



JUL 16 2014

MCPB No. 14-47
Forest Conservation Plan No. MR2014047
8787 Georgia Avenue
Date of Hearing: June 5, 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 April 28, 2014, the Montgomery County Department of Transportation (“Applicant”), together with its mandatory referral submission for disposition of the Subject Property under §20-301(1) of the Land Use Article, MD Ann. Code, filed an application for approval of a preliminary forest conservation plan¹ on approximately 3.24 acres of land located at 8787 Georgia Avenue, Silver Spring, Maryland (“Subject Property”) in the Silver Spring Policy Area, Silver Spring CBD Sector Plan (“Master Plan”) area; and

WHEREAS, Applicant’s preliminary forest conservation plan application was designated Forest Conservation Plan No. MR2014047, 8787 Georgia Avenue, (“Forest Conservation Plan” or “Application”);² 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 23, 2014, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 5, 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

¹ Pursuant to §22A-11(e) of the County Code, the Planning Board must consider the forest conservation plan when reviewing a mandatory referral application.

² Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan. As provided in the mandatory referral submission, the Subject Property will be conveyed to a private party for development, and therefore, the Board will consider the final Forest Conservation Plan at site plan review. 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:

[Handwritten signature] 6/19/14

WHEREAS, on June 5, 2014, the Planning Board, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 5-0 Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor voted to approve the Forest Conservation Plan as revised at the hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. MR2014047 for the Subject Property, subject to the following conditions:³

1. The Final Forest Conservation Plan must include the planting of two 4-6" caliper Willow oaks (*Quercus phellos*) or such other similarly sized native hardwood shade tree species as approved by Staff on the Subject Property, with final location and soil volume to be determined at the time of site plan review, considering favorable growing conditions to the trees to reach maximum growth at maturity.
2. As mitigation for the proposed loss of specimen trees 1, 2, and 3 identified on the Forest Conservation Plan (total caliper loss of 200"), eighteen (18) 3-inch caliper canopy trees must be planted onsite.⁴
3. The Final Forest Conservation Plan must include planting details for tree mitigation for the Protected Trees approved for removal by the Variance.

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

While there is no forest on the Subject Property, there is a 0.49-acre afforestation requirement. The Forest Conservation Plan, as conditioned will meet the afforestation requirement through offsite mitigation in a forest bank or through payment of the applicable fee-in-lieu.

³ 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.

⁴ The mitigation for 200" of caliper loss included removal of of trees 4 and 7 as proposed in the Application, but not approved by the Planning Board. The final mitigation requirements may be recalculated based on the Variance specifics approved as part of the Final Forest Conservation Plan.

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.

The limits of disturbance (“LOD”) for this development are along the edge of the Subject Property. In accordance with Section 22A-21(a), the Applicant requested a Variance. The Applicant proposed removing five Protected Trees, including one 54-inch specimen Willow oak on-site (Tree 2), one 45-inch specimen Willow oak on-site (Tree 1), one 33-inch specimen Tulip poplar on-site (Tree 3), one specimen 35-inch Pin oak located along the Georgia Avenue right-of-way (Tree 4), and one 33-inch Pin oak along the Spring Street right-of-way (Tree 7). Three Protected Trees within the right-of-way of Spring Street (Trees 59, 60 and 61) are proposed to remain, but will be disturbed. Efforts have been proposed to protect the trees along the property perimeter during construction, with specific measures to be established as part of the Final Forest Conservation Plan.

At the hearing, the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without a Variance, but not the full Variance as proposed by the Applicant. Although the Board did not permit the removal of Protected Trees 4 and 7, it did approve the CRZ impacts to those Protected Trees. The optimal development of this prominent urban site will best be achieved through thoughtful location of buildings with underground parking to create a more compatible transition from the single family residential development to the north into the commercial and high-rise developments to the south. The significant elevation change from Georgia Avenue to the existing parking lot creates the need for a long, sloped entrance into the site. Approximately 30 percent of the site is covered by the CRZs of Protected Trees 1, 2 and 3, which stand basically in row that divides the site into a northeastern half and a smaller southwestern portion on the other side of the trees. If a Variance were not granted for Protected Trees 1, 2 and 3, development of the site would effectively be limited to only the northeastern half – the southwestern portion appears to be too small to support productive use without major incursions into the CRZs of Protected Trees 1, 2 and 3. Therefore, the Board agreed that not permitting the removal of the on-site Protected

Trees 1, 2, and 3, would prevent approximately half of the Subject Property from being appropriately developed. Such restriction would cause unwarranted hardship on the Applicant. Furthermore, if only a portion of the site is developable, it would not meet the full potential recommended in the Sector Plan as an urban infill site.

The Planning Board made the following findings necessary to grant the Variance as limited by the Board:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The removal or impact to the CRZs of the Protected Trees, in conjunction with the concept plan for development of the site is supported by the Sector Plan. The urban conditions support the redevelopment of the Subject Property as shown on the concept plan. The existing site constraints, including grading and elevation, and location of underground utilities create a difficult site for any applicant to develop without significant impact to the Protected Trees. Further, provision for underground parking allows reduced building heights with better site organization, helping to maintain a compatible relationship with the surrounding community. Such development would be impossible without impact or removal of the Protected Trees as approved.

The Applicant did not demonstrate the need to remove Protected Trees 4 and 7. The Applicant proposed removal because disturbance to the CRZs of these trees will be greater than 30 percent considering anticipated streetscape, pedestrian, utility and circulation improvements. The Board determined that although some CRZ impacts are unavoidable, the Applicant should explore reasonable efforts as part of its future development plans to preserve these trees.

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

The concept plan for development of the Subject Property is supported by the Sector Plan and the goals of the urban infill redevelopment. With the Subject Property in particular, as the gateway to the commercial district, provision of underground parking and reduced heights will provide a compatible transition from the residential neighborhoods north of Spring Street into the commercial business district that begins at this site.

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 Variance is needed for development of the Subject Property and is not 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 approved for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide. Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a rate of approximately eighteen - 3" caliper canopy trees. Two additional Willow oaks (*Quercus phellos*) or other native shade trees are to be planted on the Subject Property. The location and quantity of soil will be set at Final Forest Conservation Plan during the Site Plan review. No mitigation is required for Protected Trees impacted but retained.

The site presently has no stormwater management other than the small patches of trees. With redevelopment of the site, the new State and local stormwater regulations will require stormwater management above the existing conditions, improving water quality relative to the existing discharge rates.

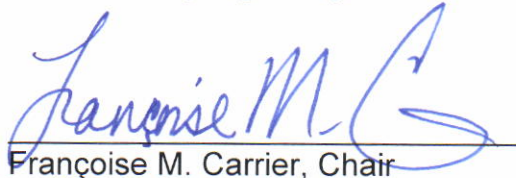
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JUL 16 2014 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, June 26, 2014, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board