

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 20, 2024

MCPB No. 24-031  
Forest Conservation Plan No. F20240210  
WAWA Burtonsville  
Date of Hearing: February 29, 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 25, 2023, Dong Ya LLC & Hong Cheng LLC (“Applicant”) filed an application for approval of a forest conservation plan, filed concurrently with Special Exception Major Modification S-847-B, on approximately 3.37 acres of land located at 15585 Old Columbia Pike (“Subject Property”) in the Burtonsville Policy Area and Burtonsville Crossroads Neighborhood Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240210, WAWA Burtonsville (“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 16, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 29, 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 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. F20240210 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 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 (“FCP”). Tree save measures not specified in 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 approved 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 a Category I Conservation Easement over all areas of forest retention as specified on the approved Final Forest Conservation Plan. 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.
  - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - d) 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.
  - e) 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, fencing, easement markers, and maintenance 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. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 13 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.

6. Certified Forest Conservation Plan

Before approval of the Certified Forest Conservation Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a) Revise the Final Forest Conservation Plan to show 13 caliper inches of mitigation plantings.
- b) Show split rail fencing or equivalent along the eastern border of the Category 1 Conservation Easement.
- c) Show permanent conservation easement signage along the perimeter of the Category 1 Conservation Easement.

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 Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.” A Final Forest Conservation Plan (“FFCP”) No. F20240210 was submitted for review and approval concurrently with the Special Exception Major Modification S-847-B. The total net tract area for forest conservation purposes includes the tract area of 3.37 acres. The Property is within the CRT zone and is classified as Mixed-Use Development (“MDP”) as defined in Section 22A-3 of the Forest Conservation Law and specified in the Trees Technical Manual. The Property contains 0.38 acre of forest; therefore, due to the disturbance proposed and mixed-use classification of the development, there is an afforestation requirement of 0.42 acres as calculated in the Forest Conservation Worksheet. There is an offsite afforestation requirement of 0.83 acres within the same Watershed or Priority

Area and, conversely, 0.97 acres outside of the Watershed or Priority Area as calculated in the Forest Conservation Worksheet. The Applicant proposes to meet this requirement by reforesting 0.42 acres on-site in a Forest Conservation Easement Category I, and taking the balance of the reforestation requirement, either 0.41 acres or 0.55 acres, to an M-NCPPC approved off-site forest bank

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

**B. Forest Conservation Variance**

The Applicant submitted a variance request in a letter dated February 4, 2023 in conjunction with Special Exception Major Modification No. S-847 B. Based on the tables in the request, the Applicant proposes to impact one (1) tree and remove or potentially remove one (1) tree, both of which are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

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.

*Table 1: Removed Protected Tree*

<b>Tree ID</b>	<b>Common Name</b>	<b>DBH</b>	<b>% Impact</b>	<b>Status</b>
1	White Oak	52	43%	Remove

*Table 2: Impacted Protected Tree*

<b>Tree ID</b>	<b>Common Name</b>	<b>DBH</b>	<b>% Impact</b>	<b>Status</b>
3	White Oak	35	29%	Save

Per Section 22A-21, a variance may only be granted 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 unwarranted hardship results from the existing small refilling station and retail store, and the Sector Plan endorses infrastructure improvement by continuing to improve building facades. The project is carefully designed to balance protection of the natural resources and improving stormwater management with the site project. Such improvements recommended by the Sector Plan (which is a reasonable and significant use of the Property) would not be possible without impacts and removal of subject

trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

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 to remove or disturb the Protected Trees listed in Tables 1 and 2 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site. Impacts have been minimized but cannot be avoided due to the required right-of-way improvements, utility work, and construction associated with the proposed development. 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.

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 required improvements on the 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 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. Installation of mitigation trees and general site landscaping in line with sector plan goals will likely improve water quality through increased infiltration and uptake of runoff.

The Applicant proposes to impact Tree #3 and remove Tree #1 that are both 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. The Applicant will be required to mitigate the 52 diameter-inches of protected trees to be removed with mitigation plantings of at least 13 caliper-inches. In this case, the Applicant proposes to plant approximately 5 trees of 3-inch caliper. Additionally, no mitigation is required for trees that are 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 20, 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 4-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley necessarily absent, at its regular meeting held on Thursday, March 14, 2024, in Wheaton, Maryland and via video conference.



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Growing East County

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