

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-054

Forest Conservation Plan No. SC2022007

Potomac Farm Estates Lot 1, Block C

Date of Hearing: June 9, 2022

JUN 21 2022

RESOLUTION

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

WHEREAS, on February 16, 2022, Kuljeet Singh (“Applicant”) filed an application for approval to amend a Forest Conservation Plan that would remove 1.38 acres of Category I Conservation Easement and mitigate offsite and onsite on the property located 10501 Chapel Road (“Subject Property”) in the 2002 Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS Applicant’s forest conservation plan application was designated Forest Conservation Plan No. SC2022007, Potomac Farm Estates Lot 1, Block C (“Forest Conservation Plan,” “Application” or “Amendment”); 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 May 27, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 9, 2022, the Planning Board held a public hearing on the Application and voted to approve the Forest Conservation Plan on motion of Commissioner Rubin; seconded by Vice Chair Verma, with a vote of 4-0-1; Chair Anderson, Vice Chair Verma, and Commissioners Patterson, and Rubin voting in favor with Commissioner Cichy abstaining.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan Amendment No. SC2022007 on the Subject Property, subject to the following conditions:

1. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. SC2022007, the Applicant must record a new Category I Conservation and a Category II Conservation

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320
www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

Easement Agreement reflecting the entire easement area excluding the area that is authorized to be removed, as specified on the approved Final Forest Conservation Plan. The new Category I and Category II Conservation Easements must be in forms approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed prior to recordation of the Deed of Release of Conservation Easement for the existing conservation easement. The existing Category I Conservation Easement remains in full force and effect until the new Conservation Easement Agreements are recorded. M-NCPPC will not approve the new Conservation Easement Agreements until the offsite mitigation is satisfied.

2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. SC2022007, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement recorded among the County Land Records in Book 36801, Page 340 and identified on the 2007-approved Final Forest Conservation Plan in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the new easements are recorded and the offsite forest planting mitigation is satisfied.
3. Within ninety (90) days of the mailing of the Planning Board resolution approving Forest Conservation Plan Amendment No. SC2022007 the Applicant must satisfy the offsite planting requirements with recordation of a M-NCPPC approved Certificate of Compliance for the purchase of 4.14 acres of forest planting from an M-NCPPC approved forest mitigation bank within the same watershed. The offsite 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 to purchase within the same watershed. Only if no M-NCPPC-approved offsite forest conservation planting is available can the offsite mitigation be satisfied with fee-in-lieu payment.
4. The Applicant must schedule the required site inspections by the M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
5. Within one hundred twenty (120) days of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. SC2022007, 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 new onsite forest conservation and supplemental planting, planting maintenance,

including invasive species management controls, and conservation easement markers.

6. The Applicant must provide invasive species management control measures within the Conservation Easements at the direction of the M-NCPPC Forest Conservation Inspection staff. The cost to control invasive species must be incorporated into the forest conservation financial surety.
7. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Forest Conservation Plan Amendment No. SC2022007, the Applicant must execute 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 planting areas credited towards meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
8. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the permanent conservation easement markers along the perimeter of the conservation easements, as shown on the FCP, or as approved by the M-NCPPC Forest Conservation Inspector.
9. The Applicant must install the plantings as shown on the approved FCP within six (6) months of the mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. SC2022007, or as directed by M-NCPPC Forest Conservation Inspection Staff.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or 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

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Amendment to remove 1.38 acres of Category I Conservation Easement provides onsite mitigation consisting of restoration planting and non-native invasive plant maintenance in a front 1.16-acre forest retention, Category I Conservation

Easement and protection of trees in a 0.50-acre Category II Conservation Easement at the rear of the Property and provides offsite mitigation of more than 2 acres of forest planting for every 1 acre removed. The Amendment provides offsite planting mitigation 4.14 acres at a M-NCPPC-approved forest conservation bank.

B. 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 or greater in DBH; are part of an historic site or designated with an historic structure; are designated as national, State or County champion trees of the species; or trees, shrubs or plants that designated as Federal or State, rare, threatened or endangered species.

This Application will require the CRZ impact to 11 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property 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 minor impacts to these trees are for landscaping in the area to establish a useable yard space. The previous recordation of the lot anticipated the proposed house construction and residential uses in a RE-2 Zone. The Applicant's Forest Conservation Plan Amendment minimizes impacts by providing root protection matting and tree protection measures prior to any tree work. Using any part of the rear yard that is not forest conservation easement as mowed grass would result in unavoidable impact to Protected Trees. Therefore, granting of this Variance is not a special privilege that would be denied to other applicants who have large trees in mowed yards that are not within Category I Conservation Easements.
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 not based on conditions or circumstances that are the result of actions by the Applicant. The requested Variance is not for the removal of any specimen trees and will have very minor potential impact on the specimen trees. The Variance is required due to the location of small trees near the specimen trees and is not a 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 existing conditions and existing improvements, 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 Variance will not violate State water quality standards or cause measurable degradation in water quality. Root protection measures will be implemented, actual ground disturbance will be limited areas that become grass yard. The tree canopy will remain and the ability of the protected trees to absorb and filter stormwater remains intact. Also, stormwater management is not required as part of this project.

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 JUN 21 2022 (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 Vice Chair Verma, seconded by Commissioner Rubin, with a vote of 4-0-1; Chair Anderson, Vice Chair Verma, and Commissioners Patterson, and Rubin, voting in favor of the motion, Commissioner Cichy abstaining at its regular meeting held on Thursday, June 16, 2022 in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board