

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

May 14, 2024

MCPB No. 24-049
Forest Conservation Plan No. F20240200
Springvale Terrace
Date of Hearing: April 18, 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 December 27, 2023, Springvale Terrace, Inc. and Enterprise Community Development, Inc. (“Applicant”) filed an application for approval of a forest conservation plan on approximately 2.66 acres of land located north of the intersection of Springvale Road and Wayne Avenue (“Subject Property” or “Property”) in the East Purple Line Policy Area and 2022 *Silver Spring Downtown and Adjacent Communities Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s Forest conservation plan application was designated Forest Conservation Plan No. F20240200, Springvale Terrace (“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 April 8, 2024 (“Staff Report”) providing its analysis and recommendation for approval of the Application, subject to certain conditions and

WHEREAS, on April 18, 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 4-0; Chair Harris, Commissioners Bartley, Hedrick, and Linden, voting in favor, with Vice Chair Pedoeem absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240200 on the Subject Property, subject to the following conditions:¹

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.

1. Prior to certification of the Final Forest Conservation Plan (“FFCP”) the following items must be addressed:
 - a) Universally adjust Limits of Disturbance (“LOD”) to encompass all work including utility connection and sidewalk modifications associated with the project.
 - b) Update all applicable sheets for consistency and accuracy.
2. 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.
3. 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.
4. The LOD shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
5. Except for demolition and/or clearing and grading associated with the demolition of the existing building, before recordation of the plat, and the start of any further clearing, grading, or construction, whichever comes first, for this development Application the Applicant must:
 - a) 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 variance tree mitigation plantings. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - b) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
 - c) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Sligo Creek watershed or Priority Area to satisfy the reforestation requirement of 0.48 acres of mitigation credit (or amount as determined on the certified FFCP). If no off-site forest banks exist within the Sligo Creek watershed or Priority Area, then the off-site requirement may be met by purchasing 0.48 acres of mitigation credits (or amount as determined on the certified FFCP) from a mitigation bank within Montgomery County outside of the Sligo Creek watershed or Priority Area, subject to Staff approval. If forest mitigation bank credits are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC for the appropriate mitigation credits.

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 FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 24 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.
7. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.

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 (“FCP”) F20240200 with the concurrent development plan applications for Preliminary Plan No. 120240030, and Site Plan No. 820240040. The Applications satisfy the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned CRT-1.5 C-0 R-1.5 H-65 and is assigned a Land Use Category of Mixed-Use Development Area (“MPD”) 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 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 2.66-acre Subject Property plus 0.53 acres of offsite disturbance associated with this Application, for a total net tract area of approximately 3.19 acres. This results in an

afforestation requirement of 0.48 acres. The Applicant shall satisfy this requirement by providing 0.48 acres equivalent credits in a forest bank within the same watershed or in a priority watershed, special protection area, or the Patuxent Primary Management Area (PMA). If no such credits are available, then the requirements are to be met outside the watershed, or ultimately by fee-in-lieu payment if no other banking options are available.

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 of three (3) and CRZ impact to two (2) 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. In this case, the unwarranted hardship is caused by the necessary layout of the development on the Property, which is dictated by the existing site conditions, development standards of the zone, Montgomery County agency requirements, and requirements associated with Sector Plan objectives. The three (3) trees requested to be removed are located along the Cloverfield Road frontage to allow for building demolition and construction as well as the installation of sidewalks and utilities. The inability to remove these trees would potentially render portions of the site undevelopable and prevent the streetscape from being upgraded to current standards. Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the renovated independent living facility for seniors, which is a reasonable and significant use of the Property.

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 removal and disturbance to the specified trees are due to the development of the Property, location of the trees and necessary site design requirements. The Property contains several large trees located within the developable area of the site. Granting a variance to allow disturbance within the developable

portion of the site and meet the objectives of the Sector Plan is not unique to this Applicant.

- 2. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application, including street frontage improvements.

- 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 variance is a result of the existing conditions and the 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 removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of these three (3) trees by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Additionally, the Department of Permitting Services found the stormwater management concept acceptable in their approval letter date March 19, 2024. 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 at least one-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 24 inches with the installation of eight 3-inch caliper canopy 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.

* * * * *

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 Commissioner Bartley, with a vote of **3-0-1**, Chair Harris, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Vice Chair Pedoeem abstaining, and Commissioner Linden necessarily absent, at its regular meeting held on Thursday, May 9, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board