

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Mailing Date:

November 21, 2023

MCPB No. 23-120

Forest Conservation Plan No. F20230320

Gregg Road Community Solar

Date of Hearing: November 16, 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 April 24, 2023, Alder Energy Development, LLC (“Applicant”) filed an application for approval of a forest conservation plan on approximately 53.95 acres of land located at 4434 Gregg Road, Brookville, MD 20833 (“Subject Property”) in the Olney Policy Area and 2005 Olney Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Preliminary/Final Forest Conservation Plan No. F20230320, Gregg Road Community Solar (“FFCP”, “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 November 16, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on November 16, 2023, the Planning Board held a public hearing on the Application and approved the Application subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20230320 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. 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 this development Application, whichever comes first, 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 Preliminary/Final Forest Conservation Plan (“FFCP”). 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.
 - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c) 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 FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
 - d) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the approximately 1.4 acres of new forest planting and mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FFCP, 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.
6. Impervious surfaces are limited to no more than 10.0 percent within the transition area of the Patuxent River Primary Management Area (“PMA”) of the Subject Property as shown on the Impervious Area Plan dated August 24, 2023.

7. Before the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area (“PMA”) on the Subject Property to no more than 10.0 percent, as shown on the Impervious Area Plan dated August 24, 2023. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
8. At time of Certified FFCP submittal, the Applicant must show on the FFCP the proposed construction of the SWM drainage pipes beneath Zion Road and modify the necessary worksheet, tables and figures on the FFCP to account for this work.
9. At time of Certified FFCP submittal, the Applicant must show on the FFCP the increased roadway dedication for Riggs Road and modify the necessary worksheet, tables, figures and FFCP to account for this increased roadway dedication.

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 Applicant has submitted a Preliminary/Final Forest Conservation Plan No. F20230320 for concurrent review with the Conditional Use Plan No. CU202404 for the installation of a community solar array of no greater than 2.0 megawatts. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Net Tract Area for forest conservation purposes includes the 53.95 acre Total Tract Area minus both 3.57 acres of land dedication for rights-of-way and 37.74 acres to remain in agricultural production, for a total net tract area of 12.64 acres. The Subject Property has a total of 1.53 acres of forest, but 0.47 acres are deducted since this acreage of forest is within the dedicated right-of-way for Zion Road. This results in a net total of forest on the Subject Property of 1.06 acres.

The Applicant proposes to retain the 1.06 acres of forest. This results in a total afforestation/reforestation requirement of 1.47 acres both within the same watershed/Priority Area and outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement by reforesting 1.47 acres of unforested stream valley buffer as required under Sec. 22A-12(e)(1)(B) of the Forest Conservation Law.

Notwithstanding the above paragraph, and as provided in Condition 9 above, the Net Tract Area may change due to additional dedication of right-of-way along Riggs Road. Accordingly, the above numbers may be modified on the Certified FFCP pursuant to Staff review and approval.

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

November 21, 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 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 approved and adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner 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, November 16, 2023 in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board