



# MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 15-53  
Forest Conservation Plan No. S-2882  
Silver Spring Retirement Residence  
Date of Hearing: October 8, 2015

OCT 19 2015

## RESOLUTION

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

WHEREAS, on December 29, 2014, Hawthorne Development LLC ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 4.46 acres of land located at 13716 New Hampshire Avenue, Silver Spring, Maryland ("Subject Property") in the White Oak Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. S-2882, Silver Spring Retirement Residence ("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 18, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions; and

WHEREAS, on May 28, 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 May 28, 2015 hearing, the Planning Board voted to defer the Application; and

WHEREAS, following further review and analysis of the Application by Staff and other governmental agencies, Staff issued a second memorandum to the Planning Board dated September 25, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 8, 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

Approved as to  
Legal Sufficiency:

 9/30/15

WHEREAS, at the October 8, 2015 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 Forest Conservation Plan No. S-2882 on the Subject Property, subject to the following conditions:<sup>1</sup>

1. The Applicant must submit a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan at the time of Preliminary Plan.
2. The Final Forest Conservation Plan must include six 3-inch caliper native shade trees as mitigation plantings for the loss of trees requiring a variance.
3. The Applicant must submit fee-in-lieu payment for the 0.67-acre planting requirement prior to any demolition, clearing or grading.

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 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.

There is no forest on site; however, the Application has a 0.67-acre planting requirement. The Applicant will meet this requirement through payment of fee-in-lieu.

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

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<sup>1</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.



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 two Protected Trees as identified in the Staff Report. 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 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.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is due to the location of the trees and the need to provide adequate fire access. Tree #2, a 36" Norway maple, is located close to the existing single-family house and would be significantly disturbed by the demolition of the house and any redevelopment of the Subject Property would require removal of the tree. Tree #12, a 30" white pine, is just off-site and impacted by the fire access turnaround. This turnaround is required to allow fire and rescue vehicles to safely access all sides of the Subject Property.

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 not based on conditions or circumstances that are the result of actions by the Applicant. It is based on the locations of the trees and the minimum disturbance required to develop the Subject Property with a retirement residence of this scale. Tree #2, a 36" Norway maple, is located adjacent to the existing single-family house and would be impacted by the demolition of the existing structure. Tree #12, a 30" white pine, is proposed for disturbance by the fire access turnaround. There is no way to eliminate this disturbance without significantly altering the proposed development program.

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 location of trees on the Subject Property impacted by the layout of the retirement residence on the Subject Property and 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 requested 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. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees with six 3-inch caliper native shade trees. 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 19 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 Presley, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor, at its regular meeting held on Thursday, October 8, 2015, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board