

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JAN 11 2023

MCPB No. 22-123  
Forest Conservation Plan No. 11997056C  
Kentsdale Estates Lot 44 and Parcel 495, Block D  
Date of Hearing: December 22, 2022

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

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

WHEREAS on May 28, 1997, the Planning Board approved Preliminary Plan No. 19970560, creating 7 lots on 20.07 acres of land in the RE-2 Zone, off of Willowbrook Drive in the Potomac Subregion Master Plan ("Master Plan") area, which included approval of a Preliminary Forest Conservation for the Property; and

WHEREAS on December 7, 2006, the Final Forest Conservation Plan associated with the Application was approved by Planning Board staff ("Staff"), subject to conditions; and

WHEREAS on July 27, 2010, by Resolution MCPB No. 10-63, the Planning Board approved Preliminary Plan Amendment No. 11997056A to revise conservation easements on Lot 41, Block D of the Kentsdale Estates subdivision; and

WHEREAS on September 19, 2016, by Resolution No. 16-095, the Planning Board approved Preliminary Plan Amendment No. 11997056B to revise conservation easements on Lot 38, Block D of Kentsdale Estates subdivision; and

WHEREAS, on April 12, 2022, Dr. Inder Chawla and Vera Chawla on behalf of Potomac Heritage Trust 2 ("Applicant") filed an application for an amendment to the approved forest conservation plan for an area within the subdivision that covers approximately 9.49 acres of land located at 10423 Willowbrook Drive; and

WHEREAS, Applicant's forest conservation plan amendment application was designated Forest Conservation Plan No. 11997056C, Kentsdale Estates Lot 44 and Parcel 495, Block D ("Forest Conservation Plan," "Application," or "Amendment"); and

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

WHEREAS, following review and analysis of the Application by Staff and other governmental agencies, Staff issued a memorandum to the Planning Board dated December 9, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 22, 2022, the Planning Board held a public hearing on the Application and voted to approve the Forest Conservation Plan, subject to conditions, on motion of Vice Chair Presley; seconded by Commissioner Branson, with a vote of 5-0; Chair Zyontz, Vice Chair Presley, Commissioners Branson, Hill and Piñero voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. 11997056C on the Subject Property, subject to the following conditions:<sup>1</sup>

1. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 11997056C, the Applicant must record a new Category I Conservation 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 Conservation Easement must be in a form 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 before 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 Agreement is recorded.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 11997056C, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easements on Kentsdale Estates Lot 44 and Parcel 495, as recorded on Record Plat No. 23678 and filed among the County Land Records on August 27, 2007, at Book 13178, Page 412 and on August 15, 2007 at Book 34726, Page 201. The Deed of Release must be in a form approved by the M-NCPPC Office of General Counsel and 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 easement is recorded and the forest planting mitigation is satisfied.

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<sup>1</sup> 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.

3. Within ninety (90) days of the mailing of the Planning Board resolution for Forest Conservation Plan Amendment No. 11997056C, 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. A cost estimate must be approved by Staff before submitting the financial security.
4. Within ninety (90) days of the mailing of the Planning Board resolution for Forest Conservation Plan Amendment No. 11997056C, the Applicant must submit fee-in-lieu payment for the 0.07-acre forest conservation planting requirement at the current fee-in-lieu rate.
5. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat of Correction that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat of Correction must be recorded in the Montgomery County Land Records within two hundred ten (210) days of the mailing date of the Planning Board Resolution approving the Amendment.
6. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Forest Conservation Plan Amendment No. 11997056C, 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 treatment and plantings areas specified on the FCP Amendment. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
7. 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.
8. The Applicant must install the plantings as shown on the approved Forest Conservation Plan within six (6) months of the mailing of the Planning Board Resolution approved Forest Conservation Plan Amendment No. 11996056C, or as directed by M-NCPPC Forest Conservation Inspection Staff.

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board

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 reconfigures 0.20 acres of forest conservation area on the Subject Property to resolve a forest conservation easement encroachment violation and provide a level open play area. No sensitive environmental features including streams, stream buffers, wetlands, wetland buffers or floodplains are affected by the Amendment.

The Amendment releases 8,612 square feet (0.20 acres) of existing Category I Conservation Easement (the "Existing Easement"). Three areas of encroachment will be removed from the Existing Easement, including Area "A" – a 27 square feet area of driveway; Area "B" – a 3,219 square feet area of cut and fill, where a rock and waterfall feature was built; and Area "D" – a 796 square feet area of driveway where fill dirt, pavement and lighting was installed. The Amendment also removes 4,570 square feet of the Existing Easement in the northeast corner of the site to allow for a future grass court and play area, which is denoted as Area "C" in the Final Forest Conservation Plan.

The Amendment includes one to one (1:1) onsite mitigation for the areas of the Existing Easement to be release as described above. This mitigation is in compliance with the Planning Board policy for easement removal to receive at least one square foot of forest planting or forest retention onsite for every square foot of forest retention removed (1:1 onsite mitigation rate) or two square feet of forest planting for every one square feet of forest retention removed (2:1 offsite mitigation rate). Specifically, the Amendment provides 8,740 square feet (0.20 acres) of forest retention, as well as restoration planting and new conservation easement markers. The two restoration areas – Restoration Area "A" and Restoration Area "B" – are Category I Conservation Easements that were cut and cleared in the spring of 2020, and this Amendment will restore the affected areas to forest conditions. To resolve the forest clearing violation, the retained areas of forest will be restored and replanted. All turf grass and lighting will be removed from within the Restoration Areas. Sixteen (16) shrubs and eight (8) trees will be planted in Restoration Planting Area "A" and twenty (20) trees and seven (7) shrubs will be planted in Restoration Planting Area B.

Finally, the Amendment releases approximately 4,852 square feet (0.11 acres) of the Existing Easement that was originally recorded in error at the west side of Parcel

495 from conservation easement and the tract area. The Amendment provides 0.07 acres of forest planting via a fee in lieu payment for the loss in tract 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 JAN 11 2023 (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 the motion of Commissioner Hill, seconded by Commissioner Presley, with a vote of 5-0, with Chair Zyontz, Commissioners Branson, Hill, Piñero, and Presley voting in favor of the motion, at its regular meeting held on Thursday, January 5, 2023, in Wheaton, Maryland and via video conference.

  
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Jeffrey Zyontz  
Montgomery County Planning Board

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Forest Conservation Plan Amendment  
No. 11997056C

Kentsdale Estates Lot 44, Block D and  
Parcel 495