

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

July 10, 2025

No. 25-072

Forest Conservation Plan No. F20250080

MHP Amherst

Date of Hearing: June 5, 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 30, 2024, Montgomery Housing Partnership (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120250010 and Site Plan No. 820250010 (“Accompanying Plans”) on approximately 6.14 acres of land located in Wheaton Downtown, north of Blueridge Avenue, between Georgia Avenue and Elkin Street (“Subject Property”) in the 2012 *Wheaton CBD and Vicinity Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20250080, MHP Amherst (“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 May 23, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on June, 5, 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 Commissioner Linden, with a vote of 3-0-1; Vice Chair Pedoeem, and Commissioners Hedrick, and Linden voting in favor. Chair Harris recused himself and Commissioner Bartley abstained.

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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 Forest Conservation Plan No. F20250080 on the Subject Property, subject to the following conditions:¹

1. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for the Accompanying Plans, the Applicant must:
 - a) Record an M-NCPPC-approved Certificate of Compliance in an M-NCPPC-approved off-site forest bank within the Sligo Creek watershed or Priority Area to satisfy the reforestation requirement of 3.26 acres of mitigation credit. If no off-site forest banks exist within the Cabin John watershed or Priority Area, then the off-site requirement may be met by purchasing 4.38 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Cabin John 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.
 - b) 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 all Protected Tree mitigation plantings required to meet the requirements of the FFCP.
 - 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 mitigation trees and maintenance credited toward meeting the requirements of the FFCP.
2. 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 plantings to mitigate for the removal of Protected Trees on the Subject Property, as shown on the approved FFCP. The Protected Tree mitigation plantings must be a minimum size of 3 caliper inches, totaling 33 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.
3. 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.
4. 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.

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.

5. 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.

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 Subject Property has a Net Tract Area of 7.11 acres with 2.25 acres of forest on the Property. As further discussed below, all 2.25 acres of forest will be removed with this Application. Based on the site zoning, the reforestation requirement is 3.26 acres if met within the Anacostia River watershed or a Priority watershed, Special Protection Area (SPA) or Patuxent Management Area (PMA). The reforestation requirement is 4.38 acres if met outside of the Anacostia River watershed or a Priority watershed, SPA or PMA.

Priority Forest Removal

The Subject Property includes 2.25 acres of forest designated as a high priority for retention, as the Property is located within a Priority Urban Forest area, as mapped by the Maryland Department of Natural Resources. FCP No. F20250080 proposes clearing 2.25 acres of forest and meeting Forest Conservation requirements off-site. Per Section 22A-12(b) of Forest Conservation Law, the FCP must retain certain vegetation and specific areas in an undisturbed condition unless specific findings are made.

The Board makes the following findings necessary to approve removal of priority forest:

1. *The development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention.*

The Property is zoned CR-2.0, C-1.5, R-1.5, H-75 and located within 0.4 miles of the WMATA Wheaton Metro Station. The Property is in the 2012 *Wheaton CBD and Vicinity Sector Plan* which recommends using public investment to accelerate private investment and highlights the development of cultural facilities. Additionally, the Sector Plan addresses the need for a connection between Georgia Avenue and Elkin Street, as well as pedestrian improvements. The forest is located in the middle of the Property, extending from the southern property line to the northern property line. There are no planning and zoning options available that meet the requirements of the Zoning Ordinance and Sector Plan and allow for increased forest retention due to the location of the forest and the proposed development.

2. *Reasonable efforts have been made to protect the specific areas and vegetation listed in the plan.*

Impacts to forest and trees can be minimized through site design techniques that includes locating buildings and circulation in open areas and minimizing grading by working with the site's topography. However, in this case, the existing forest bisects the Property from north to south, across the midpoint of the Property, effectively dividing the eastern and western portions of the Property. Additionally, there is a 50-foot elevation difference between the Georgia Avenue frontage and the Elkin Street frontage. Disturbance has been minimized but the location of the forest and the grading required for the topography, in conjunction with the Sector Plan goals, have created a scenario in which the existing forest cannot be reasonably protected.

3. *The development proposal cannot be reasonably altered.*

The proposed development responds to the requirements associated with the Wheaton Arts and Cultural Center and the need to provide affordable housing on the Property, while meeting the other goals of the Sector Plan and the regulatory requirements associated with the zone. There are no opportunities to save the existing forest by altering the development proposal by increasing building heights or rearranging circulation or buildings.

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 of four Protected Trees as identified below:

Table 1: Removed Protected Trees

Tree No.	Species (Scientific Name)	Species (Common Name)	D.B.H. (inches)	Impact (%)	Tree Condition	Status
4	Liriodendron tulipifera	Tulip Poplar	34 in.	100%	Good	Remove
5	Liriodendron tulipifera	Tulip Poplar	36 in.	100%	Good	Remove
6	Acer saccharinum	Silver Maple	32 in.	100%	Good	Remove
9	Ulmus pumila	Siberian Elm	30 in.	100%	Poor	Remove

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 for construction of 272 dwelling units, a 42,000 square foot Wheaton Arts and Cultural Center, up to 20,000 square feet of office space, a structured parking garage, and 39 townhouses. The Planning Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use for the redevelopment of the Subject Property in accordance with the recommendations of the Sector Plan and Zoning Ordinance without the Variance for the proposed Project.

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 disturbance is unavoidable to construct the proposed multi-use development. If the Applicant were not able to impact the Protected Trees, the Applicant would not be able to construct 272 dwelling units, a 42,000 square foot Wheaton Arts and Cultural Center, up to 20,000 square feet of office space, a structured parking garage, and 39 townhouses.

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 but is based upon the existing site conditions and the locations of the Protected Trees. The four (4) trees to be removed are located throughout the site. One Protected Tree (#6) is in the middle of the existing developed area and cannot be avoided if the Property is to be redeveloped. The other three Protected Trees are on the edge of the Property. Tree #9 is on the western side of the Property along Georgia Avenue, is in poor condition, and will be removed to accommodate the streetscape improvements. Trees #4 and #5 are Tulip Poplars along the southern property line. The southern entrance/exit to the parking garage follows this property line, keeping traffic separated between the Wheaton Arts and Cultural Center from the residential section of the Property and is necessary for traffic flow. These trees will be removed, with 100% impact to the critical root zones.

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 location of the Protected Trees and the proposed construction and not 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 proposed development includes Environmental Site Design to the maximum extent practicable. Additionally, eleven (11) new 3-inch caliper native trees will be planted in mitigation for the removal of the four (4) variance sized trees to replace the water quality functions of the trees being removed. Given this, granting the variance will not adversely impact water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed. 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

July 10, 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 3-0-1; Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, Chair Harris abstaining and Vice Chair Pedoeem being necessarily absent at its regular meeting held on Thursday, June 26, 2025, in Wheaton, Maryland and via video conference. Vice Chair Pedoeem reviewed the video recording of the June 26 public meeting in order to certify the resolution.

Mitra Pedoeem

Mitra Pedoeem, Vice Chair/Presiding Officer
Montgomery County Planning Board