



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

MCPB No. 19-114  
 Forest Conservation Plan No. H-134  
 Cheng Property  
 Date of Hearing: September 26, 2019

OCT 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 May 8, 2019, HONG CHENG, LLC & DONG YA, LLC. (“Applicant”) filed an application for approval of a forest conservation plan on approximately 3.58 acres of land located at 15585 and 15595 Old Columbia Road, Burtonsville (“Subject Property”) in the Fairland/White Oak Policy Area and 2012 Burtonsville Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. H-134 (“Forest Conservation Plan” or “Application”);<sup>1</sup> 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 September 13, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 26, 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, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote certified below.

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<sup>1</sup> 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.

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Approved as to  
 Legal Sufficiency: 

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No.H-134 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. Forest Conservation & Tree Save

The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. H-134.

- a) The Applicant must submit and obtain Staff approval of a Final Forest Conservation Plan.
- b) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
- c) The Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.31 acres of new forest planting prior to the start of any demolition, clearing, or grading on the Property.
- d) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property.
- e) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
- f) Afforestation plantings that are located outside the limits of disturbance must occur within the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance must occur in the first planting season following the stabilization of the applicable disturbed area.
- g) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.
- h) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.

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

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<sup>2</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.

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.

A. Forest Conservation

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

The PFCP shows 0.38 forest within the net tract area and proposes 0.06 acres of forest removal and 0.32 of forest retention. Accordingly, the Forest Conservation Worksheet results in a 0.28-acre afforestation/reforestation requirement. This requirement will be met onsite with new forest plantings adjacent to the existing forest area. All retained and planted forest on the Property will be placed in Category I conservation easement. The PFCP meets all applicable requirements of Chapter 22A of the County Code.

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.

This Application will require the removal or CRZ impact to one Protected Tree as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes 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.

Granting the variance will not confer a special privilege on the Applicant as the impact of the one tree is due to necessary improvements within the public right-of-way to construct a shared use

path. The Applicant is proposing a 24% impact to the critical root zone of a white oak tree. White oaks have good resilience to construction impacts, so if the tree is in good condition it should be able to overcome the impacts. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and need to build shared use path in the public right-of-way.

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 requested variance is a result of the existing conditions and not as 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 variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree will be retained, and the canopy is not proposed for pruning. Therefore, Staff concurs that the Project will not violate State water quality standards or cause measurable degradation in water quality.

No mitigation is required for Protected Trees impacted but retained.

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 OCT 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 Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, September 26, 2019, in Silver Spring, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board