are adequate and can serve the proposed use. Construction of local utility extensions may be required to serve the building. Montgomery County Fire and Rescue Services has review authority at the time of building permit to address access for emergency vehicles.

3. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The Department of Permitting Services approved a Stormwater Management Concept Plan on August 17, 2010. The Concept Plan proposes to meet Environmental Site Design through the use of two micro-bioretenion facilities and permeable pavement. The stormwater management concept consists of ESD and structural water quality elements including planter boxes, micro bioretention, bioretention, and modified bioretention.

4. *All previous findings remain in full force and effect.*

The Planning Board further finds that the Preliminary Plan Amendment does not affect the previous findings of the Board regarding the Preliminary Plan, and all other previous conditions of approval remain in full force and effect unless modified herein.

BE IT FURTHER RESOLVED, that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved preliminary plan; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information: and

BE IT FURTHER RESOLVED that 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.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and the date of this Resolution is APR 9 2012 (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 an Order adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Dreyfuss and Presley voting in favor of the motion, and Commissioner Anderson absent at its regular meeting held on Thursday, April 5, 2012, in Silver Spring, Maryland.



Françoise Carrier, Chair
Montgomery County Planning Board