

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 22-095

Forest Conservation Plan No. CU202204

1910 University Boulevard West

Date of Hearing: September 8, 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 September 7, 2021, 1910 University, LLC ("Applicant") filed an application for approval of a forest conservation plan on approximately 3.56 acres of land located at 1910 University Boulevard ("Subject Property") in the *2012 Wheaton CBD and Vicinity Sector Plan* ("Sector Plan") area; and

WHEREAS the Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU202204, *1910 University Boulevard West* ("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 August 29, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 8, 2022, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by motion of Commissioner Rubin, seconded by Commissioner Patterson, with a vote of 5-0; Commissioners Anderson, Cichy, Patterson, Rubin, 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 Forest Conservation Plan No. CU202204 on the Subject Property, subject to the following conditions:¹

1. The Final Forest Conservation Plan must be consistent with the Preliminary Forest Conservation Plan.
2. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, 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 required mitigation trees credited toward meeting the requirements of the FCP.
3. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, 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 variance tree mitigation plantings.
4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 84 caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
5. 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.

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 (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.

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.

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.” The Preliminary Forest Conservation Plan is being reviewed with the Conditional Use Plan and the Final Forest Conservation Plan will be reviewed and approved as part of Preliminary Plan No. 120210230. Under Section 22A-11(c) “The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception or conditional use application and must not approve a special exception or conditional use application that conflicts with the preliminary forest conservation plan.”

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”). As required by Chapter 22A, a Preliminary Forest Conservation Plan (“PFCP”) was submitted with this Conditional Use application. The total net tract area for forest conservation purposes is 3.55 acres. The Property is zoned R-60 and is classified as High Density Residential (“HDR”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Site does not contain any forest. However, there is a 0.53-acre afforestation requirement as calculated in the Forest Conservation Worksheet, as determined by the property size and 15% afforestation threshold. The afforestation requirement will be met off-site in a forest bank or by payment of fee-in-lieu.

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 10 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 for an independent living facility for seniors 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.*

Granting the variance will not confer a special privilege on the Applicant as the existing development cannot be demolished without removing eight (8) of the nine (9) trees shown as being removed. The remaining one (1) tree will be removed to accommodate the construction for the construction of the new development. If the Applicant is not allowed to impact the trees, the Applicant will not be able to redevelop a portion of the Property. Granting a variance to allow for demolition of existing facilities is not unique 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.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in proximity to the existing development proposed for demolition and removal. Eight (8) of the trees designated as removed need to be removed because of impacts due to demolition of the existing development. The Applicant has minimized disturbance by constructing within the area already developed, with one (1) additional tree required for removal due to construction of the new development.

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 and buildings do not have conditions that have created or contributed to this need for a variance.

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

The nine (9) Protected Trees requested for removal are not located in an environmental buffer or special protection area. Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Applicant is proposing to remove nine (9) Protected Trees and will mitigate for the removal of these

trees at a rate of ¼-inch planted for every 1-inch DBH of Protected Tree removed, using a minimum 3 caliper inch tree. The Applicant is proposing to remove 332 inches DBH of Protected Trees and will plant a minimum of 83 caliper inches. The Applicant is showing 28 native canopy trees at a minimum size of 3 caliper inches as mitigation for the Protected Tree removals. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides.

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 SEP 23 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 Commissioner Rubin, seconded by Vice Chair Verma, with a vote of 5-0; Chair Anderson, Vice Chair Verma, and Commissioners Cichy, Patterson, and Rubin, voting in favor of the motion, at its regular meeting held on Thursday, September 15, 2022, in Wheaton, Maryland and via video conference.



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