

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 6, 2024

MCPB No. 24-019

Forest Conservation Plan No. F20230270

Amalyn Bethesda

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 August 16, 2023, Toll Brothers Inc. (“Applicant”) filed an application for approval of a forest conservation plan on approximately 74.83 acres of land located Northeast quadrant of the intersection of Greentree Road and Interstate 495 in the 1990 North Bethesda/Garrett Park Master Plan area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20230270, Amalyn Bethesda (“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 Vice Chair Pedoeem, seconded by Commissioner Hedrick, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor and Commissioner Bartley absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230270 on the Subject Property, amending and replacing Forest Conservation Plan No. 820170170.¹ All site development elements shown on the latest electronic version of the Forest Conservation Plan, as of the date of this Staff Report submitted via ePlans

¹ This is a cumulative list of conditions, which replaces all previous conditions of approval.

Approved as to

Legal Sufficiency: /s/ Allison Myers

M-NCPPC Legal Department

to the M-NCPPC, are required except as modified by the following conditions, which restate and supersede Condition 10 of the Planning Board Resolution MCPB No. 18-124, approving Site Plan No. 820170170, dated January 15, 2019:²

1. 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.
2. The Applicant must record a Category I Conservation Easement over all areas of forest retained and forest planted prior to any demolition, clearing, or grading on the Property. The Category I Conservation Easement must be approved by the M-NCPPC Office of the General Counsel and recorded by deed among the Land Records and referenced by liber and folio on the record plat.
3. The Applicant must schedule the required site inspections with M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
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. The Applicant must submit financial surety for planting 0.74 acres of forest and obtain M-NCPPC approval of a two-year maintenance and management agreement prior to any demolition, clearing, or grading on site.
6. The Applicant must plant all reforestation within one year of construction completion.
7. The Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for 8.38 acres of mitigation credit prior to the start of any clearing, grading, or demolition occurring on the Property.
8. The Certificate of Compliance to use an off-site forest mitigation bank must be recorded in the Land Records prior to any clearing, grading, or demolition occurring on the Property.
9. The Applicant must plant a total of 33 caliper inches of native canopy trees as mitigation for the removal of five (5) trees subject to the variance provision. The minimum planting stock size must be no less than three (3) caliper inches. The trees must be planted on the Property, as shown on the Final Forest Conservation Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector. The trees must be planted within one year of construction completion.
10. Prior to any demolition, clearing, grading or construction for the sound wall as shown on this plan, the Applicant must satisfy the reforestation requirement of 0.48 acres of forest

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.

planting by recording a Certificate of Compliance in the Montgomery County Land Records for 0.48 acres of forest mitigation bank credits in a M-NCPPC approved offsite forest bank or by making a fee-in-lieu payment if mitigation credits are not available at any bank. The Certificate of Compliance must be in a form approved by the M-NCPPC Office of the General Counsel.

11. 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 33 caliper inches and located outside of any right-of-way or utility easements, including stormwater management easements, 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 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 33 caliper inches of variance tree mitigation plantings.
13. 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 33 caliper inches of variance mitigation trees required for meeting the requirements of the FCP.

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 amendment for forest clearing to allow for the installation of the revised noise wall. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees.

Forest Conservation Plan No. F20230270 shows an additional 0.34 acres of forest clearing. The cleared forest is within the SHA right-of-way for I-495. The Property is zoned R-90 and is classified as High Density Residential (“HDR”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual.

There is a 0.48-acre reforestation requirement as calculated in the Forest Conservation Worksheet. Clearing associated with Site Plan No. 820170170 generated a 0.74-acre reforestation requirement, which was previously met in an off-site mitigation bank.

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 five (5) Protected Trees as identified in the staff report. The Variance request is for the removal of four (4) and impact to one (1) Protected Trees for the construction of the concrete panel and steel post noise wall. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a Variance to be granted.

The Planning Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use for the redevelopment of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship because the Applicant is required to build a specific type of noise wall to mitigate the transportation noise of I-495. Additionally, the Applicant has coordinated with the Maryland Department of Transportation Public-Private Partnership team working on the I-495 and I-270 Managed Lanes Study to propose a sound wall design that is acceptable to SHA and can also accommodate the possible expansion of I-495 in the future. If the Applicant was not allowed to impact the Protected Trees, the Applicant would not be able to mitigate the transportation noise as required by Condition 11.c.iii of Site Plan No. 820170170.

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.*

The Applicant designed a noise wall with fewer impacts on the existing forest and trees however this technology was not allowed by the SHA. The increased disturbance and impacts to Protected Trees are required by the need to use a concrete panel and steel post noise wall design, as required by the SHA.

Granting the Variance to remove or disturb the Protected Trees listed will not confer a special privilege on the Applicant as the impacts are due to the necessary disturbance to construct the noise wall. 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 and maximize forest retention.

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 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.

Mitigation for Trees Subject to the Variance Provisions

The FCP includes the removal of 132 inches of DBH of Protected Trees. Per Section 22A-21(e), the Applicant is planting mitigation trees at a ratio of 1 caliper inch replaced for every 4 of trunk diameter removed, in addition to other forest planting and landscape credit plantings. Additionally, these trees will be located outside of utility and stormwater management easements and rights-of-way. The Applicant will plant 33 inches of native canopy trees, using a minimum size of 3-inch caliper tree.

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
Montgomery County Planning Board

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Conservation Plan No. F20230270