

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

February 12, 2024

MCPB No. 23-119  
Forest Conservation Plan No. F20230420  
Tregoning Property  
Date of Hearing: November 16, 2023

## **CORRECTED RESOLUTION**

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

WHEREAS, on June 6, 2023, ESC Tregoning LC (“Applicant”) filed an application for approval of a Preliminary Forest Conservation Plan on approximately 37.85 acres of land located at Parcels 104 and 617 (“Subject Property”) located southwest of the intersection of Kings Valley Road and Preakness Drive in Clarksburg, MD in the Rural East Policy Area and the 1994 Clarksburg Master Plan and Hyattstown Special Study Area; and

WHEREAS, Applicant’s forest conservation plan application was designated Preliminary Forest Conservation Plan No. F20230420, Tregoning Property (“Forest Conservation Plan” or “Application”);<sup>1</sup>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 3, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 16, 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, Commissioner Bartley, Hedrick and Linden voting in favor.

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<sup>1</sup> Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan. The Final Forest Conservation Plan will be submitted in conjunction with the Site Plan in accordance with Sec. 22A-11(b)(2) of the Forest Conservation Law. Therefore, for purposes of this Resolution, whether or not indicated, the Board’s action is with regard to the Preliminary Forest Conservation Plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Forest Conservation Plan No. F20230420 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. The Applicant must comply with the following conditions of approval for the Preliminary Forest Conservation Plan No. F20230420 (“PFCP”), as approved in conjunction with the Preliminary Plan of Subdivision:
  - a. The Applicant must obtain approval of a Final Forest Conservation Plan (“FFCP”) before submitting a record plat for review or obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
  - b. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.
  - c. 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 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.
  - d. Before Certified Preliminary Forest Conservation Plan approval, the Applicant must remove the proposed 20-foot-wide sewer line easements through the stream valley buffer shown on the PFCP on Parcel 617 and record a Category I Conservation Easement over the entirety of the stream valley buffer exclusive of the AT&T right-of-way. Before Certified Preliminary Plan and Certified PFCP approval, the Applicant, with approval from Staff, may show an illustrative alignment for the sewer line through the stream buffer with the label “Potential sewer alignment shown for illustrative purposes to be finalized at the time of development application for Parcel 617. The final alignment and sewer line easement, with minimal disturbance to the stream buffer and associated forest, will be determined at the time of development application for Parcel 617, and the overlapping Forest Conservation Easement will be removed and mitigated onsite.
  - e. At the time of the Certified Preliminary Forest Conservation Plan submittal, the Applicant is to remove the Category I Conservation Easements over Reforestation Areas P-1 and P-2.
  - f. At the time of the Certified Preliminary Forest Conservation Plan submittal, the Applicant must address all outstanding Staff comments on the PFCP.

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<sup>2</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.

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 Forest Conservation Plan No. F20230420 (“PFCP”) for concurrent review with the development plan application for a Preliminary Plan of Subdivision Plan No. 120230120. Residential development is occurring only on Parcel 104. While Parcel 617 is part of the overall application, it is only being used to extract and transfer residential density to Parcel 104. The Application retains the development rights for 2 market-rate units on Parcel 617 for future development. The Application 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 is assigned a Land Use Category of Cluster Medium Density Residential (“CDR”) 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 45% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 37.85 acres of Total Tract Area plus 0.38 acres of offsite disturbance associated with this Application and minus 1.24 acres of land dedication for rights-of-way, resulting in a total net tract area of 36.99 acres. There is a total of 2.95 acres of existing forest on the Subject Property with the Applicant proposing to remove 0.14 acres of forest. This results in a total afforestation/reforestation requirement of 4.57 acres within the same watershed/Priority Area or 4.64 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement by reforesting the 6.93 acres of unforested stream valley buffer as required under Sec. 22A-12(e)(1)(B) 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 CRZ impacts to 4 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.

Table 1 – Protected Trees to be impacted

Tree Number	Botanical Name	Common Name	Size DBH	Tree Condition	% CRZ Impacted	Status
9	<i>Quercus montana</i>	Chestnut Oak	36”	Good	5%	Retain; impacts only; off-site tree
14	<i>Liriodendron tulipifera</i>	Tulip Poplar	30”	Good	1%	Retain; impacts only
21	<i>Acer rubrum</i>	Red Maple	30”	Good	9%	Retain; impacts only
31	<i>Liriodendron tulipifera</i>	Tulip Poplar	36”	Good	12%	Retain; impacts only

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 the 4 trees are due to the development of the Property, location of the trees in proximity to the limits-of-disturbance (“LOD”), and necessary site design requirements for this residential development. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the Board finds that the granting of this variance is not a special privilege that is granted only to 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 that are being impacted, but not removed, are not located within a stream buffer, wetland or Special Protection Area. These trees being impacted are fully expected to recover and to continue providing the ecological and water quality functions that may be initially reduced by the impacts of the Protected Trees. Therefore, the Board finds that 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 Corrected Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Corrected Resolution remains **December 27, 2023**, (which is the date that the original Resolution was 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 corrected 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 3-0, Chair Harris, Vice Chair Pedoeem, and Commissioner Hedrick, voting in favor of the motion, Commissioners Bartley and Linden necessarily absent, at its regular meeting held on Thursday, February 8, 2024, in Wheaton, Maryland and via video conference.



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Artie L. Harris, Chair  
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