

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

April 17, 2024

MCPB No. 24-040

Forest Conservation Plan Amendment No. 12000095A

Warfield Property

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 April 16, 2002, the Planning Board issued an Opinion approving Preliminary Plan No. 120000950 to create 13 lots for 13 single family detached dwelling units, with an associated forest conservation plan, on 67.52 acres of RC-zoned land, located at on Primula Court approximately 350 feet north of Primula Drive, in the Rural East Policy Area and *Damascus Master Plan* (“Master Plan”) area; and

WHEREAS, on June 15, 2023, Kayode Ogunsola (“Applicant”) filed an application for approval of an amendment to the previously approved preliminary plan for the purpose of amending the forest conservation plan as it applies to approximately 2.11 acres of land located at 24218 Primula Court, (“Subject Property”); and

WHEREAS, Applicant’s application to amend the preliminary plan for the purpose of amending the forest conservation plan was designated Forest Conservation Plan Amendment No. 12000095A, Warfield Property (“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 21, 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 Hedrick, seconded by Vice Chair Pedoeem, with a vote of 4-0-1; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor and Commissioner Bartley abstaining.

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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 Amendment No. 12000095A on the Subject Property, subject to the following conditions, which supersede and replace the condition of approval for Preliminary Plan No. 120000950:¹

1. Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.
2. All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Damascus Master Plan unless otherwise designated on the preliminary plan.
3. All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Damascus Master Plan, and to the design standards imposed by all applicable road codes.
4. Record plat to show delineation of a Category I conservation easement over the area of stream valley buffer and forest conservation areas.
5. Record plat to provide for dedication of Seventy (70) feet of right-of-way for Hawkins Creamery Road and a 60-foot right-of-way for Primula Court extension and termination.
6. Record plat to reflect common ingress/egress easements over all shared driveways.
7. Prior to recordation of plat(s), applicant and M-NCPPC staff to coordinate the location of internal pedestrian/equestrian trails, if applicable.
8. Compliance with conditions of MCDPS (Health Dept.) septic approval.
9. Access and improvements as required to be approved by MCDPWT prior to recordation of plat(s).
10. This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed.

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.

11. The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
12. Necessary easements.
13. Within sixty (60) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 12000095A, the Applicant must submit a Certificate of Compliance for the purchase of .84-acres of Forest bank credits or pay the current Fee-in-Lieu rate of \$1.45 per square foot.
14. Within ninety (90) days of the date of mailing of the Planning Board Resolution approving Forest Conservation Plan Amendment No. 12000095A, the Applicant must submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Warfield Property, Lot 70 as recorded on Record Plat No. 22305 pursuant to Category I Conservation Easement Agreement Book 13178 Page 412 and filed among the County Land Records on September 24, 2002. The Deed of Release must be in a form approved by the M-NCPPC Office of General Counsel and 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 offsite forest planting mitigation is satisfied.
15. Within one hundred twenty (120) days of the mailing date of the Planning Board Resolution approving the Forest Conservation Plan Amendment, the Applicant must submit a Minor Subdivision Application for a Plat of Correction that delineates the abandoned conservation easement and references the Book/Page of the recorded deed for the new Category I Conservation Easement. The Plat of Correction must be recorded in the Montgomery County Land Records within 180 days of the mailing date of the Planning Board Resolution approving the amendment to the Forest Conservation Plan.
16. The Applicant must schedule the required site inspections by the M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
17. The Applicant must clearly define the boundary of the adjacent conservation easement by installing three permanent conservation easement boundary markers along the rear property line at the direction of 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.*

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

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Article III as it is the result of an enforcement action. The Applicant seeks to resolve the violation by amendment of the Forest Conservation Plan with a limited Preliminary Plan amendment for forest conservation purposes. The Preliminary Plan amendment does not alter the intent of the previous findings, which remain applicable.

The Application amends the approved forest conservation plan by abandoning the 0.21-acre Category I conservation easement on the Subject Property and instead providing 4:1 offsite mitigation for loss of forest, which totals .84 acres. The Application proposes to mitigate for the loss of protected forest by purchase of 0.84-acres of offsite Forest Bank credits or, if credits are unavailable, by paying an equivalent amount in fee-in-lieu.

Section 22A.00.01.13 of the Montgomery County Forest Conservation Regulations states that “removal of any conservation easement must be reviewed by the Planning Board.” Onsite mitigation of easement removal is generally preferable to offsite mitigation. However, certain site factors favor support of mitigation offsite in this case. The subject easement is a small peninsula with an equestrian easement along its western side and cleared land to the south and east. To accommodate the septic system, the dwelling unit had to be located toward the rear of the Subject Property, which is a flag lot. The placement of the dwelling unit leaves approximately a third of an acre available for recreational use, with half of that area encumbered by the existing Category I conservation easement. In recent years, the Board has sought to avoid encumbering properties where the easement would significantly restrict reasonable use of the yard. Development plans are now designed to conserve natural resources where they will be less prone to encroachment and are thereby more sustainable long-term.

Staff considered that reforestation of the cleared land, while providing some ecological benefits, would continue to restrict use in the manner no longer favored on development plans. By mitigating the loss offsite, the conservation efforts can be directed towards

high priority afforestation projects in sensitive environments. Finally, the provision of 4:1 offsite mitigation for loss of forest exceeds the Planning Board's standard policy of requiring 2:1 offsite mitigation or 1:1 onsite mitigation for easement removal.

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 17, 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 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, Commissioner Bartley abstaining, at its regular meeting held on Thursday, April 11, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board