

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

May 27, 2025

MCPB No. 25-055

Final Forest Conservation Plan No. F20241000

Ancient Oak

Date of Hearing: May 8, 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 July 15, 2024, Packard & Associates, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 2.26 acres of land located at 13330 Darnestown Road, Gaithersburg, MD 20878 (“Subject Property”) in the Rural West 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. F20241000 (“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 May 8, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 8, 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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Final Forest Conservation Plan No. F20241000 on the Subject Property, subject to the following conditions:<sup>1</sup>

---

<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.

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 FFCP. Tree save measures not specified on the FFCP 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 FFCP.
4. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for the Administrative Subdivision Plan, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Potomac River Direct watershed or Priority Area<sup>2</sup> to satisfy the afforestation requirement of 0.33 acres of mitigation credit as shown on the FFCP. If no off-site forest banks exist within the Potomac River Direct watershed or Priority Area, then the afforestation requirement may be met by purchasing 0.33 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Potomac River Direct 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.

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 Applicant has submitted an FFCP for concurrent review with the Administrative Subdivision Plan No. 620240220. This FFCP satisfies the

---

<sup>2</sup> Priority Area means a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA) as defined in Section 22A-12(c)(1) of the Forest Conservation Law.

requirements of both a Preliminary Forest Conservation Plan and a Final Forest Conservation Plan as required under Section 22A-11(b)(2)(A) of the Montgomery County Forest Conservation Law, Montgomery Code, Chapter 22A (“FCL”). As conditioned, the Application satisfies the applicable requirements of the FCL and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

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 FCL and the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The Net Tract Area for forest conservation purposes is 2.20 acres, which includes the Total Tract Area of 2.26 acres plus 0.02 acres of offsite disturbance associated with this Application, minus 0.08 acres for right-of-way dedication along Darnestown Road. The Subject Property does not contain existing forest resulting in a total afforestation requirement of 0.33 acres either within or outside of the same watershed or Priority Area. The Applicant proposes to meet the afforestation requirement by purchasing forest mitigation bank credits from an offsite forest bank or by paying a fee-in-lieu into the Forest Conservation Fund if no forest mitigation bank credits are available.

#### 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 CRZ impacts to two 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 as two residential lots that meet the zoning requirements without the Variance. In this case, the unwarranted hardship is caused by the need for driveway access from Darnestown Road for the proposed new lot. Because two lots are being accessed by one driveway, Montgomery County Fire and Rescue Service requires that the driveway be widened and improved for emergency vehicle use. This widening and improvement results in the impact to the two Protected Trees

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 the two Protected Trees are due to the development of the Property, location of the trees in proximity to the limits of disturbance, and necessary site design requirements for this residential development. Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, granting of this variance is not a special privilege that granted only 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 which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, necessary design requirements of this Application and requirements of other governmental agencies, as described above. Disturbance has been minimized.

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 the proposed site design and layout of the Subject Property, 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 Protected Trees being impacted are not located within a stream buffer, wetland, or Special Protection Area. These trees being impacted are fully expected to recover and to continue providing the ecological and water quality functions that may be initially reduced by the impacts of the Protected Trees. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality. 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

**May 27, 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 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, May 15, 2025, in Wheaton, Maryland and via video conference.



---

Artie L. Harris, Chair  
Montgomery County Planning Board