

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

July 30, 2024

MCPB No. 24-075
Forest Conservation Plan No. F20240690
11117 Waycroft Way -- Addition to Wickford
Date of Hearing: July 25, 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 3, 2024, Navaneeth Muthuveerasamy, (“Applicant”) filed an application for approval of a forest conservation plan on approximately 0.57 acres of land in the R-90 zone, located at 11117 and 11121 Waycroft Way, Rockville, 20852 (“Subject Property”) in the North Bethesda Policy Area and 1992 *North Bethesda/ Garrett Park Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application, filed concurrently with Administrative Subdivision Plan No. 620240160, was designated Forest Conservation Plan No. F20240690, 11117 Waycroft Way – Addition to Wickford (“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 July 12, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 25, 2024, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240690 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. 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.
2. The Applicant must schedule the required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
3. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Rock Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 0.09 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Lower Rock Creek watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
4. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department Inspection Supervisor for variance mitigation trees.
5. The Applicant must 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.
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 at least ten (10) 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.

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 Forest Conservation Plan was reviewed and approved concurrently with Administrative Subdivision Plan No. 620240160, which created two (2) lots for two (2) single-family detached dwelling units on 0.57 acres of land in the R-90 zone.

There is no forest onsite, but the Application has a 0.09-acre afforestation requirement based on a net tract area of 0.62 acres and a High Density Residential land use category. The Applicant will meet the afforestation requirement in a forest mitigation bank or by payment of fee-in-lieu.

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 one (1) Protected Tree and CRZ impact to six (6) 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 requested variance is necessary due to the need to demolish the existing single-family house and construct two new single-family houses. The lots created by Administrative Subdivision Plan No. 620240160 and the two dwelling units proposed meet the use standards and the development standards of the R-90 zone, as well as the recommendations of the 1992 *North Bethesda/ Garrett Park Master Plan*. Therefore, the Board finds that, without the variance, the Applicant would be denied reasonable and significant use of the Property for two single-family homes.

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 disturbance to the specified trees is due to the demolition of the existing single-family house and development of two new single-family houses, as well as the location of the trees and development requirements. If the Applicant was not allowed to impact the Protected Trees, the existing house could not be demolished, and the Property could not be redeveloped in accordance with the existing zoning. Granting the various will not confer on the Applicant a special privilege that would be denied to other applicants because all applicants would be required to seek a variance for any redevelopment.

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 that are the result of actions by the Applicant. The Applicant has minimized disturbance to the Protected Trees as much as possible and provided tree protection measures to reduce impacts.

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 location of trees and the proposed development 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 Protected Tree requested for removal is not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the tree removed. Therefore, its removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted will remain to provide the same level of water quality protection as it currently provides.

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 Tree at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3-inch caliper in size. This results in a total mitigation of 9.5 inches. The Applicant has proposed to plant four (4) White Oaks, 3-inch caliper in size. 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

July 30, 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.

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution approved and adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on 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, July 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board