

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

July 7, 2025

MCPB No. 25-069

Forest Conservation Plan No. F20240840

VIVA White Oak

Date of Hearing: May 29, 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 November 27, 2024, MCB Real Estate, LLC (“Applicant”) filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 12018024A (“Accompanying Plan”) on approximately 279.62 acres of land located on Cherry Hill Road SW of Gracefield Road (“Subject Property”) in the 2014 *White Oak Science Gateway Master Plan* (“Master Plan”) area; and

WHEREAS, the Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240840, VIVA White Oak (“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 19, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on May 29, 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 4-0; Chair Harris, Vice Chair Pedoeem, Hedrick and Linden voting in favor. Commissioner Bartley was necessarily absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240840 on the Subject Property, subject to the following conditions:¹

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.

1. Before certification of Forest Conservation Plan (“FCP”) No. F20240840, the Applicant must make the following revisions:
 - a) Revise the boundary covered by FCP No. F20240840 to cover only Site 2 (the WSSC Site).
 - b) Show all areas of disturbance associated with the construction of the road, including required stormwater outfalls, etc.
 - c) Show areas of existing forest, forest removed, and areas of forest retained that will be credited as forest retention on the Forest Conservation Worksheet.
 - d) Revise all figures in the worksheet and tables to reflect the change in boundary, including Net Tract Area including any needed off-site work associated with construction of the master-planned road within the new plan boundary, total area of forest, area of forest retained, area of forest removed, areas identified for reforestation, and mitigation planting required.
 - e) Prepare worksheets for both potential mitigation options, within the same or a priority watershed, and outside of the same or a priority watershed.
 - f) Make certain that the worksheet, all tables tabulating areas of forest, forest to be retained and forest to be removed are in agreement with each other, and that all areas identified on the plan sheets as forest, forest to be retained, forest to be removed and reforestation areas agree with the tables.
 - g) Submit the plan as a Preliminary/Final FCP.
2. Before any additional clearing, grading, or construction on the Percontee Site following closeout of the mining permit, the Applicant must obtain approval of an amendment to FCP No. F20240840 to incorporate the area of the Percontee Site into the Forest Conservation Plan. This amendment will require:
 - a) A variance request for any proposed impacts to trees identified as priority for protection under Section 22A-12(b)(3)(B) of Chapter 22A.
 - b) A variance request for any proposed forest removal within an environmental buffer.
 - c) A justification for forest removed in the Priority Urban Forest zone established by the State of Maryland in the July 1, 2024 update to the Maryland Forest Conservation Law.
 - d) Forestation of all stream buffer areas in accordance with Section 22A-12(e)(1)(B).
3. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Code of Montgomery County Regulations (“COMCOR”), Forest Conservation Regulations.
4. The Applicant must comply with all tree protection and tree save measures shown on the approved Final FCP. Tree save measures not specified on the Final FCP may be required by the M-NCPPC Forest Conservation Inspection Staff.

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.
6. Before the start of any demolition, clearing and grading associated with the construction of the master-planned road, the Applicant must:
 - a) Record a Category I Conservation Easement over all areas of forest retention, forest planting, and environmental buffers as specified on the approved Final FCP. 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.
 - 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 forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible in these areas.
 - c) Submit a cost estimate for the reforestation/afforestation and other FCP requirements, which includes but is not limited to trees and shrubs, variance mitigation trees, five years of maintenance including invasive species management controls, permanent easement posts and signage, natural surface trails, split rail fencing, mulching, staking, tree protection, and tree protection removal credited toward meeting the requirements as shown on the FCP. 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.
 - d) 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 new forest planting, including invasive species management controls, credited toward meeting the requirements of the Certified FCP.
7. 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 afforestation/reforestation plantings for the amount of mitigation required by the worksheet of the Certified FFCP (outside of the LOD) as shown on the approved FCP.
8. Within the first planting season following release of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for

construction of the master-planned road, the Applicant must install the permanent conservation easement signage and fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by 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.*

Preliminary/Final Forest Conservation Plan

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, a Forest Conservation Plan (“FCP”) designated F20240840 was submitted with the Application.

The associated Preliminary Plan No. 12018024A covers an area that includes a northern parcel that is a former Washington Suburban Sanitary Commission (“WSSC”) site (“Site 2” or the “WSSC Site”) and a southern parcel that is currently in use as a Percontee sand and gravel mining operation and concrete recycling facility (the “Percontee Site”). The Percontee Site is subject to existing Forest Conservation Exemption No. 41998160E, and as conditioned, Site 2 will be subject to Forest Conservation Plan No. F20240840.

Disturbance associated with the mining operation and site reclamation are being conducted under a permit administered by the Maryland Department of the Environment (“MDE”) (MDE Surface Mining Permit #93-SP-0430). Forest conservation law compliance is covered by Forest Conservation Exemption 41998160E, which was approved by Planning Staff on January 26, 1998 under Section 22A-5(i) (non-coal surface mining) of the Forest Conservation Law.

As conditioned, the approved Forest Conservation Plan No. F20240840 will be amended prior to certification by limiting the area covered by the FCP to only the area of Site 2, so not to overlap with the area subject to Forest Conservation Exemption No. 41998160E. This will result in a Net Tract Area of approximately 110 acres, with approximately 40 acres of forest retained, and approximately one acre of forest removed. Based on these approximations, which will be further refined in the certified FCP, the resulting forest mitigation planting requirement would be around two acres. The submitted FCP includes areas identified for on-site reforestation to provide the required forest conservation mitigation. The reforestation requirement and planting locations will all be finalized in the FCP submitted for certification.

Approval of the certified FCP No. F20240840 will address the Forest Conservation requirements for construction of the master-planned road on the former Site 2 property, while the existing Forest Conservation Exemption No. 41998160E will continue to allow for the disturbance required to close out the mining operation and reclamation of the Percontee Site. This exemption will remain in effect until the reclamation of the site is complete and the MDE mining permit is closed out by MDE. Together, these two approvals address Chapter 22A requirements for the entire area comprising Preliminary Plan No. 12018024A.

As conditioned, when the mining and reclamation permit is closed out, the Applicant must submit an amendment to FCP No. F20240840 to include the Percontee Site portion of the road construction to allow completion of the master-planned road system.

Priority Forest Removal

The Subject Property includes forest designated as a high priority for retention, as the Property is located within a Priority Urban Forest area, as mapped by Maryland Department of Natural Resources. FCP No. F20240840 will result in clearing approximately one acre of forest (to be determined by the Certified FCP). Per Section 22A-12(b) of Forest Conservation Law, the forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless specific findings are made.

Priority Forest Removal Findings

The following determinations are based on the required findings for the removal of priority urban 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-1.0, C-1.0, R-0.5, H-220. The Property is in the 2014 *White Oak Science Gateway Master Plan* which envisions over seven million square feet of commercial development and 5,360 housing units on the Site 2 and Percontee Site. The Plan recommends extending Industrial Drive as a new roadway, Viva White Oak Way, south through the site to connect with FDA Boulevard, with these roads forming a main street to serve the development. The zoning and planning design for this large site are intended to deliver much-needed housing and commercial space near the campus of the U.S. Food and Drug Administration to serve eastern Montgomery County. While most of the Priority Urban Forest will be preserved, the road design and grading needed for vehicle, bicycle and pedestrian circulation through the site cannot avoid all areas of forest on the property.

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

The alignment of Viva White Oak Way to connect with FDA Boulevard in the Preliminary Plan mirrors the alignment envisioned in the Master Plan. This alignment

largely traverses the open center of the property, avoiding the large forest areas along the northern, western and southern boundaries of the site that help protect the Paint Branch and its tributary streams in the area. Disturbance has been minimized but the location of the forest and the grading required for the topography, in conjunction with the Master Plan goals, have created a scenario in which a small area of the existing forest must be cleared in order to construct the roads.

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

The requirements for the road alignment needed to connect Viva White Oak Way with the existing section of Industrial Parkway and FDA Boulevard to the south, coupled with the site topography, required grading, and location needed to minimize disturbance to environmentally sensitive areas and existing forest leave little room for an altered alignment or road design that could save more forest.

Determination on Removal of Priority Forest

Based on the findings above, the Planning Board approves the removal of approximately one acre of priority forest, as the Applicant cannot avoid or minimize the forest loss while still meeting the goals of the Master Plan and the requirements of the zone.

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 7, 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; Chair Harris, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley 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.



Artie L. Harris, Chair
Montgomery County Planning Board