



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

MAR 30 2016

MCPB No. 16-035  
Forest Conservation Plan No. PP1995001  
Brookside Gardens Greenhouse  
Date of Hearing: March 24, 2016

**RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, by MCPB Resolution No. 11-49 dated May 23, 2012, the Planning Board approved Forest Conservation Plan PP1995001 for the renovation of the parking facilities associated with Brookside Gardens on approximately 60.0 acres of M-NCPPC parkland located at 1800 Glenallan Avenue, within Wheaton Regional Park ("Subject Property"), in the 1989 Master Plan for the Communities of Kensington-Wheaton area; and

WHEREAS, on February 22, 2013, Planning Department Staff ("Staff") approved an administrative amendment to Forest Conservation Plan No. PP1995001; and

WHEREAS, at a public hearing on December 5, 2013, the Planning Board conditionally approved a second amendment to Forest Conservation Plan No. PP1995001, as recommended by Staff, to revise the parking area and associated facilities on the Subject Property - because the Board did not adopt a resolution memorializing its December 5, 2013 decision, this Resolution serves to confirm that decision; and

WHEREAS, on September 3, 2015, the Montgomery County Department of Parks ("Applicant") filed an application to amend the Forest Conservation Plan for the replacement of the existing greenhouse with a new greenhouse and construction of associated circulation and stormwater management facilities; and

WHEREAS, Applicant's forest conservation plan application to amend the final Forest Conservation Plan was designated Forest Conservation Plan No. PP1995001, Brookside Gardens Greenhouse ("Forest Conservation Plan," "Application," or Amendment); and

Approved as to  
Legal Sufficiency: Nick Goddard 3/17/16  
M-NCPPC Legal Department

WHEREAS, following review and analysis of the Application by Staff and other governmental agencies, Staff issued a memorandum to the Planning Board dated March 11, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 24, 2016, Staff presented the Amendment to the Planning Board as a consent item for its review and action, at which time the Planning Board voted to approve the Amendment subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board hereby adopts the Staff’s recommendation and analysis set forth in the Staff Report and approves Forest Conservation Plan No. PP1995001, subject to the following conditions:

1. The Applicant must prepare a Forest Conservation Plan for the entire Wheaton Regional Park in conjunction with the Master Plan for Wheaton Regional Park, and compensate for the removal of 0.06 acres of forest associated with the proposed improvements.
2. The Applicant must mitigate for the removal of trees # 34, 55” beech, and #46, 30” blackgum, if field investigation determines it to be necessary to remove either or both of these trees. Mitigation must be at the rate of 1 caliper inch planted per 4” inch DBH lost, using a minimum 3” caliper native canopy tree.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference, the Board FINDS, with the condition of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures 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 includes approximately 0.06 acres of additional forest clearing that was previously shown as retained. The Applicant will compensate for this forest loss on the Forest Conservation Plan for the entire Regional Park, which will be coordinated with the Master Plan for Wheaton Regional Park, currently underway.

## 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 18 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant 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 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.*

The disturbance to the specified trees is a result of the need to demolish the existing greenhouse and build a much needed new one. Granting this variance request is not a special privilege that would be denied to other applicants.

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, but on the need to replace an outdated facility. The disturbance of the Protected Trees is minimized because the new greenhouse will be built on the footprint of the old greenhouse. However, the new greenhouse will require associated site development and stormwater management. This development cannot be implemented without 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 a result of the greenhouse demolition and construction, 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 Protected Trees 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. Protected Trees impacted but not removed 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 ratio of approximately the rate of 1 caliper inch planted per 4" inch DBH lost, using a minimum 3" caliper native canopy 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 MAR 30 2016 (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 written opinion, 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 Commissioner Presley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Presley and Fani-González voting in favor, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, March 24, 2016, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board