



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

MCPB No. 15-134
 Forest Conservation Plan No. CU2016-01
 Brandywine Senior Living at Potomac
 Date of Hearing: October 15, 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 July 9, 2013, Brandywine Senior Living at Potomac LLC ("Applicant") filed an application for approval of a forest conservation plan on approximately 4.02 acres of land located at 10800 Potomac Tennis Lane ("Subject Property") in the Potomac Policy Area, Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU2016-01 Brandywine Senior Living at Potomac ("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 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 Forest Conservation Plan No. CU2016-01 on the Subject Property, subject to the following conditions:²

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.

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.

Approved as to
 Legal Sufficiency:  10/6/15

- 1) The Applicant must obtain Staff approval of a Final Forest Conservation Plan consistent with the Preliminary Forest Conservation Plan and Planning Board recommendations prior to any land disturbing activities.
- 2) The ultimate method of afforestation credit needed in excess of the onsite planting will be determined at the time of the Final Forest Conservation Plan and may include landscaping credits or off-site plantings.
- 3) The Applicant must place a Category I conservation easement over areas of forest retention as shown on the Preliminary Forest Conservation plan that is 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 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 (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. The Application has a net tract area of 4.12 acres including the Subject Property and 0.10 acres of off-site land disturbance. The Forest Conservation Plan Worksheet generates an afforestation requirement of 0.82 acres which will be met in combination of afforestation in the stream valley buffer, landscape credits and off-site mitigation. The total amount of landscape credit and needed off-site mitigation will be determined on the Final Forest Conservation Plan.

The Application protects the on-site stream valley buffers with a Category I Easement. The minimum buffer width for the subject stream is 100 feet; however, the submitted Natural Resources Inventory/Forest Stand Delineation No. 420151830 identified steep slopes and showed a stream valley buffer of up to 125 feet. Because these steep slopes are man-made from previous improvements on the Subject Property that this Applicant will be removing, the Planning Board has agreed to a Category 1 Easement that ranges between 110 and 125 feet in width.

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 or CRZ impact to six 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. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance is not unique to this Applicant. Putting developed properties to new use, including demolishing existing improvements and constructing new improvements, is typical. Moreover, in this case, the proposed improvements will have a reduced impact on environmental resources compared to the current use of the Subject Property. Granting the variance will not confer on the Applicant a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The variance is not based on conditions or circumstances which are the result of the action by the Applicant. The imperviousness associated with the proposed development will be less extensive than the existing imperviousness on the Subject Property. The variance is necessary to remove existing imperviousness, which will ultimately lead to reduced impacts to environmental resources. There are no feasible options to remove the improvements associated with the current use and construct the proposed use that completely avoid impacting the Protected Trees.

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 not related in any way to a condition on an adjacent, neighboring property.

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

No trees will be removed as part of this development. In fact sections of the stream valley buffer will be restored to a natural condition, thus improving water quality. This impact to the tree root zones will not violate State water quality standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Application does not propose the removal of any Variance trees, and 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 Fani-González, 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 15, 2015, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board