

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

January 31, 2024

MCPB No. 24-003

Forest Conservation Plan No. F20240120

4910-4920 Strathmore Final Forest Conservation Plan

Date of Hearing: January 18, 2024

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on September 20, 2023, SAH Homes Associates LLC, c/o EYA Development LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 39.46 acres of land located at 4910-4920 Strathmore Avenue, Kensington, MD (“Subject Property”) in the Red Policy Area and 1992 North Bethesda/Garrett Park Master Plan area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240120, 4910-4920 Strathmore Avenue Final Forest Conservation Plan (“Forest Conservation Plan” or “Application”);¹ 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 January 5, 2024 providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 18, 2024, 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 4-0; Commissioners Bartley, Harris, Hedrick, and Linden voting in favor, with Commissioner Pedoeem absent.

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board’s action is with regard to the preliminary Forest Conservation Plan.

Approved as to

Legal Sufficiency: /s/ Matthew T. Mills

M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240120 on the Subject Property, subject to the following conditions:²

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. Before certified Final Forest Conservation Plan (FFCP), the Applicant must make the following technical corrections to the plans:
 - a. In the Forest Conservation Summary table, Correct the Proposed Forest Planting (Category I Easement) to 2.17 Acres; correct the Total Credits to 3.25 Acres, and correct the Remaining Requirement (or Excess Planting Provided) to -0.30 Acres.
 - b. In the Afforestation Summary table, correct the Total Reforestation/Afforestation to 3.25 acres.
 - c. In the Proposed Replacement Trees table, correct the Total Mitigation Inches to 108.
3. Before certified FFCP, the Applicant must add a planting plan showing numbers of trees and shrubs by species to be planted in the Category I and Category II Easement areas to fulfill the afforestation/reforestation planting requirement.
4. 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.
5. Before start of any clearing or grading not associated with the demolition of the existing building on the property, or new construction for this development Application, whichever comes first, the Applicant must record the Category I and II Conservation Easements over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I or II Conservation Easements 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.
6. Before start of any clearing or grading not associated with the demolition of the existing building on the property, or new construction for this development Application, whichever comes first, 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 3.00 acres of new forest planting and for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
7. Before initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation

² 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.

easement signage and fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

8. Before start of any clearing or grading not associated with the demolition of the existing building on the property, or new construction for this development Application, whichever comes first, the Applicant must 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 sensitive nature of this watershed. The use of herbicides should be avoided where possible.

9. The Applicant must install the Afforestation/Reforestation plantings for Planting Areas outside of the limits of disturbance (“LOD”) as shown on the approved FCP, 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 warranty period for these plantings will commence upon M-NCPPC inspector’s approval and acceptance.

10. The Applicant must install the Afforestation/Reforestation plantings for Planting Areas inside the LOD, as shown on the approved FCP, in the first planting season following stabilization of the applicable disturbed area. The warranty period for these plantings will commence upon M-NCPPC inspector’s approval and acceptance.

11. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 108 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.

12. The Applicant must install the mitigation tree plantings, as shown on the approved FCP, in the first planting season following stabilization of the applicable disturbed area or completion of the nearest associated building or open space area, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

13. 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.

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.*

Forest Conservation

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

A. A Preliminary Forest Conservation Plan (PFCP No. H-143) was approved with Local Map Amendment (LMA) No. H-143 on May 19, 2022. The PFCP included a variance approval to remove twelve (12) trees and to impact, but retain, an additional three (3) trees covered by the variance provision of Section 22A-12(b)(3) of the Forest Conservation Law. The PFCP covers the entire Site that was subject to the LMA, including the 15.36-acre area under this Site Plan and the remaining property that is being retained by the Holy Cross Academy. The net tract area covered by the PFCP is 39.46 acres.

A Final Forest Conservation Plan (FFCP) was previously approved with the Preliminary and Site Plans (FFCP No. 820220220). This FFCP covered the entire property under the PFCP. The Net Tract Area for the FFCP, including off-site disturbance related to the development, was 40.45 acres. Of the existing 4.06 acres of on-site forest cover, 3.59 acres were preserved in easements, and 0.47 acres of forest was cleared or counted as cleared to construct the proposed development. The total amount of forest mitigation required was 2.95 acres.

An amendment to FFCP No. 820220220 was submitted for review with Preliminary Plan Amendment 12022016A and Site Plan Amendment 82022022A. Designated FFCP F20240120, the amended FFCP responds to the changes in the number and types of residential units on the site. Due to minor adjustments in gross tract area and amount of off-site disturbance, FFCP F20240120 has a Net Tract Area of 40.44 acres. There are still 3.59 acres of forest being retained in easements and 0.47 acres of forest being removed. The amount of forest mitigation required remains at 2.95 acres.

The Applicant proposes to plant 3.25 acres on-site and apply the extra 0.30 acres (13,068 square feet) of plantings as enhanced forestation for mitigation for proposed stream buffer encroachments, as noted earlier in this staff report. A Category I Conservation Easement will be recorded over 2.17 acres of the new forest plantings. A Category II Conservation Easement will be recorded over the remaining 1.08 acres of new forest plantings to allow for maintenance required to control invasive species.

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.

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. In this case, the Subject Property is constrained by the stream valleys on its eastern and western sides. Retention of the existing school and its access further limits development. The unwarranted hardship is caused by the necessary layout of the proposed development on the Subject Property, which is dictated by the existing site conditions, development standards of the zone, Montgomery County agency requirements, and requirements associated with Master Plan objectives. Tree number No. 141 is impacted by grading required to tie into the adjacent lot, by grading required to construct the natural surface trail, and by the addition of a required stormwater outfall. These impacts have been minimized to the extent feasible. Tree No. 199 is impacted by the expansion of the LOD to tie in a new section of sidewalk to the existing walk. Trees No. 149, and 151 are impacted by required sidewalk and frontage improvements and by a new turn lane required within the Strathmore Avenue right-of-way. Tree 105 is newly impacted by grading required for the construction of the townhouses now planned for the northeast corner of the property. The inability to impact these trees would prevent completion of grading, infrastructure and amenities required to build this project. Therefore, there is a sufficient unwarranted hardship to justify a variance request because approval of the project is contingent on the provision of infrastructure and amenities required by the Planning Department and other County agencies. Denying the variance would therefore deny the Applicant a reasonable and significant use of the Property.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

This Application will require increases to the CRZ impact of three Protected Trees already approved for impact under a previous variance, and minor impacts to two previously unimpacted trees as identified in the Staff Report. 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.

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 and disturbance to the specified trees are due to the development of the Property, location of the trees and necessary site design requirements. Granting a variance to allow disturbance within the Site to meet the development requirements of the Planning Department and various County agencies is not unique to this Applicant. With the data presented, it is concluded that 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 upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application, including street frontage improvements.

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 original variance approval granted under PFCP No. H-143 required mitigation tree plantings for Protected Trees being removed. Tree 141 in the amended variance submitted with this FFCP was already approved for removal and included in the requirement to provide mitigation trees for trees removed. The mitigation

trees will replace water quality functions that may be lost by the removed trees. The Protected Trees being impacted but saved will continue 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.

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 one inch caliper planted for every four diameter inches removed, using planting stock of no less than 3 inches caliper. 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 31, 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 Commissioner Linden, with a vote of 4-0-1 Chair Harris, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, Vice Chair Pedoeem abstaining, at its regular meeting held on Thursday, January 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board

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4910/4920 Strathmore: Preliminary
Plan Amendment No. 12022016A, Site
Plan Amendment No. 82022022A,
Forest Conservation Plan No.
F20240120