

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

April 19, 2024

MCPB No. 24-037
Forest Conservation Plan No. F20240040
9801 Georgia Avenue
Date of Hearing: March 7, 2024

**This Resolution has been Superseded
by a Corrected Resolution**

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 23, 2023, JLB Realty, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 3.78 acres of land located in the northeast quadrant of the intersection of Forest Glen Road and Georgia Avenue in the 2020 Forest Glen/Montgomery Hills Sector Plan (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240040, 9801 Georgia 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 February 26, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 7, 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 4-0-1; Chair Harris, Vice Chair Pedoem, Commissioners Hedrick and Linden voting in favor and Commissioner Bartley abstaining.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240040 on the Subject Property. All site development elements shown on the latest electronic version of the Forest Conservation Plan, as of the date of this Staff

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

Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:¹

1. 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.
2. The Applicant must schedule the required site inspections with M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
3. 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.
4. Before any demolition, clearing, grading, or construction as shown on this plan, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved offsite forest bank within the Sligo Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 1.11 acres of mitigation credit. The off-site requirement may be met by purchasing 1.32 acres of mitigation 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 Sligo 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. The Certificate of Compliance must be recorded in the Montgomery County Land Records.
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 0.09 acres of canopy credit tree plantings on the Subject Property as shown on the approved FCP. The canopy credit trees must be 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.
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 64 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.

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.

7. The Applicant must 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 64 caliper inches of variance tree mitigation plantings and 0.09 acres of trees planted for canopy credit.
8. 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 64 caliper inches of variance mitigation trees and 0.09 acres of trees planted for canopy credit required for meeting the requirements of the FCP.

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 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 Preliminary Plan No. 120230160 and Site Plan No. 820230130. The associated Preliminary Plan and Site Plan applications propose to redevelop an existing medical office into a mixed-use development with up to 420,000 square feet of residential development (up to 390 multi-family residential units) and up to 5,000 square feet of commercial development. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees.

Forest Conservation Plan No. F20240040 shows 0.43 acres of forest clearing. The Property is zoned R-90 and is classified as High Density Residential (“HDR”) 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 3.89 acres and 1.23 acres of off-site disturbance for a total of 5.12 acres. The Property is zoned CRT-2.5, C-2.5, R-2.5, H-120’ 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 Applicant is meeting the planting requirements through a combination of 0.09 acres of on-site tree canopy credit and purchasing credits through a forest mitigation bank. 1.11 acres of forest mitigation credits must be purchased through a forest conservation bank located in the Sligo Creek watershed or other Priority Area. If no credits are available in a forest conservation bank located in the Sligo Creek watershed or other Priority Area, the

Applicant must purchase 1.32 acres of forest mitigation credits through a forest conservation bank located elsewhere in the County. If no forest mitigation credits are available for purchase at any forest conservation banks in the County, the Applicant must make a fee-in-lieu payment to satisfy the 1.32 acres of reforestation required.

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 nine (9) Protected Trees as identified in the staff report. The Variance request is for the removal of eight (8) and impacts to one (1) Protected Trees for the construction of the residential development. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a Variance to be granted.

The Planning Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use for the redevelopment of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship because the Applicant would not be able to redevelop the Property in accordance with the Sector Plan and the development standards allowed by the Zoning Ordinance.

The Property has many constraints and requirements shaping the design of the proposed development. The Property slopes east from Georgia Avenue to Woodland Drive with a grade change of approximately 20 feet over approximately 270 feet. There is also a north-south slope, with a decrease of eight feet from the northern extent of Woodland Drive frontage to the southern extent. There is an existing sewer line running through the center of the Property that must be relocated before redevelopment. The Property is also constrained by the storm drain line and stormwater management handling runoff from Georgia Avenue. The Property is also subject to the site-specific recommendations of the Sector Plan to accommodate the entrance to a proposed tunnel connecting to the Forest Glen Metro Station and to provide a minimum of one-half acre of civic green on the Property. Also, the Property is directly adjacent to the Forest Glen Metro Station, and the proposed development meets the Sector Plan and goals in *Thrive Montgomery 2050* (“General Plan”) of providing housing at transit stations.

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 is redeveloping the Property to meet the goal of providing housing at the Forest Glen Metro Station, as well as providing stormwater management for Georgia Avenue, space for the new Forest Glen Metro Station entrance, urban civic green, and frontage improvements along Woodland Drive to reduce traffic speed and provide a safe pedestrian experience. These requirements require the disturbance generating the impacts on the Protected Trees. Because these goals are provided in the site-specific recommendations in the Sector Plan, they would apply to any redevelopment of the Property. 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 on existing site conditions and the requirements to meet development standards, Sector Plan goals, General Plan goals, and County Code requirements, as further described above.

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 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.

Mitigation for Trees Subject to the Variance Provisions

The FCP includes the removal of 255 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 64 inches of native canopy trees, using a minimum size of 3-inch caliper tree.

The Planning Board approves the Variance request.

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

April 19, 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 Vice Chair Pedoeem, with a vote of 4-0-1, Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining, at its regular meeting held on Thursday, April 4, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board