

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

May 15, 2025

MCPB No. 25-041
Forest Conservation Plan No. F20250160
Rickman Property
Date of Hearing: April 24, 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 23, 2024, Potomac Valley Brick and Supply Company (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120250060 (“Accompanying Plan”) on approximately 6.30 acres of land located at 18849 Woodfield Road, Gaithersburg, MD 20879 (“Subject Property”) in the Rural East Policy Area and within the *2004 Upper Rock Creek Area Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Final Forest Conservation Plan No. F20250160, Rickman Property (“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 April 14, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 24, 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 Barley, Hedrick and 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. F20250160 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, whichever comes first, 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 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 the variance mitigation trees, five years of maintenance including invasive species management controls, mulching, 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 Great Seneca Creek or Upper Rock Creek watersheds or a Priority Area to satisfy the afforestation requirement of 1.05 acres of forest conservation mitigation credit. If no off-site forest banks exist within the Great Seneca Creek or Upper Rock Creek watersheds or a Priority Area, then the off-site requirement may be met by purchasing 1.05 acres of forest conservation mitigation credits from a mitigation bank within Montgomery County outside of the Great Seneca Creek or Upper Rock Creek watersheds or a Priority Area, subject to Staff

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.

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 7.5 caliper inches, as shown on the approved FFCP. 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 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 with the Application. The total net tract area for forest conservation purposes is 6.98 acres, which includes the Subject Property of 6.30 acres, plus offsite work of 0.68 acres for offsite work within the proposed right-of-way of Woodfield Road for the installation of a sidewalk, sewer line extension, water connection and storm drain connections.

The Subject Property is zoned Industrial Light (IL) and is classified as Commercial and Industrial Use Area ("CIA") 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 1.05 acres as calculated in both of the Forest Conservation Worksheets. As conditioned, the Applicant will meet this requirement by purchasing the appropriate credits in a forest mitigation bank or if no banks are available, then submitting a fee-in-lieu payment 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.

This Application will require the removal or CRZ impact to three Protected Trees as identified in Table 1 and in the Staff Report. The Variance request is for the impact to and the removal of these Protected Trees for the construction of three (3) mixed use buildings containing office, a retail brick showroom, a warehouse and material storage, and light manufacturing uses while meeting Montgomery County requirements.

Table 1 – Removed and Impacted Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
1	Sycamore	<i>Plantanus occidentalis</i>	34 in.	31%	Offsite tree in good condition, minor impacts to CRZ; impacts only, save tree
5	Red Oak	<i>Quercus rubra</i>	30 in.	100%	Onsite tree in fair condition, 100% impacts to CRZ, tree within LOD; remove tree
6	Black Cherry	<i>Prunus serotina</i>	30 in.	29%	Offsite tree in fair condition, minor impacts to CRZ; impacts only, save tree

Unwarranted Hardship

In accordance with Section 22A-21(a), the Applicant has requested a Variance from Sec. 22A-12(b)(3)(C) of the FCL in order to remove one (1) and impact two (2) Protected Trees. Without this variance from the FCL, the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property for the redevelopment of this site in the IL zone for the construction of three (3) mixed use buildings containing office use, retail brick showroom, warehouse and material storage, and light manufacturing use while meeting Montgomery County requirements. The impacts to trees #1 and #6 are the result of a DPS requirement for stormwater management structures to adequately treat stormwater runoff in the Upper Rock Creek

SPA and overlay zone. The removal of tree #5 is the result of a MCDOT requirement to realign the proposed entry drive with an existing driveway on the opposite side of Woodfield Road. While redeveloping this site and addressing Montgomery County requirements, the Applicant has no option but to remove or impact these Protected Trees.

Tree Variance Findings

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 Board finds that granting the Variance to remove tree #5 and to impact trees #1 and #6, will not confer a special privilege on the Applicant as the impacts or removals are due to necessary development requirements of providing safe and adequate entry into the site and to provide necessary stormwater management. Therefore, the granting of this Variance is not a special privilege for this Applicant and one 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 on the necessary development standards of providing safe and adequate site access and providing necessary stormwater management. There are no reasonable alternative designs that would lessen or avoid impacts to Protected Trees on site.

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 required improvements, 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 two Protected Trees being impacted are not located within a stream buffer or wetland area but are located within the Upper Rock Creek Special Protection Area (SPA). Tree #5, which

is proposed to be removed, is not located within the Upper Rock Creek SPA. Additionally, the required mitigation plantings for the removal of tree #5 are being installed within the SPA in the southern corner of the site adjacent to a SWM facility and thereby will provide some increased measure of water quality treatment for the Upper Rock Creek SPA.

Mitigation for Trees Subject to the Variance Provision

There is one Protected Tree approved for removal in this Variance request resulting in a total of 30 inches of DBH being removed. The FFCP includes mitigation at a rate that approximates the form and function of the tree removed. The Board approves the replacement of the Protected Tree at a ratio of approximately 1-inch caliper for every 4 inches removed using trees that are a minimum of 3-inch caliper in size. This results in a total mitigation of 7.5 inches which will be met with the installation of three 3-inch caliper trees. These mitigation trees must be overstory trees native to the Piedmont Region of Maryland installed on the Subject Property outside of any rights-of-way and/or 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

May 15, 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 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 1, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board