

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

January 17, 2025

MCPB No. 24-120
Forest Conservation Plan No. F20240060
Rich Meadows
Date of Hearing: December 19, 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 October 31, 2023, Kent Murphy (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Administrative Subdivision Plan No. 620240010 (the “Accompanying Development Application”) on approximately 15.17 acres of land located at 13635 Darnestown Road (“Subject Property”) in the Darnestown Policy Area and *2002 Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240060 Rich Meadows (“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 December 6, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on December 19, 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 Vice Chair Pedoeem, 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. F20240060 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.

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 Development Application, the Applicant must:
 - a) Record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement 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 for the easement must be referenced on the record plat.
 - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c) 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.
 - d) Submit a cost estimate for the reforestation/afforestation and other FCP 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 fencing, mulching, staking, tree protection, and tree protection removal credited toward meeting the

requirements as shown on the FCP. 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.

- e) 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 0.29 acres of new forest planting mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
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 as shown on the approved FCP.
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 37.5 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.

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 Subject Property is zoned RC and 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 15.17-acre Total Tract with a deduction of 0.06 acres for an associated pipeline with this Application, for a total Net Tract area of 15.11 acres. The Subject Property contains approximately 8.80 acres of stream valley buffer of which 8.30 acres is forested and 0.29 acres will be planted with forest cover. As conditioned, all areas will be protected with a Category I Conservation Easement.

There is a total of 13.18 acres of existing forest on the Subject Property. The Applicant is proposing to remove 0.38 acres and retain 12.80 acres of forest resulting in no afforestation/reforestation requirement.

While there is no planting requirement per the worksheet, all unforested areas of Stream Valley Buffer must be afforested, as required by Chapter 22A-12(e)(1)(B) and as shown on the approved FCP.

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 five 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 to allow one lot for one single family home without the Variance. Given that the Subject Property contains a large number of Protected Trees that are generally scattered throughout the site, it would be infeasible to develop the Subject Property without impacting Protected Trees in some manner. The number of Protected Trees to be impacted or removed has been minimized to the extent practicable in the Accompanying Development Application.

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 impacts to the one (1) tree and the removal of four (4) trees are due to the development of the Subject Property, location of the trees in proximity to the limits of disturbance (“LOD”) and necessary site design requirements for this residential development. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting of this variance is not a special privilege that would be granted only to this Applicant and 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. As noted above, Protected Trees are scattered throughout the Subject Property, and the Applicant has designed the project to minimize impacts to Protected Trees to the extent practicable.

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 impacted are not located within a stream buffer, wetland or Special Protection Area. Trees being removed are not located within a stream buffer, wetland or Special Protection Area. The Application proposes mitigation for the removal of these four trees by planting larger caliper trees on-site. The one tree being impacted is fully expected to recover and to continue providing the ecological and water quality functions that may be initially reduced by the impacts of the Protected Trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and

function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1 inch replacement for every 4 inches removed. As conditioned, variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 37.5 caliper inches, as shown on the approved FCP. 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

January 17, 2025


(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 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, January 16, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board