

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAY 02 2023

MCPB No. 23-031
Forest Conservation Plan No. F20230020
Johns Hopkins Belward Property
(formerly known as JHU Medical and Surgery Center at Belward)
Date of Hearing: March 30, 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 January 5, 2023, Johns Hopkins University, Facilities and Real Estate ("Applicant") filed an application for approval of a forest conservation plan on approximately 140.77 acres of land located at 9951 Key West Avenue ("Subject Property" or "Overall Site") in the R & D Village Policy Area and *Great Seneca Science Corridor Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. F20230020 ("Forest Conservation Plan" or "Application"); and

WHEREAS, the Forest Conservation Plan was submitted in conjunction with Site Plan No. 820220250, Belward Campus, Parcel A & Belward Campus Drive; 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 March 20, 2023, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on March 30, 2023, 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 Piñero, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, Commissioners Bartley, Hedrick, and Pedoeem voting in favor.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605 | Fax: 301-495-1320
www.montgomeryplanningboard.org | mco-chair@mcnppc.org

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. F20230020 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. Before certification of the Final Forest Conservation Plan, the Applicant must change the title of the Final Forest Conservation Plan to Johns Hopkins Belward Property.
3. Before certification of the Final Forest Conservation Plan, the Applicant must add tree protection measures, such as tree protection fencing and root pruning, in the vicinity of existing trees and forest to be preserved, including Variance Tree No. 1.
4. The Applicant must comply with all tree protection and tree save measures shown on the approved Certified Final Forest Conservation Plan. Tree save measures not specified in the Final Forest Conservation Plan 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 Certified Final Forest Conservation Plan.
6. Before certification of the Final Forest Conservation Plan, the Applicant must show the planting locations and species of trees planted in mitigation for the removal of the variance trees. These plantings must total at least 69.5 inches caliper of native shade trees, and each tree must be at least 3 inches caliper.
7. Before certification of the Final Forest Conservation Plan, the Applicant must indicate on the plans that the Mission Hills Preserve will be afforested as shown on the Certified Final Forest Conservation Plan.
8. The Applicant must install the forest plantings in the 200-foot-wide Mission Hills Preserve within two planting seasons following the release of the first sediment control permit associated with development on the Overall Site.
9. Before the start of any demolition, clearing, or grading associated with development on the Overall Site, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 7.33 acres of new forest planting in the Mission Hills Preserve.
10. Before the start of any demolition, clearing, and grading associated with the first sediment control permit for the Overall Site, the Applicant must record Category

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.

I Conservation Easements overall onsite retained forest and for the forest planted within the Mission Hills Preserve as specified on the certified Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and shall allow for necessary grading for roads and associated stormwater management facilities approved by the Preliminary Plan and any subsequent site plans or amendments, as illustrated on Final Forest Conservation Plan No. 820210120, and must be recorded in the Montgomery County Land Records by deed, and the Liber and Folio for the easement must be referenced on the record plat.

11. The Applicant must submit a five-year Maintenance and Management Agreement in a form approved by the M-NCPPC Office of General Counsel before the start of any demolition, clearing, or grading on the Overall Site. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the reforestation of environmental buffers and the planting of variance mitigation trees.
12. No clearing, grading, or disturbance can occur in forest conservation easement areas that are to be abandoned until the abandonment process is completed.
13. Before certification of the Final Forest Conservation Plan, the Applicant must add a note to the plans stating that approval of the FFCP does not constitute staff approval of any conceptual road alignments shown on the plans for future phases of development.
14. The Applicant must install the remaining required on-site forest plantings within two planting seasons following the release of the second sediment control permit associated with development on the Overall Site.
15. Within one year following the release of the third sediment control permit associated with development on the Overall Site, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Muddy Branch watershed to satisfy the remaining reforestation requirement. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Muddy Branch watershed or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.

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.

Previous Forest Conservation Plan Approvals

A Preliminary Forest Conservation Plan (PFCP) was approved as a part of the review and approval of Preliminary Plan No. 119961100 and amended with Preliminary Plan Amendment No. 11996110A. The net tract area for the PFCP and amendment is 138.15 acres, including approximately 30 acres already developed east of the Belward Farm. The Preliminary Forest Conservation Plan showed 29.8 acres of existing forest. PFCP Amendment No. 11996110A, allowed 25.13 acres of forest clearing resulting in a forest mitigation requirement of 34.37 acres. Most of the forest clearing has already occurred during the development of the eastern 30 acres of the original site.

Final Forest Conservation Plan (FFCP) No. 820210120 was approved with Site Plan No. 820210120 for the JHU Medical Office Building (JHU MOB Site Plan) and covered the entire 107-acre Overall Site, as required by the conditions of approval for PFCP No. 11996110A. FFCP No. 820210120 included off-site disturbance that increased the net tract area to 140.13 acres. The FFCP allowed 25.95 acres of forest clearing, with 3.85 acres of forest to be retained, and resulted in a forest mitigation requirement of 36.53 acres. This mitigation was to be provided through 17.67 acres of on-site afforestation and 18.86 acres of offsite forest banking credits.

Final Forest Conservation Plan

The Applicant has submitted Forest Conservation Plan No. F20230020 to amend the Final Forest Conservation Plan associated with Site Plan No. 820210120 for the Overall Site. The Net Tract Area for purposes of Forest Conservation is 140.77 acres. The Final Forest Conservation Plan proposes 25.95 acres of forest clearing, 3.85 acres of forest retention, and a mitigation requirement of 36.70 acres. The mitigation requirement will be met through 7.33 acres of forest plantings in the 200-foot-wide Mission Hills Preserve, to be included in the ultimate on-site reforestation total of 18.67 acres. The balance of the on-site planting will be provided when the second sediment control plan is approved for the Property. The remaining mitigation requirement of 18.03 acres will be provided through off-site

forest banking when the third sediment control permit is approved for the Property. Environmentally sensitive areas, including stream buffers, are being protected within conservation easements.

The 2010 *Great Seneca Science Corridor Master Plan* (the “Master Plan” or the “GSSC Master Plan”) included a requirement to create a 200-foot forested buffer (the “Mission Hills Preserve”) along the northern Belward Campus boundary to protect the Mission Hills single-family residential development. The conditions of approval for the amended Preliminary Forest Conservation Plan (No. 11996110A) therefore prioritized the planting of the Mission Hills Preserve with the approval of the first site plan on the Overall Site. FFCP No. 820210120 attempted to achieve this by requiring that the Mission Hills Preserve be planted within two planting seasons following the release of the first sediment control permit associated with the first site plan. However, since the approval of the first site plan (JHU MOB Site Plan), market conditions have changed, and the Applicant has decided to delay construction until market conditions become more favorable. It is therefore uncertain when the sediment control permit associated with the first site plan will be released, which in turn makes it uncertain when the Mission Hills Preserve will be planted. To rectify this and fulfill the intention to create the Mission Hills Preserve at the beginning of development on the Overall Site, FFCP No. F20230020 amends the conditions of approval pertaining to the timing of mitigation to link the planting requirements to the first, second, and third sediment control permits on the Overall Site regardless of which site plan they are associated with. Therefore, whichever project pulls the first sediment control permit will be responsible for planting the Mission Hills Buffer.

This FFCP includes the abandonment of a 0.09-acre portion of an existing Category I Forest Conservation Easement at the northeast corner of the Property, because it is within an area designated for frontage improvements along Muddy Branch Road. The easement area being removed is being replaced at 1:1 on-site within the expanded easement incorporating the Mission Hills Preserve and stream valley buffer areas, so no additional mitigation is required for the abandonment. This has been reflected in the calculations for the total forest retained, forest cleared, and afforestation and reforestation requirements for the FFCP.

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.

The Variance request pertaining to the current FFCP relates to the development proposed by the associated Site Plan Application No. 820220250 (the "Site Plan Application"). The Site Plan Application would construct three (3) buildings with up to 757,000 square feet of above grade gross floor area for research and development, biotechnology offices, related labs, and 6,000 square feet of above grade gross floor area for a retail pavilion; new public and private roads; three (3) structured parking garages; open space improvements; and related amenities on a 66.5-acre portion of the Overall Site. The Site Plan Application requires the removal or CRZ impact to twelve (12) Protected Trees. In accordance with Section 22A-21(a), the Applicant requested a Variance on February 20, 2023, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The GSSC Master Plan recommendations and zoning have identified the Johns Hopkins Belward Farm property primarily for research and development and medical uses. The Master Plan also includes substantial services and infrastructure for this Property, including Master Plan roads, right-of-way for the proposed Corridor Cities Transitway and the LSC Loop trail, and park and recreation facilities. The master-planned Belward Campus Drive, the extension of Private Road B-4, required frontage improvements and utilities, and the grading to accommodate them will impact twelve specimen trees. Denying the variance request would interfere with the efficient development of the Subject Property, the provision of required street grids, and the infrastructure needed to support the development. The proposed use of the Subject Property for a medical office building, life science industry development, and the required Master Plan facilities, is significant and reasonable. The Planning Board has granted a variance to other applicants facing similar challenges in development.

Table 1: Protected Trees Approved for Impacts

Tree No.	Species	DBH Inches	% CRZ Impacts	Status
1	White Pine (<i>Pinus strobus</i>)	31.4"	34%	Good condition.
62	White Oak (<i>Quercus alba</i>)	40.4"	3%	Poor condition.
63	White Oak (<i>Quercus alba</i>)	39.4"	15%	Good condition.
64	White Oak (<i>Quercus alba</i>)	40.7"	27%	Good condition.

Specimen Trees to be Disturbed but Retained

Three (3) trees, Nos. 62, 63, and 64, are approved to be impacted by grading necessary to construct the master-planned Belward Campus Drive and its associated frontage. Tree No. 62 will sustain 3 percent (3%) CRZ disturbance, Tree No. 63 will have 15 percent (15%) of its CRZ disturbed, and Tree No. 64 will have 27% of its CRZ disturbed. Tree No. 1 is on private property at the northwest corner of the Belward Campus. This tree will have up to 34 percent (34%) of its CRZ impacted by the construction of a force main sewer line running along Muddy Branch Road. As much of the area within the LOD for the sewer is already on Muddy Branch Road, it is expected that the actual CRZ impact to be less than 34%, because very few tree roots are likely to be under the existing pavement. Therefore, with proper tree protection measures implemented, the Planning Board finds these trees can be preserved.

Table 2: Protected Trees Approved for Removal

Tree No.	Species	DBH Inches	% CRZ Impacts	Status
67	White Oak (<i>Quercus alba</i>)	32.0"	53%	Good condition.
68	White Oak (<i>Quercus alba</i>)	30.5"	88%	Good condition.
74	White Oak (<i>Quercus alba</i>)	31.6"	96%	Good condition.
75	White Oak (<i>Quercus alba</i>)	30.1"	100%	Good condition.
77	White Oak (<i>Quercus alba</i>)	39.7"	100%	Good condition.
78	White Oak (<i>Quercus alba</i>)	35.6"	99%	Fair condition.
98	Black Walnut (<i>Juglans nigra</i>)	32.0"	100%	Good condition.
109	Blackgum (<i>Nyssa sylvatica</i>)	46.6"	100%	Dead.

Specimen Trees Approved for Removal

Specific justification for removal of protected trees is summarized below:

- Trees No. 68, 75 and 98 are within the alignment of master-planned Belward Campus Drive. The road alignment cannot reasonably be realigned to save these trees.
- Trees No. 74, 77, and 78 are within the alignment for the extension of Private Road B-4 where it connects to Belward Campus Drive. The intersection point is fixed by the existing alignment of Private Road B-4 to the south and the master-planned right-of-way for Belward Campus Drive and cannot reasonably be changed to save these trees.
- Tree No. 67 lies along the northern edge of the alignment for the master-planned Belward Campus Drive and the accompanying sidewalk. Fifty-three percent (53%) of the tree's CRZ will be disturbed by the construction and grading. The tree cannot survive this much impact and was approved for removal.
- Tree No. 109 lies in the middle of the area planned for the construction of Muddy Branch Park. This was once an iconic blackgum tree that was recommended for retention within the park area, but the tree is now dead and was approved for removal.

Section 22A-21 of the County Code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted. 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.*

Impacts to specimen trees are a result of the Master Plan and zoning recommendations for the site, especially the requirement to provide master-planned Belward Campus Drive and its connection to Private Road B-4, as well as for infrastructure needed to support the development. As discussed above, the Board has determined that the impacts to the trees subject to the variance requirement cannot be avoided. 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, but on required plan elements. As discussed in detail above, the trees subject to the variance request are within the alignment of master-planned Belward Campus Drive and associated sidewalk and the alignment for the extension of Private Road B-4, which cannot be reasonably altered or avoided by the Applicant.

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 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 Protected Trees requested for removal are not located in an environmental buffer or special protection area. This approval is conditioned on mitigation that approximates the form and function of the trees removed. Therefore, their removal will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted but retained will remain to provide the same level of water quality protection as it currently provides.

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 one-inch caliper for every four inches removed using trees that are a minimum of three inches caliper in size. This results in a total mitigation of 69.5 inches with an installation of 24 three-inch caliper trees. No mitigation is required for Protected Trees impacted but retained.

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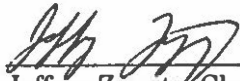
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAY 02 2023 (which is the date that this Resolution is mailed to all parties of record); and

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 Pedoeem, with a vote of 5-0; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, Hedrick, and Pedoeem, voting in favor of the motion, at its regular meeting held on Thursday, April 20, 2023 in Wheaton, Maryland and via video conference.



Jeffrey Zyontz, Chair
Montgomery County Planning Board