



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

MCPB No. 21-119

Final Forest Conservation Plan No. MR2022002

Capital Crescent Trail Under MD 355

Date of Hearing: October 14, 2021

NOV 29 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 20, 2021, the Montgomery County Department of Transportation ("Applicant") filed an application for approval of a forest conservation plan on approximately 2.08 acres of land located along Elm Street north of 47th Street, Bethesda, Maryland 20815 ("Subject Property") within the 2017 Bethesda Downtown Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2022002, Capital Crescent Trail Under MD 355 ("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 October 4, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 14, 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, on October 14, 2021, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; seconded by Commissioner Verma; with a vote of 4-0, Chair Anderson and Commissioners Cichy, Patterson and Verma voting in favor.

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Approved as to

Legal Sufficiency: Emily Vaias

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2022002 on the Subject Property, subject to the following conditions:¹

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 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.
3. 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.
4. 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.
5. 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.
6. 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

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 is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

7. 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 FFCP.
8. 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, 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

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.

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

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 one (1) Protected Tree and the removal of one (1) Protected Tree as identified in the Staff Report. 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 without the Variance because 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.

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 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. *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 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. *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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

4. *Granting the Variance 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 as 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 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 1" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. No mitigation is required for Protected Trees impacted but retained. As a result of the proposed removal of one (1) subject tree, for a total of 30.5" DBH removed, the Applicant must provide 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.


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 NOV 29 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 Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy, Patterson, and Verma voting in favor of the motion, and Commissioner Rubin abstaining at its regular meeting held on Thursday, November 18, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board