

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-098
Forest Conservation Plan No. F20230180
Wildwood Swim Club
Date of Hearing: September 21, 2023

OCT 05 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 March 28, 2023, Wildwood Manor Swim Club (“Applicant”) filed an application for approval of a forest conservation plan on approximately 4.75 acres of land located at 10235 Hatherleigh Drive (“Subject Property”) in the North Bethesda Garrett Park Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230180, Wildwood Swim Club (“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 September 7, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 21, 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.

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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. F20230180 on the Subject Property, subject to the following conditions:¹

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 certified 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, environmental buffers, and cemetery area 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, including an opening for pedestrian access to the cemetery, along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d) 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. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the

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.

sensitive nature of this watershed. The use of herbicides should be avoided where possible.

- e) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
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 on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 41.5 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.
 6. The Category I Conservation Easement on the Property must include the following provisions, applying only to the area designated on the FCP for protection of the existing cemetery:
 - a) Clearing of plant material (such as brush, saplings, undergrowth, or non-woody vegetation), spreading of mulch within the cemetery area and placement of fencing or markers is permitted as needed to establish an attractive and recognizable burial ground.
 - b) Limited clearing of trees is permitted, subject to the approval of the Planning Director, to establish an attractive and recognizable burial ground and to place fencing or markers. The tree canopy should be maintained to facilitate the continued functioning of the Easement area as forest.
 - c) Placement of appropriate markers, monuments, or signage for the purposes of delineation, acknowledgment, and interpretation of the cemetery is permitted.
 - d) Placement of a fence or erection of a structural improvement for the purposes of delineation and acknowledgment of the cemetery is permitted, subject to the approval of the Planning Director.
 - e) Unpaved paths or trails consistent with the purpose of the Easement are permitted to allow access to the cemetery area.
 7. At the time of Certified Forest Conservation Plan, revise the Forest Conservation worksheet to include 0.04 acres off-site disturbance.

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.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law ("FCL") and the Montgomery County Planning Department's Environmental Guidelines². As required by Chapter 22A, a Forest Conservation Plan was submitted with the Application. The tract area for the Property is 4.75 acres but off-site work totaling 0.04 acres is required to improve the connection to the Hatherleigh Drive and connect to the storm drain system. The Forest Conservation worksheet will be updated to reflect the final acreage of off-site disturbance as required on the Final Sediment and Erosion Control Plan. The updated tract area will not change the forest conservation mitigation required.

The Subject Property is zoned R-90 and is classified as High Density Residential as defined in Section 22A-3 of the FCL and as specified in the Trees Technical Manual. The Subject Property contains 2.09 acres of existing forest. The Applicant proposes to remove 0.65 acres of forest and retain 1.44 acres. The retained forest will be protected within a Category I Forest Conservation Easement. Because the credit for forest retention above the conservation threshold (0.49 acres) exceeds the reforestation requirement (0.16 acres), no mitigation for forest removal is required as calculated in the Forest Conservation Worksheet.

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-21 ("Variance"). Otherwise such resources as

² Based on the initial submittal date for the Subject Application, the Forest Conservation Plan is subject to the Forest Conservation Law in effect prior to April 3, 2023.

defined under Section 22A-12(b)(3) must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 24 Protected Trees as identified in Table 1. No trees will be impacted or removed within the limits of the burial ground. The Variance request is for the removal of 9³ and impact to 15 Protected Trees for the construction of the new pool deck, pavement widening, driveway entrance and utilities. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a Variance to be granted. Staff has made the following determinations in the review of the Variance request and the proposed Forest Conservation Plan.

Table 1: Removed Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
2	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 in.	40%	Remove tree with mitigation
9	Tulip Poplar	<i>Liriodendron tulipifera</i>	45 in.	100%	Remove tree with mitigation
10	Tulip Poplar	<i>Liriodendron tulipifera</i>	43 in.	100%	Remove tree with mitigation
11	Tulip Poplar	<i>Liriodendron tulipifera</i>	38 in.	100%	Remove tree with mitigation
12	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 in.	100%	Remove tree
13	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	100%	Remove tree
14	Tulip Poplar	<i>Liriodendron tulipifera</i>	33 in.	100%	Remove tree
15	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 in.	100%	Remove tree
16	Tulip Poplar	<i>Liriodendron tulipifera</i>	39 in.	100%	Remove tree

³ Five (5) trees identified for removal are located within the forest area, outside the limits of the burial ground. Mitigation for removal of Protected Trees within forest stands is not required because compensation is accounted for through the Forest Conservation Worksheet.

Table 2: Impacted Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
7	White Oak	<i>Quercus alba</i>	36 in.	6%	Save tree
8	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	5%	Save tree
20	Tulip Poplar	<i>Liriodendron tulipifera</i>	37 in.	27%	Save tree
28	Red Oak	<i>Quercus rubra</i>	43 in.	30%	Save tree
32	Red Oak	<i>Quercus rubra</i>	41 in.	13%	Save tree
45	Red Oak	<i>Quercus rubra</i>	38 in.	9%	Save tree
46	Tulip Poplar	<i>Liriodendron tulipifera</i>	38 in.	1%	Save tree
49	Red Oak	<i>Quercus rubra</i>	30 in.	29%	Save tree
53	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 in.	2%	Save tree
54	Red Oak	<i>Quercus rubra</i>	43 in.	13%	Save tree
60	Tulip Poplar	<i>Liriodendron tulipifera</i>	33 in.	10%	Save tree
62	Tulip Poplar	<i>Liriodendron tulipifera</i>	34 in.	2%	Save tree
63	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	2%	Save tree
66	Tulip Poplar	<i>Liriodendron tulipifera</i>	50 in.	1%	Save tree
70	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	17%	Save tree

In accordance with Section 22A-21(a), the Applicant requested a Variance , and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use for a community swim club of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship because the Property has been in service as a community pool for decades and needs to be repaired, refurbished, and brought up to code for Fire Department access and stormwater management.

The work is largely being restricted to the existing developed area of the Property, with limited expansion and disturbance to allow for construction and bringing the Property and facilities up to code. Over the years, large trees have grown up around the pool facilities, with CRZs extending into the construction area. Nine (9) of the variance trees will suffer sufficient CRZ impacts to necessitate their removal. Six (6) of these trees, numbers 9, 10, 12, 13, 14, and 15, lie within an area where stormwater management facilities are to be located. Stormwater facilities must be located where they are downslope of impervious surfaces to be

treated, and outside of stream valley buffers. There are no good options for relocating these facilities to save additional variance trees. Tree number 11 is impacted by parking, stormwater facilities and grading of a steep slope. Tree number 16 is right next to the pool deck that must be replaced and is too close to that construction to be saved. Tree number 2 is impacted by pavement widening required for fire department access. The CRZ of 15 Protected Trees will be impacted, but will be retained. Of these, trees numbered 7 and 8 will be impacted by the required stormwater outfall. Trees 20, 28, 32, 45, 46, 49, 53 and 54 will be impacted by reconstruction of the pool deck. Trees 60, 62, 63, 66, and 70 will be impacted by the pavement widening required for emergency services access. Forest clearing and Protected Tree removal have been minimized, with the majority of the onsite forest and variance trees preserved and protected by a Category I Conservation Easement.

The locations of the existing facilities being refurbished and reconstructed, the proximity of large trees that have grown up around the pool facilities, and the requirements to meet code emergency services access and stormwater management significantly affects the ability of the project to avoid impacts to variance trees. Based on the existing conditions on the Subject Property, avoiding impacts to all variance trees would prevent the reasonable use of the Property, thereby creating an unwarranted hardship for the Applicant.

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 to remove or disturb the Protected Trees listed in Tables 1 and 2 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site, as outlined in the preceding paragraphs. Impacts have been minimized but 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 and the requirements to meet development standards and County Code requirements. As noted above, the need to repair and refurbish existing facilities limits the Applicant's ability consider alternative designs that would avoid impacts to Protected Trees. The Applicant has designed the project to minimize the

impacts to Protected Trees to the extent possible and maximize forest retention.

- 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 the required improvements on the Property, 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 Protected Trees being removed are not located within a stream buffer, wetland, or a special protection area. Mitigation trees will be planted on the Subject Property to replace the lost form and function of Protected Trees being removed.

There are four (4) Protected Trees located outside of forest proposed for removal resulting in a total of 166 inches of DBH being removed. The FCP includes mitigation for Protected Trees numbers 9, 10, 11, and 12, to replace the form and function of these trees. Per Planning Board policy, these trees will be replaced at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper inches in size. This results in a total mitigation required of 41.5 inches. The Applicant is proposing to plant fourteen 3-inch caliper trees to meet this requirement.

Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to the Piedmont Region of Maryland and installed on the Subject Property outside of any rights-of-way and/or utility easements. This Application is subject to the Forest Conservation Law in effect prior to April 3, 2023 therefore no mitigation is required for Protected Trees removed within forest stands.

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 ~~OCT 05 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 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 of the motion, at its regular meeting held on Thursday, September 28, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board

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