



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

DEC 28 2021

MCPB No. 21-133
Forest Conservation Plan No. H-143
4910-4920 Strathmore Preliminary Forest Conservation Plan
Date of Hearing: December 16, 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 August 5, 2021, EYA Development LLC ("EYA") and BL Strathmore LLC ("Brandywine") ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 39.46 acres of land located at 4910-4920 Strathmore Avenue ("Subject Property") in the 1992 North Bethesda/Garrett Park Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. H-143, 4910-4920 Strathmore Preliminary Forest Conservation Plan ("Forest Conservation Plan" or "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 November 8, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on December 16, 2021, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote certified below.

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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 Forest Conservation Plan No. H-143 on the Subject Property, subject to the following conditions:¹

1. The Applicant must obtain approval of a Final Forest Conservation Plan ("FFCP"), for the entire Property (39.46 acres, consisting of Parcels A and B, plus off-site disturbance, with approved deductions), concurrently with the first Site Plan approval.
2. Prior to certification of the Preliminary Forest Conservation Plan ("PFCP"), the Applicant must correct the Forest Conservation worksheet to remove the deduction for off-site improvements and adjust the required Total Afforestation and Reforestation accordingly.
3. The Final Forest Conservation Plan must:
 - a. Be substantially consistent with the approved PFCP;
 - b. Show the planting locations of at least 114.95 total caliper inches of native shade trees, each at least three caliper inches (3"), to mitigate the removal of twelve (12) variance trees;
 - c. Include measures to enhance the stream buffer function including invasive species management, as well as other techniques such as buffer averaging and/or enhanced forestation; and
 - d. Update the Tree Variance request, if necessary, to determine the disposition of other variance trees.
4. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
5. 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.
6. Prior to recordation of the plat and the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
7. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the three (3.0) acres of new forest planting and for the mitigation

¹ 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.

- trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
8. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 9. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 10. 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.
 11. The Applicant must install the Afforestation/Reforestation plantings in Planting Areas 1, 2, 3, and 4, as shown on the approved FFCP, 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.
 12. 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, the Applicant must plant the variance tree mitigation plantings totaling at least 114.95 caliper inches using a minimum tree size of 3 caliper inches. The variance tree mitigation plantings must be installed as shown on the FFCP or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 13. 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.

BE IT FURTHER RESOLVED that having given full consideration to 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, and ensures 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, Chapter 22A ("FCL").

The Net Tract Area is 39.46 acres, which includes the area of Parcels A and B, plus off-site disturbance required for the construction of utilities and frontage improvements, minus areas of roadway easement. The afforestation threshold for the CRN zone is 15% of the Net Tract Area, or 5.92 acres, and the Conservation Threshold is 20%, or 7.89 acres. The Applicant proposes to clear 0.49 acres of existing forest and retain 3.57 acres, resulting in a combined reforestation and afforestation mitigation requirement of 2.84 acres. Fulfillment of the mitigation requirement is proposed to be accomplished through planting new forest on site.

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 fifteen (15) Protected Trees as identified in the Staff Report. Twelve (12) trees will be removed and three (3) trees will be protected. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for single-family and senior living units, without the Variance.

The Board makes 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 proposed design responds to the multiple site constraints and is consistent with the proposed zoning and Master Plan

recommendations; thus, granting the variance will not confer a special privilege to the Applicant.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is based on the constraints of the Property, access requirements, required utility connections, stormwater management facilities, grading and other engineering challenges, rather than on conditions or 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 design and constraints on the Subject Property and not as a result of land or building use on a neighboring property nor on other portions of the overall Property not being rezoned.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Removal of the twelve (12) Protected Trees is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately one inch replaced for every four inches removed, using planting stock of no less than 3 inches caliper, each. No mitigation is required for Protected Trees impacted but retained.

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 DEC 28 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).

* * * * *

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 and Commissioners Cichy, Patterson, and Verma voting in favor of the motion, and Commissioner Rubin absent at its regular meeting held on Thursday, December 16, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board