



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

MCPB No. 19-001  
Forest Conservation Plan No. CU201904  
Francisco Landscaping  
Date of Hearing: May 16, 2019

JUN 10 2019

**RESOLUTION**

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

WHEREAS, on September 20, 2018, FM Group, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 6.18 acres of land located at 15400 Holly Grove Road ("Subject Property") in the Cloverly Policy Area and 1997 Cloverly Master Plan ("*Master Plan*") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU201904, *Francisco Landscaping* ("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 May 5, 2019 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 16, 2019, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on May 16, 2019, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Fani-Gonzalez, seconded by Commissioner Cichy, with a vote of 4-0; Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor, and Commissioner Dreyfuss absent.

Approved as to  
Legal Sufficiency:

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU201904 on the Subject Property, subject to the following conditions:<sup>1</sup>

1. By October 31, 2019 the Applicant must:
  - a. Record a Category I conservation easement over all areas of forest retention and forest planting as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County land records.
  - b. Install permanent forest conservation easement signage along the perimeter of the conservation easement, as determined by the M-NCPPC forest conservation inspector.
  - c. install permanent fencing along the non-forested conservation easement edge or as determined by the forest conservation inspector.
2. By May 31, 2020 the Applicant must plant 1.24 acres of forest and three variance mitigation trees as specified on the approved Forest Conservation Plan.
3. Submit financial surety for planting 1.24 acres of forest and obtain M-NCPPC approval of a two-year maintenance and management agreement for the forest planting area before any planting activities occur.

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 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 ensures the protection of environmentally sensitive features.*

#### Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on April 12, 2018. There is no existing forest on the Property.

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<sup>1</sup> 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.

The total tract area for the Property is 6.18 acres. Based on the land use category and the forest conservation worksheet there is a 1.24-acre afforestation planting requirement. The Applicant proposes to plant 1.24 acres of forest on-site. This planting location will connect to the existing forest near the northwest property boundary. It will also incorporate existing on-site large trees along the northern property boundary into the forest planting.

Over a period of years there has been a significant amount of off-site clearing that has resulted in the loss of approximately 6,500 square feet of forest. This area will be cleared of debris and re-stabilized as part of the forest planting proposed adjacent to this area.

#### Tree Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires no impact to trees that: measure 30 inches or greater DBH ("Protected Tree"); are part of a historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to a Protected Tree, including removal or disturbance within the Protected Tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. In the written request for a variance, an applicant must demonstrate that strict adherence to Section 22A-12(b)(3), i.e. no disturbance to a Protected Tree, would result in an unwarranted hardship as part of the development of a property.

#### *Unwarranted Hardship*

The Subject Property has no forest on site. Eight protected trees grow on and adjacent to the Subject Property. These trees are located within the developed area of the site. Changes, such as paving the driveway and parking lot, extending a water line along the driveway, and adding stormwater management, will impact these trees.

#### *Variance Request*

On November 6, 2018, the Applicant requested a variance for impact to six Protected Trees. This request was modified on December 6, 2018 to request impact to seven Protected Trees and removal of one protected tree (tree#4). These trees are shown on the table below.

*Variance Tree Table*

Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	Critical Root Zone (Sq. Ft.)	Critical Root Zone Impacts	Percent of CRZ Impacted (SF)
4	PRUNUS SSP.	CHERRY SSP.	36	9161		4641 51%
5	PRUNUS SSP.	CHERRY SSP.	30	6362		2081 33%
7	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	30	6362		26 1%
9A	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	45	14957		4263 29%
9B	ACER RUBRUM	RED MAPLE	45	14957		4263 29%
11	PRUNUS SSP.	CHERRY SSP.	34	8171		523 6%
17	ACER RUBRUM	RED MAPLE	40	11310		38 1%
19	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	40	11310		20 1%

Based on the following justifications, the Applicant has met all criteria required to grant the variance for the removal of one tree and impact to other trees subject to the variance provision.

*Variance Findings*

The Planning Board must make findings that the Application has met all requirements of section 22A-21 of the County Code before granting the variance. The Board has made the following determinations on the required findings for granting the variance:

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

Granting the variance is not unique to this Applicant. This applicant is normalizing an existing use to comply with conditional use requirements. The proposed improvements will have a lesser impact on environmental resources than the existing use of the Site. Granting the variance will not confer on the Applicant a special privilege that would be denied to other applicants.

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

The variance is not based on conditions or circumstances which are the result of the action by the Applicant. The imperviousness associated with the proposed development will be less extensive than the existing Site improvements. The variance is necessary to add stormwater management, improve water service safety and pave the existing gravel drive and parking area. There are no feasible options to deconstruct the current use and construct the proposed use that completely avoid impacting the Protected Trees.

3. *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 not related in any way to a condition on an adjacent, neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality;*

There are no impacts to streams and their buffers. A stormwater management concept has been approved by the Department of Permitting Services. Proposed facilities will improve the quality of runoff where no facilities existed before. The Impact will not violate State water quality standards.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist for a recommendation prior to acting on the request. As of the publishing of this report, no recommendation from the County Arborist has been received for this case.

Mitigation

There is one variance tree proposed for removal. The other seven trees will have limited disturbance within their critical root zone and are candidates for safe retention. Mitigation for the loss of Tree #4 will consist of the planting of three three-inch caliper shade trees.

Variance Recommendation

Staff recommends that the variance be granted. The submitted FCP meets all applicable requirements of the Chapter 22A of the County Code (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 JUN 10 2019 (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).

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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 Cichy, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, May 30, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board