

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Mailing Date:

April 24, 2024

MCPB No. 24-041
Forest Conservation Plan No. F20240150
Chevy Chase Club
Date of Hearing: April 4, 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 19, 2023, Chevy Chase Club, Inc. (“Applicant”) filed an application for approval of a forest conservation plan on approximately 190 acres of land located at 6100 Connecticut Avenue, Chevy Chase (“Subject Property” or “Property”) in the Bethesda/Chevy Chase Policy Area and in the 1990 *Bethesda Chevy Chase Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240150, Chevy Chase Club (“Forest Conservation Plan,” “Amendment” 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 March 22, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 4, 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 Bartley, 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.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605
www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240150 on the Subject Property, subject to the following conditions¹ which replace and supersede all other conditions of approval under Final Forest Conservation Plan No. SC1996001:

1. Before the start of any demolition, clearing, grading, or construction for this Application, whichever comes first, the Applicant must:
 - a. Record an Amended and Restated Category I Conservation Deed of Easement that: (1) amends and restates the Category I Conservation Deed of Easement, dated October 8, 2013 and recorded October 29, 2013 at Liber 47878, folio 429; and (2) reflects the entire easement area as shown on the Certified Final Forest Conservation Plan. Such new easement agreement must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed before the Deed of Release of Conservation Easement for the existing conservation easement can be recorded.
 - b. Submit a Deed of Release of Conservation Easement for the Category I Conservation Easement recorded among the County Land Records in Liber 47878, folio 429 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the new easement is recorded.
 - c. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the Forest Conservation Plan (“FCP”), or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d. Record an Amended and Restated Forest and Tree Management Agreement that amends and restates the Forest and Tree Management Agreement, dated October 8, 2013 and recorded October 29, 2013 at Liber 47879 folio 001 (“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

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.

Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.

- 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 approximately 1.79 acres (as the final acreage is determined and shown on the Certified Final Forest Conservation Plan) of new onsite forest planting, mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
2. Before certification of the FFCP, the plans must be revised per the following:
 - a. Update the invasives control plan to address long term measures to control bamboo throughout the easement areas.
 - b. Perform minor corrections/clarifications in coordination with M-NCPPC Planning 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. 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.
 5. 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.
 6. The Applicant must control the invasive species throughout the conservation easement areas and address any onsite invasives outside of the easement setting as feasible, to among other things reduce the seedbank (and other propagative parts) that would otherwise continue to affect the easement areas.
 7. The Forest Conservation Inspector may authorize or require alternate methods of invasive control to be implemented.
 8. The Applicant must install the Afforestation/Reforestation plantings for areas outside of the limits of disturbance as shown on the approved FCP, 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.

9. The Applicant must install the plantings located inside the LOD, as shown on the approved FCP, in the first planting season following the release of the sediment control permit.
10. The Applicant must install the variance tree mitigation plantings as shown on the approved FCP 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 variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling at least 200.75 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.
11. The mitigation plantings must be at least five (5) feet away from any structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
12. Before acceptance of the plantings, the conservation easement boundary markers must be installed with unique numbers applied to each existing and new monument, and a corresponding map is to be provided to the Forest Conservation Inspector.

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 Forest Conservation Plan was originally approved under Final Forest Conservation Plan No. SC1996001, at which time the Director determined that the applicable requirements of the Forest Conservation Law were met. The Board finds that as conditioned, the Forest Conservation Plan Amendment complies with

the requirements of the Forest Conservation Law.

With this Amendment, the removal of 1.63 acres of Category I Forest Conservation Easement is appropriately mitigated by the onsite replacement of 1.79 acres of new Category I Conservation Easement. The new easement areas will contain a mix of existing vegetation and proposed plantings that are located in settings which are generally comparable or in more desirable locations than the areas to be removed. Furthermore, the new footprint/layout will result in a net increase of the overall protection of the stream valley buffer. Of the 1.63 acres of Category I Forest Conservation Easement being removed, approximately 0.16 acres of the of the removal and clearing is within the stream valley buffer; whereas, an additional 0.92 acres of stream valley buffer will be planted and protected by a Category I Forest Conservation Easement, for a net increase of 0.76 acres of protected and planted stream valley buffer. The Amendment results in more contiguous and larger easements within the stream valley buffer and expands and consolidates the remaining Category I Forest Conservation Easement areas.

B. Forest Conservation Variances

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”). Furthermore, Section 22A-12(b)(3)(D), independently subjects forest clearing activity within the stream valley buffer to a Variance. Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal of 21 Protected Trees and CRZ impacts to 39 Protected Trees as identified in the Staff Report, and the clearing of 0.16 acres of forested stream valley buffer. 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 denial of the Variance request would cause an unwarranted hardship because the Property has a notable quantity of subject trees interspersed throughout the property as a result of the long-term continuous passive use of the site. Additionally, golf courses are typically associated with streams and other water features. Therefore, any significant renovation or expansion of the approximately 130-year-old golf course would not be possible without triggering a variance.

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 property is constrained by environmentally sensitive areas such as subject trees, historic resources, streams and associated buffers. Most institutional uses require occasional modernization, renovation or expansion resulting in some level of disturbance. The proposed impacts and removals of subject trees have been reduced, and in some cases eliminated from this project. Therefore, the granting of this request 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 variances are based on the need to maintain a viable facility in balance with site constraints. Specifically, the Property is constrained by isolated areas of protected forest, the presence of streams and stream valley buffers, and a high quantity of larger trees. These features are spread throughout the Property, rather than located in centralized areas, therefore, it is infeasible to renovate the course without impacts to Protected Trees or stream valley buffer. The design aims to minimize those impacts and enhance protection of the Property's natural features. For these reasons, the Board finds that the need for the Variances is not based on conditions or circumstances which are the result of actions of the Applicant.

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 variances are a result of the proposed improvements and not 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 Amendment will result in a net increase of stream valley buffer protected within a Category I Conservation Easement, and also provides a larger, more contiguous easement footprint that fills in previous gaps that separated some of easement areas. As part of the Amendment, additional forest plantings within the new easement areas will occur along with supplemental plantings and the control of invasive species within existing easement areas and stream valley buffers. Additionally, the project includes naturalization of stream areas which will also enhance water quality. Furthermore, the work will proceed under the direction of the Department of Permitting Services and also the

Maryland Department of the Environment to ensure appropriate water quality standards are followed.

A Stormwater Management Concept was approved on December 7, 2022, and new stormwater management devices are not required as part of the renovations due to the stormwater management goals being met by the existing wet pond with no change in the Runoff Curve Number or ultimate use, along with a decrease in impervious surfaces as well as the no net loss of forest areas on-site.

For these reasons, the Board finds that the Amendment will not result in a degradation of water quality.

Mitigation for Resources Subject to the Variance Provisions

Mitigation for the Variance Trees 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 minimum ratio of 1 caliper inch replaced for every 4 of trunk diameter removed (in addition to other forest plantings). No mitigation is required for Protected Trees impacted but retained.

In accordance with Section 22A-21(f), removal of forest within a stream valley buffer for which a Variance is granted requires a 2:1 (on-site) reforestation ratio. Approximately 0.16 acres of forested stream valley buffer removal is approved, therefore at least .32 acres of on-site reforestation must be provided. With this Amendment, an additional 0.92 acres of stream valley buffer will be planted and protected by a Category I Forest Conservation Easement, which results in more than a 5:1 replacement ratio for forest removed from the stream valley buffer.

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

April 24, 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 Commissioner Linden with a vote of **4-0**, Chair Harris, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, Vice Chair Pedoeem necessarily absent, at its regular meeting held on Thursday, April 18, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board