



MCPB
Item No.
Date: 10.14.2021

Capital Crescent Trail Under MD 355 - Preliminary Forest Conservation Plan - MR2022002



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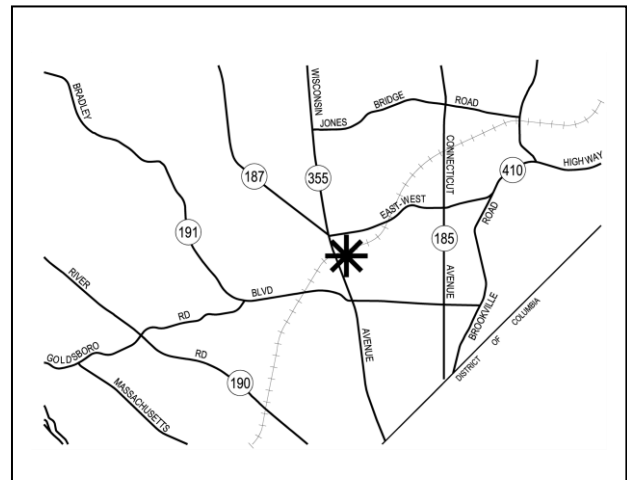


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Completed: 10/4/2021

Description

- Request for approval of a Final Forest Conservation Plan associated with Mandatory Referral No. MR2022002 for the construction of a grade-separated trail connecting the future Capital Crescent Civic Green to the Purple Line- constructed portion of the Capital Crescent Trail via a tunnel within the basement level of the 7272 Wisconsin Avenue building, beneath Wisconsin Avenue and Elm Street and connecting to a portal in Elm Street Park. Includes reconstruction of the north side of Elm Street Park.
- Location:** Elm Street N of 47th Street
- Zone:** R-90
- Master Plan:** 2017 Bethesda Downtown Sector Plan
- Property size:** 2.08 acres
- Applicant:** Montgomery County Department of Transportation
- Acceptance Date:** August 20, 2021
- Review Basis:** Chapter 22A



Summary

- Staff recommends **APPROVAL** with conditions of Final Forest Conservation Plan MR2022002.
- This proposal requires a Forest Conservation Plan and associated Variance Request for impacts to and removal of specimen trees as well as afforestation requirements associated with the proposed disturbance.
- This Application is for a Final Forest Conservation Plan in conjunction with Mandatory Referral Application MR2022002 for Phase 1 of the Capital Crescent Trail. Phase 2 of this project is exempt from the Chapter 22A requirement to submit a Forest Conservation Plan and is addressed in a separate Staff Report along with the required Mandatory Referral Findings for the project.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Final Forest Conservation Plan No. MR2022002, with the following conditions:

1. The Applicant should schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must submit and receive approval of a Final Forest Conservation Plan for the Subject Property. The Final Forest Conservation Plan (FFCP) must be consistent with the Preliminary Forest Conservation Plan submitted as part of this Application.
3. 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 Inspection Staff.
4. Prior to certification of the Final Forest Conservation Plan, the Applicant must coordinate with M-NCPPC Staff to address updates and additions to the Forest Conservation Plan and notes in order to provide clarity and consistency across plan sheets.
5. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Rock Creek or Little Falls watershed to satisfy the afforestation requirement for a total of 0.32-acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Rock Creek or Little Falls watershed or by making a fee-in-lieu payment if mitigation credits are not available at any bank.
6. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
7. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 7.6 caliper inches, or as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
8. 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 FCP.
9. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

SITE DESCRIPTION

Site Description

The Subject Property ("Property" or "Site") is located in downtown Bethesda northeast of the intersection of Elm and 47th Street, just east of Wisconsin Avenue (MD-355). The Site is adjacent to both CR (Commercial Residential) and R-60 (residential) zones near Elm Street Urban Park. The Property is also within the 2017 *Bethesda Downtown Sector Plan* (Sector Plan).



Figure 1 – Aerial photo (Approx. Site area shaded in red)

The Subject Property falls within two watersheds: the Rock Creek Watershed, which is a Use Class I¹ watershed, and the Little Falls Watershed, which is a Use Class I-P² watershed. Although this is an urban area, there is one significant tree and two specimen trees on site (measured at 24-inch or greater and 30-inch or greater, respectively). There are also a number of younger street trees within the study area. Aside from the watershed and mature trees, there are no additional environmentally sensitive features onsite such as floodplains, wetlands, forest, or rare/threatened/endangered species. There are no cultural resources or historic sites located within or adjacent to this site.

¹ Use I:

WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE

Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, and industrial water supply.

² Use I-P:

WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY

Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, industrial water supply, and use as a public water supply.

PROJECT DESCRIPTION

Proposal

The Capital Crescent Trail, an off-road trail that spans from Georgetown to Silver Spring via Bethesda, is currently paved from Georgetown to Bethesda Avenue in Bethesda. Between Elm Street Park in Bethesda and the Silver Spring Transit Center, the trail is under construction as part of the Purple Line light rail project. The project, further detailed in Mandatory Referral Applications MR2022002 and MR2020030, is proposed to provide the final segments of the trail in Downtown Bethesda, between Bethesda Avenue and Elm Street Park.

Upon completion, this will create a high-quality transportation hub that connects the surrounding communities to the commercial core in Downtown Bethesda, the future entrance to the Red Line station, the future Purple Line station, and a bicycle parking station. Due to the high cost of the project, MCDOT may complete this project in two phases. Phase 1 would ensure that the existing section of the Capital Crescent Trail between Georgetown and Bethesda Avenue is connected to the Purple Line section of the Capital Crescent Trail between Elm Street Park and the Silver Spring Transit Center, upon completion of the Purple Line. Phase 2 would provide a more direct connection through Downtown Bethesda via the construction of a new tunnel under MD 355.

Due to impacts associated with Phase 1, the proposed work requires submission of a Forest Conservation Plan which will be described within this Staff Report. The project includes the construction of a tunnel for the Capital Crescent Trail to connect trail users to the Georgetown Branch Trail to the north of Elm Street Urban Park and through the park to extend under Elm Street West of 47th Street and continue under Wisconsin Avenue. The park is proposed to be modified to include the trail tunnel entrance, enhanced play features, stormwater management, and plantings in the disturbed areas.

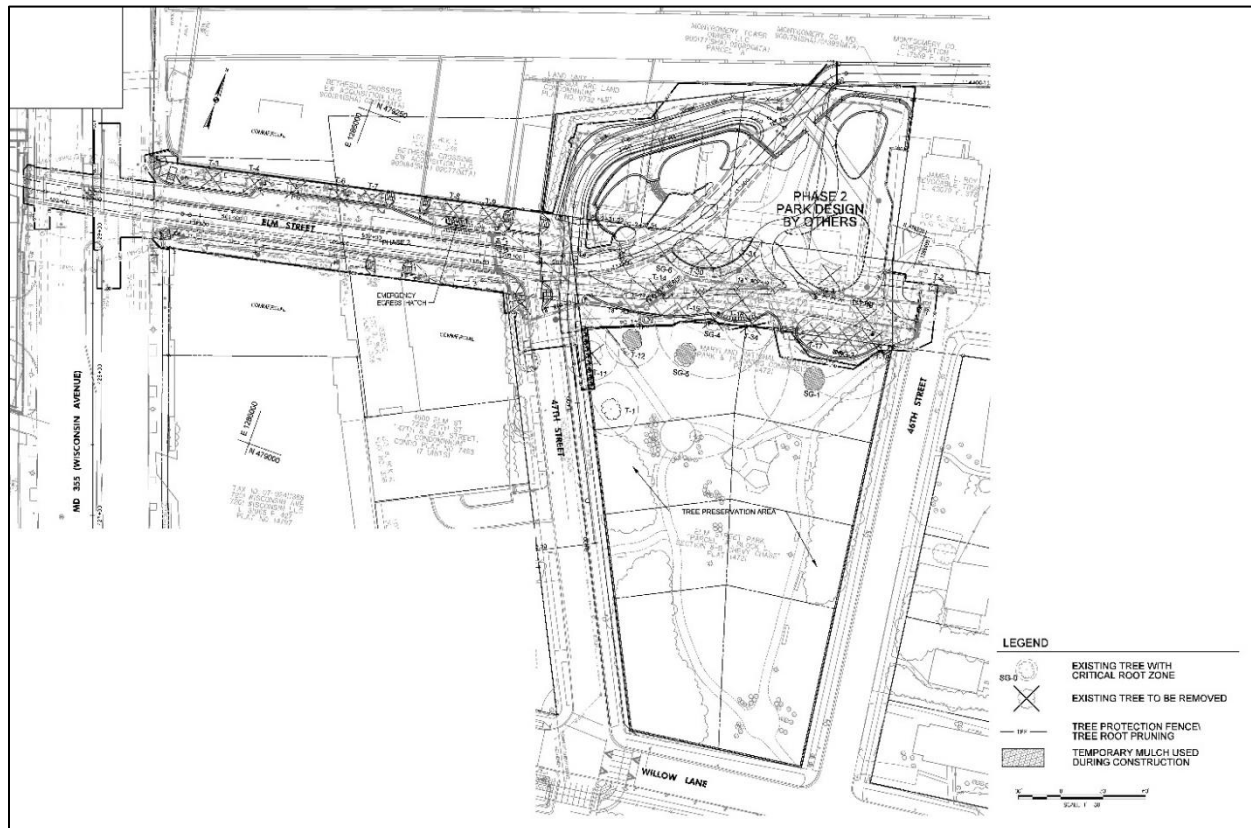


Figure 2 – Phase 2 Forest Conservation Plan

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), designated No. 420201600, was approved for the Subject Property on June 2, 2020. The approved NRI/FSD describes the existing and natural features of the Site including an inventory of significant and mature trees measuring 24-inches or greater in diameter-at-breast height (DBH). Those trees which are 30 inches DBH and above are subject to the Variance provisions of the Forest Conservation Law for any proposed impacts and/or removals.

The Project area contains no forest, however there are many mature trees of a variety of species. Specimen/Significant trees range in size from 28" up to 49.5" while most street trees range generally from 8" to 20". There are minor slopes on the Site as it drains towards the south; the soils onsite are classified as urban land and Glenelg loam, neither of which are environmentally sensitive. There are no streams, stream buffers, or wetlands onsite.

The Applicant has acknowledged and made efforts to preserve the environmental features of the Site which include the mature trees. However, impacts and removals could not be completely avoided due to the overlapping logistical constraints including existing buildings surrounding the Subject Property, the requirement to connect to an existing trail, and spatial requirements for grading a tunnel connection. With these constraints in mind, the Applicant has prioritized protecting environmental features where possible while also providing a project cited as a priority in the 2018 Bicycle Master Plan.

Forest Conservation

Although there is no forest onsite, this Application is subject to Chapter 22A Forest Conservation Law and as such, the Applicant has provided a Final Forest Conservation Plan. The Forest Conservation Plan shows that within the 2.08-acre Site area, and with the additional 0.54-acres of offsite work, there will be a calculated afforestation requirement of 0.32-acres. This requirement, as conditioned, will be met via credits from an off-site forest bank or via fee-in-lieu.

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 ≥ 30 " DBH, therefore a variance is required. The Applicant submitted a variance request on September 14, 2021 (Attachment B) for the impacts to one subject tree and proposed removal of one subject tree, 2 trees in total, that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.



Figure 3 –Forest Conservation Plan Variance Impacts

Table 1: Trees to be Removed/Impacted

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
SG-5	Tulip Poplar	49.5"	34.5%	Good	SAVE (Root prune, TPF)
SG-6	Sawtooth Oak	30.5"	100%	Good	REMOVE

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 which would deny the Applicant of reasonable and significant use of the Property, due to a number of related reasons. For MCDOT to implement the full program as described in the Bicycle Master Plan, tree impacts are unavoidable. Due to the location of the specimen trees within the limits of disturbance as well as the grading requirements for a safe and accessible site within the tight urban setting, the project would not be able to move forward without a variance being granted. Therefore, the Applicant would face an

unwarranted hardship without approval of this variance request and would not be able to complete this important public project.

Variance Findings

The following findings are required for the 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 this segment of the Capital Crescent Trail is in conformance with the County's Bicycle Master Plan. Further, any Applicant would be required to adhere to the spatial constraints onsite and limit impact to sensitive environmental features. With these factors considered, 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. *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 the Site while adhering to certain constraints. 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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

The development proposal for the Site includes the planting of variance mitigation trees, additional street tree and landscape plantings, as well the implementation of bioretention facilities for stormwater management. Through the preservation of trees, where possible, and the planting of additional trees and shrubs, the Applicant will inherently increase soil permeability and water uptake while reducing stormwater runoff. Thus, the Application is not expected to cause measurable degradation of water quality.

Mitigation for Trees Subject to the Variance Provisions

There is one subject tree 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 one (1) subject tree, for a total of 30.5" DBH removed, which results in a mitigation requirement of at least 7.6 caliper inches of native canopy trees sized at least 3 caliper inches each. As conditioned, the Applicant will provide mitigation plantings of at least 7.6 caliper inches to satisfy this requirement and mitigate for the loss of one tree in the study area.

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, one (1) subject tree and to remove one (1) subject tree associated with the Application.

Stormwater Management (SWM)

The Project must comply with the requirements of Chapter 19 of the Montgomery County Code. The Application received approval of a Stormwater Management Concept/Site Development Stormwater Management Plan from the Department of Permitting Services on June 29, 2021. The plan demonstrates that stormwater management goals will be met via environmental site design (ESD) consisting of micro-bioretenion facilities and porous surfaces. Additionally, a waiver has been granted, due to space constraints, for two areas within the right-of-way. A detailed review of stormwater management will occur at the time of detailed plan review. With this approval, the Applicant will meet all applicable requirements of Chapter 19 of the Montgomery County Code.

Conclusion

Staff recommends approval of the Final Forest Conservation Plan, with conditions as enumerated in the Staff Report. Staff also recommends approval of the variance request as submitted on September 14, 2021 and described in this report.

ATTACHMENTS:

- Attachment A: Final Forest Conservation Plan
- Attachment B: Applicant's variance request letter
- Attachment C: Stormwater Concept Approval Letter