



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

OCT 19 2015

MCPB No. 15-124
 Forest Conservation Plan No. MR2016004
 Wheaton Public Improvements
 Date of Hearing: October 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 August 7, 2015, Montgomery County Department of General Services and M-NCPPC Parks ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 5.63 acres of land located at the northeast corner of Georgia Avenue and Arcola Avenue ("Subject Property") in the Master Plan for the Communities of Kensington-Wheaton ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2016004, Wheaton Library, Community Recreation Center and Neighborhood 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 October 2, 2015, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 15, 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 Preliminary Forest Conservation Plan No. MR2016004 on the Subject Property, subject to the following conditions:¹

1. Prior to any demolition, clearing or grading on site, the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department.

¹ 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:  10/15/15

2. The Final Forest Conservation Plan must show mitigation planting at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree, for the loss of trees requiring a variance.
3. The Applicant must either pay the fee-in-lieu or record a certificate of compliance for the 0.93-acres forest planting requirement prior to any demolition, clearing, or grading on site.
4. The Applicant must plant mitigation planting at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree on the property 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 (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 and a 0.93 acre planting requirement. The Applicant will meet this requirement by payment of fee in lieu or planting at a forest mitigation bank. The Board concludes that this is appropriate, as there are no priority reforestation areas or adjoining forest on-site.

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 five Protected Trees and CRZ impact to five 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 requested Variance is necessary due to the location of the existing trees on and around the Subject Property, the need to demolish two buildings prior to constructing the collocated facility, and the requirement to provide stormwater management for all facilities. The library, recreation center, and park project is needed in order to provide the Wheaton area with adequate public facilities.

Leaving the requested trees in an undisturbed state would result in an unwarranted hardship, because the Applicant would not be able to remove any existing features or install any new features or stormwater management facilities.

The Board makes 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 Protected Trees is a result of the need to build a new library and recreation center, parking, and park. The development is the continuation of an existing, reasonable use of the Subject Property, and disturbance has been minimized to retain trees where possible. The size and configuration of the site preclude alternative site designs that would allow the Protected Trees to remain undisturbed.

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 variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the 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 requested variance is a result of the location of trees and the impacts by the layout of the new library, recreation center and park, and not a result of land or building use on a neighboring property. The impact to the trees is the minimum disturbance necessary to demolish and

rebuild library and recreation center, to provide a park facility, and to provide associated upgrades to the site.

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 at a rate of 1 inch caliper per 4 inches of DBH removed, using a minimum 3 inch caliper native shade tree. 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).

* * * * *

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, at its regular meeting held on Thursday, October 15, 2015, in Silver Spring, Maryland.

Casey Anderson, Chair
Montgomery County Planning Board