

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

June 28, 2024

MCPB No. 24-015
Forest Conservation Plan No. F20240110
Corso Chevy Chase
Date of Hearing: February 8, 2024

CORRECTED 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 7, 2023, The Corso DC LLC (“Applicant”) filed an application for approval of a forest conservation plan, filed concurrently with Preliminary Plan No. 120240020 and Site Plan No. 820240030, on approximately 12.29 acres of land located at 7100 Connecticut Ave (“Subject Property”) in the Chevy Chase Policy Area and 1990 Chevy Chase Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240110, Corso Chevy Chase (“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 October 24, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 8, 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; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor, with Commissioner Bartley being absent.

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Approved as to
Legal Sufficiency: /s/ Emily Vaias
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240110 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 (“FCP”). Tree save measures not specified in 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, except that minor modifications to the limits of disturbance within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services or MDSA.
4. Before the start of any clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a) Record a Category I Conservation Easement over all areas of forest retention as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement 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.
 - 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 forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as 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 for the variance mitigation trees, fencing, easement markers, and maintenance required for meeting the requirements of the FCP.
5. Prior to the initial planting acceptance inspections of the required on-site variance mitigation plantings, the Applicant must install the 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.

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.

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 123 caliper inches and located outside of any right-of-way or utility easements, including stormwater management easements, 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 Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by “a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan.” A Final Forest Conservation Plan (“FFCP”) No. F20240110 was submitted for review and approval concurrently with the Preliminary Plan No. 120240020. The total net tract area for forest conservation purposes includes the tract area of 13.62 acres. The Property is within the CRNF zone and is classified as Mixed-Use Development (“MDP”) as defined in Section 22A-3 of the Forest Conservation Law and specified in the Trees Technical Manual. The Property contains a 3.71-acre high-priority forest; therefore, due to the disturbance proposed and mixed-use classification of the development, there is an afforestation requirement of 0.00 acres as calculated in the Forest Conservation Worksheet. No afforestation or reforestation planting is required as the requirements are fully addressed by the preservation of existing forest within the proposed Category I Easement (and no payment of a fee-in-lieu or offsite banking is proposed).

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

B. Forest Conservation Variance

Previous Forest Conservation Variance approval
 A Preliminary Forest Conservation Plan (PFCP) was approved as a part of the review and approval of Local Map Amendment H-148. The Applicant submitted a variance request in a letter dated February 4, 2023. Based on the tables in the request, the Applicant proposes to impact 13 trees and remove or potentially remove 15 trees that are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

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.

Table 1: Removed Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
48	Red Oak	31	59%	Remove
49	London Plane Tree	35	74%	Remove
50	Willow Oak	36	63%	Remove with intent to save
51	Willow Oak	35	56%	Remove with intent to save
54	London Plane Tree	30	100%	Remove
426	London Plane Tree	30	83%	Remove
434	Ornamental Cherry	30	100%	Remove
435	Pin Oak	31	100%	Remove
436	American Sycamore	32	100%	Remove
437	American Sycamore	40	100%	Remove
440	Tulip Poplar	30	72%	Remove
441	Southern Red Oak	37	74%	Remove
457	Tulip Poplar	31	32%	Remove
462	White Oak	33	31%	Remove
489	Tulip Poplar	31	34%	Remove

Table 2: Impacted Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
39	Tulip Poplar	31	1%	Save
43	Tulip Poplar	35	9%	Save
443	Tulip Poplar	41	28%	Save
445	Tulip Poplar	34	1%	Save
448	Tulip Poplar	35	19%	Save
449	White Oak	34	2%	Save
453	White Oak	31	33%	Save
454	White Oak	32	11%	Save
464	Southern Red Oak	31	15%	Save
476	White Oak	31	5%	Save
488	Tulip Poplar	38	34%	Save
491	Tulip Poplar	33	35%	Save
493	Tulip Poplar	30	22%	Save

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship results from the existing obsolete development and the Master Plan endorsement for housing as the primary future alternative if former institutional uses redevelop. The project is carefully designed to balance protection of the natural resources and environmental qualities of the Planning Area (also per the Master Plan recommendations) while generally keeping the redevelopment limited to the areas of existing development. However, since the entire site perimeter is mostly encompassed by subject trees, which are also interspersed within the central areas of the site, the redevelopment as a senior living community, with associated commercial, is a reasonable and significant use of the Property and would not be possible without impacts and removal of subject trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

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 of the trees is due to the location of the trees and necessary site design requirements. Notably more than 90% of the proposed redevelopment is on top of land already occupied by infrastructure of buildings, parking, and utilities. Additionally, considerable efforts were made to avoid and minimize the overall impacts and the proposed layout allows most of the existing forest setting (which also contains many protected trees) to be preserved within a Category I Easement. Furthermore, the Applicant will provide onsite mitigation for the

removal of protected trees. The variance request would be granted to any applicant in a similar situation. Therefore, the granting of this variance is not a special privilege that would be 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 and necessary design requirements of this project which among other things, includes the desire to maintain the existing onsite forest containing numerous subject trees. The Applicant has designed the project to minimize the impacts to Protected Trees to the extent possible.

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 required improvements on the 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 a special protection area. Mitigation trees will be planted on the Subject Property to replace the lost form and function of Protected Trees being removed. Installation of mitigation trees and general site landscaping in line with sector plan goals will likely improve water quality through increased infiltration and uptake of runoff.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper inches in size. This results in a total mitigation required of 123 inches. The Applicant is proposing to plant 3 to 4-inch caliper trees to meet this requirement. The final locations of the mitigation trees will be confirmed at the direction of the MNCPPC Forest Conservation Inspector. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Corrected Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Corrected Resolution remains

March 7, 2024

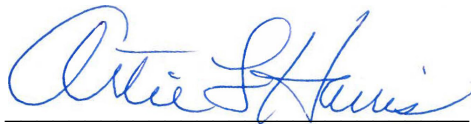
(which is the date that the original Resolution was mailed to all parties of record); and

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 the corrected resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of **4-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley necessarily absent, at its regular meeting held on Thursday, June 27, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board