

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

October 11, 2024

MCPB No. 24-092
Forest Conservation Plan No. F20240420
Tregoning Property
Date of Hearing: September 26, 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 29, 2024, ESC Tregoning LC (“Applicant”) filed an application for approval of a final forest conservation plan, in conjunction with Preliminary Plan Amendment No. 12023012A and Site Plan No. 820240080 to construct 44 dwelling units including 38 single-family dwelling units and 6 townhouse dwelling units and retaining 2 development rights for future development on approximately 37.85 acres of land located at Parcels 104 and 617 (“Subject Property”) located southwest of the intersection of Kings Valley Road and Preakness Drive in Clarksburg, MD in the Rural East Policy Area and the 1994 Clarksburg Master Plan and Hyattstown Special Study Area; and

WHEREAS, Applicant’s forest conservation plan application was designated Final Forest Conservation Plan No. F20240420, Tregoning Property (“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 September 16, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 26, 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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240420 on the Subject Property, subject to the following conditions,

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Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

which supersede all prior conditions approved with the Preliminary Forest Conservation Plan No. F20230420:¹

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 recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must:
 - a) Record Category I Conservation Easements over all areas of forest retention, forest plantings and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easements 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. The Book/Page of the easement agreements must be referenced on the record plat.
 - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the approved FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c) Install permanent conservation easement fencing in the locations shown on the approved FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d) 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 FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - e) Submit a cost estimate for the reforestation/afforestation and other FFCP requirements, which includes but is not limited to trees and shrubs, variance mitigation trees, five years of maintenance including invasive species management controls, permanent easement posts and signage, natural surface trails, split rail

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.

- fencing, mulching, staking, tree protection, and tree protection removal credited toward meeting the requirements as shown on the FFCP. This cost estimate must be reviewed and approved by the M-NCPPC Planning Department Inspection Staff prior to the submission of financial surety to determine the amount of the financial surety.
- 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 7.11 acres of new forest planting, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. 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 for Planting Areas P1, P2, P3 and P4 (outside of the limits of disturbance (“LOD”)) as shown on the approved FFCP.
 6. Before Certified FFCP set approval, the Applicant must show the location of the natural surface trail in the Category I Conservation Easement on Block B, behind Lots 19-27.
 7. At time of installation, the natural surface trail is to be field located with 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.*

The Board finds that as conditioned, the Final Forest Conservation Plan (“FFCP”) complies with the requirements of the Forest Conservation Law.

Preliminary Forest Conservation Plan

The Applicant had obtained an approved Preliminary Forest Conservation Plan No. F20230420 (“PFCP”) on February 12, 2024 with Planning Board Resolution No. MCPB 23-119. As part of the PFCP, the Planning Board granted a variance from Sec. 22A-12(b)(3)(C) of the Forest Conservation Law in order to impact, but retain, four specimen trees. The FFCP does not alter or amend that variance and is in compliance with the PFCP.

Final Forest Conservation Plan

The Applicant has submitted a Final Forest Conservation Plan No. F20240420 for concurrent review, in conjunction with Preliminary Plan Amendment No. 12023012A and Site Plan No. 820240080 to construct 44 dwelling units including 38 single-family dwelling units and 6 townhouse dwelling units. Residential development is occurring only on Parcel 104. While Parcel 617 is part of the area subject to the Preliminary Plan, it is only being used to extract and transfer residential density to Parcel 104. The Application retains two development rights on Parcel 617 for future development. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned RE-1 and is being developed under the MPDU Optional Method. As such, it is assigned a Land Use Category of Cluster Medium Density Residential ("CDR") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 20% and a conservation threshold of 45% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 37.85-acre Total Tract Area plus 0.38 acres of offsite disturbance associated with this Application and minus 2.71 acres of land for roadway dedication along Kings Valley and Ridge Road, and also for the AT&T right-of-way. These additions and deductions result in a total Net Tract Area of 35.52 acres. There is a total of 2.95 acres of existing forest on the Subject Property with the Applicant proposing to remove 0.13 acres of forest. This results in a total afforestation/reforestation requirement of 4.41 acres within the same watershed/Priority Area or 4.48 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement, as well as the minimum retention requirement discussed below, by reforesting 7.11 acres on-site both within and adjacent to the unforested stream valley buffer as required under Sec. 22A-12(e)(1)(B) of the Forest Conservation Law.

Minimum Forest Retention

Section 22A-12(f) of Montgomery County Code, Chapter 22A, the Forest Conservation Law ("FCL"), in general, states there are special provisions for minimum retention, reforestation and afforestation on any site developed under a cluster or other optional method of development in a one-family residential zone and must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement. Forest retention should be maximized where possible. This site is being developed under the optional method and is located within a one-family residential zone, RE-1. As such, 22A-12(f) applies to this development site.

Section 22A-12(f)(2)(B) states, in part, that “[i]n a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).” Section 22A-12(f)(2)(C) provides that “[o]n a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.”

Under the applicable sections of 22A-12(f) the Applicant’s minimum on-site forest retention requirement would be the afforestation threshold of 7.10 acres, since the existing forest of 2.95 acres is less than the Afforestation Threshold specified in the FFCP worksheet. Under this section of the FCL, the Applicant must retain all the existing on-site forest of 2.95 acres, unless forest removal is allowed under Section 22A-12(f)(3), and plant an additional 4.15 acres bringing the total reforestation up to the afforestation threshold of 7.10 acres.

The FFCP proposes a small amount of existing forest removal for the installation of Hoffman Drive. Due to site grading and the required alignment of Hoffman Drive, approximately 0.13 acres of existing forest will need to be removed. The alignment and connection of Hoffman Drive is being required of the Applicant by both Montgomery County Planning Staff and the Montgomery County Department of Transportation (“MCDOT”). The connection of Hoffman Drive and the construction requirements to install this required roadway necessitate a small amount of the existing forest on the Subject Property.

In order for the 0.13 acres of existing forest to be removed and the FFCP to be approved, the Planning Board must find that retention of this forest is not possible. Section 22A-12(f)(3) states that: “If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.”

The Planning Board finds that it is not possible for the Applicant to retain all of the 2.95 acres of existing forest on the Subject Property and satisfy the regulatory requirements for this development, based on the site grading and the required alignment of Hoffman Drive discussed above. The Applicant is providing the maximum possible on-site forest retention by protecting the remaining balance of the 2.82 acres of existing forest. In addition, the Applicant is providing 7.11 acres of reforestation within and adjacent to the unforested stream valley buffer on Parcel 617. This brings the total reforestation both saved and planted up to 9.93 acres, which exceeds the afforestation threshold of 7.10 acres.

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

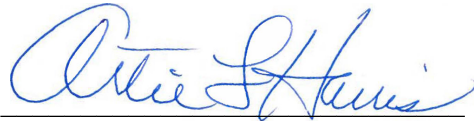
(which is the date that this Resolution is mailed to all parties of record); and

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 10, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board