

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

MCPB No. 21-019
Forest Conservation Plan No. H-140
Project Name: Park Montgomery
Date of Hearing: March 25, 2021

MAR 30 2021

RESOLUTION

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

WHEREAS, on December 4, 2020, Park Montgomery Limited Partnership (“Applicant”), filed an application for approval of a 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, located at 8860 Piney Branch Road, approximately 900 feet east of University Boulevard (“Subject Property”) in the 2013 Long Branch Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. H-140, Park Montgomery (“Forest Conservation Plan” or “Application”);¹ 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 March 12, 2021 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 25, 2021, 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.

¹ 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.

Approved as to Legal Sufficiency: *Delicia Coleman*
2425 Redden Drive, Wheaton, Maryland 20902 Phone: 301.495.4605
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board **APPROVED** Forest Conservation Plan No. H-140 on the Subject Property, subject to the following conditions:²

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 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.

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:

² 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.

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.

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD 420210430) was approved by Staff on October 20, 2020 and a Forest Conservation Plan for the Subject Property was submitted as part of the Local Map Amendment application. The Subject Property contains approximately 0.3 acres of forest. The Application proposes to remove approximately 0.1 acres of forest, which results in a forest afforestation requirement of 0.13 acres that will be met via credits purchased from an offsite Forest Conservation Bank or through fee-in-lieu, 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 of two and CRZ impact to nine Protected Trees as identified in the tables below. 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 subject Application includes disturbance/removal of trees that are ≥ 30 ” DBH, therefore a variance is required. The Applicant submitted a variance request on January 25, 2021 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

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

Table 2: Trees to be Impacted but Retained

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

*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, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, the Board 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, the Board has conditioned 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, the Board finds that there is an unwarranted hardship.

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.*

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.

2. *The need for the Variance 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. 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 proposed site design and layout on the Subject Property 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 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.


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 MAR 30 2021 (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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, March 25, 2021, in Wheaton, Maryland.



Casey Anderson, Chairman
Montgomery County Planning Board