



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

MCPB No. 10-176
Forest Conservation Plan No. MR2009742
Third District Police Station
Date of Hearing: December 16, 2010

MAR 8 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on October 7, 2009, Montgomery County Department of General Services ("Applicant"), filed an application for approval of a Forest Conservation Plan together with its mandatory referral application on 11.15 acres of land known as Third District Police Station located on the northwestern quadrant of the White Oak interchange at Route 29 and New Hampshire Avenue ("Property" or "Subject Property"), in the White Oak Master Plan area ("Master Plan"); and

WHEREAS, the Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2009742, Third District Police Station, Phase 1 and Phase 2 ("Forest Conservation Plan" or "Application"); and

WHEREAS, the Applicant requested postponement of Planning Board public hearings scheduled for review of the Application in order to revise the Application; and

WHEREAS, following the Planning Board's review of the revised Application at the public hearing of May 27, 2010, the Applicant requested a deferral of the Board's decision on both the mandatory referral and Forest Conservation Plan in order to re-design the site to address the Planning Board's and community's concerns; and

WHEREAS, following review and analysis of the Application as revised and signed by Kevin Mack, a qualified professional, on October 25, 2010 (the "Revised Application") by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated December 1, 2010, setting forth its analysis, and recommendation for approval with conditions of the Revised Application ("Staff Report"), and on December 16, 2010, the Planning Board held a public hearing on the Revised Application (the "Hearing"); and

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Revised Application; and

WHEREAS, on December 16, 2010, the Planning Board approved the Preliminary Forest Conservation Plan subject to certain conditions, on motion of Commissioner Dreyfuss and seconded by Commissioner Presley; with a vote of 4-0, with Commissioners Alfandre, Dreyfuss, Presley, and Wells-Harley voting in favor; Commissioner Carrier being absent.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Preliminary Forest Conservation Plan No. MR2009742 on the Property, subject to the following conditions:

1. Revise the Preliminary Forest Conservation Plan as follows:
 - a. Include detailed calculations for determination of landscape credit for proposed parking lot trees. No forest conservation landscape credit will be provided for trees that overlap with stormwater management easements and/or infrastructure, are closer than 10 feet from the edge of stormwater management filter/planting media within bioretention facilities, or whose trunks are less than 15 feet from a light pole.
 - b. Use tree shelters made of no. 14 gauge wire fabric with 2" x 4" openings instead of plastic tree shelters.
2. The Preliminary Forest Conservation Plan must be amended by the Planning Board to include a specific proposal for Phase 2 prior to the review and approval of a Final Forest Conservation Plan for Phase 2.
3. Submission and approval of a separate Final Forest Conservation Plan for each development phase for the property prior to any land disturbing activities occurring onsite. No land disturbance activities, including forest clearing, can occur on either phase of the site until a Final Forest Conservation Plan is approved for the specific project phase.
4. The Final Forest Conservation Plan for Phase 1 must include the following:
 - a. Submit a tree save plan for Forest Preservation Area A. The tree save plan must identify native trees that are at least 4 inches and greater, diameter at breast height (DBH), and lying within 50 feet of the proposed eastern and southern boundaries of Forest Preservation Area A. The tree save plan must include a critical root zone analysis for such native trees

and provide tree preservation measures, such as, but not limited to, reconfiguration of the limits of disturbance in those areas where preservation of such trees may be possible.

- b. Add root pruning along the limits of disturbance where forest or trees are to be protected, including all areas of forest and trees in Phase 2.
 - c. Add onsite signs to clearly identify trees in the police station complex that provide forest conservation credits and must remain.
 - d. Detailed five-year maintenance program for removal and management of non-native invasive species and required supplemental forest plantings, as needed, for each forest conservation area.
 - e. Supplemental plantings within forest retention areas must be determined in the field and must include native trees and shrubs.
 - f. Add a note that at least one person performing the invasive plant management work must have experience in invasive plant removal and management techniques. Qualifications of this person must be submitted to M-NCPPC Environmental Planning Division for review and approval prior to the pre-construction meeting.
5. Prior to the start of any onsite clearing or grading the applicant must record Category I conservation easements over all onsite forest retention and forest planting areas shown on the approved Final Forest Conservation Plan for the appropriate phase of development. The applicant must also record a Category II conservation easement over those landscaped trees that are counted towards meeting the forest conservation plan requirements.

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 Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Applicant has met all criteria required, and the Planning Board does hereby grant a variance to Section 5-1607(c) of the Natural Resources Article, MD Ann. Code in accordance with Section 22A-21 of the Montgomery County Code.*

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone requires

a variance. The following trees require a variance for disturbance within their critical root zones: #1 as identified and shown on the Revised Application (30-inch, diameter at breast height (DBH), tulip poplar) and #7 as identified and shown on the Revised Application (33-inch, DBH, red maple).

In accordance with Section 22A-21(e), the Applicant has met all of the following criteria required for the Board to grant the variance:

- a. *Will not confer on the applicant a special privilege that would be denied to other applicants;*

Granting the variance will not confer a special privilege as disturbance of the two specimen trees noted above are the minimum necessary in order to provide public sewer service to the police station and to provide adequate parking spaces for employees and police vehicles at the police station. Providing public sewer hookup and adequate parking spaces are reasonable and would be a privilege extended to any applicant in a similar situation.

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

The provision of public sewer service is required for any building that is constructed on the subject site. Public sewer service on this site is not limited to only a government agency. In addition, adequate onsite parking must be provided for any project proposed on the subject site since there is no public parking structure nearby or offsite parking available on existing public roads that surround the site.

- c. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the County's proposed project to locate a police station and another use on the site. It is not a result of land or building use on a neighboring property.

- d. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being disturbed will not be removed. A stormwater management concept has been conditionally approved by Montgomery County Department of

Permitting Services (DPS). Prior to clearing and grading on the site, a sediment and erosion control permit will be required by DPS.

2. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

BE IT FURTHER RESOLVED, that this constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is ~~JAN 13 2011~~ (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 Commissioner Dreyfuss, seconded by Commissioner Presley, with Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, and Chair Carrier abstaining, at its regular meeting held on Thursday, January 13, 2010, in Silver Spring, Maryland.


Françoise Carrier, Chair
Montgomery County Planning Board