



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

MCPB No. 20-082

Forest Conservation Plan No. CU2020-05

Project Name: Spectrum Retirement

Date of Hearing: July 30, 2020

**AUG 17 2020**

**RESOLUTION**

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

WHEREAS, on March 19, 2020, Spectrum Retirement Communities, LLC ("Applicant"), submitted a Conditional Use application for approval of a forest conservation plan for proposed construction of a Residential Care Facility with 100 units and 130 beds including a memory care section of 18 units, on a 5.93-acre property located at 9545 River Road on the north side of the Road, 0.5 mile east of its intersection with Falls Road, Potomac, MD, Identified as Parcel 786 Tax Account No. 10-00855533 ("Subject Property"), RE-2 zone, *2002 Potomac Subregion Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU2020-05, Spectrum Retirement ("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 July 19, 2020 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 30, 2020, 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.

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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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU2020-05 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. This PFCP is conditionally approved and final approval is contingent upon approval by the Montgomery County Hearing Examiner of Conditional Use No. CU2020-05.
2. Applicant must submit a Final Forest Conservation Plan ("FFCP") to M-NCPPC Staff for review with the Preliminary Plan of Subdivision submittal.
3. The FFCP must be consistent with the final approved PFCP.
4. Applicant must obtain approval of the Final Forest Conservation Plan prior to certification of the preliminary plan of subdivision.
5. The Applicant must provide mitigation for the loss of trees per the approved Variance in the form of three (3) native canopy trees with a minimum size of three (3) caliper inches. The trees must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
6. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
7. 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.

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 the protection of environmentally sensitive features.*

A. Forest Conservation

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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.



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

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD 420200520) was approved by Staff on March 5, 2020 and a Forest Conservation Plan for the Subject Property was submitted as part of the Conditional Use application. The Subject Property contains no forest. The Application does not propose to remove or retain any forest and results in a forest planting requirement of 1.20 acres, which will be met as conditioned.

**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 two Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board found 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.*

Granting the Variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Site. The Protected Trees are in the developable area of the Site. Granting a Variance to allow land disturbance within the developable portion of the Site is not unique to this Applicant. The Board found 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 actions by the Applicant.*

The need for the Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based on existing site conditions, including the location of the Protected Trees within the developable area of the Site and offsite in the area of required roadway improvements.

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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this need for a Variance.

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 Protected Trees removed will be mitigated for by planting new trees which will provide water quality benefits offsetting the tree removed.

In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of the Protected Trees at a ratio of approximately 1 inch for every 4 inches removed. The individual replacement trees will be a minimum of 3-inch caliper in size and will be planted on the Subject Property. This Application proposes to remove 30 inches in DBH, resulting in a mitigation requirement of 7.5 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. While these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees.

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 AUG 17 2020 (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 Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, July 30, 2020, in Silver Spring, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board