

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

October 17, 2024

MCPB No. 24-095

Forest Conservation Plan Amendment No. F20240830

Bennett Creek Animal Hospital

Date of Hearing: October 3, 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 February 27, 2009, the Planning Board approved Final Forest Conservation Plan No. 120080180 (“Forest Conservation Plan”) on approximately two acres of land located at 22416 Frederick Road, Clarksburg (“Subject Property”) in the Clarksburg Policy Area and 1994 Clarksburg Master Plan (“Master Plan”) area; and

WHEREAS, on March 21, 2024, Jeffrey B. Walcoff, D.V.M. and Sheila Walcoff (“Applicant”) filed an application for approval of an amendment to the Forest Conservation Plan, in conjunction with Special Exception Modification No. S-2659-A to add a 4,833 square foot addition to the south side of the existing building, increase the parking lot, and revise the conservation easements for the existing Veterinary Hospital on the Subject Property; and

WHEREAS, Applicant’s forest conservation plan amendment application was designated Forest Conservation Plan Amendment No. F20240830, Bennet Creek Animal Hospital (“Forest Conservation Plan Amendment,” “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 September 20, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 3, 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 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 Amendment No. F20240830 on the Subject Property, subject to the following conditions, which supersede and replace the conditions of approval of Final Forest Conservation Plan No. 120080180:¹

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. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a) Submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Lot 7 and 8 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the Certificate of Compliance is recorded or fee-in-lieu is paid, and the new easements are recorded.
 - b) Record a Category I Conservation Easement over all areas 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.
 - c) 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.
 - d) Install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - e) 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.

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.

The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.

- f) 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 0.23 acres of new forest planting mitigation trees, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
 - g) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Little Seneca Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 0.14 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 Little Seneca 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.
5. Prior to the certified FFCP, the Applicant must revise the plans to clearly reflect the offsite mitigation amount is 0.28 acres (0.14 acres x 2).
 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 Afforestation/Reforestation plantings as shown on the approved FFCP.
 7. 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 a minimum of 7.5 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.

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.

This Amendment revises the previously approved limits of disturbance (“LOD”) to provide for onsite improvements including an addition and associated stormwater management. The Amendment also shows the currently proposed alterations to the Subject Property as required under Section 22A.00.01.09.B of the Forest Conservation Regulations.

The Amendment proposes the removal of 0.37 acres of Category I forest conservation easement, which will be mitigated through a combination of on-site and off-site mitigation. The Amendment proposes the creation of 0.23 acres of new Category I conservation easement on-site and 0.14 acres of mitigation to be met off-site at a 2:1 ratio for a total of .28 acres. The off-site mitigation will be met through the purchase of credit from a forest conservation bank, if available, or through payment of a fee-in-lieu if no mitigation bank credits are available. This will provide mitigation at a rate of 1:1 for the easement removal (0.23 acres onsite) and 2:1 mitigation offsite (2 x 0.14 acres offsite = 0.28 acres).

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 Protected Tree: Tree T2, a 30-inch DBH Black Oak. 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 required regrading of the Subject Property for the addition to the existing Veterinary Hospital and associated stormwater management requires the removal of Tree T2. While Tree T2 is currently in a Category I conservation easement, there is no other option for the expansion of the existing building that would allow the Applicant to expand their business. The expansion of the existing use is a reasonable use of the Subject Property and is permitted in the zone by special exception, therefore the Applicant would be denied reasonable and significant use of the Subject Property without the Variance.

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 tree T2 are due to the reasonable development of the Property and the location of the trees within the property adjacent to the limits-of-disturbance (“LOD”). Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that is 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. The site is currently developed with an approved animal veterinary clinic and the expansion of the existing use cannot be accommodated without the addition and the required grading and stormwater management.

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 Tree being removed will be mitigated for replacing the form and function of that tree. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is proposing the removal of one Protected Tree measuring 30 inches and has provided mitigation at a ratio of 1:4 using a minimum of 3-inch caliper trees. Total mitigation provided must be equal or greater 7.5 inches, and as conditions, the Applicant will provide three 3-inch caliper trees or a total of 9 inches of mitigation.

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

October 17, 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 Commissioner Linden, with a vote of **5-0**; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, October 10, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board