



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

MCPB No. 15-75
 Forest Conservation Plan No. LMA G-957
 Dowdens Station
 Date of Hearing: July 9, 2015

JUL 24 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 March 6, 2015, Clarksburg Mews, LLC ("Applicant") filed an application for approval of a forest conservation plan on approximately 24.37 acres of land located on the west side of Frederick Road (MD 355), 1,300 feet north of its intersection with Shawnee Lane ("Subject Property") in the Clarksburg Policy Area, Clarksburg ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. G-957, Dowdens Station ("Forest Conservation Plan" or "Application");¹ and

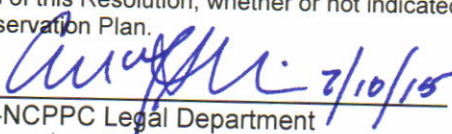
WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board dated June 26, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("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, on July 9, 2015, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Wells-Harley, seconded by Commissioner Fani-Gonzalez, with a vote of 3-0; Commissioners Anderson, Fani-Gonzalez, and Wells-Harley voting in favor. Commissioners Dreyfuss and Presley were absent from the hearing.

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to
 Legal Sufficiency:


 M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. G-957 on the Subject Property, subject to the following conditions:²

1. Prior to record plat and any land disturbing activities, the Applicant must obtain approval of a Final Forest Conservation Plan consistent with the Preliminary Forest Conservation Plan and Planning Board conditions
2. The Applicant is required to record a Category I Conservation Easement over areas of forest retention as shown on the Forest Conservation Plan approved by the Planning Board. The easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records and reflected on the record plat prior to any land disturbing activities.

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.

The Forest Conservation Plan shows 13.3 acres of forest clearing and 8.17 acres forest retention. No forest mitigation is required due to the high level of forest retention.

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.

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.

This Application will require the removal or CRZ impact to fifteen 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 Property is limited by road dedications, slopes, streams and wetlands, and the number of protected trees within the forest. These constrictions limit the developable area of the site. In order to develop this Property, it is impossible not to impact Protected Trees. Therefore, this is not a special privilege to be conferred on the Applicant.

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 based on the constrained site conditions, the need for a sewer connection and the zoning density as proposed by the Applicant. This is not a result any action undertaken by the Applicant.

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 proposed site design and layout and is not caused by a neighboring property.

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

The granting of this variance will not adversely affect water quality beyond the proposed forest removal. Water quality will be impacted in particular by forest removal in the stream channel and within the stream buffer. Appropriate erosion and sediment controls will be installed, as specified in the Erosion and Sediment Control Plan for this Application.

Mitigation for Protected Tree impact and removal is calculated by the forest conservation worksheet, since all of the Protected Trees are located within forested areas. In this case, sufficient forest is being retained and additional mitigation is not required.

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 24 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 Fani-González, with Chair Anderson, Vice Chair Wells-Harley, and Commissioner Fani-González voting in favor of the motion, and Commissioners Dreyfuss and Presley absent, at its regular meeting held on Thursday, July 16, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board