



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

**JUL 15 2015**

MCPB No. 15-69  
Forest Conservation Plan No. S-2881  
Colesville Senior Living  
Date of Hearing: June 25, 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 23, 2014, Columbia/Wegman Companies, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 5.98 acres of land located at 13908 New Hampshire Avenue, Silver Spring, Maryland ("Subject Property") in the White Oak Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. S-2881, 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 June 15, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 25, 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 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-2881 on the Subject Property, subject to the following conditions:<sup>1</sup>

<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.

Approved as to

Legal Sufficiency: [Signature] 6/18/15

M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320

[www.montgomeryplanningboard.org](http://www.montgomeryplanningboard.org) E-Mail: [mcp-chair@mncppc-mc.org](mailto:mcp-chair@mncppc-mc.org)

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 Applicant must place a Category I conservation easement over approximately 0.22 acres of forest retention as shown on the Preliminary Forest Conservation Plan. Prior to any demolition, clearing, or grading, the easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records. The liber and folio of the recorded easement must be referenced on the record plat.
3. The Applicant must place a Category II conservation easement over approximately 0.65 acres of forest planting as shown on the Preliminary Forest Conservation Plan. The easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records prior to clearing or grading. The liber and folio of the recorded easement must be referenced on the record plat.
4. Prior to any clearing, grading, or demolition, the Applicant must submit a financial surety and a maintenance and management agreement for the forest planting shown on the Preliminary Forest Conservation Plan.

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

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

There is 0.60 acres of forest on site and the Applicant proposes to remove 0.38 acres and retain 0.22 acres in a Category I Forest Conservation Easement, with a 1.08-acre planting requirement. The Applicant will meet this requirement by planting 0.65 acres of forest on-site and meeting the remaining 0.43-acre planting requirement off-site. A Category II Forest Conservation Easement will cover the 0.65 acres of forest planting, to allow for maintenance and recreational use. The 0.65 acres of forest



planting will incorporate a hard surface trail to allow for use by all residents and visitors.

#### 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. 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 tree is due to the location of the tree and the need to provide stormwater management and site circulation. The Protected Tree is located in the center of the Subject Property, at the high point. Any sort of development of the Subject Property would require grading to drain water away from the development and disturbance of the high point of the Subject Property, and therefore, impact the Protected Tree.

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 Protected Tree and the minimum disturbance required to develop the Subject Property with the proposed project. The Protected Tree is located in the center of the Subject Property, at the high point. The tree is located where the building is proposed for development. Even if the building was reconfigured, the tree would be removed for stormwater management facilities, site circulation, or grading for water flow.

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 the Protected Tree on the Subject Property in relation to the development 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 proposed development will not impact environmental buffers and will provide plantings to mitigate for the size and function of the lost tree. The requested variance will not violate State water quality standards or cause a measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Applicant will replace the Protected Tree with three 3-inch caliper native shade trees.


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 ~~July 15 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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Dreyfuss, Presley, and Fani-González voting in favor of the motion, at its regular meeting held on Thursday, June 25, 2015, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board