



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

MAY 20 2013

MCPB No. 13-89
Forest Conservation Plan No. PP2006001
North Four Corners Local Park
Date of Hearing: May 9, 2013

RESOLUTION

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

WHEREAS, on August 16, 2005, together with a Parks Facility Plan, the Planning Board approved a preliminary forest conservation plan on approximately 13.93 acres of land located at 315 West University Boulevard ("Subject Property") in the Four Corners Master Plan Area ("Master Plan") area; and

WHEREAS, in response to Planning Board direction and community input, the Facility Plan was revised and approved by the Planning Board on January 31, 2008; and

WHEREAS, on December 18, 2012, Montgomery County Parks Department ("Applicant") filed an application for approval to amend the previously approved preliminary forest conservation plan to serve as the final forest conservation plan to be consistent with the revised Facility Plan; and

WHEREAS, Applicant's amendment to the forest conservation plan application was designated Forest Conservation Plan No. PP2006001 North Four Corners Local Park ("Forest Conservation Plan" or "Application"); 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 April 25, 2013, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 9, 2013, 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 voted to approve the Application subject to certain conditions, by the vote as certified below.

Approved as to
Legal Sufficiency:  4/30/13

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. PP2006001 on the Subject Property, subject to the following condition:¹

The Applicant must amend the Forest Conservation Plan to include an additional 19 caliper inches of native canopy trees to be approved by Staff.

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, 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 development is subject to the Montgomery County Forest Conservation law because it is on a tract of land greater than 40,000 square feet. This Application was submitted to allow the Parks Department to develop the Subject Property in a manner consistent with the Facility Plan approved by the Planning Board on January 31, 2008. In its current configuration, 0.75 acres of forest exists along the southern perimeter of the Subject Property. The redevelopment will remove 0.12 acres of forest and the Forest Conservation Plan requires 0.24 acres of forest to be planted as mitigation.

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.

¹ 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.

This Application will require the removal or CRZ impact to 26 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. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Disturbance of the Protected Trees is due to redesign of the Facility Plan in accordance with the clear direction by the Planning Board. Therefore, a Variance would be granted to other applicants proposing to develop the Subject Property as directed.

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

The disturbance shown is the minimum needed to implement the Facility Plan, as approved by the Planning Board. Disturbance has been minimized and detailed and specific tree protection measures have been used to minimize damage and attempt to save as many of the Protected Trees as possible.

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 need for the Variance is a result of the renovation and expansion of the park 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.*

None of the Protected Trees are located within any streams valley buffers, wetlands or other environmentally sensitive areas. The replacement of Protected Trees at a ratio of approximately 1 caliper inch for every 4" diameter breast height removed substantially replaces the form and function of the existing tree canopy - to protect water quality by: i) reducing runoff through rainfall interception and water

uptake, ii) providing shade for impervious areas, and iii) improving soil texture. Fifty four (54) three-inch caliper trees will be planted throughout the Subject Property. The project should also improve water quality by the addition of modern stormwater management facilities.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board requires a replacement of Protected Trees at a ratio of approximately 1 caliper inch for every 4" diameter breast height removed. Fifty four (54) three-inch caliper trees will be planted throughout the Subject Property. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

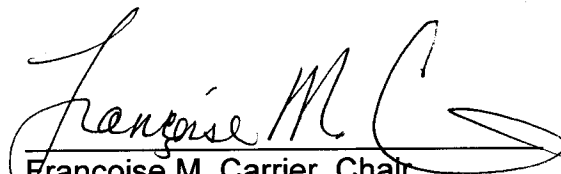
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAY 20 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Presley present and voting in favor of the motion, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, May 9, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board