



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

MCPB No. 21-023
Forest Conservation Plan No. SC2019012
North Branch Trail at Rock Creek
Date of Hearing: March 25, 2021

AUG 11 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 November 20, 2018, Montgomery County Department of Parks ("Applicant") filed an application for approval of a Forest Conservation Plan for the North Branch Trail of Rock Creek Regional Park, ("Subject Property"), in both the 1994 Aspen Hill and the 2004 Upper Rock Creek Master Plan ("Master Plan") areas; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. SC2019012, North Branch Trail ("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 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 at which it heard testimony and received evidence submitted for the record; and

WHEREAS, at the hearing the Planning Board voted to approve the Application, subject to certain conditions, by motion of Commissioner Cichy, seconded by Commissioner Verma, with a vote of 5-0, Chairman Anderson, Commissioners Cichy, Fani-Gonzalez, Patterson and Verma voting in favor.

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES the Forest Conservation Plan No. SC2019012 subject to the following conditions:¹

1. The Applicant must install the variance mitigation plantings within 6 months following the pre-construction meeting unless modified by the M-NCPPC Forest Conservation Inspector.
2. The Applicant must have all required site inspections performed by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
3. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

BE IT FURTHER RESOLVED that having considered the recommendations 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.*

A. Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Code. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on July 28, 2017. The existing trail and proposed trail improvements are within the Rock Creek Regional Park. The project area is largely within sensitive areas along the east side of Lake Bernard Frank and along the North Branch of Rock Creek. Approximately 5.11 acres of forest will be removed for the improvements to the trail, primarily in the northern segment where there is no existing trail. The affected area has 10.21 acres of existing forest, 5.10 of which will continue to be protected. No forest mitigation plantings are required.

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

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Tree Loss

The trail is designed to be located along previously disturbed areas. Beginning at the southern end of the trail, the connection from the Lakeside Trail will utilize the road between two abandoned parking lots. The road was closed to public vehicular access in the 1980's. The road will be narrowed to a width of 10 feet and the area of removed pavement will be restored. The next section of trail moving north is along a natural surface trail. Steep slopes exist on either side of the trail. Next, the trail will utilize a WSSC access road. Because these cleared areas exist, it was determined that they should be utilized instead of clearing undisturbed areas. The trail near the ICC has been previously impacted by the construction of the highway. A short segment then connects this section to the proposed Preserve at Rock Creek development trail. Where possible, the trail is located along an old roadbed and people's choice trails.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection, and requires no impact to: trees that are 30 inches DBH or greater; are part of an historic site or designated with an historic structure; are designated as a National, State, or County champions; are at least 75 percent diameter of the current State champion of that species; or any plants that are Federal or State rare, threatened, or endangered species. Any impact to high priority vegetation, including disturbance to the critical root zone (CRZ) requires a variance. A variance application must provide written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. Development of this trail requires impacts to trees identified as high priority for retention and protection; therefore, the Applicant has submitted a variance request.

Variance Request

A variance request dated January 25, 2021 was submitted proposing to remove fourteen (14) specimen trees and impact the CRZ of Forty-one (41) specimen trees. (Table 1).

Variance Trees Impacts

ID	Common Name	Scientific Name	DBH	%CRZ Impacted	Condition	Status
13	Red Oak	<i>Quercus rubra</i>	32	20	Poor	Save
54	Korean Pine	<i>Pinus koraiensis</i>	35	30	Excellent	Save
55	Korean Pine	<i>Pinus koraiensis</i>	31	10	Excellent	Save
57	Red Oak	<i>Quercus rubra</i>	36	30	Excellent	Save
61	Southern Red Oak	<i>Quercus falcata</i>	38	25	Good	Save
70	Mockernut Hickory	<i>Carya tomentosa</i>	27	15	Excellent	Save
72	Pignut Hickory	<i>Carya glabra</i>	29	10	Excellent	Save
76	Red Oak	<i>Quercus rubra</i>	35	40	Good	Save
78	Red Oak	<i>Quercus rubra</i>	37	12	Good	Save
87	White Oak	<i>Quercus alba</i>	44	20	Fair	Save
88	Red Oak	<i>Quercus rubra</i>	33	10	Good	Save
110	Red Oak	<i>Quercus rubra</i>	30	3	Good	Save
111	Tulip Poplar	<i>Liriodendron tulipifera</i>	38	20	Good	Save
122	Sycamore	<i>Platanus occidentalis</i>	39	38	Fair	Remove*
125	Tulip Poplar	<i>Liriodendron tulipifera</i>	33	24	Good	Save
129	Tulip Poplar	<i>Liriodendron tulipifera</i>	37	5	Good	Save
132	Tulip Poplar	<i>Liriodendron tulipifera</i>	35	27	Fair	Save
133	Red Oak	<i>Quercus rubra</i>	31	22	Excellent	Save
141	Tulip Poplar	<i>Liriodendron tulipifera</i>	32	34	Fair	Save
161	Red Oak	<i>Quercus rubra</i>	31	27	Poor	Remove
162	Red Oak	<i>Quercus rubra</i>	41	13	Fair	Save
181	Red Oak	<i>Quercus rubra</i>	97	12	Good	Save
201	Tulip Poplar	<i>Liriodendron tulipifera</i>	30	40	Good	Remove*
213	White Oak	<i>Quercus alba</i>	35	10	Good	Save
219	White Oak	<i>Quercus alba</i>	35	8	Good	Save
221	Sycamore	<i>Platanus occidentalis</i>	33	5	Fair	Save
224	Sycamore	<i>Platanus occidentalis</i>	40	5	Fair	Save
225	Tulip Poplar	<i>Liriodendron tulipifera</i>	38	21	Fair	Save
226	Tulip Poplar	<i>Liriodendron tulipifera</i>	32	18	Good	Save
228	White Oak	<i>Quercus alba</i>	31	70	Fair	Remove
242	Green Ash	<i>Fraxinus pennsylvanica</i>	35	34	Fair	Remove
260	Tulip Poplar	<i>Liriodendron tulipifera</i>	39	40	Good	Remove*
261	White Oak	<i>Quercus alba</i>	33	30	Good	Save
274	Silver Maple	<i>Acer saccharinum</i>	32	25	Fair	Save
278	Tulip Poplar	<i>Liriodendron tulipifera</i>	31	30	Fair	Save
284	Tulip Poplar	<i>Liriodendron tulipifera</i>	30	10	Fair	Save
367	Red maple	<i>Acer rubrum</i>	42	2	Poor	Save
369	Mockernut Hickory	<i>Carya tomentosa</i>	25	5	Mostly Dead	Remove
370	White Oak	<i>Quercus alba</i>	47	36	Good	Save
372	White Oak	<i>Quercus alba</i>	30	10	Good	Save
375	White Oak	<i>Quercus alba</i>	34	12	Good	Save
380	Sycamore	<i>Platanus occidentalis</i>	21	25	Good	Save
385	Green Ash	<i>Fraxinus pennsylvanica</i>	33	30	Good	Remove
391	Sycamore	<i>Platanus occidentalis</i>	39	42	Excellent	Remove*
392	Sycamore	<i>Platanus occidentalis</i>	45	33	Fair	Remove*
407	White Oak	<i>Quercus alba</i>	33	10	Good	Save
409	White Oak	<i>Quercus alba</i>	39	30	Good	Save
410	Shingle Oak	<i>Quercus imbricaria</i>	31	48	Poor	Remove
411	Sycamore	<i>Platanus occidentalis</i>	37	38	Poor	Remove
416	White Oak	<i>Quercus alba</i>	40	31	Good	Save
417	Sycamore	<i>Platanus occidentalis</i>	62	100	Poor	Remove
420	White Oak	<i>Quercus alba</i>	37	21	Fair	Save
442	Tulip Poplar	<i>Liriodendron tulipifera</i>	42	4	Good	Save
R565	Tulip Poplar	<i>Liriodendron tulipifera</i>	36	15	Good	Save
L	Red Maple	<i>Acer rubrum</i>	36	17	Poor	Remove

*Final decision on removal to be made at the time of construction.

Table 1: Variance Trees to be impacted or removed (bold)

Unwarranted Hardship Basis

Per Section 22A-21(a), an applicant may request a variance from Chapter 22A if the applicant can demonstrate that enforcement of Chapter 22A would result in an unwarranted hardship.

The Applicant proposes to impact 55 variance trees and of those trees, 14 (in **bold**) are proposed for removal. Table 1 provides details of the 55 trees.

This is a linear project. Every effort was made to configure the trail to minimize tree loss and disturbance while still providing a safe and accessible trail. A number of techniques will be utilized to minimize impact to these trees. In areas where the grade will be lowered near significant trees, an air spade will be used to determine the exact location of the existing roots. If possible, the major roots will be left intact and protected by the use of fabric. If it is necessary to remove the roots, the roots will be cut using a hand saw. In areas where the elevation is increased, root aeration matting will be placed between the ground and the fill. In addition, the trees will be pruned to remove any dead or damaged limbs.

Not impacting these trees would cause an unwarranted hardship because of the need to provide the facilities that are shown in the Facility Plan. This trail is recommended in numerous planning documents and is an important link in the Countywide Trail System. It is anticipated to be a heavily used trail.

Accordingly, the Applicant has a sufficient unwarranted hardship to justify a variance request for all specimen 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. The Board makes the following findings in the review of the variance request and the proposed forest conservation plan:

Variance Findings

Granting of the variance:

1. *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 to trees is due to the location of the trees and necessary site design requirements. The Applicant proposes removal of these trees with mitigation. Therefore, granting this variance is not 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 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 location of the existing trail and necessary requirements to make the proposed improvements.

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 existing conditions 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 variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or impacted are located along an existing trail and is subject to constant erosion. This project seeks to correct this issue as well as provide stormwater mitigation along the entire alignment. The northern segment of the trail is subject to a Water Quality Plan due to its location in the Upper Rock Creek SPA.

To mitigate for the removal of specimen trees the final forest conservation plan includes planting of 57 3-inch caliper trees. A total of 680 inches of tree DBH are being removed and replaced at 25 percent of that amount. Therefore, an equivalent of 170 inches of tree caliper are required to be replanted.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is _____ (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, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, July 29, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board