

# Montgomery Planning


THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION


MCPB


Item No. 7

Date: 03.25.2021

## Park Montgomery, Preliminary Forest Conservation Plan - Local Map Amendment H-140

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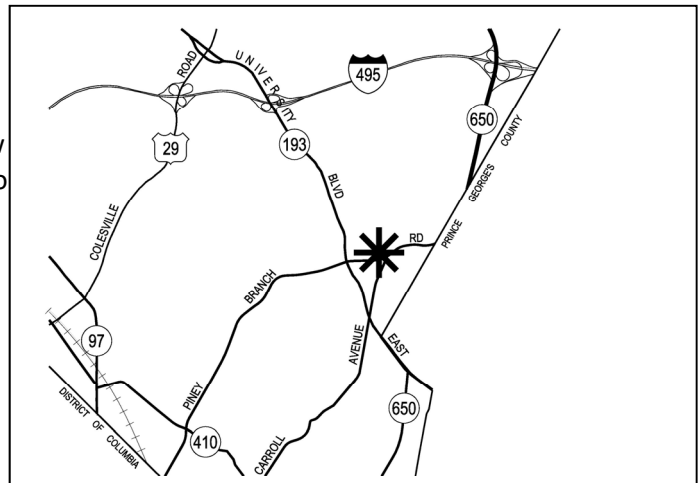
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### Description

Completed: 03.12.21

Request for approval of a Preliminary Forest Conservation Plan and Variance request associated with Local Map Amendment H-140 to rezone a 3.29-acre property from R-H to CRTF-1.6, C-0, R-1.6, H-140 to allow the construction of a new multi-family structure for up to 76 units with an existing 141 unit apartment building to remain, with 15% of total units (217) as MPDUs.

- **Location:** 8860 Piney Branch Avenue approximately 900 feet east of University Boulevard
- **Master Plan:** 2013 *Long Branch Sector Plan*
- **Applicant:** Park Montgomery Limited Partnership
- **Application Accepted:** December 4, 2020
- **Public Hearing by the Hearing Examiner:** April 12, 2021
- **Review Basis:** Chapter 22A, Forest Conservation Law



### Summary

- Staff recommends approval of the Preliminary Forest Conservation Plan.
- Preliminary Forest Conservation Plan associated with a Local Map Amendment request to allow construction of a new multifamily structure for up to 76 units on the Property.
- The Property is currently developed with one 15-story multi-family building containing 141 affordable units and surface parking to remain, and a two-story parking structure proposed for demolition under redevelopment.
- The recommendations for Local Map Amendment H-140 are described in a separate report.
- A subsequent Sketch and Site Plan will be required if the Local Map Amendment is approved.

## RECOMMENDATION AND CONDITIONS

### STAFF RECOMMENDATION

Down County Planning Staff recommends approval of the Preliminary Forest Conservation Plan with the following conditions:

1. Prior to any clearing, grading or demolition on the site, the Applicant must submit and receive approval of a Final Forest Conservation Plan, which must be consistent with the approved Preliminary Forest Conservation Plan and associated conditions.
2. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the Forest Conservation Plan.
3. The Applicant must plant the variance tree mitigation plantings on the Subject Property, with a minimum size of 3 caliper inches, totaling at least 17 caliper inches as shown on the certified Forest Conservation Plan. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
4. The Applicant must submit financial surety, in a form approved by the M-NCPPC Office of General Counsel, to the M-NCPPC Planning Department for the mitigation plantings required per the Final Forest Conservation Plan.
5. Prior to demolition or any land disturbing activities occurring onsite the Applicant must receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off- site forest mitigation bank, or payment via fee-in-lieu, for an equivalent credit of 0.13 acres (or as determined on the Final Forest Conservation Plan).
6. The development must comply with the Final Forest Conservation Plan which is to include a Tree-Save Plan prepared by an ISA-Certified Arborist who is also a Maryland Licensed Tree-Care Expert. Additionally, as part of the preconstruction activities, the Applicant must enter into a contract with the tree care professional to implement a five-year maintenance and management plan for Tree 17 and Tree 18. Mitigation plantings will be required if the tree dies or severely declines within the five-year timeframe.

### Property Description

The Property is currently zoned R-H (multiple-unit, high-rise planned residential), and improved with a 14-story multi-family building containing 141 units with one access point from Piney Branch Road with surface parking and a two-story parking structure. The existing building is supported by the County Housing Initiative Fund, and a large portion of those units are reserved for households at 60% area median income (AMI), while some units are market rate affordable.

The Applicant proposes to rezone the Property from the existing R-H zone to CRTF 1.6 C 0.5 R 1.6 H 140'. The purpose of this rezoning is to allow the Site to increase allowable density for the construction of a second multi-family building with structured parking for affordable housing.

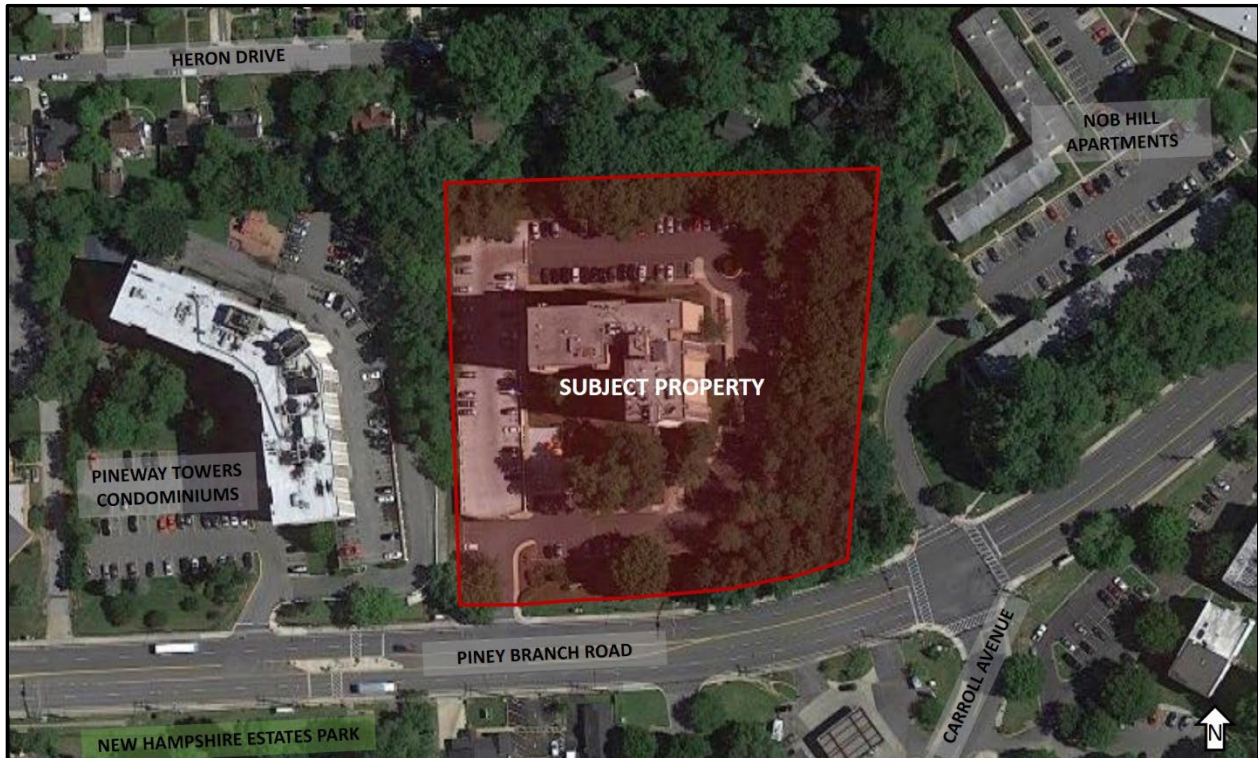


Figure 1: Aerial View of Property and rezoning area outlined in red

### Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), designated no. 420210430, was approved for the Subject Property on October 20, 2020. The Subject Property is located within the Northwest Branch watershed, a Use IV watershed<sup>1</sup>, which is also a tributary to Anacostia River. The Property contains a small portion of forest (approximately 12,875 square feet) as well as mature trees, measuring 30-inches or greater in diameter-at-breast height (DBH), which are subject to the Variance provision of the Forest Conservation Law. The forest stand consists of red maple and various oaks as the dominant species, and green hawthorn and black locust as co-dominant species. The forest is considered a third stage, well established forest with heavy canopy and little understory. The forest is located in the east and northeast portions of the Site, though a few significant trees exist at the Property's southern edge as well as within the middle of the Property just west of the proposed residential building.

<sup>1</sup> USE IV: RECREATIONAL TROUT WATERS: Waters that are capable of holding or supporting adult trout for put and take fishing, and that are managed as a special fishery by periodic stocking and seasonal catching (cold or warm waters).

The Property slopes significantly from north to south with the grade dropping by about 36 feet towards the frontage on Piney Branch Road. Aside from the forest and mature trees, there are no other environmentally sensitive features such as wetlands, 100-year floodplain or stream valley buffers, and the site is not located within a Special Protection Area. Soils on the site are classified as 1C Galia silt loam, which typically has moderate slopes between 8 and 15%; there are, however, areas of man-made steep slopes circling the perimeter of the property. There are no cultural facilities or historic sites located within or adjacent to this site nor any known rare, threatened, or endangered species or critical habitats.

#### *Forest Conservation*

This Application is subject to Chapter 22A Forest Conservation Law and has included a Preliminary Forest Conservation Plan with this Application. The Forest Conservation Plan shows that within the 3.3-acre site area, there is approximately 0.3-acres of forest, as most of the surrounding forest lies outside of the property. Of that 0.3-acres of forest, approximately 0.1-acres are proposed to be cleared; the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated Afforestation Requirement of 0.13-acres, which Staff recommends be met through via credits purchased from an off-site, Forest Conservation Bank or through fee-in-lieu.



*Figure 2: Street View of existing Site*

#### Forest Conservation 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. Any impact to these trees, including removal of the subject tree or disturbance within the 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. The Law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75% of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The subject Application includes disturbance/removal of trees that are  $\geq 30''$  DBH, therefore a variance is required. The Applicant submitted a variance request on January 25, 2021 (Attachment B) for the impacts to nine subject trees and proposed removal of two subject trees that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

**Table 1: Trees to be Removed**

<b>TREE #</b>	<b>TYPE</b>	<b>DBH</b>	<b>Percent of CRZ Impacted by LOD</b>	<b>CONDITION</b>	<b>PROPOSED STATUS</b>
10	White Oak	34"	60%	Fair	<b>REMOVE</b>
13	Scarlet Oak	33"	41%	Fair	<b>REMOVE</b>

**Table 2: Trees to be Impacted but Retained**

<b>TREE #</b>	<b>TYPE</b>	<b>DBH</b>	<b>Percent of CRZ Impacted by LOD</b>	<b>CONDITION</b>	<b>PROPOSED STATUS</b>
3	Scarlet Oak	30"	21%	Good	<b>SAVE</b>
4	Scarlet Oak	36"	41%	Good	<b>SAVE</b>
5	Scarlet Oak	33"	17%	Good	<b>SAVE</b>
7	White Oak	33"	12%	Fair	<b>SAVE</b>
8	White Oak	35"	1%	Not listed (off-site tree)	<b>SAVE</b>
11	White Oak	32"	16%	Not listed (off-site tree)	<b>SAVE</b>
16	Red Maple	33"	17%	Fair	<b>SAVE</b>
17	White Oak	37"	43%*	Fair	<b>SAVE</b>
18	Tulip Poplar	49"	66%*	Fair	<b>SAVE</b>

\*Although the impacts proposed for Tree-17 and Tree-18 are large, much of the root zones are constrained by existing buildings/paving. The impacts proposed will consist of surface work which limits the actual impact for these trees.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, Staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship due to a number of distinct, yet related reasons: In order to provide Fire & Rescue access to the Site along with adequate parking and stormwater management that do not conflict with the existing Site improvements, unavoidable issues arise. Due to the Site's grading as well as height limits associated with the development, providing increased underground, rather than surface, parking is not feasible without variance tree impacts. The proposed underground parking helps to limit the overall footprint of this additional development for the site but does not eliminate all impact to subject trees. As conditioned, the proposed layout, which has been coordinated between the Applicant and MNCPPC Staff, minimize CRZ impacts to existing specimen trees. Further, the Applicant will be required to coordinate with an Arborist as well as the M-NCPPC Forest Conservation Inspector to utilize specialized construction techniques, provide tree protection, and minimize the limits of disturbance as feasible. Due to the extensive impacts related to construction around Tree-17 and Tree-18, two of the largest trees onsite, Staff also recommends implementing a five-year maintenance and management plan for these particular trees. Although trees with such impacts would typically be candidates for removal and mitigation, limiting proposed impacts to surface work, rather than excavation and major grading offers the chance for these mature trees to remain. Based on the existing circumstances and conditions on the Property, Staff agrees that there is an unwarranted hardship.

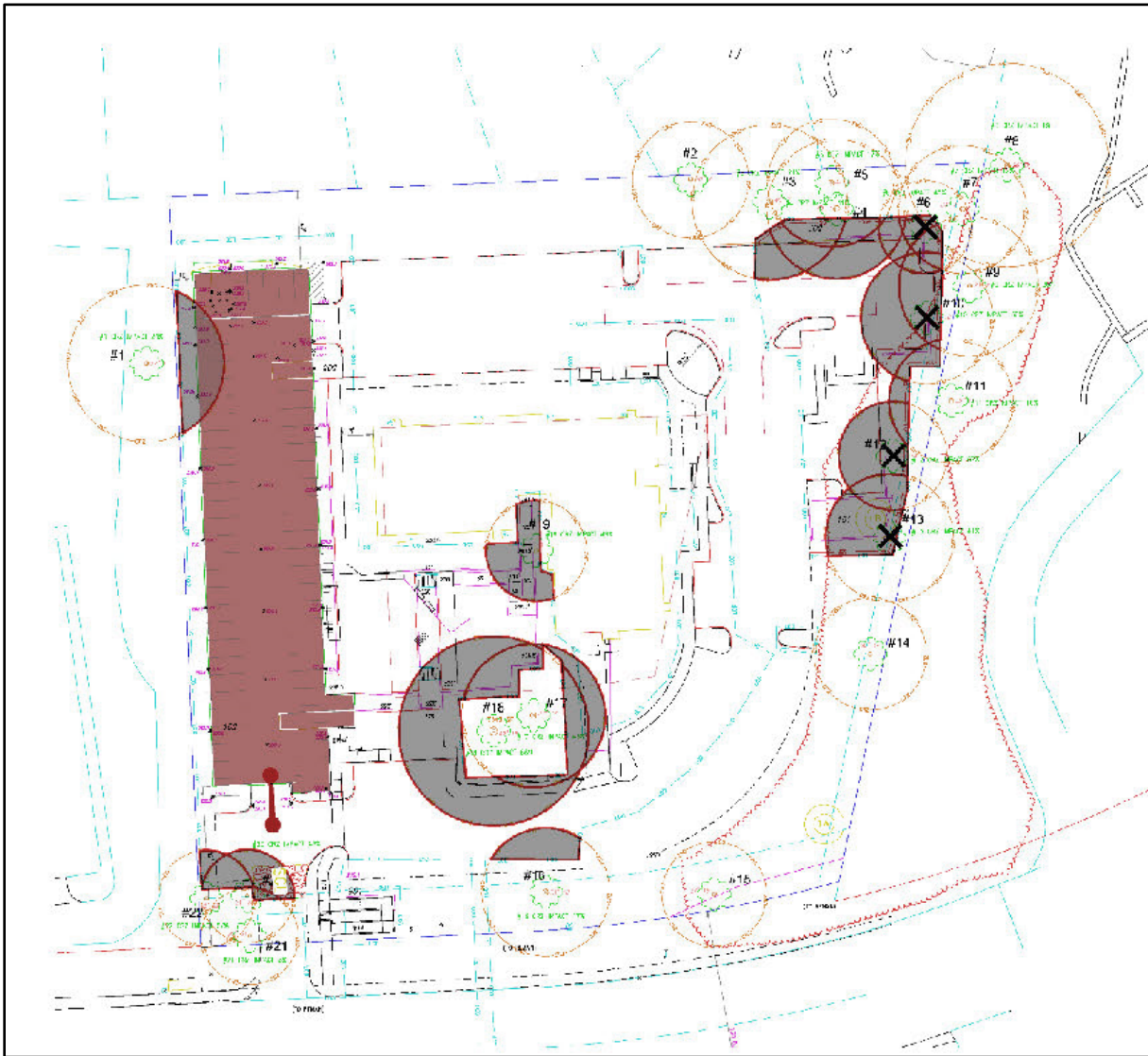


Figure 3: PFCP exhibit showing variance trees proposed for removal<sup>2</sup> and impact

#### Variance Findings

Staff has made the following determination based on the required findings for granting of the requested variance:

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

The Applicant's proposal to construct an additional multi-family building with structured parking for affordable housing, improve site access/circulation for Fire & Rescue, and improve onsite stormwater management greatly reduces the impacts that would otherwise occur if the Applicant proposed demolition of the existing building or proposed construction of a new building and infrastructure elsewhere on the Site. Further, the Applicant's proposal will provide environmental benefit via proposed mitigation plantings. With these factors considered, Staff concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

<sup>2</sup> Note: removals include two variance trees of 30" DBH or greater and two trees below the variance threshold.

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

As stated above, the requested variance and associated tree impacts are due to the concerns related to the improvement of site access and minimizing the stormwater impacts related to the proximity of steep slopes within the limited Site area. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees which provide shade and buffering from adjacent uses. Without this flexibility in the proposed design and construction, far greater subject tree impacts would be expected. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

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

The proposed tree plantings, which includes mitigation plantings, will help maximize the permeability of the soil, which serves to reduce runoff. The planting of these trees, as well as the retention of mature trees onsite, will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. Additionally, the Subject Property does not currently contain any stormwater management features. The Applicant proposes a development which will meet current State and local stormwater management standards; this will be verified by the submission of a Stormwater Management Plan to the Department of Permitting Services. A measurable degradation in water quality is not anticipated as the development will provide Best Management Practices (BMP) areas to meet ESD requirements for the Site in order to achieve water quality standards. This Application does not increase impervious surfaces, as the proposed building falls mainly on the existing parking lot. This development will also provide stormwater management on-site, where there are currently no such measures. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

#### Mitigation for Trees Subject to the Variance Provisions

There are two subject trees proposed for removal in association with this Application. Planting mitigation for the removal should be at a rate that approximates the form and function of the trees removed, at a ratio of approximately 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. As a result of the proposed removal of two subject trees, for a total of 67" DBH removed, which results in a mitigation requirement of at least 17 caliper inches of native canopy trees sized at least 3 caliper inches each. The Applicant has also included additional native canopy tree plantings for environmental enhancements within the site. This inclusion results in mitigation a total of 119 caliper inches of trees planted in association with this development. Staff supports this approach which will greatly enhance the natural features onsite and compliment the adjacent forest canopy.

#### Maintenance & Monitoring for Impacted Trees Subject to the Variance Provisions

It is important to disclose additional information regarding the proposed significant impact on Tree 17 and Tree 18. These trees are centrally located on the Property, situated between existing surface parking and an existing courtyard area. Although the work proposed at this location is shown to be limited to the edges of the critical root zones of both trees, the trees will subject to a significant amount of disturbance as indicated by the 43% and 66%

CRZ impacts. Staff recommends the Applicant work with an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert to prepare a tree-save plan which includes protective measures for Trees 17 and 18. Staff further recommends the Applicant enter into a contract with an appropriate tree care professional to implement a five-year tree care program to ensure the long-term health and prevent the potential decline of two large and centrally featured specimen trees. This level of care is needed due to the combination of impact proposed and the location of the trees; both trees have canopy that extends over the courtyard and outdoor play areas for the existing and proposed buildings. The detailed terms of the program shall be determined in coordination with the tree care professional and M-NCPPC at the time of Site Plan submission.

#### Staff Recommendation on the Variance

As a result of the above findings, Staff recommends approval of the Applicant's request for a variance from the Forest Conservation Law to impact, but retain, nine subject trees and to remove two subject trees associated with the application.

#### Stormwater Management (SWM)

The Project must comply with the requirements of Chapter 19 of the Montgomery County Code. There are no known stormwater management facilities located on the Property. As such, the Applicant will utilize Environmental Site Design (ESD) to the Maximum Extent Practicable to significantly improve the onsite treatment of stormwater runoff. Stormwater management treatment for quality will be provided onsite through several micro-bioretenion planters and potential green roofs. It is also important to note that this proposal will not increase the total area of impervious surfaces onsite. The Applicant will submit a Stormwater Management Concept Plan for the Project to the Montgomery County Department of Permitting Services (DPS), Water Resources Section (currently with the Site Plan submission); and a Sediment and Erosion Control Plan will be prepared and submitted to DPS for approval prior to construction.

#### **Conclusion**

Staff recommends approval of the Preliminary Forest Conservation Plan, with conditions as enumerated in the Staff Report. Staff also recommends approval of the variance request as submitted on January 25, 2021 and described in this report.

#### **ATTACHMENTS:**

Attachment A: Preliminary Forest Conservation Plan

Attachment B: Applicant's variance request letter