



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 15-49
Forest Conservation Plan No. DPA201501
Bloom MV Area IV
Date of Hearing: April 23, 2015

MAY 12 2015

RESOLUTION

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

WHEREAS, together with Development Plan Amendment 15-01, on March 20, 2015, *USL2 MR Montgomery Village Business Trust* ("Applicant") filed an application for approval of a forest conservation plan on approximately 17.34 acres of land located at *Montgomery Village Avenue 1000 feet south of Apple Ridge Road* ("Subject Property") in the *Gaithersburg Vicinity Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. *DPA201501* ("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 April 13, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 23, 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, on April 23, 2015, the Planning Board voted to approve the Application subject to conditions on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with a vote of 5-0; Commissioners Anderson, Dreyfuss, Fani-Gonzalez, Presley and Wells-Harley all voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. *DPA201501* on the Subject Property, subject to the following conditions:²

¹ For purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

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.

Approved as to
Legal Sufficiency:


M-NCPPC Legal Department

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1. Approval of Forest Conservation Plan No. *DPA201501* is contingent on the approval of Development Plan Amendment 15-01.
2. The Applicant must obtain permission from the relevant agencies to remove the FEMA 100-year floodplain delineation from the site prior to submission of a Preliminary Plan of subdivision. Should the Applicant fail to obtain permission to remove the 100-year floodplain designation, the Preliminary Plan must show the removal of units from the FEMA designated floodplain area, including the required 25-foot floodplain building restriction line.
3. The Applicant must obtain permission to remove the WSSC easements (WSSC L.4303 F.338 & WSSC L.4195 F.808) from the site prior to submission of a Preliminary Plan of subdivision. Should the Applicant fail to obtain permission to remove the WSSC easements, the Preliminary Plan must show the removal of the units that overlap these easements.
4. Following Preliminary Plan approval, record Category II easements over afforestation areas.
5. The Final Forest Conservation Plan and Landscape Plan must show the planting of 29 native shade trees of 3 inches caliper or greater, or any combination of larger caliper native shade trees equaling at least 85 caliper inches, in mitigation for variance trees removed.

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

No forest exists on the site. Chapter 22A-12 establishes the forest conservation threshold and afforestation requirements based on the land use type. The afforestation threshold for planned unit development areas is 15% of the net tract area. This results in an afforestation requirement of 2.6 acres. The Preliminary Forest Conservation Plan shows afforestation in seven planting areas totaling 2.86 acres, which will be protected by Category II Conservation Easements.

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 or CRZ impact to **19** 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.*

The Protected Trees on the site are mostly white pine trees that are not ordinarily native to this part of Montgomery County. These trees were planted by the former golf course owners to provide landscaping for the course, and have been on the course long enough to achieve specimen size. Considering the constraints of the site and the specifics of the development, infrastructure, facilities and amenities as proposed in the Development Plan Amendment (on which the Forest Conservation Plan is based), the Applicant has taken reasonable steps to minimize impact to other Protected 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 Variance is based on the constraints of the site, and since the Forest Conservation Plan is subject to the Development Plan Amendment as approved by the District Council, it is not the result of actions by the Applicant, but rather it has signaled that the District Council finds development of this type and density appropriate for 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 a result of the site design and layout on the Subject Property.*

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

Mitigation for the 10 Protected Trees to be removed will be handled by the planting of up to 29 new trees of at least 3 inches caliper, a ratio of approximately one caliper inch replaced for every inch removed. As these trees mature, they will replace the water quality functions provided by the Protected Trees removed. In addition, the new development will be required to provide stormwater management using environmentally sensitive design (esd) designed to mimic "forest in good condition" to the maximum extent practicable.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. . 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 MAY 12 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).

* * * * *

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 Anderson, Vice Chair Wells-Harley, and Commissioners Presley and Fani-González voting in favor of the motion, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, May 7, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board