



MAY 23 2012

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

MCPB No. 11-49
Forest Conservation Plan No. PP1995001
Brookside Gardens Parking Renovation
Date of Hearing: June 16, 2011

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 January 26, 2010, the Montgomery County Department of Parks ("Applicant") filed an application for approval of a Forest Conservation Plan on approximately 3.0 acres of M-NCPPC parkland located at 1800 Glenallan Avenue, within Wheaton Regional Park ("Property" or "Subject Property") in the 1989 Master Plan for the Communities of Kensington-Wheaton area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. PP1995001, Brookside Gardens Parking Renovation ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated June 1, 2011 setting forth its analysis and recommendation for approval of the Application, including a variance request for the impact of 18 subject trees, 2 of which are proposed for removal, subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, the Planning Board held a public hearing on the Application (the "Hearing") on June 16, 2011; and

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

WHEREAS, on June 16, 2011, the Planning Board approved the Final Forest Conservation Plan including all findings necessary for granting of the variance request, subject to certain conditions, on motion of Commissioner Dreyfuss and seconded by Commissioner Wells-Harley with a vote of 4-0; Commissioners Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor; Commissioner Alfandre being absent.

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

M-NCPPC Legal Department
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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. PP1995001 on approximately 3.0 acres of M-NCPPC parkland located at 1800 Glenallan Avenue, within Wheaton Regional Park, in the 1989 Master Plan for the Communities of Kensington-Wheaton area, and subject to the following conditions:

1. Submission and approval of a Final Forest Conservation Plan prior to any clearing or grading.
2. A sediment and erosion control plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency of the Limits of Disturbances (LODs) and the associated tree/forest preservation measures.

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 and upon consideration of the entire record, the Montgomery County 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 Forest Conservation Regulations Section 109A (COMCOR 22A.00.01.09A).*

The Forest Conservation Plan includes approximately 0.30 acres of forest clearing. Due to the preservation of other forest areas within the property, the site remains 11.00 acres above the forest conservation threshold and therefore does not have any reforestation/afforestation planting requirements. In addition the plan provides for the planting of a minimum of eighteen 2" caliper native tree credited as mitigation for removal and impacts to trees which are subject to the variance.

Forest Conservation Variance Request

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 trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since the currently proposed project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 for all of the impacts, and the FCP proposes to impact and/or remove trees \geq 30 inches DBH beyond the previous approvals, a variance is required.

Under Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection on April 11, 2011 for a written recommendation prior to acting on the request. The County Arborist responded on April 18, 2011 with a favorable recommendation, on the condition that appropriate mitigation is provided for the resources disturbed.

The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

- a) *Approval of the variance will not confer on the Applicant a special privilege that would be denied to other Applicants.* The renovation is in step with the approved Brookside Gardens Master Plan, which originally identified the need for additional parking at Brookside Gardens to accommodate the over 400,000 annual visitors it receives. The general impacts of the proposed renovation have been shown on the conditionally approved facility plan and the revised Brookside Gardens Master Plan. Refinement of the approved concept is anticipated and necessary part of the design process, rather than a unique or special consideration for the Applicant. Furthermore, the maintenance and upgrading of regional facilities is the responsibility of public agencies in executing their duties to the community. Therefore, staff finds that the variance request would be granted to any Applicant in a similar situation.

- b) *Approval of the variance is not based on conditions or circumstances which are the result of the action by the Applicant.* The program requirements of the project were developed based on guidance from the master plan as well as input received from the M-NCPPC staff and public outreach. In order to accomplish the goals, some limited impacts/removals of specimen trees were found to be necessary. Over a dozen parking configurations were examined as part of the schematic design and four alternatives were developed for further consideration. The preferred alternative was chosen based on obtaining the maximum amount of parking available within the smallest footprint while preserving the high quality forest and numerous specimen trees to the south. The impact and removals are necessary and unavoidable in order to implement the plan as proposed. Staff finds the variance can be granted under this condition if mitigation for the impacts is provided (above and beyond forest conservation requirements). A minimum of eighteen 2" caliper native tree plantings will be credited on the FFCP as mitigation for the impacts/removals subject to the variance. Note that the 30% concept planting plan for this project includes forty-five (45) 2.5" caliper shade trees, twenty-one (21) 1.5" caliper flowering trees, and one hundred and twenty (120) shrubs.

- c) *Approval of the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.* The requested variance is a result of the current application on the subject property and is not related to land or building use on a neighboring property.

- d) *Approval of the variance will not violate State water quality standards or cause measurable degradation in water quality.* The proposed plan will use Environmental Site Design criteria including permeable paving and bioretention areas to treat the stormwater on site. These best management practices are not being used at the existing parking lot. Therefore, the proposed design will provide significantly improved water quality treatment than the existing condition. Additionally the project has an approved Stormwater Management (SWM) Concept, and the final SWM Plans will be approved for this project by the Montgomery County Department of Permitting Services. The approved SWM Plan will ensure that water quality standards will be met in accordance with State and County criteria.

Therefore, the Planning Board finds that the Application, as conditioned, satisfies all applicable requirements of the Forest Conservation Law.

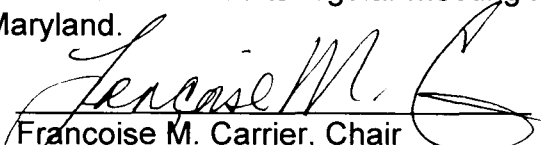
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter and the date of this Resolution is MAY 23 2012 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion at its regular meeting held on Thursday, May 17, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board