



MAY 23 2012.

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

MCPB 11-93
Forest Conservation Plan No. PP2012002
Little Bennett Day Use Facility
Date of Hearing: October 6, 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 August 2, 2011, the Montgomery County Parks Department ("Applicant"), filed an application for approval of a Forest Conservation Plan on approximately 137.62 acres of land located at 23701 Frederick Road (MD 355), just north of the intersection of Frederick Road (MD 355) and Comus Road ("Property" or "Subject Property"), in the Clarksburg master plan ("Master Plan") area; and

WHEREAS, Applicant's Forest Conservation Plan application was designated Forest Conservation Plan No. PP2012002, Little Bennett Day Use Facility ("Forest Conservation Plan" or "Application")¹; and

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

WHEREAS, on October 6, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

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.

Approved as to
Legal Sufficiency:

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

MNCPPC Legal Department
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WHEREAS, on October 6, 2011, the Planning Board approved the Forest Conservation Plan on a motion of Commissioner Anderson, seconded by Commissioner Presley, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley, all voting in favor.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Forest Conservation Plan No. PP2012002, subject to the following condition:

1. Provide a final Forest Conservation Plan consistent with the preliminary Forest Conservation Plan for review and approval by Staff prior to any land disturbance.

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 Montgomery County Planning Board FINDS, with the condition of approval, that:

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

Forest Conservation

The preliminary Forest Conservation Plan shows 0.71 acres of forest clearing and 76.70 acres of forest retention and does not generate a planting requirement.

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) of the County Code ("Variance"). Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, the Application requires two Protected Trees to be removed. Further, the Application will impact four Protected Trees. Even with tree preservation measures to help ensure the Protected Trees with anticipated impacts survive construction, a Variance is required due to the impact.

- i. The Board found that without the Variance, the Applicant would suffer unwarranted hardship and would deny the Applicant reasonable and significant use of the Property.

Were the Applicant to be denied the Variance, it would deprive the community of the park facility as anticipated by the Master Plan. The facility has been designed to emphasize the natural features of the site with minimal impact, particularly clearing of Protected Trees. The Applicant has altered path alignments to minimize impact to forested areas and will field locate boardwalk locations to avoid trees to the maximum extent possible.

- ii. In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the necessary criteria required to grant the Tree Variance.

1. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The legislatively approved 2007 Little Bennett Regional Park Master Plan makes specific recommendations for the Subject Property. Granting the Variance is necessary to comply with the Montgomery County Council's recommendations contained in the Little Bennett Master Plan. As such, this is not a special privilege conferred on the Applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Applicant is developing the Subject Property as a park which is part of the approved 2007 Little Bennett Regional Park Master Plan for this area. Impacts to the Protected Trees are needed to comply with roadway and stormwater management requirements necessary for the creation of the park.

3. *The need for the Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The Variance is a result of the proposed site design and layout on the Subject Property, and is 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 that are to be removed or impacted are not located near any perennial, intermittent, or ephemeral streams, nor are they part of any environmental buffer. The surrounding green space that is to remain will continue to provide water quality and quantity benefits comparable to existing conditions. Furthermore, through environmental site design measures the Subject Property is treating) additional water beyond that which currently flows off MD-355. Therefore, removal or disturbance of the CRZ's of the Protected Trees would not violate State water quality standards, nor will it result in a measurable degradation in water quality.

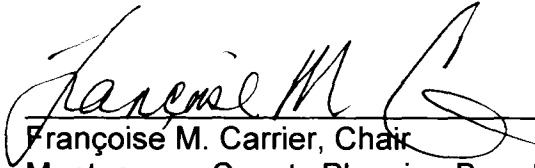
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 23 2012 (which is the date that this Resolution is mailed to all parties of record); and

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