

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DATE MAILED:

September 11, 2025

MCPB No. 25-097

Forest Conservation Plan No. F20241050

Bergfield Tract

Date of Hearing: July 31, 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 September 11, 2024, Donohoe Development Co. (“Applicant”) filed an application for approval of a forest conservation plan, in conjunction with a Preliminary Plan No. 120240130 (the “Accompanying Plan”), on approximately 9.93 acres of land located at 8800 Brookville Road, Silver Spring (“Subject Property”) in the Lyttonsville Policy Area and 2017 *Greater Lyttonsville Sector Plan* (“Sector Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Final Forest Conservation Plan No. F20241050, Bergfield Tract (“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 July 21, 2025, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 31, 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, and Commissioners Hedrick and Linden voting in favor. Commissioner Bartley being necessarily absent.

2425 Reedie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605

www.montgomeryplanningboard.org | mcp-chair@mncppc.org

Approved as to
Legal Sufficiency:

/s/ Allison Myers
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Final Forest Conservation Plan No. F20241050 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. 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 Forest Conservation Plan (FCP) may be required by the M-NCPPC Forest Conservation Inspection Staff. Alternate methods of invasive control may be required or permitted by the M-NCPPC Forest Conservation Inspector.
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 FFCP.
4. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Lower Rock Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 3.57 acres of mitigation credit. If no off-site forest banks exist within the Lower Rock Creek watershed or Priority Area, then the off-site requirement may be met by purchasing 4.81 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Lower Rock Creek 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.
5. 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 variance tree mitigation plantings as shown on the approved FFCP.
 - a. The variance tree mitigation plantings must be a minimum size of four (4) caliper inches totaling at least 99.5 caliper inches and must be native to the Piedmont Region of Maryland, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of 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.

- b. The variance tree mitigation plantings must be at least five feet (5 ft) away from any structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
6. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for the Accompanying Plan:
 - a. The Applicant must 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 mitigation tree plantings, including variance tree mitigation plantings credited toward meeting the requirements of the FCP, and invasive plant control measures.
 - b. The Applicant must submit a cost estimate for the variance mitigation trees, which includes but is not limited to five years of maintenance including invasive species management controls, 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.
 - c. The Applicant must 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 any mitigation trees, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
7. Before certification of the FFCP, the Applicant must revise the plans per the following:
 - a. Revise the net tract area for the forest conservation worksheet and associated plans/notes/figures to reflect the net tract area as being the area contained within the current property boundaries plus the offsite LOD.
 - b. Address invasive species management onsite and best management practices for disposal.
 - c. Perform minor clarifications/corrections to the satisfaction of Planning 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.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code (“FCL”) and requires a Forest Conservation Plan concurrent with Preliminary Plan No. 120240130.

The Property is zoned IM-2.5, H-50 and is classified as Commercial and Industrial Use Areas (“CIA”) as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The total net tract area for forest conservation purposes includes the tract area of 9.92 acres and 0.64 acres of off-site disturbance for a total of 10.56 acres. There are 2.48 acres of forest on the Property, and the Application proposes to clear all forest on site. The Forest Conservation Worksheet shows a calculated reforestation requirement of 3.57 acres associated with the Application due to the tract area and associated offsite work designation of the project. As conditioned, this reforestation requirement will be addressed by purchase of forest mitigation bank credits or by payment of a fee-in-lieu.

Priority Forest Removal

The Subject Property proposes to clear 2.48 acres of 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. 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.

The Board makes the following findings to approve the 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 Subject Property is zoned Moderate Industrial (IM). The 2017 *Greater Lyttonsville Sector Plan* (the “Sector Plan”) recommends preservation of the industrial community along Brookville Road and to continue to make the industrial district affordable, accessible and practical for traditional industrial

enterprises. (Sector Plan pages 21 and 104). The Sector Plan also sets the zoning for the property at IM 2.5 FAR. (Sector Plan page 25). The Property has a permitted FAR of 1,080,940 square feet and approximately 412,000 square feet of development is proposed, which is well under the density allowed. There are no other additional planning or zoning options that would result in greater forest retention that would substantially comply with the relevant Sector Plan goals.

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

The Property contains major site constraints associated with the existing radio antennas and guy wires which create numerous design obstacles. Off-sets from the towers and cables for buildings, driveways, parking lots and other features have a great impact on any proposed development for the site. For example, the typical strategy of preserving the forested perimeter of a site by concentrating development at the core is not feasible due to the central location of the existing towers along with the significant radial spans of the guy wires. As submitted, the proposal does, however, allow the preexisting radio towers to continue their function while also providing industrial uses desired by the Sector Plan minimizing the need for development at an entirely new site. Although the project remains well under the allowable density, the layout has creatively balanced numerous constraints, and reasonable efforts have been made to protect priority forest.

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

The Property contains numerous site constraints, as enumerated above. Given the unusual site constraints and Sector Plan recommendations for the site, the development proposal cannot be reasonably altered to save the priority areas and still fulfill the goals of the Sector Plan for the industrial development on the Property.

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 removal of ten (10) Protected Trees as identified below.

Table 1: Protected Trees to be Removed

Tree ID#	DBH	Latin Names	Common Name	Disposition
1	43	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
3	30	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
4	36	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
6	32	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
8	37	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
9	43	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
10	35	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
18	31	<i>Liriodendron tulipifera</i>	Tulip Poplar	Remove
71	43-38	<i>Acer saccharinum</i>	Silver Maple	Remove
72	30	<i>Populus deltoides</i>	Cottonwood	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 new industrial buildings and two self-storage buildings without the Variance. The Board finds that the denial of the Variance request would cause an unwarranted hardship due to the major constraints interrelated with the three existing radio/cell towers to remain, which are owned by others and are subject to a perpetual easement. The radio towers consist of the antennae structures, supporting guy wires, and associated utility sheds and the largest tower has support wires that span the width of the Property. The variance is required to balance the numerous site constraints for implementing the proposed development as desired by the Sector Plan.

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.*

The impacts on the Protected Trees resulting from this redevelopment are necessary. The Property is highly constrained, and the development cannot proceed without disturbing or removing Protected Trees. The proposed redevelopment requires specific infrastructure improvements, such as buildings, designated parking areas, and site access, which will result in the removal of the onsite specimen trees. Therefore, the granting of this request 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 on existing site conditions and implementation of the Sector Plan recommendations. Based on the requirements for the proposed industrial development and the site constraints, the proposal cannot be reasonably altered in a way that avoid impacts to Protected Trees; however, the Applicant has minimized these impacts to the extent practicable.

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 variances are a result of the proposed improvements 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 Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer, wetland, or a special protection area. Mitigation trees will be planted on the Subject Property to replace the form and function of Protected Trees being removed. Furthermore, a Stormwater Management Concept was prepared for the proposed improvements which include micro bioretention, planter box micro-bioretention, modular wetland system, CMP storage, and Storm filter facilities, or other DPS approved equivalent stormwater management practices. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The FFCP includes the removal of ten Protected Trees totaling 398 inches in diameter at breast height. Per Section 22A-21(e), the Applicant is planting mitigation trees at a ratio of one caliper inch replaced for every four inches of trunk diameter removed. As conditioned, the Applicant will plant twenty-five (25) native canopy trees, using a minimum size of 4-inch caliper tree, which will total at least 100-inch caliper.

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

September 11, 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 Linden, seconded by Commissioner Hedrick, with a vote of 3-0-1; Chair Harris, and Commissioners Hedrick and Linden voting in favor, Commissioner Bartley abstaining and Vice Chair Pedoeem being necessarily absent, at its regular meeting held on Thursday, September 4, 2025, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board