

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

February 14, 2025

MCPB No. 25-013  
Forest Conservation Plan No. F20250070  
Democracy Center  
Date of Hearing: January 16, 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 September 20, 2024, Democracy Center MF, LLC (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with *Prelim* Plan No. 120250020 and Site Plan No. 820250020 on approximately 15.35 acres of land located at the northwest quadrant of the intersection of Fernwood Road and Rockledge Drive in Rock Spring (“Subject Property”) in the 2017 *Rock Spring Sector Plan* area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20250070 Democracy Center (“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 January 3, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on January 16, 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 Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20250070 on the Subject Property, subject to the following conditions:<sup>1</sup>

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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. See also Montgomery County Code §50.2.2.A (“applicant”).

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Approved as to  
Legal Sufficiency:

/s/ Matthew Mills  
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 this development Application, the Applicant must:
    - a) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Rock Creek watershed or Priority Area to satisfy the reforestation requirement of 2.34 acres of mitigation credit. If no off-site forest banks exist within the Cabin John watershed or Priority Area, then the off-site requirement may be met by purchasing 2.34 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Cabin John 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.
    - b) 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.
    - c) 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 mitigation trees and maintenance 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 variance tree mitigation plantings on the Subject Property
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as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 42 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.

FCP No. F202507070 will meet Forest Conservation Law through forest banking or, if forest mitigation bank credits are not available for purchase, then fee-in-lieu. The Subject Property has a net tract area of 15.58 acres. Based on the site zoning, the afforestation requirement is 2.34 acres.

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 (5) 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 development of housing and related needs 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 does not confer a special privilege on the Applicant as the disturbance is unavoidable to construct infill development housing. The Property is developed with an office building, associated parking, and active recreation areas. If the Applicant were not able to impact the Protected Trees, the Applicant would not be able to construct housing and provide improved stormwater management for the new development.

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 but is based upon the existing site conditions and the locations of the Protected Trees. The five (5) trees to be removed are located throughout the site. In order to remove existing infrastructure and build the new development, these trees will be removed, with 100% impact to the critical root zones.

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 location of trees and the proposed construction 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 Property's existing conditions include an office building and associated surface parking, and an open area with active recreation areas. The approved development includes improved stormwater management, including micro-bioretenion facilities, a storage facility, and a storm filter fault. Additionally, fourteen (14) new 3-inch caliper native trees will be planted in mitigation for the removal of the five (5) Protected Trees to replace the water quality functions of the trees being removed. Given this, granting the variance will not adversely impact water quality.

The Protected Trees approved for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being impacted

will remain to provide the same level of water quality protection as it currently provides.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board hereby approves the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4- inches removed using a minimum of 3-inch caliper trees, resulting in a mitigation of forty-two (42) inches, with a minimum at installation of fourteen (14) 3-inch caliper trees. 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

February 14, 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 motion of Vice Chair Pedoeem, seconded by Commissioner Linden, with a vote of 3-0; Chair Harris, Vice Chair Pedoeem and Commissioner Linden voting in favor of the motion, Commissioner Bartley and Hedrick necessarily absent at its regular meeting held on Thursday, February 6, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board