

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-087
Forest Conservation Plan No. F20230030
Willerburn Acres
Date of Hearing: July 27, 2023

SEP 21 2023

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 24, 2023, Robert Gamzeh (“Applicant”), filed an application for approval of a forest conservation plan in conjunction with an administrative subdivision plan, on property that would create two lots on one acre of land in the R-90 zone, located about 450 feet northeast of the intersection of Seven Locks Road and Gainsborough Road at 11712 Gainsborough Road (“Subject Property”), in the Potomac Policy Area and the 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. F20230030, Willerburn Acres (“Forest Conservation Plan” or “Application”), and the accompanying Administrative Subdivision Plan is No. 620230040; 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 July 14, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 27, 2023, the Planning Board held a public hearing on the Application, and voted to approve the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230030 on the Subject Property, subject to the following conditions:

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320

www.montgomeryplanningboard.org | mcpb-chair@mcpcprc.org

Approved as to

Legal Sufficiency: /s/ Emily Vaias

M-NCPPC Legal Department

1. The Applicant must comply with the following conditions of approval for the Preliminary/Final Forest Conservation Plan No. F20230030 (“FFCP”), approved in conjunction with the Administrative Subdivision Plan No. 620230040:
 - a. 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.
 - b. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree-save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
 - c. 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.
 - d. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of three caliper inches totaling 12.0 caliper inches. Planting locations to be shown on the FFCP or as required by the M-NCPPC Inspection Staff.
 - e. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application or the accompanying Administrative Subdivision Plan No. 620230040, the Applicant must:
 - i. Submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.17-acres of afforestation/reforestation requirement.
 - ii. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
 - iii. 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 the variance tree mitigation plantings. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.

BE IT FURTHER RESOLVED, that having considered 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 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 (FCL).

The accompanying Administrative Subdivision Plan No. 620230040 (the "Administrative Subdivision Plan") approves development of two lots on one acre, subject to conditions. A Forest Conservation Plan was submitted with the Administrative Subdivision Plan. The Subject Property is zoned R-90 and is assigned a Land Use Category of High Density Residential ("HDR") 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 15 percent and a conservation threshold of 20 percent of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 1.00-acre Total Tract Area plus 0.10 acres of offsite disturbance associated with this Application and as approved by the Administrative Subdivision Plan, for a total net tract area of 1.10 acres. There is no existing forest on the Subject Property. This results in a total afforestation/reforestation requirement of 0.17 acres. The Applicant proposes to meet the planting requirement by purchasing credits from an offsite forest bank within the Cabin John Creek watershed or another watershed if no credits are available within the Cabin John Creek watershed. If no forest bank credits are available in any forest bank within Montgomery County, then the Applicant will make a fee-in-lieu payment to the M-NCPPC forest conservation fund.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as 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.

The Applicant proposes to remove one and impact two Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for two lots each with one dwelling unit, without the Variance.

The Board made 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 trees ST-1 and ST-4, and the removal of tree ST-2 are due to the development of the Property with two houses, location of the trees within the limits-of-disturbance ("LOD") of the Property, and necessary site design requirements for the Property. Tree No. ST-2 is located in the front portion of the Property and is near an existing driveway; it is in moderate- to poor condition. Tree No. ST-2 will be significantly impacted by the installation of stormwater management controls, drywells, a new public sidewalk, new utility lines, and the excavation for a new single-family detached unit on proposed Lot No. 1. Removal of Tree No. ST-2 is warranted, given the significant construction impacts, as well as the tree's moderate- to poor condition. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that is granted only this Applicant and 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 the Administrative Subdivision Plan.

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 proposed improvements on the subject Property, 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. Mitigation is proposed for the removal of tree ST-2 by planting on-site a quantity of four, three-inch minimum caliper,

Maryland native overstory trees. The mitigation trees will replace the ecological and water quality functions that may be lost by removal of ST-2. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

There is one Protected Tree proposed for removal in this variance request, resulting in a total of 38.5 inches of DBH removed as shown on the FFCP. The Applicant proposes mitigation at a rate that approximates the form and function of the tree removed. This tree will be replaced at a ratio of approximately one-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 9.63 inches with the installation on-site of a quantity of four, three-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements. Although these trees will not be as large as the tree removed, they will be planted on the Subject Property and provide some immediate benefit, ultimately replacing the canopy lost by the removal of tree ST-2. There is some disturbance within the CRZ of two trees, Trees ST-1 and ST-4; however, these trees will receive adequate tree protection measures. An existing driveway currently within their CRZ will be removed and the area rehabilitated, and their roots will regenerate, and the functions they currently provide will continue. Therefore, no mitigation is recommended for trees that are impacted but retained. As conditioned, the mitigation trees will be protected as part of a five-year maintenance and management agreement.

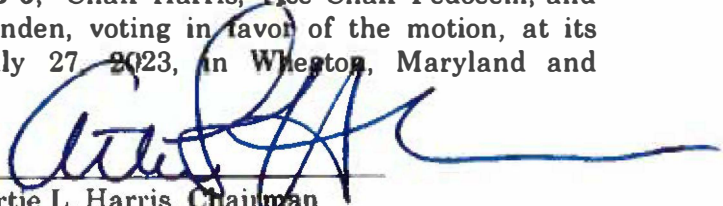
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is SEP 21 2023 (which is the date that this Resolution is mailed to all parties of record); and

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 approved and adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on 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 of the motion, at its regular meeting held on Thursday, July 27, 2023, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chairman
Montgomery County Planning Board