

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUN 30 2023

MCPB No. 23-068
Forest Conservation Plan No. F20230150
Strathmore Square Buildings 2 & 5
Date of Hearing: June 22, 2023

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 22, 2023, Fivesquares Development LLC, (“Applicant”) filed an application for approval of a forest conservation plan on approximately 14.72 acres of CR-3.0 C-0.5 R-2.75 H-300 zoned-land located at the Grosvenor-Strathmore Metro Station (“Subject Property” or “Site”) in the *2018 Grosvenor-Strathmore Metro Area Minor Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230150 (“Forest Conservation Plan” or “Application”); and

WHEREAS, the Forest Conservation Plan was submitted in conjunction with Site Plan No. 820230050, Strathmore Square, Building 2 and Site Plan No. 820230070, The Reserve at Strathmore Square (Building 5); 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 June 12, 2023, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June 22, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor, with Commissioner Bartley being absent.

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230150 on the Subject Property, subject to the following conditions:¹

1. The Applicant must schedule the required site inspections with 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 any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must satisfy the remaining half of the reforestation requirement for a total of 3.71 acres of mitigation credit by recording a Certificate of Compliance in the Montgomery County Land Records for 1.855 acres of forest mitigation bank credits in a Montgomery County Planning Department-approved forest mitigation bank in the Rock Creek Watershed. 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 watershed or by making a fee-in-lieu payment if mitigation credits are not available at any bank. The Certificate of Compliance must be in a form approved by the M-NCPPC Office of the General Counsel.
4. 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.
5. Prior to certification of FFCP No. F20230150, the Applicant must add limits of disturbance associated with curb improvements at the WMATA Metro station on the southwest portion of the Site, adjust the forest conservation worksheet, and provide additional mitigation if necessary.

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.*

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

Natural Resource Inventory/Forest Stand Delineation

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for this Site was approved by M-NCPPC staff on November 20, 1998 (NRI/FSD No. 419990610). The Site contains no streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically adjacent steep slopes, or known occurrences of rare, threatened, or endangered species. The Application is in conformance with the *Montgomery County Planning Department's Environmental Guidelines*.

Forest Conservation Plan

This Site has several previously approved Final Forest Conservation Plans (FFCPs). The first FFCPs were associated with Mandatory Referrals for the construction of the WMATA garage and subsequent garage expansion and site improvements, and covered the whole property. The Forest Conservation Mitigation requirements created by the Mandatory Referral actions have already been fulfilled.

The original FFCP for this Site, No. MR2000201, designated the 1.74 acres of retained forest lying east of the parking garage and west of Tuckerman Lane as a Category I Conservation Easement. Even though the Category I Easement was never recorded in the County Land Records, it is still treated as a Category I Easement in the regulatory review. Subsequent to the original approval, 0.10 acres of the retained forest was removed to construct a concrete stairway up to the Metro Parking lot from Tuckerman Lane, leaving 1.64 acres of retained forest. The Planning Board Resolution approved the amended FFCP for Mandatory Referral No. MR2018026 (Resolution MCPB No. 18-063) including a condition requiring that any future plan submission showing removal of this area must replace this forest at a 2:1 ratio, resulting in a requirement for 3.28 acres of off-site forest planting, plus an additional 0.10 acres for the forest previously removed in the area designated as easement, for a total of 3.38 acres of off-site forest planting, or 6.76 acres of existing forest preserved.

Sketch Plan 320190010 was approved in 2018, followed in 2019 by Preliminary Plan 120190180 to redevelop a portion of the property with a mix of residential and non-residential uses.

Preliminary Forest Conservation Plan (PFCP) 120190180 established the preliminary forest mitigation requirements for the new development, and included a variance request for disturbance to variance trees. The Preliminary

Plan added 1.88 acres of off-site disturbance for infrastructure improvements required to serve the new development, plus 0.31 acres for the inclusion of proposed Parcel C with the Preliminary Plan application. These items add 2.19 acres to the net tract area that were not previously accounted for in the prior FFCP approvals, and they resulted in an additional 0.33 acres of reforestation required.

Adding the forest mitigation planting requirement for the new tract area to the mitigation requirement for the Category I Easement removal yields a combined requirement for 3.71 acres of forest planting (or 7.42 acres of forest preservation) in an approved off-site forest conservation bank.

Condition 19 in the Resolution approving Preliminary Plan 120191080 (Resolution MCPB No. 19-065) required that, "Before demolition, clearing or grading on the Subject Property, the Applicant must fulfill half of the Forest Conservation mitigation requirements to obtain 3.71 acres of forest mitigation bank credit by recording a Certificate of Compliance in the Montgomery County Land Records for 1.855 acres of forest mitigation bank credit in a Montgomery County Planning Department-approved forest mitigation bank. The remaining 1.855 acres of forest mitigation bank credits must be provided within one year of the issuance of the first sediment and erosion control permit associated with the second Site Plan approved for the Site. The Certificates of Compliance must be in a form approved by the M-NCPPC Office of the General Counsel." This condition was carried forward by a subsequent PFCP amendment, No. 12019018A.

In 2022, a new FFCP was approved with Site Plan 820220070, covering the requirements of the first phase of development on the Site including providing half of the forest mitigation requirement of 3.71 acres. The Applicant has already purchased the 1.855 acres of off-site banking required under FFCP 820220070.

The FFCP currently under review, F20230150, amends FFCP 820220070 and has been submitted in fulfillment of the Chapter 22A requirements for Site Plan Nos. 820230050 and 820230070. As required by Condition 19 in Resolution MCPB No. 19-065, this FFCP requires that 1.885 acres of off-site forest bank credits be purchased to satisfy the remainder of the forest mitigation requirement on the property.

After F20230150 was submitted for review, the Applicant agreed to construct curb improvements on the WMATA property along the southwestern portion of the property. The additional Limits of Disturbance (LOD) associated with these curb improvements must be shown on the Certified Final Forest Conservation Plan, and additional forest conservation mitigation provided if

necessary. This requirement has been included in the conditions of approval for F20230150.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

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 30 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).

* * * * *

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 Vice Chair Pedoeem, seconded by Commissioner Hedrick, with a vote of 4-0-1; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstained, at its regular meeting held on Thursday, June 29, 2023, in Wheaton, Maryland and via video conference.



Artie Harris, Chair
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