



**MONTGOMERY COUNTY PLANNING BOARD**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 15-74**

**Forest Conservation Plan No. PP2015001**

**Hillandale Local Park**

**Date of Hearing: July 9, 2015**

**JUL 15 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 November 24, 2014, Montgomery County Department of Parks ("Applicant") filed an application for approval of a forest conservation plan on approximately 23.35 acres of land located at 10615 New Hampshire Avenue, Silver Spring, Maryland ("Subject Property") in the White Oak Science Gateway Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. PP2015001, Hillandale Local Park ("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 29, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 9, 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 APPROVED Forest Conservation Plan No. PP2015001 on the Subject Property, subject to the following conditions:<sup>1</sup>

1. Prior to issuance of a Sediment Control Permit from the Department of Permitting Services, the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department. The Final

<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:

*Christina Soria* 7/11/15  
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.

2. The Final Forest Conservation Plan must show the planting of six 3-inch caliper native shade trees as mitigation plantings for the loss of trees requiring a variance.
3. The Applicant must plant 0.26 acres of forest and six 3-inch caliper native shade trees within one year of construction completion.

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 12.69 acres of forest on site and the Applicant proposes to remove 0.53 acres and retain 12.16 acres. The Applicant proposes to plant 0.26 acres of unforested stream valley buffer as mitigation for permanent impervious encroachments into the stream valley buffer but this planting is not required to meet forest conservation requirements.

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 four Protected Trees and impact but not remove ten 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.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to reconfigure the site while minimizing impacts to the forest and stream valley buffers. All development has been constrained to the previously developed areas of the site, with the exception of the stormwater conveyance and outfall that is necessary to provide safe conveyance of the stormwater. Only 8.35 acres of this 23.35 acre site is developable.

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. The Applicant has minimized disturbance and designed the site to maximize forest retention and environmental buffer restoration. The stormwater conveyance path was specifically designed to minimize the impacts to both forest and individual trees. Both trees associated with that disturbance and requiring removal are in poor condition. The Applicant is also attempting to save two trees within the interior of the construction activities. While they have requested a variance for removal of these trees, due to the difficult nature of this preservation task, disturbance has been minimized and tree protection measures proposed. All of the other tree impacts are to trees at the edge of the forest or stormwater management conveyance disturbance.

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 proposed 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 Park development removes permanent impervious encroachments from the environmental buffer and provides forest planting as mitigation for the remaining encroachments, as well as providing stormwater management for a site that previously did not have any. Seven of the trees will be impacted by stormwater management conveyance and outfall. The Park development 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 Trees removed. The Board approved 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 JUL 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).

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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 Vice Chair Wells-Harley, seconded by Commissioner Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Fani-González voting in favor, and Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, July 9, 2015, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board