

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

October 11, 2024

MCPB No. 24-085
Forest Conservation Plan No. F20240720
PLD Lot 44 & 4702 West Virginia Avenue
Date of Hearing: September 12, 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 March 13, 2024, BB 4702 Holdings LLC (“Applicant”) filed an application for approval of a final forest conservation plan in conjunction with Mandatory Referral No. MR2024021, Sketch Plan Amendment No. 32019006B, Preliminary Plan No. 120240110, and Site Plan No. 820240140 for the construction of a 125,469 square foot mixed-use building for up to 59 dwelling units with 15% MPDUs, including up to 120,000 square feet for up to 53 multifamily units and up to 5,469 square feet of commercial uses for up to 6 live/work units (the “Accompanying Applications”) on approximately 0.78 acres of land located at 4702 West Virginia Avenue (“Subject Property”) in the Bethesda Downtown Policy Area and Bethesda Downtown Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240720, PLD Lot 44 & 4702 West Virginia Avenue (“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 August 30, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 12, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Pedoeem, seconded by Commissioner Hedrick, 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/ Emily Vaias
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240720 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. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. Before the start of any demolition, clearing, grading or construction, whichever comes first, for the development shown on the Accompanying Applications, the Applicant must submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.12 acres of afforestation/reforestation requirement, or as shown on the certified Final Forest Conservation Plan.
4. 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 as shown on the certified Final Forest Conservation Plan.
5. The Applicant must plant the variance tree mitigation plantings on the Subject Property, with a minimum size of 3 caliper inches, totaling at least 17.25 caliper inches, or as shown on the certified Final Forest Conservation Plan. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
6. Before any demolition, clearing, grading or construction for the Accompanying Applications, whichever comes first, 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 for the mitigation trees and maintenance credited toward meeting the requirements of the FCP.
7. Before any demolition, clearing, grading or construction for the development shown on the Accompanying Applications, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of 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.

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.

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 Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code (“FCL”) and requires a Forest Conservation Plan concurrent with Mandatory Referral No. MR2024021, Sketch Plan Amendment No. 32019006B, Preliminary Plan No. 120240110, and Site Plan No. 820240140. The associated Mandatory Referral, Sketch Plan Amendment, Preliminary Plan, and Site Plan applications (the “Accompanying Applications”) replace the existing single-family home and parking lot with the construction of a mixed-use building. The proposed building will consist of up to 59 multi-family residential units, including 15% MPDUs and 6 live/work units. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees.

The Property is zoned CR-3.0, C-2.0, R-2.75, H-70, CRT-0.5, C-0.25, R- 0.5, H-70 and is classified as Mixed-Use Development (“MDP”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The total net tract area for forest conservation purposes includes the tract area of 0.62 acres and 0.16 acres of off-site disturbance for a total of 0.78 acres. The Forest Conservation Worksheet shows a calculated afforestation requirement of 0.12 acres associated with the Application due to the tract area, associated offsite work, and the mixed-use designation of the project. As conditioned, this minor afforestation requirement is anticipated to be addressed by purchase of forest mitigation bank credits or by payment of a 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.

The Applicant submitted a variance request in a letter dated March 13, 2024 in conjunction with Forest Conservation Plan No. F20240720. The Applicant proposes to impact six (6) Protected Trees and remove two (2) Protected Trees, all of which 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

Table 1: Removed and Impacted Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
1	White Mulberry	39	100%	Remove
2	Tulip Poplar	30	100%	Remove
3	Zelkova	36	19%	Save
4	Red Cedar	32	0.4%	Save
8	Silver Maple	40	23%	Save
14	Red Maple	45	5%	Save
15	Silver Maple	49	6%	Save
16	Silver Maple	38	5%	Save

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 for the multi-family residential project without the Variance. The impacts to variance trees are necessary for the implementation of a Sector Plan recommended Eastern Greenway in this location. Any level of disturbance within the Subject Property would impact the critical root zones of the subject trees. Additionally, the creation of an enjoyable green space will need extensive grading and disturbance. This is due to the current state of the designated greenway location, which is comprised of a single-family lot and a parking lot. In order to incorporate the development program, demolition of the existing structures is required, which in turn necessitates impacts and removal of the variance trees. As conditioned, the proposed layout, which has been coordinated between the Applicant and M-NCPPC Staff, will minimize CRZ impacts to existing specimen trees where possible.

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.*

The Applicant proposes to demolish the existing structures and construct a mixed-use development, which includes multi-family dwelling units (15%

MPDUs) with structured parking and provide a Sector Planned greenway. This proposal will provide much needed housing while also increasing parks/open space and environmental innovation in this urban area. With these factors considered, the Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

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 and associated tree impacts are due to concerns related to the existing layout of the Subject Property in relation to specimen trees onsite and on the Site's perimeter. Implementing the Eastern Greenway and constructing a new multi-family building necessitates variance tree impacts. The Applicant's variance request demonstrates efforts to minimize overall site impacts and preserve mature trees where feasible. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 proposed site design and layout on 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 proposed Eastern Greenway, which includes lawn, landscape plantings of shrubs and trees in addition to canopy tree mitigation plantings will help maximize the permeability of the soil, which serves to reduce runoff. The planting of these trees will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. As part of this proposal, the Applicant must also meet the 35% green cover requirements of the Sector Plan which will provide further water capture. Additionally, the Subject Property does not currently contain any stormwater management features while the Applicant proposes a development which will meet current State and local stormwater management standards. The Accompanying Applications reduce impervious surfaces and implements areas of green roof and landscape plantings within the design. Thus, granting the variance will ultimately result in an improvement of water quality, rather than cause measurable degradation.

Mitigation for Trees Subject to the Variance Provisions

The variance request includes the removal of 69 inches of DBH of Protected Trees. Per Section 22A-21(e), the Applicant is planting mitigation trees at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, in addition to other forest planting and landscape credit plantings. Additionally, these trees will be located outside of utility and stormwater management easements and rights-of-way. The Applicant is planting 17.25 inches of native canopy trees, using a minimum size of 3-inch caliper tree. 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

October 11, 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 3, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board