

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

December 22, 2023

MCPB No. 23-137
Forest Conservation Plan No. F20230260
Rock Creek Vista Lot 29, Block B
Date of Hearing: December 7, 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 23, 2023, Laura Reiff and Jeffrey Kozero (“Applicant”) filed an application for approval of a forest conservation plan amendment on approximately 2.98 acres of land located at 17604 Hollingsworth Drive, Derwood, Maryland 20855 (“Subject Property”) in the Rural East Policy Area, 2004 Upper Rock Creek Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan amendment application was designated Forest Conservation Plan No. F20230260, Rock Creek Vista Lot 29, Block B (“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 November 23, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 7, 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 4-0-1; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor, with Commissioner Bartley abstaining.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230260 on the Subject Property, subject to the following conditions, which restate and supersede Condition 1 of the Planning Board’s Opinion approving 120000730, dated July 5, 2001:

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Approved as to
Legal Sufficiency: /s/ Matthew T. Mills
M-NCPPC Legal Department

1. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits. Conditions of approval to include:
 - Approval of five (5) lots as depicted on Forest Conservation Plan dated 3/12/01.
 - Record plat to reflect final delineation of the area dedicated to M-NCPPC (approx. 9.3 acres).
 - All stream valley buffers outside of M-NCPPC dedication to be referenced on the record and shown as ~~Category I~~ *Category I and Category II* conservation easements.
 - Final forest conservation plan to reflect two (2) foot topography within and immediately abutting the established limits of disturbance. Applicant to demonstrate that sediment control for all grading occurring on the lots will be controlled within the defined drainage area (shown on the plan) toward the front (northeast) of the lots.
 - Forest conservation requirements to be met through retention of forest within the M-NCPPC dedication area and the plat recorded stream valley buffers.
2. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. F20230260, the Applicant must record new Category I and a Category II Conservation Easement Agreements reflecting all easement areas as specified on the approved Final Forest Conservation Plan. The new Category I and Category II Conservation Easements must be in forms approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Office of the General Counsel and must be recorded in the Montgomery County Land Records prior to recordation of the Deed of Release of Conservation Easement for the existing conservation easement. The existing Category I Conservation Easement remains in full force and effect until the new Conservation Easement Agreements are recorded.
3. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. F20230260, the Applicant must submit a Deed of Release of Conservation Easement for the existing Category I Conservation Easement on Lot 29, Block B, as recorded on Record Plat No. 22323 pursuant to Category I Conservation Easement Agreement Book 13178 Page 412 and filed among the County Land Records on October 3, 2002. The Deed of Release must be in a form approved by the M-NCPPC Office of General Counsel and recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release shall not be approved by M-NCPPC until the new easements are recorded and the onsite forest planting mitigation is satisfied.
4. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new

Category I Conservation Easement. The Plat must be recorded in the Montgomery County Land Records within 180 days of the mailing date of the Planning Board Resolution approving the amendment to the Site Plan.

5. Within one hundred twenty (120) days of mailing of the Planning Board Resolution approving F20230260, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 0.71 acres of new onsite supplemental planting, planting maintenance, including invasive species management controls, and conservation easement markers.
6. 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.
7. The Applicant must provide invasive species management control measures within the Conservation Easements at the direction of the M-NCPPC Forest Conservation Inspection staff. The cost to control invasive species must be incorporated into the forest conservation financial surety.
8. Within one hundred twenty (120) days of the mailing of the Planning Board Resolution for Final Forest Conservation Plan Amendment No. F20230260, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all planting areas credited towards 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.
9. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the permanent conservation easement markers and/or fencing along the perimeter of the conservation easements, as shown on the FCP, or as approved by the M-NCPPC Forest Conservation Inspector.
10. The Applicant must install the plantings as shown on the approved FCP within six (6) months of the mailing of the Planning Board Resolution approving F20230260, or as directed by 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 Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Article III as it is the result of an enforcement action. The Applicant seeks to resolve the violation by amendment of the Forest Conservation Plan with a limited Preliminary Plan amendment for forest conservation purposes. The Preliminary Plan amendment does not alter the intent of the previous findings, which remain applicable. It is therefore also subject to the Law under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.”

Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations states that “removal of any conservation easement must be reviewed by the Planning Board”. Onsite mitigation of easement removal is generally preferable to offsite mitigation because it provides in-kind replacement for the removal. This is especially true in a Special Protection Area. Therefore, the Applicant proposes to retain the protective elements of a Category II Easement while proposing 4:1 onsite mitigation for the modification. This exceeds the Planning Board’s standard policy of requiring 2:1 offsite mitigation or 1:1 onsite mitigation.

A total of seventy-one (71) trees, twenty-four (24) shrubs, and a native herbaceous groundcover will be planted on the Property as part of this Amendment. These afforestation requirements are consistent with Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations. The Amendment results in a net gain 0.30-acres of Category I Conservation Easement on the property while preserving Category II protections for the 0.10-acre modified area.

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 defined under Section 22A-12(b)(3) must be left in an undisturbed condition. No impacts to high priority trees are proposed by this amendment, therefore no variance was requested or reviewed.

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 22, 2023

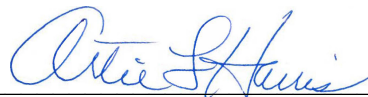
(which is the date that this Resolution is mailed to all parties of record); and

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 Linden, seconded by Vice Chair Pedoeem, with a vote of 3-0-1; Chair Harris, Vice Chair Pedoeem, and Commissioner Linden voting in favor of the motion, Commissioner Bartley abstaining, and Commissioner Hedrick necessarily absent, at its regular meeting held on Thursday, December 14, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board

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