

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 12, 2024

MCPB No. 24-018

Forest Conservation Plan No. F20230450

**12700 Travilah Road**

Date of Hearing: February 15, 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 June 7, 2023, 12700 Travilah Road, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 16.03 acres of land located at 12700 Travilah Road, Rockville, MD 20854 (“Subject Property”) in the Rural West Policy Area and the Potomac Subregion 2002 (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Preliminary/Final Forest Conservation Plan No. F20230450 (“FCP”, “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 1, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 15, 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 Vice Chair Pedoeem, 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. F20230450 on the Subject Property, subject to the following conditions:<sup>1</sup>

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<sup>1</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.

1. The Applicant must comply with the following conditions of approval for the Preliminary/Final Forest Conservation Plan No. F20230450:
  - a. 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.
  - b. 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.
  - c. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
  - d. 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. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 98 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.
  - e. 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:
    - i. 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.
    - ii. 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 tree plantings and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
    - iii. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Potomac watershed or Priority Area to satisfy the reforestation requirement of 3.17 acres of mitigation credit. If no off-site forest banks exist within the Lower Potomac watershed or Priority Area, then the off-site requirement may be met by purchasing 3.17 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Lower Potomac watershed or Priority Area, subject to Staff approval. If forest

mitigation bank credits are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC for the appropriate mitigation credits subject to Staff 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/Final Forest Conservation Plan F20230450 (“FCP”) for concurrent review with the development plan application for a Preliminary Plan of Subdivision No. 120220120. 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-2 and is assigned a Land Use Category of Medium Density Residential (“MDR”) 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 35% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 16.03-acre Total Tract Area plus 0.31 acres of offsite disturbance associated with this Application and minus 0.48 acres of land dedication for rights-of-way, for a total net tract area of 15.86 acres. There is no existing forest on the Subject Property. This results in a total afforestation/reforestation requirement of 3.17 acres either within the same watershed/Priority Area or outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement by purchasing credits from an offsite forest bank within the Washington Metropolitan watershed or another watershed if no credits are available within this watershed. If no forest bank credits are available in any forest bank within Montgomery County, then the Applicant will make a fee-in-lieu payment to M-NCPPC.

The Subject Property contains approximately 1,753 square feet of an unforested and treeless stream valley buffer in the northwest corner of the Property that is associated with an off-site stream located about 70-feet to the west. A Category I Conservation Easement was recorded on neighboring property located at 12644 Travilah Road under plan number SC2003007 which was placed over the stream buffer on that property. There is 30-foot-wide pipestem belonging to the property located at 13116 Brushwood Way that leads out to Travilah Road separating the stream buffer on the Subject Property from the existing conservation easement at 12644 Travilah Road. There are no immediately adjacent Category I Conservation Easements in the proximity of the stream valley buffer on the Subject Property.

Under typical circumstances a Category I Conservation Easement would be required to be placed over any stream valley buffer since these are protected entities under 22A-12(b)(2) of the Forest Conservation Law (“FCL”) and Sec. 22A.00.08.E(2) of the Forest Conservation Regulations (“FCR”), and reforested in accordance with Sec. 22A-12(e)(1)(B). However, in this case, the Board determined that it was inappropriate to place a Category I Conservation Easement over the 1,753 square foot stream valley buffer on this property for two reasons. First, this easement would be considered an isolated standalone easement since it is not immediately adjacent to or connected to any existing conservation easements. This isolation would make the easement difficult to enforce and protect. Second, reforesting the small easement would not meet the size or dimensional requirements for a forest as specified under Sec. 22A-3 of the FCL and Sec. 22A.00.01.08.D of the FCR and thereby would not typically be saved under normal circumstance and would not be given afforestation credit. Given these two reasons, the Board determined, not to place a Category I Conservation Easement over this small 1,753 square foot on-site stream buffer. However, a portion of the variance tree mitigation plantings are proposed to be placed within this stream buffer area.

#### 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 impacts to 14 Protected Trees as identified in the Staff Report. The Application proposes to create seven buildable residential lots for the construction of seven single-family detached homes. Each lot is approximately two acres with a small community area in the

center of a proposed cul-de-sac. The Applicant also proposes a six-foot sidewalk with a six-foot-wide street buffer on the western side of the new proposed public street, as well as around the cul-de-sac. An eleven-foot sidepath with a six-foot street buffer is proposed along the Property's entire frontage on Travilah Road. 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.

Given that the Subject Property is 16.03 acres located in the RE-2 zone, a reasonable and significant use of the property is to subdivide the property into approximately 7 to 8 residential lots pending compliance with all other applicable laws and ordinances. In this case, the unwarranted hardship is caused by the combination of the necessary layout of the proposed development on the Subject Property which is dictated by the existing site conditions, development standards of the zone and Montgomery County agency requirements combined with the location of the Protected Trees.

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 and the removal of 10 trees are due to the development of the Property, location of the trees within the limits-of-disturbance ("LOD") of the Property and necessary site design requirements for a small property. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that granted only 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. There is no reasonable alternative configuration of the lot layout that would result in the saving of the Protected Trees.

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 being removed are not located within a stream buffer, wetland or Special Protection Area. At time of the FFCP, mitigation will be proposed for the removal of these trees by planting 33 3-inch caliper, Maryland native overstory trees on-site. These trees will replace the ecological and water quality functions that may be lost by removal of the Protected Trees. 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 1-inch caliper for every 4 inches removed and planted trees that are a minimum of 3-inch caliper in size. 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

March 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.

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**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 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor at its regular meeting held on Thursday, March 7, 2024, in Wheaton, Maryland.



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