



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

MCPB No. 14-44
Forest Conservation Plan No. S-2761
Pacano Property
Date of Hearing: June 12, 2014

JUN 25 2014

RESOLUTION

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

WHEREAS, on October 27, 2009, Jose Pacano, d/b/a Woodstone Group, LLC, ("Applicant") filed an application for approval of a forest conservation plan on approximately 4.50 acres of land identified as Parcel P233, Tax Map FY 53 and located at 28621 Ridge Road (MD 27), approximately 2,160 feet north of its intersection with Kemptown Road (MD 80) ("Subject Property") in the Rural East Policy Area, Damascus Master Plan ("Master Plan") area, and Patuxent River Primary Management Area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. S-2761, Pacano Property ("Forest Conservation Plan" or "Application"); 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 May 30, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 12, 2014, 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, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Forest Conservation Plan No. S-2761 on the Subject Property, subject to the following conditions:¹

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor(s) in interest to the terms of this approval.

Approved as to
Legal Sufficiency:

 6/12/14

1. Within one month of the date of the Planning Board hearing for the Special Exception Application S-2761, the Applicant must submit a revised Final Forest Conservation Plan S-2761 to Staff for review and approval. The revised Final FCP (FFCP) must address the following:
 - a. The FFCP must include a revised Data Table that accurately reflects the forest data.
 - b. The FFCP must accurately note on Sheet 1 that the plan proposes to remove one tree greater than 30 inches in diameter.
2. Within six months of the date of the Board of Appeals Resolution for the Special Exception Application S-2761, the Applicant must comply with the conditions of approval for the Final Forest Conservation Plan S-2761 including:
 - a. The Applicant must plant 0.80 acres of reforestation within the stream buffer as specified on the approved Final Forest Conservation Plan.
 - b. The Applicant must plant 0.70 acres of native meadow vegetation as specified on the approved Final Forest Conservation Plan.
 - c. The Applicant must place a Category I conservation easement over all areas of forest retention, forest planting, and portions of the stream valley buffer as specified on the approved Final Forest Conservation Plan. Conservation easements must be recorded in the Montgomery County land records.
 - d. The Applicant must place a modified Category I conservation easement in a form approved by M-NCPPC over all areas of meadow planting as specified on the approved Forest Conservation Plan that allows for annual mowing of the meadow areas. Conservation easements must be recorded in the Montgomery County land records.
 - e. The Applicant must submit financial surety for planting 0.80 acres of forest and creating 0.70 acres of native meadow habitat prior to the start of the maintenance period.
 - f. The Applicant must obtain M-NCPPC approval of a two-year maintenance and management agreement for the forest planting and meadow creation areas.
3. The Applicant must install permanent split rail fencing and signs along the perimeter of the conservation easement where it abuts the gravel parking area in the rear of the Subject Property, as determined by the M-NCPPC forest conservation inspector at the time of forest planting.
4. The Applicant must install permanent forest conservation easement signage along the perimeter of the conservation easement in all areas where permanent fencing is not required, as determined by the M-NCPPC forest conservation inspector at the time of forest planting.
5. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Additions or adjustments to the tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.

6. The final sediment control plan, if required by Montgomery County Department of Permitting Services, must be consistent with the final limits of disturbance shown on the approved FFCP.

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 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

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 0.95 acres of existing forest on the Subject Property. This Application proposes to retain 0.90 acres of forest and exclude 0.05 acres of forest from retention calculations. The excluded forest may be necessary to remove in the future for pond maintenance purposes due to its location on an existing pond embankment. There is a 0.10 acre forest planting requirement that will be met onsite within the stream buffer. Within the stream buffer onsite, the Application will retain 0.90 acres of existing forest and plant 0.80 acres of additional forest, which will be protected under a Category I conservation easement, and create 0.70 acres of native meadow habitat, which will be protected under a modified Category I conservation easement. The Application meets its planting requirements under the Forest Conservation Law.

An NRI/FSD was approved for the Subject Property on August 13, 2009, and it identifies stream buffers surrounding a perennial stream in the middle of Subject Property. The Forest Conservation Law generally requires that land within stream buffers remain in a natural, undisturbed state. The Application does not strictly comply with this requirement; it includes some pre-existing impervious surfaces within the stream buffer and does not place a portion of the stream buffer on the western side of the Subject Property under long-term protection.

However, under Section 22A-12(b)(1) of the Forest Conservation Law, land within a stream buffer may be disturbed or left in an unprotected

condition if certain findings are made, including that: (A) the development makes maximum use of any available planning and zoning options that would result in the greatest possible forest retention; (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the forest conservation plan; and (C) the development proposal cannot be reasonably altered.

In this case, the Board finds that all of the above conditions are met. Within the stream buffer, the Application maximizes the protection of existing forest, includes the planting and protection of substantial areas of new forest and meadows, and eliminates a significant area of impervious surface. Reasonable efforts have been made to protect the land and vegetation within the buffer, which encompasses the large majority of the Subject Property, while still permitting its use as the site of a landscape contracting business. Because of the unique layout of the Subject Property, the development proposal cannot be reasonably altered without precluding such use.

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 one Protected Tree as identified in the Staff Report (Tree Number 5). In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes 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. The Applicant will disturb the critical root zone of Tree Number 5 in order to remove impervious surfaces on the Subject Property as recommended in the Patuxent River PMA. Currently, the tree's condition is poor, and it presents a hazard to an existing

structure on the Subject Property. Tree Number 5 and its critical root zone are located within the developable portion of the Subject Property. Granting a Variance to allow the removal of a Protected Tree in poor condition that presents a hazard to an existing structure and is within the developable portion of a property 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 existing poor condition of the tree.

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 existing conditions on the Subject Property and is not the 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.*

Tree Number 5 is not located in a stream buffer or special protection area; however, it is located within the transition area of the Patuxent River PMA. The Application will plant 0.80 acres of forest within the stream buffer which will ultimately replace any water quality benefits lost by the removal of this tree. Therefore, removal of Tree Number 5 will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

Mitigation is typically not required for the removal of trees in poor condition or that are hazardous. However, the 0.80 acres of forest planting the Applicant will perform within the stream buffer on the Subject Property is in excess of the mitigation that would be required by the forest conservation law if Tree Number 5 were not in poor condition and hazardous, and it will ultimately mitigate any benefits lost by the removal of this tree.

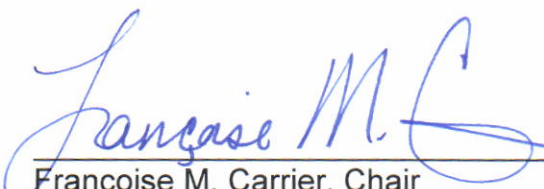
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUN 25 2014 (which is the date that this Resolution is mailed to all parties of record); and

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).

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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 Commissioner Presley, 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, June 12, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board