

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Mailing Date:

December 20, 2023

MCPB No. 23-115

Forest Conservation Plan No. F2023004A

Olney Theater Centre

Date of Hearing: November 9, 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 May 4, 2023, the Olney Theatre Center (“Applicant”) filed an application for approval of a forest conservation plan amendment on approximately 10.6 acres of land located at 2001 Olney Sandy Spring Road, Olney, MD 20832 (“Subject Property”) in the Olney Policy Area and the 2005 Olney Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan amendment application was designated Forest Conservation Plan No. F2023004A, Olney Theater Centre (“Forest Conservation Plan”, “FFCP” 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 October 27, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 9, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Pedoeem, seconded by Commissioner Hedrick, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor with Commissioner Bartley being absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F2023004A on the Subject Property, subject to the following conditions, which supersede all previous conditions:<sup>1</sup>

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<sup>1</sup> 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 the 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 measures shown on the approved Amended Final Forest Conservation Plan (“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 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) 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 FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - b) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the planting of variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 12 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.<sup>2</sup>
6. 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.<sup>2</sup>
7. At time of Certified FFCP submittal, the Applicant is to address all outstanding comments on the FFCP.

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<sup>2</sup> Unresolved Conditions of Approval from Final Forest Conservation Plan No. 82001002D.

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 Final Forest Conservation Plan Amendment No. F2023004A (“FFCP”) shows forest cover of 1.52 acres on the Subject Property. No forest is proposed to be removed. This results in a reforestation requirement of 0.05 acres. The Applicant has previously met this requirement under the original Final Forest Conservation Plan by protecting 1.52 acres of forest in a Category I Conservation Easement and protecting 0.45 acres of forest in a Category II Conservation Easement. The Applicant submitted a tree variance request with this submittal to impact three protected trees not previously shown to be impacted on previous Final Forest Conservation Plan Amendments.

The Final Forest Conservation Plan No. 820010220 was approved on March 7, 2002 and has been subsequently amended 4 times. A Final Forest Conservation Plan Amendment was submitted for concurrent review with the Site Plan Amendment No. 82001022E. The Application satisfies the applicable requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code, and complies with the Montgomery County Planning Department’s approved *Environmental Guidelines*. This FFCP revises the previously approved limits of disturbance (“LOD”) to provide for minor onsite adjustments for improved utilization of space by removing, relocating and reconfiguring some of the existing structures. The FFCP also shows the currently proposed alterations to the Subject Property as required under Section 22A.00.01.09.B of the Forest Conservation Regulations.

The FFCP does not alter any of the recorded Forest Conservation Easements on the Subject Property or any of the previously approved forest conservation requirements associated with the original FFCP, Plan No. 820010220 or subsequent amendments.

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 CRZ impacts to 3 Protected Trees as identified in Table 1. 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.

*Table1 - Protected Trees to be impacted*

Tree Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted	Status
52	<i>Liriodendron tulipifera</i>	Tulip Tree	48”	Good	8%	Retain
53	<i>Liriodendron tulipifera</i>	Tulip Tree	46”	Good	8%	Retain
55	<i>Quercus velutina</i>	Black Oak	34”	Good	0.04%	Retain

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. To lessen construction impact to the trees, the Applicant redesigned the Project to consolidate two driveways into one driveway, and to locate the new driveway (away from the variance trees) to the south/southwest side of the property. The unwarranted hardship is also caused by the existing site conditions, development standards of the zone, Montgomery County agency requirements, and requirements associated with Master Plan objectives.

Three Protected Trees (Tree Nos. 52, 53 and 55) are being impacted by the limits-of-disturbance (“LOD”) for the project. The CRZs of Tree Nos. 52 and 53 are both impacted by the relocation of six storage containers. This relocation is necessary in order to create area for the new Loading Dock and Storage Building adjacent to the Scene Shop and to provide paved access to the containers from the existing drive on the west side of the Main Stage building. The CRZ of Tree No. 55 is being minimally impacted by the installation of a SWM drainage pipe which is directing storm water runoff from the theatre structures to the existing stream.

The inability to impact these trees would prevent reasonable redevelopment of the layout of the Olney Theatre Center. The six storage containers are being relocated

to the only available area on the Subject Property that can accommodate these items. The inability to move these containers to the proposed location would prevent the expansion of the Production Area and the addition of a new Storage Building connected to the Scene Shop and original Theatre.

Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the redevelopment and layout of the theatre center allowed under the zone, which is a reasonable and significant use of the Property.

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 impacts to trees 52, 53 and 55 are due to the reasonable development of the Property and the location of the trees within the property adjacent to the limits-of-disturbance (“LOD”). Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that is 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, 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 are not located within an environmental buffer or Special Protection Area. The Protected Trees are not being removed, but will have their CRZs slightly impacted. The Protected Trees being impacted will remain to provide the same level of water quality protection as they currently provide. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

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.

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



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