

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

November 22, 2024

MCPB No. 24-099
Forest Conservation Plan No. F20240760
The Brownstones at Westbard Square
Date of Hearing: October 17, 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 20, 2024, Westwood Associates, LLC (“Applicant”) filed an application for approval of a forest conservation plan, in conjunction with a Site Plan No. 820240160 (the “Accompanying Application”), on approximately 2.25 acres of land located at 5101 Ridgefield Rd, Bethesda, MD 20816 (“Subject Property”) in the Westbard Policy Area and Westbard Sector Plan 2016 (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240760, The Brownstones at Westbard Square (“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 October 7, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on October 17, 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 Bartley, with a vote of 3-0; Chair Harris and Commissioners Bartley, and Hedrick voting in favor, Vice Chair Pedeoem and Commissioner Linden were necessarily absent.

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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 No. F20240760 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 (FFCP) may be required by the M-NCPPC Forest Conservation Inspection Staff. Alternate methods of invasive control may be required or permitted by the M-NCPPC Forest Conservation Inspector.
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 FFCP.
4. In accordance with the requirements of the existing Category I Conservation Easement recorded in Book 65350, Page 62 of the Land Records of Montgomery County, after the Applicant has graded and reforested the easement area as shown on the FFCP, the Applicant must:
 - a) Record an amended Category I Conservation Easement reflecting the entire easement area. The new easement agreement 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.
 - b) Install permanent conservation easement signage and split rail fence along the perimeter of the conservation easements as shown on the Forest Conservation Plan, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
5. Before the start of demolition, grading, or construction, whichever comes first under 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 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.
 - b) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for all mitigation trees,

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.

landscape plantings and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.

6. M-NCPPC Forest Conservation Inspection Staff may require additional plantings to mitigate for tree removals within the Category I Conservation Easement.
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 required reforestation plantings and mitigation trees on the Subject Property as shown on the approved FFCP.
8. Before certification of the FFCP, the Applicant must revise the plans per the following:
 - a) Make 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”). The Board previously approved Preliminary Forest Conservation Plan (“PFCP”) No. 120170170 for the Property. In accordance with the PFCP conditions of approval, separate Final Forest Conservation Plans are to be submitted for each phase of the overall project as it is approved.

Final Forest Conservation Plan No. F20240760 (“FFCP”) was submitted for concurrent review and approval with Site Plan No. 820240160. The associated Site Plan application (the “Accompanying Application”) proposes a new, 32-unit townhouse development, with 12.5 percent MPDUs, and environmental

enhancements on approximately 2.42 acres at the southwest quadrant of the intersection of River Road and Brookside Drive.

The Property is zoned CRT-1.0, C-0.25, R-1.0, H-45 and R-60 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 2.25 acres and 0.11 acres of off-site disturbance for a total of 2.36 acres.

The PFCP preserved 0.74 acres of forest in a Category I Conservation Easement, which was recorded at Book 65350, Page 62 of the Land Records of Montgomery County (the “Conservation Easement”). The Conservation Easement contains provisions establishing the effective date of the easement and allowing an amendment to the easement during site plan review, as needed, to update and modify the easement area boundaries. As anticipated by this provision, the FFCP amends the boundaries of the existing Conservation Easement by removing .08 acres of existing easement and by adding .20 acres of new easement area, for a total of approximately 0.86 acres protected by the modified Category I Forest Conservation Easement. The amended Conservation Easement will include a mix of existing vegetation and proposed plantings in more desirable locations to enhance the stream buffer. Additionally, invasive species will be controlled, and reforestation will be implemented to restore the nature and function of the stream valley buffer.

The 0.08 acres of Conservation Easement to be removed is a result of impacts to the stream valley buffer on the Property, including 0.054 acres for existing encroachment and 0.033 acres for the installation of a stormwater facility. The installation of a stormwater facility is an allowable activity under the Environmental Guidelines and therefore a variance under Section 22A-12(b)(3)(D) is not required to allow such impacts. The impacts to forest in the stream valley buffer that are unrelated to stormwater facilities require a variance from that requirement, however, as detailed below.

B. Forest Conservation Variance

The Project is subject to Section 22A-12(b)(3)(D) of the Montgomery County Forest Conservation Law. This section outlines criteria for leaving a stream valley buffer undisturbed, as these areas are identified as environmentally sensitive and are high priority for retention and protection (“Priority Areas for Retention”). Any impact to the forest with stream valley buffers, including grading and clearing, requires a variance under Section 22A-21 (“Variance”).

In accordance with Section 22A-21(a), the Applicant requested a Variance to remove 0.02 acres of forested stream valley buffer. The Board finds that the Applicant would experience unwarranted hardship if the variance were not granted and would be denied reasonable and significant use of the property to allow for a portion of one dwelling unit to be located within the stream valley buffer. The Applicant has shown that the Property is constrained by a significant number of sensitive environmental features located within an existing forest conservation easement and the stream valley buffer. Furthermore, reconfiguring the dwelling unit would not be possible without requiring a 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.*

The Applicant proposes to construct 32 dwelling units, remove existing parking lot surfaces, and expand the on-site Category I Forest Conservation Easement, along with stream enhancements. The Property is constrained by environmentally sensitive areas such as steep slopes, erodible soils, streams, and associated buffers. The proposal aims to address the need for housing while also increasing open space and making environmental improvements in the new development area. 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 is not based on conditions or circumstances that are the result of the actions of the Applicant. The site is constrained by environmentally sensitive areas, such as steep slopes, highly erodible soils, and streams with their associated buffers, as well as frontage on three roadways, which create a challenge in configuring the development. The Applicant's variance request shows efforts to lessen site impacts and enhance the stream buffer where possible.

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 variances are a result of the proposed improvements and not 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 granting of the variance will not violate State water quality standards, or degrade water quality, but rather it will improve water quality. By promoting groundwater recharge, the proposed bioretention feature, located within the stream valley buffer, will improve the effectiveness of the Site's proposed stormwater management system.

The forested stream valley buffer impacts triggering the variance are fully mitigated onsite by the relatively sizable increase of protected stream valley buffer. The variance provision Section 22A-21(f) requires a 2:1 on-site reforestation ratio for the removal of forest within a stream valley buffer. Approximately 0.02 acres of forested stream valley buffer removal is proposed, which generates a mitigation requirement of 0.04 acres. As described above, an additional 0.20 acres of stream valley buffer will be added and protected by a Category I Forest Conservation Easement, which exceeds the 0.04 acre requirement. Notably, under this application, the land use does not change the use, and overall environmental land cover and features are enhanced rather than diminished. Furthermore, the Final Forest Conservation Plan results in more contiguous and larger easement within the onsite priority areas for environmental improvement and conservation.

The Application satisfies all applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies with the Montgomery County Planning Department's Environmental Guidelines. The Board approves the variance, with the overall onsite and offsite easement mitigation as conditioned, to address the forest clearing within the stream valley buffer.

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 Commissioner Bartley, with a vote of 3-0-2; Chair Harris, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Vice Chair Pedoeem, and Commissioner Linden abstaining, at its regular meeting held on Thursday, November 14, 2024, in Wheaton, Maryland and via video conference.



Artie Harris, Chair
Montgomery County Planning Board