

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

April 30, 2025

MCPB No. 25-036
Final Forest Conservation Plan No. F20240220
Addition to Glen Hills, Section 3
Date of Hearing: March 27, 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 June 26, 2024, Norton Land Design, LLC (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120240150 (“Accompanying Plan”) on approximately 3.79 acres of land located at 12631 Circle Drive, Rockville, MD 20850 (“Subject Property”) in the Potomac Policy Area and 2002 *Potomac Subregion Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Final Forest Conservation Plan No. F20240220, Addition to Glen Hills, Section 3 (“Final Forest Conservation Plan”, “FFCP” 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 March 17, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 27, 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, Commissioners Bartley, Hedrick, and Linden voting in favor.

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 Final Forest Conservation Plan No. F20240220 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, whichever comes first, for the Accompanying Plan, the Applicant must:
 - a. 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 credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - b. Submit a cost estimate for variance mitigation trees, five years of maintenance including invasive species management controls, staking, tree protection, and tree protection removal credited toward meeting the requirements as shown on the FFCP. 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.
 - 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 variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
 - d. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Potomac River watershed or Priority Area to satisfy the afforestation requirement of 0.83 acres of mitigation credit. If no off-site forest banks exist within the Lower Potomac River watershed or Priority Area, then the

¹For 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.

off-site requirement may be met by purchasing 0.83 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Lower Potomac River 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 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 FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 24.5 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.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”) and the Montgomery County Planning Department’s Environmental Guidelines. As required by Chapter 22A, an FFCP was submitted in conjunction with the Preliminary Plan No. 120240150 and to be reviewed concurrently. The total net tract area for forest conservation purposes is 4.15 acres which includes the Subject Property of 3.79 acres, plus off-site work of 0.36 acres for offsite work within the proposed right-of-way for Newgate Road and Circle Drive. The Subject Property is zoned RE-1 and is classified as Medium Density Residential (“MDR”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Subject Property contains no forest. This results in a total afforestation requirement of 0.83 acres as calculated in both of the Forest Conservation Worksheets. The Applicant proposes to meet this requirement by purchasing the appropriate credits in an M-NCPPC approved

forest bank, or if no forest banks are available, then submitting a fee-in-lieu payment into the 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-21 (“Variance”). Otherwise, such resources as defined under Section 22A-12(b)(3) must be left in an undisturbed condition.

This Application will require the CRZ impact to one (1) and the removal of three (3) Protected Trees as identified in Table 1. The Variance request is for impacts and removal of these Protected Trees for the construction of three new residential structures, driveway access to all four units, sidewalk installation along Newgate Road and Circle Drive, and the installation of the required utility connections to the proposed units.

Table 1 – Removed and Impacted Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
3	Tulip Poplar	<i>Liriodendron tulipifera</i>	32 in.	100%	Remove tree. Tree located within LOD, impacted by grading.
4	Tulip Poplar	<i>Liriodendron tulipifera</i>	36 in.	54%	Remove tree. Tree located within LOD, impacted by grading and construction of proposed unit.
5	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	93%	Remove tree. Tree located within LOD, impacted by grading and construction of driveway.
11	Tulip Poplar	<i>Liriodendron tulipifera</i>	34 in.	15%	CRZ Impacts Only.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a Variance to be granted. The Board has made the following determinations in the review of the Variance request and the proposed Forest Conservation Plan.

Unwarranted Hardship

In accordance with Section 22A-21(a), the Applicant has requested a Variance from Section 22A-12(b)(3)(C) of the FCL in order to impact or remove 4 Protected

Trees. Without this variance from the FCL, the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for four homes by being unable to develop this site under the RE-1 zone requirements and to also minimize impacts to the Piney Branch SPA. The proposed units on Lots 1 and 2 have been pulled out of the SPA and are located closer to Newgate Road. The 4 Protected Trees to be impacted or removed are located in this area as well. In an effort to reduce the environmental impacts of this development, the Applicant is faced with the necessity of impacting or removing 4 Protected Trees. The Board finds that the denial of the Variance request would cause an inability to subdivide this 3.79-acre property into four 40,000-square-foot lots and construct three new units, which is a reasonable and significant use of the Property.

Tree Variance Findings

The following determinations are based on the required findings for granting of the requested variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Board finds that granting the Variance to impact Tree 11, and to remove Trees 3, 4 and 5 will not confer a special privilege on the Applicant as the impacts or removals are due to necessary development requirements of this property in the RE-1 zone and the reduction of impacts to the Piney Branch SPA. These 4 Protected Trees are either being impacted or removed with the installation of the two units and driveways on Lots 1 and 2. Therefore, the granting of this Variance is not a special privilege for this Applicant and one that would be denied to other applicants.

2. *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 on the necessary development standards and requirements of subdividing this property into 4 lots in the RE-1 zone, constructing three new units, utility connections, driveways and sidewalks.

3. *Is not based on a condition relating 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 the required improvements, and not as a result of land or building use on a neighboring property.

4. *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 a special protection area. The three Protected Trees proposed to be removed are located on the property outside of the Piney Branch SPA. The Application proposes mitigation for the removal of these three Protected Trees by planting nine 3-inch caliper trees on-site. These trees will replace water quality functions that may be lost by the removed trees. Therefore, the Board finds that the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision

There are three Protected Trees proposed for removal in this Variance request resulting in a total of 98 inches of DBH being removed. The FFCP includes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3 caliper in size. This results in a total mitigation of 24.5 inches which will be met with the installation of nine (9) 3-inch caliper trees.

Although the installed mitigation trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of trees 3, 4 and 5. These mitigation trees must be overstory trees native to the Piedmont Region of Maryland and must be installed on the Subject Property outside of any rights-of-way and/or utility easements.

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 30, 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 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, April 24, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board