

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

April 30, 2025

MCPB No. 25-044

Forest Conservation Plan No. F20250110

PLD Lot 25 Redevelopment

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 October 2, 2024, Monument Realty (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Mandatory Referral No. MR2025005, Preliminary Plan No. 120250040, and Site Plan No. 820250030 (collectively, the “Accompanying Plans”) on approximately 1.38 acres of land located at 4701, 4703 and 4705 Highland Avenue, approximately 130 feet east of Wisconsin Avenue on the block bounded by Maple Avenue, Tilbury Street, Highland Avenue, and a public alley (“Subject Property”) in the Bethesda CBD Policy Area and *2017 Bethesda Downtown Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Final Forest Conservation Plan No. F20250110, PLD Lot 25 Redevelopment (“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 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 and Vice Chair Pedoeem, Commissioners Bartley, Hedrick, Linden, voting in favor.

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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. F20250110 on the Subject Property, subject to the following conditions:<sup>1</sup>

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. Before clearing, grading, or construction, whichever comes first for development under the Accompanying Plans, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Rock Creek watershed or Priority Area to satisfy the reforestation requirement of 0.24 acres of mitigation credit. If no off-site forest banks exist within the Lower Rock Creek watershed or Priority Area, then the off-site requirement may be met by purchasing 0.24 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Lower Rock 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.
4. 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 as shown on the certified Final Forest Conservation Plan.
5. The Applicant must plant the variance tree mitigation plantings on the Subject Property, with a minimum size of 3 caliper inches, totaling at least 16 caliper inches, or as shown on the certified Forest Conservation Plan. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
6. Before any demolition, clearing, grading or construction for development under the Accompanying Plans, whichever comes first, the Applicant must 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 credited toward meeting the requirements of the FCP.

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<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.

7. Before any demolition, clearing, grading or construction for development under the Accompanying Plans, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for mitigation tree plantings, including variance tree mitigation plantings credited toward meeting the requirements of the FCP.

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 Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code (“FCL”) and requires a Forest Conservation Plan for concurrent review and approval with Mandatory Referral No. MR2025005, Preliminary Plan No. 120250040, and Site Plan No. 820250030. The associated Mandatory Referral, Preliminary Plan, and Site Plan applications propose replacing the existing parking lot with the construction of a multifamily building. The proposed building will consist of up to 227 multi-family residential units, including 20% MPDUs, 8 live/work units, and a public parking garage. Included with the Forest Conservation Plan is a request for a tree variance for impacts to subject trees.

The Property is zoned CR-3.0, C-2.0, R-2.75, H-70, CRT-0.5, C-0.25, R- 0.5, H-70, is within the Bethesda Overlay Zone, and is classified as Mixed-Use Development (“MDP”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The total net tract area for forest conservation purposes includes the tract area of 1.38 acres and 0.23 acres of off-site disturbance for a total of 1.61 acres. There is no existing forest on the Property, which results in an afforestation requirement of 0.24 acres. As conditioned, the Applicant will meet this minor afforestation requirement through the purchase of forest mitigation bank credits or the payment of a fee-in-lieu to the Forest Conservation Fund.

## 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 Applicant submitted a variance request in a letter dated October 25, 2024 in conjunction with Forest Conservation Plan No. F20250110. The Applicant proposes to impact two (2) Protected Trees and remove two (2) Protected Trees, all of which are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law

*Table 1: Removed and Impacted Protected Trees*

<b>Tree ID</b>	<b>Latin Name</b>	<b>Common Name</b>	<b>DBH</b>	<b>% Impact</b>	<b>Status</b>
1	Quercus palustris	Pin Oak	33	100%	Remove
2	Quercus rubra	Red Oak	31	100%	Remove
5	Acer rubrum	Red Maple	45	28%	Save
6	Acer saccharinum	Silver Maple	49	16%	Save

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 to develop a 227-unit multi-family residential building with a public parking garage without the Variance. The impacts to variance trees are necessary for the implementation of a Sector Plan recommended Eastern Greenway in this location. Any level of disturbance within the Subject Property would impact the critical root zones of the subject trees. Additionally, the creation of an enjoyable green space will need extensive grading and disturbance. This is due to the current state of the designated greenway location, which comprises of a parking lot. In order to incorporate the development program, demolition of the existing structure is required, which in turn necessitates impacts and removals to variance trees. As conditioned, the proposed layout, which has been coordinated between the Applicant and M-NCPPC Staff, will minimize CRZ impacts to existing specimen trees where possible.

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.*

The development cannot proceed without disturbing or removing Specimen Trees, as the proposed redevelopment requires specific infrastructure improvements, including stormwater facilities, and the mater-planned Eastern Greenway. The specific infrastructure improvements are based on regulatory requirements and recommendations of the Master Plan, therefore they are not unique to the Applicant. With these factors considered, the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

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 and associated tree impacts are due to concerns related to the existing layout of the Subject Properties in relation to specimen trees onsite and on the Site's perimeter. Implementing the Eastern Greenway, a sector plan recommendation for the 2017 *Bethesda Downtown Sector Plan* and the development standards of the zone (CR-3.0, C-2.0, R-2.75, H-70, CRT-0.5, C-0.25, R-0.5, H-70), classified as Mixed-Use Development ("MDP"), along with the necessary design requirements of this Application for constructing a new multi-family building, necessitate variance tree impacts. The Applicant's variance request demonstrates efforts to minimize overall site impacts and preserve mature trees where feasible. Therefore, this variance request is not based on circumstances resulting from actions by the Applicant.

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 proposed site design and layout on 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 cause measurable degradation in water quality, as granting the variance will allow the development of the Eastern Greenway, which includes lawn, landscape plantings of shrubs and trees, in addition to canopy tree mitigation plantings that will help maximize the permeability of the soil, which serves to reduce runoff. The planting of these trees will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. As part of this proposal, the Applicant must also meet the 35% green cover requirements of the Sector Plan which will provide further water capture. Additionally, the Subject Property does not

currently contain any stormwater management features while the Applicant proposes a development which will meet current State and local stormwater management standards. This Application reduces impervious surfaces and implements areas of green roof and landscape plantings within the design. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

#### Mitigation for Trees Subject to the Variance Provisions

The FCP includes the removal of 64 inches of DBH of Protected Trees. Per Section 22A-21(e), the Applicant is planting mitigation trees at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed. Additionally, these trees will be located outside of utility and stormwater management easements and rights-of-way. As conditioned, the Applicant must plant at least 16 inches of native canopy trees, using a minimum size of 3-inch caliper tree. 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 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.

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#### **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