

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 20 2023

MCPB No. 23-089

Forest Conservation Plan No. F20230100

Community Housing Initiative

Date of Hearing: July 6, 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 April 7, 2023, Community Housing Initiative, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 3.78 acres of land located at 16998 Overhill Road, Derwood 20855 ("Subject Property") in the Upper Rock Creek Policy Area and 2004 *Upper Rock Creek Master Plan* area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. F20230100 Community Housing Initiative ("Forest Conservation Plan" or "Application");¹ 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 9, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 6, 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 Bartley, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

¹ Unless specifically indicated otherwise, the Board has reviewed the Preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the Final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the Preliminary Forest Conservation Plan.

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Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230100 on the Subject Property, subject to the following conditions:²

1. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan ("FFCP"). The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
2. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 77 caliper inches. Planting locations must be shown on the FFCP.
3. The Applicant must submit a FFCP for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
4. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

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 Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Application does not propose to clear any existing forest. Based on the land use category, IDA (Institutional Development Area) and the

² 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.

forest conservation worksheet, there is a 0.86 planting requirement generated for the Application.

The Applicant is proposing to plant 0.62 acres of forest onsite within the Stream Valley Buffer. The remaining planting requirement of .024 acres will be met offsite.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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 of eight Protected Trees and CRZ impact to two 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.

Tree impacts were minimized to the extent practicable but grading the site, which has a significant slope from north to south, to current ADA standards to ensure that site elements and community facilities are accessible requires significant earthwork across the site, which impacts the 8 trees proposed for removal. Currently the site has an elevation change of 60 feet from corner to corner from the northern center to the lower corner.

With consideration of the disturbance to rebuild a healthy soil profile, construction of the foundation, and design considerations impacting the trees. The Site could not be developed without Variance tree impacts.

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 removal and impacts of the trees is due to the location of the trees and necessary site design requirements unique to a residential care facility use. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

- 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 which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this specific use.

- 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 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. The FCP proposes to provide mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees. Also, granting of the variance will allow for environmental remediation of the site, as well as planting within the stream valley buffer, which will enhance water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 77 inches with the installation of 26 3-inch caliper trees. No mitigation is required for Protected Trees impacted but retained.

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 JUL 20 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 consistent with the Maryland rules for the judicial review of administrative agency decisions.

* * * * *

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 Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor, at its regular meeting held on Thursday, July 13, 2023, in Wheaton, Maryland and via video conference.



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