

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

**April 23, 2024**

MCPB No. 24-030

Forest Conservation Plan No. F20230390

**Brickyard Estates**

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 June 2, 2023, AMT Development, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 6.66 acres of land located at 7601 Brickyard Road, Rockville, MD 20854 (“Subject Property”) in the Potomac Policy Area and the 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Preliminary/Final Forest Conservation Plan No. F20230390, Brickyard Estates (“FFCP” “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. F20230390 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 Regulation.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP 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 recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for the accompanying Administrative Subdivision Application, the Applicant must:
  - a) 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.
  - b) Install permanent conservation easement fencing and signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - c) 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 FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - d) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 1.62 acres of new forest planting, mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. The Applicant must install the Afforestation/Reforestation plantings for the 1.62-acre planting area as shown on the approved FFCP, 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.
6. 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 FFCP. The variance tree mitigation plantings must be a

minimum size of 3 caliper inches totaling 66.25 caliper inches, as shown on the approved FFCP. 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 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 No. F20230390 (“FFCP”) for concurrent review with the Administrative Subdivision Plan No. 620230150 that proposed to create three (3) new residential lots for three (3) one-family detached units in the RE-2 zone. 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 Cluster 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 6.66-acre Total Tract Area plus 1.45 acres of offsite disturbance associated with this Application, for a total Net Tract area of 8.11 acres. There is no existing forest on the Subject Property resulting in a total afforestation/reforestation requirement of 1.62 acres within the both the same watershed or in a Priority Area and outside of the same watershed or Priority Area. The Applicant proposes to meet this planting requirement by augmenting an area of tree cover with plantings of Maryland native understory trees and shrubs and placing this area into a Category I Conservation Easement.

## 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 19 Protected Trees as identified in the Staff Report. 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.

The initial FFCP application proposed a different lot layout with one lot fronting on Brickyard Road, one lot fronting on New London Drive, and one corner lot in between with frontages on both roads. This lot layout resulted in unnecessary impacts and removal to a larger number of Protected Trees than what is currently proposed. In coordination with Staff, the Applicant was able to revise the lot layout to have all three lots parallel to each other and fronting onto New London Drive. This layout responds best to the unique site conditions by locating the proposed units along the northern property boundary where the property is mostly flat and with the least amount of tree cover. This minimizes the amount of required site grading and impacts to the existing tree cover and Protected Trees.

The revised lot layout shows there are 8 Protected Trees proposed to be removed and 11 to be impacted. Of the 8 trees to be removed, 5 of these trees (Trees 60, 106, 115, 120 and 126) are located within the proposed development area within the limits of disturbance (“LOD”). Three of these 8 trees (Trees 27, 54 and 61) are located near the periphery of the site just outside the LOD. However, these trees are heavily impacted by the LOD, losing portions of their structural root systems thereby creating a situation where these trees could develop into potential hazard trees given their conditions and locations to the proposed homes and roadway. The 11 trees to be impacted are all located outside, but in proximity of, the LOD and are proposed to be retained.

The inability to impact or removed these Protected Trees would prevent the reasonable and significant use of this Subject Property. Given that the Subject Property contains a large number of Protected Trees that are generally scattered throughout the site, it would not be feasible to develop this Property and not impact or remove Protected Trees in some manner. However, the number of Protected Trees being impacted and removed has been greatly minimized by this application with the re-orientation of the lots towards New London Drive.

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 11 trees and the removal of 8 trees are due to the development of the Property, location of the trees in proximity to the 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, 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.

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 impacted 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 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 four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 66.25 inches with the installation of 23 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. 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

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(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 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 of the motion, at its regular meeting held on Thursday, April 4, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board