

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

November 22, 2024

MCPB No. 24-097

Forest Conservation Plan No. F20240640

Bradley Hills - 5315 Goldsboro Rd

Date of Hearing: October 10, 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 20, 2024, Karka Holdings LLC. (“Applicant”) filed an application for approval of a forest conservation plan, in conjunction with Administrative Subdivision Plan No. 620240130 (the “Accompanying Application”), on approximately 1.27 acres of land located at 5315 Goldsboro Road (“Subject Property”) in the Bethesda-Chevy Chase Policy Area and 1990 Bethesda-Chevy Chase (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240640, Bradley Hills - 5315 Goldsboro Rd (“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 27, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 10, 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 with Commissioner Bartley abstaining.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240640 on the Subject Property, subject to the following conditions:¹

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.

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

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 the Accompanying Application development, the Applicant must:
 - a) 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 screen 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. The use of herbicides should be avoided where possible.
 - b) 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 landscape trees, mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
 - c) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the afforestation requirement of 0.19 acres of mitigation credit (or amount as determined on the certified FFCP). If no off-site forest banks exist within the Lower Potomac River watershed or Priority Area, then the off-site requirement may be met by purchasing 0.19 acres (or amount as determined on the certified FFCP) of mitigation credits from a mitigation bank within Montgomery County outside of the Lower Potomac River watershed or Priority Area, subject to Staff approval. If forest

mitigation bank credits are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC for the appropriate mitigation credits outside of the same watershed or Priority Area.

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 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 at least 65 caliper inches, 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. The mitigation plantings must be at least five (5) feet away from any property lines, structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
7. Before submittal of the Certified Forest Conservation Plan, the Applicant must make the following changes:
 - a) Update the forest conservation worksheets (and associated notes and figures) to add the offsite LOD to the net tract area.
 - b) Revise tree save plan to show the existing screen trees along the north of Lot 35 and address their preservation.
 - c) Adjust the screen plantings and mitigation tree locations on the plans with respect to locations of the existing trees to remain.
 - d) Perform minor corrections/clarifications in coordination with M-NCPPC Planning 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.

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 Administrative Subdivision Plan No. 620240130. The associated Administrative Subdivision Plan application (the “Accompanying Application”) demolishes the existing single-family home and subdivides one lot into two lots for a new single-family dwelling on each lot. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees.

The Property is zoned R-90 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 1.05 acres and 0.22 acres of off-site disturbance for a total of 1.27 acres. The Forest Conservation Worksheet shows a calculated afforestation requirement of 0.19 acres associated with the Application due to the tract area and associated offsite work 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.

This Application will require CRZ impacts to three (3) Protected Trees and removal of seven (7) Protected Trees as identified in the Staff Report. 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 two homes without the Variance.

Table 1: Protected Trees to be Impacted

Tree ID	Common Name	DBH	% Impact	Status
6	Red Maple	35”	35%	Good condition
14	Tulip Tree	41”	16%	Good condition
15	Tulip Tree	39”	14%	Fair condition

Table 2: Protected Trees to be Removed

Tree ID	Common Name	DBH	Status
2	Tulip Tree	42"	Fair condition
4	Sycamore	39"	Fair condition
5	Cherry	33"	Fair condition
9	Sweetgum	36"	Good condition
10	Silver Maple	39"	Fair condition
11	Silver Maple	41"	Poor condition
13	Cherry	31"	Good condition

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 subdividing one lot into two lots for two new single-family dwellings without the Variance. Any level of disturbance within the Subject Property would impact the critical root zones of the subject trees. In order to incorporate the development program, demolition of the existing structure 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.*

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property, location of the trees and necessary site design requirements. The Property contains several large trees located throughout the site and within the right-of-way along the frontage. Granting a variance to allow disturbance within the developable portion of the site and meet the objectives of the Master Plan is not unique to this Applicant. 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, development standards of the zone, and necessary design requirements of this Application, including street frontage

improvements. Nearly all the site and the associated frontage is encompassed by the critical root zones of subject trees. Therefore, impacts and removals are unavoidable. However, the Applicant has provided measures to preserve subject trees where feasible and has provided appropriate mitigation.

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 Trees being removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of the subject trees by planting larger caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Additionally, the Department of Permitting Services found the proposed stormwater management concept acceptable in their approval letter dated July 12, 2024. 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 variance request includes the removal of 261 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 65.25 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

November 22, 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, November 14, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board