



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB No. 12-128**  
**Forest Conservation Plan Amendment No. MR2004302**  
**Clarksburg High School**  
**Date of Hearing: October 25, 2012**

NOV 9 2012

**RESOLUTION**

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

WHEREAS, the Planning Board, by transmittal letter dated June 25, 2004, approved Forest Conservation Plan No. 04302-MCPS-1, with the mandatory referral review for development of the Clarksburg Area High School, located in the south quadrant of Shawnee Lane and MD355 ("Subject Property"), in the Clarksburg master plan ("Master Plan") area; and

WHEREAS, on September 14, 2012, Miller & Smith Eastside, LLC, acting as the agent for Department of Permitting Services ("MCDPS") submitted plans to reconstruct the existing two-lane Shawnee Lane as a four-lane divided roadway between Gateway Center Drive and Frederick Road (MD355) for the Planning Board's review under mandatory referral; and

WHEREAS, the construction and widening of Shawnee Lane will require removal of 0.26 acres of forest in an area designated on Forest Conservation Plan No. 04302-MCPS-1 for permanent protection; and

WHEREAS, on September 12, 2012, in anticipation of the mandatory referral submission, Miller & Smith Eastside, LLC and Montgomery County Public Schools ("Applicant") jointly filed an application for approval of an amendment to Forest Conservation Plan No. No. 04302-MCPS-1 to provide mitigation for such removal; and

WHEREAS, Applicant's forest conservation plan amendment application was designated Forest Conservation Plan No. MR2004302, Clarksburg High School ("Forest Conservation Plan" or "Application");<sup>1</sup> and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the

<sup>1</sup> Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to  
Legal Sufficiency:

  
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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Planning Board dated October 12, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 25, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board voted to approve the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2004302 on the Subject Property, subject to the following condition:<sup>2</sup>

1. Prior to any land disturbing activities:
  - a) Applicant must submit and receive Staff approval of a final forest conservation plan;
  - b) Applicant must record a Category I conservation easement over the designated areas of the Clarksburg High School; and
  - c) Applicant must obtain a final inspection of the planted forest areas to ensure the area to be used to compensate for the mitigation has met the survival requirements and is acceptable for banking.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, 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 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 will meet their mitigation requirement as conditioned through 1:1 replacement onsite of forested areas removed from the previously approved forest conservation plan.

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<sup>2</sup> For the purpose of the condition, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

## B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as 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 or CRZ impact to 3 Protected Trees as identified in Attachment 4 of the Staff Report (September 13, 2012 letter identified as the Updated Variance Letter). In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made 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.*

Disturbance and removal of Protected Trees is due to the widening of Shawnee Lane. The trees and their critical root zones lie within the construction area needed for the road with very limited opportunity to adjust the design, particularly since this project is to widen an existing roadway.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The Applicant has prepared and submitted plans which meet all applicable master plan, and forest conservation requirements. The Variance is needed due to existing site conditions with very limited opportunity to adjust the design, particularly since this project is to widen and existing roadway.

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 Variance is needed to construct the proposed road widening. Prior to construction and impact, that portion of the school property

on which the Protected Trees are located will be conveyed to the County as part of the public right-of-way. Therefore, the need for the Variance will no longer be related to land on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

Removal of and impact to the Protected Trees will have no impact on existing water quality protection measures.

Mitigation for Trees Subject to the Variance Provisions – The one (1) tree proposed for is located within the existing forest and its removal is accounted for in the forest mitigation calculation. Additional mitigation is not required either for the removal of trees that are accounted for in the forest clearing calculations, or for trees disturbed but not removed.


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 NOV 9 2012 (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 Dreyfuss, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, October 25, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair  
Montgomery County Planning Board