

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

January 31, 2025

MCPB No. 25-004  
Forest Conservation Plan No. F20240180  
Clarksburg Chase  
Date of Hearing: January 9, 2025

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on November 15, 2023, Mark Anderson/US Home, LLC (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120240040 and Site Plan No. 820240050 (“Accompanying Plans”) on approximately 136.17 acres of land located at Northwest quadrant of intersection of Gosnell Farm Drive at Old Clarksburg Road (“Subject Property”) in the Clarksburg Policy Area and 2014 *Ten Mile Creek Area Limited Amendment to the 1994 Clarksburg Master Plan & Hyattstown Special Study Area* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240180, Clarksburg Chase (“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 30, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 9, 2025, 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, and Commissioners Bartley, Hedrick, and Linden voting in favor.

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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. F20240180 on the Subject Property, subject to the following conditions:<sup>1</sup>

1. Before certification of the Site Plan, the Applicant must revise the Final Forest Conservation Plan to address minor comments in ePlans:
  - a. Only the following species are to be planted within the Parkland Conveyance Area: Red Oak, Swamp White Oak, Chinquapin Oak, Flowering Dogwood, and Fringe Tree.
2. 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.
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 the start of any clearing, grading, record plat, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all area of forest retention, forest planting, and environmental buffers that will not be conveyed to M-NCPPC Department of Parks, 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.
5. Before any clearing, grading or construction for the Accompanying Plans, the Applicant must submit a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, and mitigation trees. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
6. The Applicant must 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.

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<sup>1</sup> 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 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 8.04 acres of new forest planting and mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
8. Before the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must 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.
9. The Applicant must install the Stream Valley Buffer plantings as shown on the approved FCP, 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. Flexibility in the timing of the plantings may be required to allow for the required stream restoration work to occur.
10. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
11. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services (“MCDPS”) for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff the Applicant must install the variance tree mitigation plantings as shown on the FCP.
12. 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.

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 RNC and is assigned a Land Use 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 percent and a conservation threshold of 45 percent of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 136.17-acre Total Tract plus 0.04 acres offsite improvements associated with this Application, for a total Net Tract area of 136.22 acres. There is 75.51 acres of forest onsite of which 0.89 acres is being cleared.

The application results in no afforestation/reforestation requirement as per the forest conservation worksheet. However, the application does require the planting of unforested Stream Valley Buffer of 8.04 acres. All areas of Stream Valley buffer and plantings will be placed into a Category I Conservation Easement.

#### 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 eight 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 the construction of 101 dwelling units, including 49 single-family detached units and 52 single-family attached units (including 13 moderately priced dwelling units) and the dedication of 100.57 acres of parkland without the 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.*

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 and satisfying the recommendations of the Master Plan.

Granting 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions and Master Plan recommendations, as well as the requirement for impervious removal and stream restoration on the Property

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 need for a variance based on conditions and constraints on the Subject Property, not 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. As conditions, the Application will reforest the currently unforested stream buffers, as well as provide additional mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

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 one-inch caliper for every four inches removed. This results in a total mitigation of 26 inches with the installation of eight, three and-one-half inches to four-inch caliper trees. These trees will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to the region. 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 31, 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.

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**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 the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Commissioner Linden was necessarily absent, at its regular meeting held on Thursday, January 23, 2025, in Wheaton, Maryland and via video conference.



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Artie L. Harris, Chair  
Montgomery County Planning Board