

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

January 12, 2024

MCPB No. 23-126
Forest Conservation Plan No. F20230410
Chevy Chase Lake Block A
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 August 7, 2023, The Chevy Chase Land Company (“Applicant”) filed an application for approval of a forest conservation plan on approximately 1.81 acres of land located at 8550 Connecticut Avenue (“Subject Property”) in the Chevy Chase Policy Area and 2013 Chevy Chase Lake Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230410, Chevy Chase Lake Block A (“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 27, 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 Commissioner Linden, 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. F20230410 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 plant the variance tree mitigation plantings for removed on-site specimen trees on the Subject Property; mitigation plantings for removed off-site specimen trees within the right-of-way may be located within the right-of-way following coordination with the M-NCPPC Forest Conservation Inspector. Minimum planting size of 3-inch caliper totaling 17 caliper inches is required. Planting locations to be shown on the Final Forest Conservation Plan (“FFCP”).
2. Applicant must submit a Final Forest Conservation Plan (“FFCP”) for review and approval with any future development plan for this Subject Property.
3. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

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 Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) 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.” A Preliminary Forest Conservation Plan (“PFCP”) No. F20230410 was submitted for review and approval concurrently with the Preliminary Plan No. 120230110. The total net tract area for forest conservation purposes includes the tract area of 1.81 acres and 0.50 acres of off-site disturbance for a total of 2.31 acres. The Property is within the CRT and CRN zones and is classified as Mixed-Use Development (“MDP”) as defined in Section 22A-3 of the Forest Conservation Law and specified in the Trees Technical Manual. The Property contains no forest, however due to the disturbance proposed and mixed-use classification of the development, there is an afforestation requirement of 0.35 acres as calculated in the Forest Conservation Worksheet. The afforestation requirement will be met off-site in a forest bank or by payment of fee-in-lieu.

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

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 seven Protected Trees as identified in tables 1 and 2 below. 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: Removed Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
28	Pin Oak	31 in.	100%	Remove tree
29	Sweet Gum	34 in.	100%	Remove tree

Table 2: Impacted Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
31	Sweet Gum	31 in.	2.6%	Save tree
34	Red Maple	38 in.	5.5%	Save tree
37	Red Maple	36 in.	0.05%	Save tree
2111	Pin Oak	31 in.	22.8%	Save tree
2136	Pin Oak	45 in.	2.8%	Save tree

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 identified Protected Trees 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, sector plan goals, and County Code requirements. The Applicant has designed the project to minimize the impacts to Protected Trees to the extent possible.

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. Installation of mitigation trees and general site landscaping in line with sector plan goals will likely improve water quality through increased infiltration and uptake of runoff.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees 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 17 inches. The Applicant is proposing to plant 6 3-inch caliper trees to meet this requirement. The final locations of the mitigation trees will be confirmed at the direction of the MNCPPC Forest Conservation Inspector. 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:

January 12, 2024

(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, January 11, 2024, in Wheaton, Maryland and via video conference.



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Chevy Chase Lake Block A, Preliminary
Plan Application No. 120230110, and
Forest Conservation Plan No.
F20230410