Montgomery County Planning Board
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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DATE MAILED:

NOVEMBER 2, 2026

MCPB No. 26-95
Forest Conservation Plan No. F20260570
4861 Battery Lane
Date of Hearing: October 8, 2026

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on May 8, 2026, Investors Battery Lane, LLC ("Applicant") filed an application for approval of a forest conservation plan for concurrent review and approval with Preliminary Plan No. 120260110 & Site Plan No. 820260110 ("Accompanying Plans") on approximately 2.13 acres of land located at 4861 Battery Lane ("Subject Property") in the Bethesda CBD Policy Area and 2025 *Bethesda Downtown Plan Minor Master Plan Amendment* and 2017 *Bethesda Downtown Sector Plan* ("Sector Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. F20260570, 4861 Battery Lane ("Forest Conservation Plan" "FCP" 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 September 28, 2026, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 8, 2026, 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 Bartley, with a vote of 5-0; Chair Harris, Vice Chair Bartley, and Commissioners Hedrick, Linden and Pedoeem voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20260570 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. 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 variance tree mitigation plantings. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. The use of herbicides should be avoided where possible.

    b. Submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.34 acres of afforestation requirement (or as determined on the certified Forest Conservation Plan ("FCP")).

    c. Submit a cost estimate for the FCP requirements, which includes but is not limited to variance mitigation trees, 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.

    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 planting of mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.

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 variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 30 caliper inches, as shown on the approved FCP. The quantity of mitigation plantings can be reduced if the M-NCPPC Forest Conservation Inspection Staff determine that Protected Trees shown as removed can be

[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.

retained. 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 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 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.

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. Certified Forest Conservation Plan
   Before approval of the Certified Forest Conservation Plan, the following revisions must be made and/or information provided subject to Staff review and approval:

   a. Update the Forest Conservation Plan to incorporate an assessment of the offsite edge trees affected by this Application. The updated Tree Save measures shall be prepared by an ISA certified Arborist and incorporate stress reduction measures to appropriately retain the edge trees as feasible. The updated plans shall also address access and methods of any offsite tree removal to avoid or minimize forest impacts and/or damage to adjacent save trees.

   b. Update tree impact figures as applicable.

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 has a net tract area of 2.24 acres, including the Property area of 2.13 acres and offsite disturbance area of 0.11 acres. The FCP does not include any forest clearing, and there is no existing onsite forest to be retained. Based on the site zoning and forest conservation worksheets, the afforestation requirement is 0.34 acres whether it is met within or outside the Rock Creek watershed or a Priority watershed, Special Protection Area (SPA) or Patuxent Management Area (PMA). As permitted by Section 22A-12(g)(2), the Applicant will meet the forest conservation requirement with fee-in-lieu, as it is under 0.50 acres.

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 three (3) and CRZ impact to five (5) Protected Trees as identified in the Staff Report. 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 high density residential use without the Variance. Impacts to these trees, and this variance, are necessary to achieve the density and uses for this Site as recommended 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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to trees subject of this request is

unavoidable with the redevelopment of the Property. Protected Trees onsite are located within the development footprint. The Project also includes a through block connection segment along the northern side of the Property, which contributes to impacts to offsite trees. The through-block connection is a site-specific recommendation of the *Bethesda Downtown Sector Plan*.

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 within the developable area of the site.

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 Application includes environmental site design to the maximum extent practicable. The Project does not impact stream valley buffers, floodplain, wetlands or their associated buffers. Furthermore, it includes appropriate mitigation tree plantings for the trees removed, which will ultimately replace the form and function of the protected trees. 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
using trees that are 3-inch caliper in size or greater. This results in a mitigation requirement of thirty (30) inches, with a minimum of ten (10) 3-inch caliper trees. 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

NOVEMBER 2, 2026

(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.

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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 the motion of Vice Chair Bartley, seconded by Commissioner Pedoeem, with a vote of 4-0; Chair Harris, Vice Chair Bartley, and Commissioners Linden and Pedoeem, voting in favor of the motion, Commissioner Hedrick was necessarily absent at its regular meeting held on Thursday, October 29, 2026, in Wheaton, Maryland and via video conference.

Artie L. Harris, Chair
Montgomery County Planning Board

Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department