

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

June 18, 2024

MCPB No. 24-053

Final Forest Conservation Plan No. F20240100

Saddle Ridge

Date of Hearing: May 23, 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 August 9, 2023, David & Mikel Blair (“Applicant”) filed an application for approval of a Final Forest Conservation Plan on approximately 24.14 acres of land located at 11524 Highland Farm Road, Rockville, MD 20854 (“Subject Property”) in the Rural West Policy Area and the 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s Final Forest Conservation Plan application was designated Forest Conservation Plan No. F20240100, Saddle Ridge (“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 May 10, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 23, 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 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

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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 No. F20240100 on the Subject Property, subject to the following conditions:¹

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 (“FFCP”). Tree save measures not specified on 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 recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:
 - a. Record Category I Conservation Easements over all areas of forest retention, forest planting and environmental buffers as specified on the approved FFCP. The Category I Conservation Easements 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 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 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 1.32 acres of new forest planting, for the variance mitigation trees and for maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
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

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.

Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the plantings for the four reforestation areas totaling 1.32 acres as shown on the approved FFCP.

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 61.93 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.
7. At time of installation of the proposed Natural Surface Path through the proposed Category I Conservation Easement as shown on the FFCP, the Applicant must schedule a pre-construction meeting with M-NCPPC Forest Conservation Inspection Staff to determine the width and alignment of this path through the Category I 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 Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Applicant submitted a Final Forest Conservation Plan No. F20240100 for concurrent review with the Administrative Subdivision Plan No. 620240040. 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 24.14-acre Total Tract Area plus 0.20 acres of offsite disturbance associated with this Application, for a total Net Tract area of 24.34 acres. This net tract area differs from the NRI/FSD acreage 13.56 acres and the amount of onsite forest increased from 1.39 acres to 6.64 acres. These differences between the NRI/FSD and the FFCP occurred because at the time of FFCP submittal an additional 10.58 acres was added to the Subject Property. Although a new NRI/FSD was not required at that time, the environmental information was updated with the FFCP. The Subject Property contains approximately 2.24 acres of stream valley buffer of which 1.61 acres is forested and 0.63 acres will be planted with forest cover. All areas are either within current Forest Conservation Easement or will be protected with a proposed Category I Conservation Easement.

There is a total of 6.64 acres of existing forest on the Subject Property. The Applicant is proposing to remove 0.66 acres and retain 5.98 acres of forest resulting in a total afforestation/reforestation requirement of 1.32 acres within the same watershed or Priority Area or 1.65 acres outside of the same watershed or Priority Area. A portion of the retained forest is within an existing Category I Conservation Easement as shown on Plat 20941 recorded on December 21, 1998. There is a mix of both existing and proposed Category I Conservation Easements on the Subject Property which are all being used to meet the requirements of the FCL. Even though the calculated reforestation requirement is 1.32 acres, the Applicant proposes to meet the planting requirement onsite by planting 1.33 acres of reforestation. All planted and retained forest will be placed into Category I Conservation Easements resulting in a total of 7.31 acres of forest retained or planted and also protected.

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 11 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board finds that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the

Subject Property for three homes without the Variance. The unwarranted hardship is caused by the combination of the location of the Protected Trees on the Subject Property in relation to the necessary layout of the proposed subdivision, which is dictated by the irregularly shaped property, existing site conditions, development requirements for the Property such as grading, drainage, utility installation and layout. The inability to impact or remove these Protected Trees would prevent the reasonable and significant use of this property. Given that this site 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 minimized to the most practical extent possible by this application.

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 eleven (11) trees and the removal of seven (7) trees are due to the development of the Property, location of the trees in proximity to the limits-of-disturbance (“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 would be 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. Trees being removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of these trees by planting larger caliper trees on-site. The 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 one-inch caliper for every four inches (4 in.) removed using trees that are a minimum of three caliper inches in size. This results in a total of 61.92 inches with the installation of 21 three-inch caliper overstory trees native to the Piedmont Region of Maryland on the Subject Property outside of any rights-of-way and 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

June 18, 2024

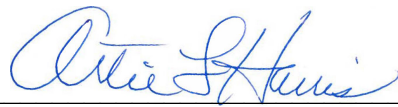
(which is the date that this Resolution is mailed to all parties of record); and

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 **5-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, its regular meeting held on Thursday, June 13, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board