

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 23-020

Forest Conservation Plan No. H-148

Project Name: Corso Chevy Chase

Date of Hearing: March 9, 2023

MAR 17 2023

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on November 3, 2020, Corso DC, LLC ("Applicant"), filed an application for approval of a forest conservation plan and variance request associated with Local Map Amendment H-148 to rezone a 13.64-acre property from R-60 to CRNF 1.5, C-0.25 R-1.25 H 70 to allow the construction of a Residential Care Facility (over 16 persons) containing up to 287 independent dwelling units, 190 assisted living beds, and 30 memory care beds, and up to 5,000 square feet of commercial/retail use, located at 7100 Connecticut Avenue, approximately 1300 feet north of Bradley Lane ("Subject Property") in the *1990 Bethesda Chevy Chase Master Plan* ("Sector Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. H-148, Corso Chevy Chase ("Forest Conservation Plan" or "Application");¹ 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 27, 2023 providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 9, 2023, the Planning Board held a public hearing on the Application, and voted to approve the Application subject to conditions, on the motion of

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Vice Chair Piñero, seconded by Commissioner Pedoeem, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, Commissioners Bartley, Hedrick, and Pedoeem voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. H-148 on the Subject Property, subject to the following conditions:²

1. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.
2. The Preliminary Plan must include building restriction lines as appropriate to maintain a 20-foot distance from any future building to the proposed conservation easements. However, below-grade foundation, and above-grade building features under Section 59.4.1.7.B.5.a, are allowed within the 20-foot Building Restriction Line.
3. Before certification of the Preliminary FCP, the Applicant must address the following items subject to staff approval:
 - a. Update all FCP sheets for consistency regarding tree removals, variance tables, mitigation plantings, and associated plan elements as shown in the staff report and/or approved by the Planning Board.
 - b. The overall plans, forest conservation worksheet and associated plans/notes/figures must be revised to reflect the updated footprint of the Category I Conservation easement.
 - c. Update LOD and variance request to include all applicable work and grading.
 - d. Clarify/correct notes and graphics as needed.
4. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling at least 123 caliper inches and consist of canopy tree species which are native to the Piedmont Region of Maryland. Planting locations to be shown on the Final Forest Conservation Plan ("FFCP").
5. The Applicant must submit a Final Forest Conservation Plan ("FFCP") for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property.

² 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.

6. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.
7. The development must comply with the Final Forest Conservation Plan which is to include a Tree-Save Plan prepared by an ISA-Certified Arborist who is also a Maryland Licensed Tree-Care Expert. A five-year maintenance and management plan for Trees 50 and 51 must be implemented by a similarly qualified tree care professional. Replacement street trees will be required if Trees 50 and/or 51 dies or severely declines within the five-year timeframe.

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 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.

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD 420222220) was approved by Staff on September 27, 2022 and a Forest Conservation Plan for the Subject Property was submitted as part of the Local Map Amendment application. The Subject Property contains approximately 3.71 acres of forest. The Application proposes to remove approximately 0.74 acres of forest. No afforestation or reforestation requirements result from this proposal as the requirements are fully addressed by the preservation of existing forest within the proposed Category I easement, as conditioned.

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-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal of fifteen (15) and CRZ impact to thirteen (13) Protected Trees as identified in the tables below. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed 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 subject Application includes disturbance/removal of trees that are greater than or equal to 30 inches diameter at breast height (DBH), therefore a variance is required. The Applicant submitted a variance request on February 4, 2023 for the impacts to thirteen subject trees and proposed removal of fifteen subject trees that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Table 1: Trees to be Removed

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
48	Red Oak	31"	100%	Poor	REMOVE
49	London Plane Tree	35"	100%	Good	REMOVE
50	Willow Oak	36"	95%	Fair	REMOVE WITH INTENT TO SAVE
51	Willow Oak	35"	95%	Fair	REMOVE WITH INTENT TO SAVE
54	London Plane Tree	30"	100%	Fair	REMOVE
426	London Plane Tree	30"	83%	Fair	REMOVE
434	Ornamental Cherry	30"	100%	Poor	REMOVE
435	Pin Oak	31"	100%	Fair	REMOVE
436	American Sycamore	32"	100%	Poor	REMOVE
437	American Sycamore	40"	100%	Poor	REMOVE
440	Tulip Poplar	30"	72%	Poor	REMOVE
441	Southern Red Oak	37"	74%	Fair	REMOVE
457	Tulip Poplar	31"	32%	Poor	REMOVE
462	White Oak	33"	100%	Fair	REMOVE
489	Tulip Poplar	31"	34%	Fair	REMOVE

Table 2: Trees to be Impacted but Retained

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
39	Tulip Poplar	31"	31%	Fair	SAVE
43	Tulip Poplar	35"	46%	Fair	SAVE
443	Tulip Poplar	41"	28%	Fair	SAVE
445	Tulip Poplar	34"	1%	Fair	SAVE
448	Tulip Poplar	35"	19%	Good	SAVE
449	White Oak	34"	2%	Good	SAVE
453	White Oak	31"	33%	Fair	SAVE
454	White Oak	32"	11%	Poor	SAVE
464	Southern Red Oak	31"	15%	Poor	SAVE
476	White Oak	31"	5%	Poor	SAVE
488	Tulip Poplar	38"	34%	Good	SAVE
491	Tulip Poplar	33"	35%	Good	SAVE
493	Tulip Poplar	30"	35%	Fair	SAVE

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship results from the existing obsolete development and the Master Plan endorsement for housing as the primary future alternative if former institutional uses redevelop. The project is carefully designed to balance protection of the natural resources and environmental qualities of the Planning Area (also per the Master Plan recommendations) while generally keeping the redevelopment limited to the areas of existing development. However, since the entire site perimeter is mostly encompassed by subject trees, which are also interspersed within the central areas of the site, the redevelopment recommend by the Master Plan (which is a reasonable and significant use of the Property) would not be possible without impacts and removal of subject trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

The Board made 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 removal of the trees is due to the location of the trees and necessary site design requirements.

Notably more than 90% of the proposed redevelopment is on top of land already occupied by infrastructure of buildings, parking, and utilities. Additionally, considerable efforts were made to avoid and minimize the overall impacts and the proposed layout allows most of the existing forest setting (which also contains many protected trees) to be preserved within a Category I Easement. Furthermore, the Applicant will provide onsite mitigation for the removals of protected trees. The variance request would be granted to any applicant in a similar situation. Therefore, the granting of this variance is not a special privilege 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 upon the existing site conditions and necessary design requirements of this project which among other things, includes the desire to maintain the existing onsite forest containing numerous subject trees.

- 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 on the 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 site is not located in the vicinity of a stream buffer, wetland or special protection area.

The area of proposed redevelopment generally coincides with the areas of existing development. The existing conditions have considerable impervious areas with very little existing stormwater management. Ultimately a stormwater management plan addressing water quality through Environmental Site Design will be provided for the development as approved by the Montgomery County Department of Permitting Services. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality. Additionally, the soil restoration techniques to be implemented as conditioned will maximize the permeability of the soil helping to further reduce runoff while also enhancing the setting for the associated plantings. The replanting of mitigation trees will also help water quality goals by providing shading and water retention and uptake. Collectively these efforts are anticipated to ultimately have

an improvement on water quality. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

There are fifteen (15) trees proposed for removal or potential removal in association with the Application. There will also be disturbance to CRZs of another thirteen (13) trees that will be retained. Planting mitigation for the removals should be at a rate that approximates the form and function of the trees removed. Replacement should occur at a ratio of approximately one-inch caliper for every four inches DBH of removal, using onsite trees that are a minimum of three inches caliper, overstory trees native to the Piedmont Region of Maryland. For the 492 diameter-inches of protected trees to be removed (or potentially removed), the applicant must provide mitigation of at least 123 caliper-inches of replacements. In this case, the Applicant proposes to plant approximately 41 trees of 3-inch caliper size, however the final locations and quantities will be determined as part of the FFPC review. Additionally, no mitigation is required for trees that are impacted, but retained.

Maintenance & Monitoring for Impacted Trees Subject to the Variance Provisions

Trees 50 and 51 are located along the Connecticut Avenue frontage within the State Highway Administration right-of-way. The trees are situated in a lawn panel between the existing curb and sidewalk. Although the work proposed at this location is to be performed under the direct supervision of an arborist and utilize specialized construction techniques, the trees will be subject to a significant amount of disturbance as indicated by the 95% CRZ impacts. The Applicant will continue to work with an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert to prepare a tree-save plan which includes protective measures for Trees 50 and 51. As conditioned, an appropriate tree care professional will also implement a five-year tree care program to ensure the long-term maintenance and monitoring for the prominently featured specimen Trees 50 and 51. This level of care is needed due to the combination of impact proposed and the location of the trees; both trees have canopies that extend over the roadway and sidewalk. The Applicant has submitted a letter prepared by an arborist with proposed methods to preserve these trees. However, more detailed terms of the tree save plan and associated maintenance and monitoring shall be determined in coordination with the tree care professional and M-NCPPC at the time of Site Plan submission.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance from the Forest Conservation Law to impact, but retain, thirteen (13) subject trees and to remove fifteen (15) subject trees associated with the Application.

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 MAR 17 2023 (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 within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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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 Commissioner Bartley, with a vote of **3-0**; Vice Chair Piñero, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Chair Zyontz and Commissioner Pedoeem were necessarily absent, at its regular meeting held on Thursday, March 16, 2023, in Wheaton, Maryland and via video conference.



Roberto R. Piñero, Vice Chair
Montgomery County Planning Board