



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

**MCPB No. 13-135**  
**Forest Conservation Plan No. S-2841**  
**Spring Arbor Olney (Danshes Property)**  
**Date of Hearing: September 19, 2013**

**OCT 3 2013**

**RESOLUTION**

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

WHEREAS, on April 30, 2012, Sonia Danshes Trust and HHHUNT Corporation (collectively, "Applicant") filed an application for approval of a forest conservation plan on approximately 37.68 acres of land, identified as Parcel P771, Tax Map HT 51, and located on the east side of Georgia Avenue, approximately 1,000 feet south of the intersection with Old Baltimore Road ("Property" or "Subject Property") in the Olney Policy Area and Olney Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. S-2841, Spring Arbor Olney ("Forest Conservation Plan" or "Application");<sup>1</sup> and

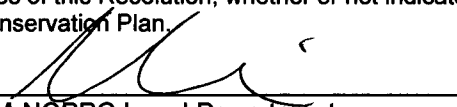
WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board dated September 6, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 19, 2013, 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

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Mary Wells-Harley, seconded by Commissioner Anderson, by a vote of 4-0, Commissioners Carrier, Wells-Harley, Anderson and Dreyfuss voting in favor; with Commissioner Presley absent.

<sup>1</sup> 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  
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320  
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. S-2841 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated August 21, 2013, including:
  - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
  - b. The Sediment Control Plan must be consistent with final limits of disturbance as approved by the M-NCPPC staff.
  - c. The Applicant must place a Category I conservation easement over all areas of forest retention and environmental buffers as specified on the approved Forest Conservation Plan prior to clearing and grading occurring onsite. Conservation easements must be shown on the record plats.
  - d. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of all forest conservation easements.

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 which is Chapter 22A of the Montgomery County Code.

There are approximately 35.15 acres of existing forest on the Property. This Application proposes to clear 7.92 and retain 27.23 acres of forest. Approximately 13.75 acres of the retained forest is located within the environmental buffers and the majority of the remaining 13.48 acres of retained forest is contiguous upland forest located adjacent to the environmental buffer. There is no forest planting requirement for the development of the Property as shown on the Preliminary Forest

---

<sup>2</sup> 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.

Conservation Plan. All of the retained forest and areas within the environmental buffers will be protected in a Category I conservation easement.

#### 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 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). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to twenty-one 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.

In support of the approved Variance, the Planning Board finds:

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 removal and disturbance to the Protected Trees are due to the development of the site. The trees and their critical root zones lie within the developable area of the Property. The Application proposes removal of two Protected Trees in fair condition due to required grading for the stormwater management facilities and parking. The remaining nineteen Protected Trees that are subject to the Variance will be minimally impacted by construction. Eight of these impacted trees are on an adjacent historic property. Granting the Variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant.

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 upon existing site conditions and the applicable development standards for stormwater management and access.

- 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 Protected Trees requested for removal are not located in an environmental buffer or special protection area. The proposed stormwater management concept must meet Environmental Site Design standards, which will provide water quality treatment throughout the proposed developed area. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

No mitigation is required for Protected Trees removed because they are located within the existing forest and their loss is accounted for in the forest conservation worksheet calculations. No mitigation is required for Protected Trees impacted but retained.

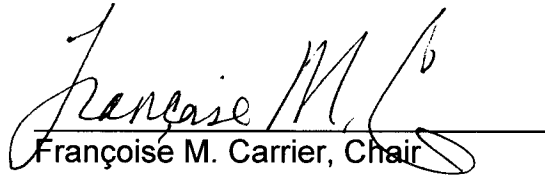
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is OCT 31 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, September 26, 2013, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Françoise M. Carrier, Chair  
Montgomery County Planning Board