

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Mailing Date:

December 20, 2023

MCPB No. 23-129
Forest Conservation Plan No. F20230140
HBKY Ethiopian Church
Date of Hearing: November 30, 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 28, 2023, Mr. Gizachew Tiruneh, (“Applicant”) filed an application for approval of a forest conservation plan on approximately 5.42 acres of land located at 4115 Muncaster Mill Road, Rockville, MD (“Subject Property”) in the Olney Policy Area and the 2005 Olney Master Plan area; and

WHEREAS, Applicant’s forest conservation plan application was designated Preliminary/Final Forest Conservation Plan No. F20230140, HBKY Metmiq Ethiopian Orthodox Tewahedo Church (“FFCP”, “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 November 17, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 30, 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 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230140 on the Subject Property, subject to the following conditions:¹

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.

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 FFCP. Tree save measures not specified on the FFCP 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 FFCP.
4. The Applicant must install the 0.79 acres of Afforestation/Reforestation plantings as shown on the approved FFCP, in the first planting season following the required soil profile rebuilding and stabilization of the applicable disturbed area.
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 FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 25.6 caliper inches, as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
6. 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:
 - a. Record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved 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.
 - b. 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 soil profile rebuilding credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.79 acres of new forest planting, soil profile rebuild, variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
7. Prior to the initial planting acceptance inspection for the required on-site reforestation, the Applicant must install the permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

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 Applicant has submitted a Preliminary/Final Forest Conservation Plan (“FFCP”) No. F20230140 to be reviewed concurrently with the Preliminary Plan No. 120230080. The FFCP satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned RE-1 and assigned a Land Use Category of Institutional Development Area (“IDA”), as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 20% and a conservation threshold of 25% of the Net Tract Area.

The Net Tract Area for forest conservation purposes is 5.42 acres. This includes the original site of 5.00 acres plus 0.41 acres of access right-of-way brought into this Application and 0.01 acres of offsite disturbance. There is a total of 0.29 acres of existing forest on the Subject Property that will be retained which results in a reforestation requirement of 0.79 acres. The Applicant proposes to meet the planting requirement on-site by planting forest in unforested portions of the stream buffer and areas immediately adjacent to the stream buffer. All retained and planted forest will be protected in a Category I Conservation Easement.

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 or CRZ impact to 9 Protected Trees as identified in Tables 1 and 2. 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.

Table 1 – Protected Trees to be removed

Tree Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted
3	<i>Acer saccharinum</i>	Silver Maple	32.0”	Fair	57%
7	<i>Ulmus americana</i>	American Elm	40.5”	Fair	100%
8	<i>Juglans nigra</i>	Black Walnut	30.0”	Fair	100%

Table 2 – Protected Trees to be impacted

Tree Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted
5	<i>Populus grandidentata</i>	Bigtooth Aspen	30.0” and 32.0”	Fair	21%
16	<i>Liriodendron tulipifera</i>	Tulip Poplar	30.0”	Good	5%
22	<i>Liriodendron tulipifera</i>	Tulip Poplar	36.0”	Good	3%
24	<i>Liriodendron tulipifera</i>	Tulip Poplar	54.0”	Good	17%
25	<i>Liriodendron tulipifera</i>	Tulip Poplar	40.0”	Good	22%
26	<i>Acer rubrum</i>	Red Maple	44.0”	Good	29%

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 of three and impacts to six Protected Trees are due to the

development of the Property, location of the trees within the limits-of-disturbance (“LOD”) of the Property and necessary site design requirements for a small property. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting of this variance is not a special privilege that granted only this Applicant and 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, development standards of the zone, location of the trees on the property and necessary design requirements of this Application.

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 proposed site design and layout of the Subject 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 Special Protection Area. At time of the FFCP, mitigation will be proposed for the removal of trees 3, 7 and 8 by planting 9 3-inch caliper, Maryland native overstory trees on-site. These trees will replace the ecological and water quality functions that may be lost by removal of the three specimen trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in 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 approximately 9 3-inch caliper overstory trees native to the Piedmont Region of Maryland. 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

December 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 of the motion, at its regular meeting held on Thursday, December 7, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board

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