

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

April 8, 2025

MCPB No. 25-027

Final Forest Conservation Plan No. F20250100

Ruby Senior Living

Date of Hearing: March 13, 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 17, 2024, Worldshine Home, LLC (“Applicant”) filed an application for approval of a final forest conservation plan for concurrent review and approval with Preliminary Plan No. 120250030 (“Accompanying Plan”) to create one lot for the development of a Residential Care Facility with up to 120 beds on approximately 4.66 acres of land located at 21908 Ruby Drive & 12405 W. Old Baltimore Road, Boyds (“Subject Property”) in the Clarksburg Policy Area and 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. F20250100, Ruby Senior Living (“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 February 28, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 13, 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 4-0-1; with Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick and Linden voting in favor. Commissioner Bartley abstained.

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. F20250100 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 recordation of the plat and the start of any clearing, grading, or construction, whichever comes first, for the associated development application the Applicant must Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Little Seneca Creek watershed or Priority Area to satisfy the reforestation requirement of 2.24 acres of mitigation credit. If no off-site forest banks exist within the Little Seneca Creek watershed or Priority Area, then the off-site requirement may be met by purchasing 2.92 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Little Seneca Creek 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.
5. Within the one year or two growing seasons following the release of the first building permit of the primary structure 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 115.75 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees are 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

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.

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 Final Forest Conservation Plan complies with the requirements of the Forest Conservation Law and is consistent with Preliminary Forest Conservation Plan No. CU202311.

The Subject Property is zoned R-200 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 4.66-acre Total Tract plus 0.54 acres of offsite improvements associated with this Application, for a total Net Tract area of 5.20 acres.

The Application proposes clearing all 1.36 acres of forest onsite and results in an afforestation/reforestation requirement of 2.24 acres if within the same watershed or a Priority watershed or 2.92 acres if met elsewhere in the County. The Applicant is proposing to meet the entire requirement offsite through the purchase of forest mitigation bank credits or, if none are available, through payment of a fee-in-lieu.

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.

The Preliminary Forest Conservation Plan included the approval of a variance request; however, as the Accompanying Plan required changes and additional tree impacts, the Applicant submitted a new Variance Request, which will supersede

the previously approved variance request. This Application will require the removal of 3 and CRZ impact to 12 Protected Trees as identified below:

ID	Scientific Name	Common Name	Condition	DBH	Remove or Save
E00	Picea Pungens	Blue Spruce	good	34	Remove
E01	Liriodendron Tulipifera	Tulip Poplar	fair/poor	30	Remove
E02	Prunus Serotina	Black Cherry	fair/poor	34	Remove
E03	Acer Rubrum	Red Maple	good	33	Remove
E04	Quercus Rubra	Red Oak	fair/poor	31	Remove
E05	Quercus Velutina	Black Oak	Poor	43	Remove
E06	Quercus Alba	White Oak	good	36	Remove
E09	Quercus Alba	White Oak	good	33	Save
E13	Quercus Velutina	Black Oak	good	32	Save
E17	Ulmus Americana	American Elm	fair	39	Remove
E21	Acer Rubrum	Red Maple	fair/poor	53	Remove
E25	Acer Saccharinum	Silver Maple	good/fair	59	Remove
E29	Prunus Serotina	Black Cherry	fair	31	Remove
E32	Acer Saccharinum	Silver Maple	fair	40	Remove
E34	Acer Saccharinum	Silver Maple	poor	31	Remove

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 a Residential Care Facility without the Variance. The Protected Trees are, for the most part, centrally located within the Property. Therefore, the inability to impact or remove these highly impacted Protected Trees would potentially render portions of the Site undevelopable for this Project. The Board finds that there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the proposed subdivision and subsequent development, which is a reasonable and significant use of the Property.

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 three trees and the removal of twelve trees are due to the location of the trees within and adjacent to the limits of disturbance of the

Property and necessary site design requirements for this Property. 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 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 resulting from 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.

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 results from the existing conditions and the proposed site design and layout of the Property and not from 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 or wetland. Proposed mitigation includes planting 29 four-inch caliper, Maryland native overstory trees on-site. The mitigation trees will replace the ecological and water quality functions that may be lost by the removal of the seven 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 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 115.75 inches with the installation of 29 four-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. 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 8, 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 4-0-1; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining at its regular meeting held on Thursday, April 3, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board