



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

MCPB No. 12-118
Forest Conservation Plan No. G-910
LMA G-910 Towne Crest
Date of Hearing: September 13, 2012

OCT 10 2012

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on January 23, 2012, Towne Crest Apartments, LLC ("Applicant") filed an application for approval of a forest conservation plan on approximately 8.11 acres of RT-12.5 and R-30 zoned land located at 17500 Towne Crest Drive ("Subject Property") in the Gaithersburg Vicinity Master Plan ("Master Plan") area; and

WHEREAS, this Application was filed in conjunction with Local Map Amendment G-910 in which Applicant has submitted an application to rezone the Subject Property to PD-44; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. G-910 ("Forest Conservation Plan" or "Application");¹ and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board dated August 30, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 13, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to
 Legal Sufficiency:



 M-NCPPC Legal Department

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. G-910 on the Subject Property, subject to the following conditions:²

1. The Applicant must submit Final Forest Conservation Plan for the area covered by rezoning application G-910 with the Site Plan.
2. All afforestation requirements must be met on-site as mandated by the zone.
3. Thirteen native shade trees of at least 3" caliper must be included in the landscape plan for the site as mitigation for the removal of four (4) specimen trees. These trees will not count toward afforestation requirements.
4. The Applicant must coordinate with the Town of Washington Grove regarding removal of any off-site trees in the Town of Washington Grove and mitigation required.
5. The Applicant must submit a Tree Save Plan as a component of the Final Forest Conservation Plan for the trees impacted along the Town of Washington Grove municipal boundary. The Tree Save plan must be signed by an International Society of Arboriculture Certified Arborist.

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 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 Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

Section 22A-12(f)(2)(B) of the Montgomery County Forest Conservation Law states that "In a planned development, or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation

² 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.

threshold. Section 22A-12(f)(2)(D) provides that “[i]f a site covered by this subsection is unforested, on-site afforestation must equal the applicable afforestation threshold.” The PD-44 zone proposed by the Applicant falls under the “planned development” category of zoning and is unforested; therefore on-site afforestation must equal the afforestation threshold of 15% of the net tract area, or 1.36 acres. The Preliminary Forest Conservation Plan (PFCP) submitted by the Applicant proposes to meet this requirement through tree canopy cover, which is permitted due to the high-density residential development proposed (Section 22A-12(d)(2) of the Montgomery County Forest Conservation Law). The PFCP does not propose any Category I easements on site.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law 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) (“Variance”). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of or CRZ impact to 18 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

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

1. *Granting the 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 the critical root zones of the specimen trees on-site are located in an existing 15-foot sanitary sewer easement and would be impacted by the removal of the existing buildings independent of the proposed redevelopment. In addition, impacts to the critical root zones of other specimen trees located off-site will be mitigated by the use of tree save measures prior to construction. Given the intensity of the proposed development, impacts to variance trees are to be expected.

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

The requested variance is based on the constraints of the site and the Applicant's proposed development density, public facilities and amenities, rather than on conditions or circumstances which are the result of actions by the Applicant.

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

The requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

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

The proposed development plan would improve the water quality on-site and in adjacent areas downslope of the site with the addition of on-site water quality treatment facilities and Environmental Site Design practices. In addition, the specimen trees requested for removal on-site are not located in an environmental buffer or special protection zone.

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. No mitigation is required for Protected Trees impacted but retained.

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 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 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, October 4, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board