

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

April 1, 2025

MCPB No. 25-024
Forest Conservation Plan No. F20250240
Brighton Station STATCOM Expansion
Date of Hearing: February 6, 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 19, 2024, Pepco (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Mandatory Referral No. MR2025007 (“Accompanying Plan”) expand an existing substation on approximately 232 acres of land located at 1300 Brighton Dam Road, Brookeville (“Subject Property”) in the Olney Policy Area and 2005 *Olney Master Plan* (“*Master Plan*”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20250240, Brighton Station STATCOM Expansion (“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 27, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on February 6, 2025, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the 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, with Commissioners Bartley and Hedrick necessarily absent.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605
www.montgomeryplanningboard.org | mcp-chair@mncppc.org

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. F20250240 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 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 the start of any demolition, clearing, grading, or construction for the Accompanying Plan, the Applicant must:
 - a) Record a Category I or modified 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 or modified 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.
 - 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. 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.

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.

- 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 1.52 acres of new forest planting and 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 125 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.
7. Impervious surfaces are limited to no more than 12.25 percent on the Subject Property, which is within the Patuxent River Primary Management Area (“PMA”) as shown on the Impervious Surface Plan dated January 24, 2025.
8. Before the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area (“PMA”) on the Subject Property to no more than 12.25 percent, as shown on the Impervious Surface Plan dated January 24, 2025. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records

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 total Net Tract Area for Forest Conservation purposes is 226.83 acres, which is equal to the total tract area, 231.76 acres, minus 4.93 acres of deductions for Gas Line Easements. The Subject Property is zoned RC but is considered Institutional Development Area (IDA) as defined by Chapter 22A, because of the use. The IDA land use category has a 15% afforestation threshold and 20% reforestation threshold, which set the requirements of the forest conservation worksheet. There are 171.36 acres of existing forest within the Net Tract Area, and the Applicant proposes to count 45.87 acres as cleared. This results in no additional afforestation/reforestation requirement.

As conditioned, all the forest being retained for this project will be placed into long-term protective easements. The easements are split into two types: the standard Category I Conservation easement (70.56 acres) and a modified Category I Conservation (54.93 acres). The modified Conservation Easement is being placed over areas that may require future expansions necessary for the operations of the substation. All of the forest in the modified easements is above the break-even point in the worksheet and would not incur removal penalties if need in the future.

Impervious Surface Limitations

The Subject Property is in the Rocky Gorge Dam watershed and subject to the Patuxent Primary Management Area (PMA), with relevant requirements set forth in the Environmental Guidelines. The development proposed on the Subject Property is within the PMA transition area, which is subject to the requirement that imperviousness should not exceed 10%.

The existing substation on the Property is comprised of approximately 9.62% impervious surface that is composed of 16% pavement, 33% compacted stone and 51% uncompacted stone. The new construction to accommodate the expansion would add 6.08 acres of impervious surfaces bringing the overall imperviousness on the Subject Property to 12.25%, which exceeds the 10% limit set forth in the Environmental Guidelines by 2.25%. The Applicant requested that the Planning Board waive the requirement pertaining to the impervious limit in the PMA, noting that the expansion of the substation on the Subject Property is necessary to ensure grid reliability as a result of the planned retirement of the coal-fired Brandon Shores Generating Station.

The Environmental Guidelines note that “flexibility shall be shown in the application of these guidelines on a site-by-site basis to best achieve environmental and other planning objectives for the site.” (p. 2). Further, the Environmental Guidelines provide that “[t]he Planning Board at their discretion may approve, waive, or amend staff recommendations.” (p. 2).

Based upon the Applicant’s need to provide reliable power to the citizens of Montgomery County and the region at large, the Board grants flexibility from the 10% impervious limit in this case. As provided in the Environmental Guidelines, allowing the Applicant to exceed the requirement by 2.25% would further planning objectives for the site while still preserving 125.49 acres of forest, which includes 39.37 acres of forested stream valley buffer. The amount of imperviousness is the minimum need to achieve the goals and objectives of the regional power grid. Denying the waiver would have direct negative impacts on the public interest, as it is necessary to ensure regional grid reliability. As conditioned, the Applicant will enter into an impervious surface agreement to implement the Impervious Surface Plan dated January 24, 2025.

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 19 Protected Trees as identified in the Staff Report, as follows:

Table 1: Variance Trees to be Removed

	Species	DBH (inches)	Condition (Good unless otherwise noted)
21	White Pine	32.5	Fair, leaning, weak, root heaving
22	White Pine	30	
23	White Pine	30	
24	Sycamore	30	Fair, heavy vine cover
25	Sycamore	32	
26	Sycamore	36	Fair, bent trunk
28	Sycamore	37	Fair, co-dominant trunks
29	Sycamore	30.5	
30	Sycamore	33	
31	Sycamore	44.5	Co-dominant stems, weak attachment
44	Sycamore	39	
45	Sycamore	45.5	Fair, some dieback in canopy
47	Sycamore	35.5	Poor, notable dieback
50	Sycamore	44	

Table 2: Variance Trees to be Impacted

	Species	DBH (inches)	Condition (Good unless otherwise noted)
27	Sycamore	30	
32	Sycamore	35.5	Co-dominant stems, weak attachment
46	Sycamore	38	
48	Sycamore	34	Four trunks at bh
49	Red Maple	34	Fair

In addition to individual trees under 22A-12(b)(3)(C), the Applicant is requesting 44,911 square feet of disturbance to forest protected under 22A-12(b)(3)(D) “Any forest in a floodplain or stream buffer, except if the activity occurring within the floodplain or stream buffer is permitted under the environmental guidelines.”

In accordance with Section 22A-21(a), the Applicant requested a Variance for impacts to the Protected Trees and forested stream valley buffer (“SVB”), and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for the substation expansion without the Variance. Denial of the variance application would create

an unwarranted hardship for the Applicant because there are no other alternatives to the project that would allow them to meet the goal of expanding the substation site to maintain the safety and integrity of the electrical supply grid for the service area.

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 of and impacts to the trees and forest within the SVB is due to the location of the trees and necessary site design requirements unique to a substation upgrade. Therefore, granting of 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 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 and necessary design requirements of this specific use. The Applicant, in conjunction with Staff, has explored alternatives to determine that the proposal meets the objectives of the project while minimizing the impact on Protected Trees and SVB to be 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 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 FCP proposes to provide 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 using trees that are a minimum of three caliper inches in size. As conditioned, the Applicant must plant mitigation trees totaling 125 caliper inches. 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

April 1, 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 Vice Chair Pedoeem, seconded by Commissioner Linden, with a vote of 3-0-2; Chair Harris, Vice Chair Pedoeem, and Commissioner Linden, voting in favor of the motion, Commissioners Bartley and Hedrick abstaining at its regular meeting held on Thursday, March 27, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board