

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 26 2023

MCPB No. 23-069
Forest Conservation Plan No. F20230110
Portuguese Community Center
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 June 22, 2015, the Associcao Cultural de Lingua Portuguesa, Inc. (“Applicant”), filed an application for approval of a forest conservation plan on 2.06 acres identified as Lot P1, Block A. The Property will have access from a relocated driveway on Muncaster Mill Road (“Subject Property”) within the 2005 *Olney Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230110, Portuguese Community Center (“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 June 9, 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 Commissioner Linden, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor with Commissioner Bartley absent.

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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 APPROVED Forest Conservation Plan No. F20230110 on the Subject Property, subject to the following conditions:

1. The Applicant must schedule the required site inspections by 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. 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.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a) 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. 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.
 - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c) Install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.84 acres of new forest planting and maintenance, including invasive species management controls.
 - e) Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward 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.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and 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 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 (FCL).

The total net tract area for forest conservation purposes is 2.13 acres which includes the Subject Property of 2.06 acres, plus off-site work of 0.07 acres. The Subject Property is zoned RE-1 and is classified as Medium Density Residential as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Subject Property contains 0.08 acres of forest. The Applicant proposes to remove 0.03 acres of forest and retain 0.05 acres of forest. This results in a total reforestation requirement of 0.41 acres as calculated in the Forest Conservation Worksheet. The Applicant proposes to meet this requirement by planting 0.84 acres of forest on-site. Planting will take place within the stream buffer.

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 CRZ impact to four Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Board finds that denial of the Variance request would cause an unwarranted hardship because the large trees are located on a relatively

small lot that is significantly constrained by a stream flowing across the property. The Subject Property owner proposes to construct a parking lot, a driveway relocation and associated stormwater management. Development is constrained by existing site conditions and the presence of a stream and associated buffer. Although 2.06 acres in size, only about half of the lot is buildable, and avoiding impacts to all Protected Trees is not possible. Trees 2, 5, 9, and 16 are located along the perimeter of the disturbance area and are expected to survive the construction process.

The Board made 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 to impact Trees 2, 5, 9 and 16 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site. These impacts cannot be avoided. Therefore, the 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 on existing site conditions, which include the presence of a stream and associated buffer, and the requirements to meet development standards.

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 proposed improvements, 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. Two of the Protected Trees being impacted will help to stabilize the stream buffer and become part of the stream buffer reforestation area.

Further, granting the Variance will allow the Applicant to install stormwater management facilities on the Subject Property and will not result in the removal of any Protected Trees.

Since no Protected trees will be removed, no mitigation is required.

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 26 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 4-0-1, Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden voting in favor, Commissioner Bartley abstaining, at its regular meeting held on Thursday, July 13, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chairman
Montgomery County Planning Board

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Forest Conservation Plan - F20230110
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