

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

July 29, 2024

MCPB No. 24-072

Forest Conservation Plan No. F20240160

Adventist Healthcare White Oak Medical Center

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 24, 2009, the Planning Board approved Site Plan No. 820080210, including the associated Forest Conservation Plan No. 820080210, to allow 803,570 square feet of commercial development for a main hospital building, ambulatory care building, faith center, medical office buildings and parking; and

WHEREAS, on November 27, 2023, Adventist HealthCare Inc. (“Applicant”) filed an application for approval of a forest conservation plan amendment on approximately 40.86 acres of land located on the west side of Plum Orchard Drive, approximately 400 feet southwest of Broadbirch Drive (“Subject Property”) in the White Oak Policy Area and 2014 *White Oak Science Gateway Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application, which was filed concurrently with Subdivision Regulation Waiver Request No. SRW202401 and Site Plan Amendment No. 82008021L, was designated Forest Conservation Plan No. F20240160, Adventist Healthcare White Oak Medical Center (“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 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.

2425 Reddie 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. F20240160 on the Subject Property, amending and superseding the conditions of approval for Forest Conservation Plan No. 820080210, 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. 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. M-NCPPC Forest Conservation Inspection Staff may require additional plantings to mitigate for tree removals within the Category I Conservation Easement.
5. Before the start of any demolition, clearing, grading, or construction for this development, the Applicant must:
 - a. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - b. 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 and any other plantings deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - c. 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 the variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
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 1.5 caliper inches totaling 8 caliper inches, as shown on the approved

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.

FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

7. Before approval of the Certified Forest Conservation Plan, the following revisions must be made and/or information provided subject to Staff review and approval:
 - a. Removal of LOD for future construction shown on Sheet F-203.
 - b. Inclusion of all approved sheets of the FCP, to create a complete plan set associated with this plan number.
 - c. Show permanent conservation easement signage along the perimeter of the Category I Conservation Easements.

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 Amendment was reviewed and approved concurrently with Subdivision Regulation Waiver Request No. SRW202401 and Site Plan Amendment No. 82008021L, which allow the transfer of 61,750 square feet of previously approved density from Medical Office Building 2 (“MOB 2”) to a new Medical Office Building 3 (“MOB 3”) at the northern end of the Site; provide a surface parking lot adjacent to MOB 3 (with 163 parking spaces); and provide temporary surface parking to serve the main hospital in the location of potential future MOB 2 (with 139 interim parking spaces).

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Amendment does not propose any disturbance within the Category I Conservation Easements. However, the Amendment includes changes to the limits of disturbance (“LOD”) to allow for revisions to the proposed parking lot. The LOD was previously located between 5 feet and 30 feet from the recorded Category I Conservation Easement and stream valley buffer, but the LOD is proposed to be shifted to the easement and buffer line along the redesigned surface parking lot. While the LOD change does not clear additional forest, it may create additional tree loss along the line of clearing that can negatively affect the protected forest and stream valley buffer. M-NCPPC Forest Conservation Inspection Staff may require additional

trees to be planted inside the Category I Conservation Easement to fill in gaps left by the removal or death of trees along the LOD. If necessary, this planting will also reduce the spread of invasive species caused by the creation of the new edges.

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 impact to eight (8) 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 accommodate parking for the medical office building and associated stormwater facilities. While the surface parking is in the area that was initially planned for this use, design standards and requirements have changed requiring the additional disturbance and impacts to Protected Trees. The development proposed meets the use standards and development standards of the LSC zone, therefore without the Variance, the Applicant would be denied 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 disturbance is to construct a part of the overall hospital development that was already conceptually approved. If the Applicant were not able to impact the Protected Trees, the Applicant would not be able to construct a surface parking lot of sufficient size and provide adequate stormwater management facilities for it, and not be able to construct the facilities that were approved for this location.

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

The Property is very constrained by environmental features that include a

major tributary to the Paint Branch of the Anacostia River and associated floodplains, wetlands, and buffers. There are also steep slopes and major topographic changes across the Property, necessitating high retaining walls. The Applicant worked to minimize disturbance and avoid impacting the Category I Conservation Easements and stream valley buffers on-site. The one Protected Tree approved for removal was previously shown as removed on prior plans by a conceptual layout. The tree has now grown to a size that it is considered Protected and requires a variance to remove.

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 location of trees and the parking lot construction 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.*

Tree No. 2, 32-inch Tulip Poplar, is approved for removal but is located outside of the stream valley buffer. Mitigation for the removal of the tree will be accomplished by planting trees within the stream valley buffer, providing additional water quality protection. Tree No. 2 proposed for removal will be mitigated at a rate that approximates the form and function of tree being removed. This tree will be replaced at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 1.5-inch caliper in size. This results in a total mitigation of eight (8) inches, with a minimum installation of six (6) 1.5-inch caliper trees. 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 29, 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 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