

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 6, 2024

MCPB No. 24-022

Forest Conservation Plan No. F20240250

12500 Ardennes Avenue

Date of Hearing: February 22, 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 November 1, 2023, Twinbrook Ardennes Owner LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 1.32 acres of land located at 12500 Ardennes Avenue (“Subject Property”) in the 2009 *Twinbrook Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240250, 12500 Ardennes (“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 February 9, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 22, 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; Chair Harris, Vice Chair Pedoem, Commissioners Hedrick and Linden voting in favor. Commissioner Bartley was absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240250 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 schedule the required site inspections by 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 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.
3. 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.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Rock Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 0.23 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Lower Rock Creek watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
 - b) 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.
 - c) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the variance mitigation trees required for meeting the requirements of the FCP.
5. 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 FCP. Adjustments to the planting locations of these trees is permitted with the approval of the 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 Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. The Forest Conservation Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law², as conditioned and described below.

Natural Resource Inventory/Forest Stand Delineation Plan

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved on November 1, 2023 (NRI/FSD No. 420240550). The Property contains no streams or stream buffers, wetlands or wetland buffers, hydraulically adjacent steep slopes, 100-year floodplains, or known habitats of Rare, Threatened and Endangered species. This Property drains to the Lower Rock Creek, which is a Maryland State Use Class I stream. This watershed is not in a Special Protection Area. The submitted Site Plan is in conformance with the Montgomery County Planning Department's Environmental Guidelines.

Forest Conservation Plan

A combined Preliminary/Final Forest Conservation Plan for this Property was approved with Site Plan No. 820200080, but the approvals expired in August 2022 because a Certified Site Plan was not submitted within the required timeframe. Final Forest Conservation Plan ("FFCP") No. F20240250 was submitted for review and approval concurrently with Site Plan No. 820240060.

The total net tract area for forest conservation purposes includes the tract area of 1.30 acres and 0.26 acres of off-site disturbance for a total of 1.56 acres. The Property is zoned CR-2.0, C-1.5, R-2.0, H-145T and is classified as Mixed-Use Development ("MDP") as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. There is no forest existing on the Property. Based on the net tract area of 1.56 acres and the CR zoning designation, development of this Property will result in an afforestation requirement of 0.23 acres. The

² Based on the initial submittal date for the Subject Application, the Forest Conservation Plan is subject to the Forest Conservation Law in effect on April 3, 2023.

afforestation requirement will be met off-site in a forest bank or by payment of fee-in-lieu.

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 of one Protected Tree – a 35.6-inch diameter breast height (DBH) crabapple (*Malus angustifolia*). This tree has been recognized as the National Champion crabapple tree by American Forests. 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. In this case, the Protected Tree is located close to the existing development and will be significantly impacted during the demolition process. Any new development, with associated site work, would cause even greater impacts. Leaving the Protected Tree in an undisturbed state would deny the Applicant reasonable and significant use of its Property for a residential project.

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.*

Removal of the crabapple is not a special privilege that would be denied to other applicants. The tree is in very poor condition and will be significantly impacted by the demolition of the existing building. Given the rapid decline of the tree, the viability of the tree is questionable, even without any construction activities.

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, the location of the tree, and the need for additional right-of-way dedication for Twinbrook Parkway, pushing the public utility easement and necessary sidewalk safety improvements to within a few feet of the trunk of the tree, all within the critical root zone.

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 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 Tree being removed is 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 Tree being removed.

Mitigation for Trees Subject to the Variance Provisions

The FFCP includes mitigation for the removal of the 35.6-inch DBH crabapple. Per Planning Board policy, replacement is required 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 would require the planting of 9 caliper inches of native trees to replace the Protected Tree. The Applicant is proposing to plant five (5) native trees to mitigate for the loss of the 35.6-inch crabapple.

The Planning Board approves the variance request.

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

March 6, 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 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, February 29, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
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12500 Ardennes
Sketch Plan No. 32018020A
Site Plan No. 820240060
Forest Conservation Plan No.
F20240250