



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

MCPB No. 15 - 18
Preliminary Plan No. 12003010A
Poplar Hill (a.k.a. Harlow Subdivision) Lot 45
Date of Hearing: February 19, 2015

FEB 25 2015

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, the Planning Board, by Opinion dated January 21, 2003, approved Preliminary Plan No. 120030100, creating 6 lots on 30.90 acres of land in the RC Zone, located on Poplar Hill Road, in the Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on July 22, 2014, Shawn and Dianne McConnell ("Applicant"), filed an application for approval of an amendment to the previously approved preliminary plan to remove 7,700 square feet of Category I Conservation Easement area from Harlow Subdivision Lot 45 ("Subject Property") and to place 9,150 square feet of existing unprotected forest on the Subject Property under a new Category I Conservation Easement as mitigation; and

WHEREAS, the Applicant's application to amend the Preliminary Plan was designated Preliminary Plan No. 12003010A, Poplar Hill (a.k.a. Harlow Subdivision) Lot 45 ("Preliminary Plan", "Amendment" 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 February 6, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on February 19, 2015, 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 voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED THAT, the Planning Board approves Preliminary Plan No. 12003010A to remove 7,700 square feet of Category I

Approved as to
Legal Sufficiency

 2/11/15

Conservation Easement area from the Subject Property and, as mitigation, place 9,150 square feet of previously unencumbered forest on the Subject Property under a new Category I Conservation Easement, subject to the following conditions:¹

1. Prior to submitting a Record Plat application, the Applicant must record a Category I Conservation Easement by deed in the Land Records of Montgomery County, Maryland for all retained and new easement areas on the Subject Property. The new Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel before recordation. The existing Category I Conservation Easement remains in full force and effect until the new Category I Conservation Easement is recorded in the Land Records of Montgomery County, Maryland.
2. Within one hundred and twenty (120) days of the mailing date of this Resolution, the Applicant must submit a complete Record Plat application that delineates and references the new Category I Conservation Easement.
3. Within thirty (30) days of the mailing date of this Resolution, the Applicant must submit a cost estimate for the restoration planting, two-year maintenance and signage requirements of the Final Forest Conservation Plan for Staff review and approval.
4. Within ninety (90) days of the mailing date of this Resolution, the Applicant must submit financial security for the planting, maintenance and signage requirements of the Final Forest Conservation Plan in the amount and in a format approved by Staff.
5. Within ninety (90) days of the mailing of this Resolution, the Applicant must enter into a Maintenance and Management Agreement in a form approved by the M-NCPPC Office of the General Counsel to ensure compliance with the conditions of the Final Forest Conservation Plan.
6. Within ninety (90) days of the mailing of this Resolution, the existing perimeter fencing on Harlow Subdivision Lot 49 (14705 Poplar Hill Road) is to be relocated pursuant to this Amendment. The Applicant is responsible for securing access permission from Harlow Subdivision Lot 49 Property Owner.
7. Within nine (9) months of the mailing date of this Resolution, the Applicant must install permanent conservation easement markers at the perimeter of the new Category I Conservation Easement as shown on the Final Forest Conservation Plan.

BE IT FURTHER RESOLVED, that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

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

BE IT FURTHER RESOLVED, that having considered 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:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan, and all findings not specifically addressed remain in effect.

1. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A:

A. Forest Conservation

As conditioned, the Forest Conservation Plan approved with this Amendment ("FCP") complies with the requirements of the Forest Conservation Law.

The FCP includes the removal of 7,700 square feet of Category I Conservation Easement area on the Subject Property, including 2,900 square feet within a stream buffer. The FCP requires the replacement of the stream buffer area at a 1.5:1 ratio, and the Applicant will place 4,350 square feet of previously unprotected stream buffer under a new Category I Conservation Easement. The Applicant will replace the remaining 4,800 square feet of existing Category I Easement area at a 1:1 ratio by placing 4,800 square feet of previously unencumbered forested area under the new Category I Conservation Easement.

The FCP also includes restoration work within the new easement area, including restoration of a natural grade, establishment of stable vegetated slopes, replanting native trees and shrubs, mulching, and debris removal. Two years of maintenance and management is required for the restoration planting, and the Applicant will install permanent conservation easement markers along the boundary of the new Category I Conservation Easement area.

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 CRZ impact to six Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance, and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. Without the Variance, the Applicant would be unable to correct a Forest Conservation Law violation and improve the health of the Protected Trees.

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.*

The Variance permits the correction of a Forest Conservation Law violation. It allows the Applicant to mitigate preexisting root damage to the Protected Trees, and it does not confer on the Applicant a special privilege that would be denied to other applicants.

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

The Variance is required to remediate the past placement of fill dirt within the CRZs of the Protected Trees and is a necessary condition of this Amendment and the associated FCP. The work to be performed under the Variance is recommended by Staff to bring the Subject Property into compliance with the Forest Conservation Law and is not based on conditions or circumstances that are the results of the Applicant's actions.

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 need for the Variance is not related to a condition on a neighboring property.

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

The Variance will allow for the establishment of stable vegetated slopes and will improve the filtration capacity of the nearby stream buffers.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is FEB 25 2015 (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 Fani-González, seconded by Commissioner Presley, with Chair Anderson and Commissioners Dreyfuss, Presley, and Fani-González voting in favor, and Vice Chair Wells-Harley absent, at its regular meeting held on Thursday, February 20, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board