



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

MCPB No. 16-093  
Forest Conservation Plan No. 11993048A  
Connecticut Avenue Culvert Replacement  
Date of Hearing: September 15, 2016

**SEP 21 2016**

**RESOLUTION**

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

WHEREAS, on December 2, 1993, by Opinion dated December 16, 1993, the Planning Board approved Preliminary Plan No. 119930480 ("Preliminary Plan"), submitted by the Archdiocese of Washington for approximately 127.52 acres of land located at 13801 Georgia Avenue, Silver Spring, Maryland 20906 ("Subject Property") in the 1994 Aspen Hill Master Plan area for the Gate of Heaven Cemetery; and

WHEREAS, on October 7, 1994, the Montgomery County Planning Department approved Final Forest Conservation Plan 119930480, which was associated with the Preliminary Plan and referenced conservations easements shown on the Preliminary Plan; and

WHEREAS, on June 21, 2016, the Montgomery County Department of Transportation ("Applicant") filed an application to amend Final Forest Conservation Plan 119930480 for approval of the following modifications:

1. Temporary disturbance within a Category I Conservation Easement for the replacement of an undersized culvert carrying a tributary of the Turkey Branch of Rock Creek under Connecticut Avenue.

WHEREAS, Applicant's forest conservation plan application to amend Forest Conservation Plan 119930480 was designated Forest Conservation Plan No. 11993048A ("Forest Conservation Plan," "Amendment," 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 1, 2016, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

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

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

WHEREAS, on September 15, 2016, Staff presented the Amendment to the Planning Board as a consent item for its review and action; at which time the Planning Board voted to approve the Amendment subject to certain conditions, by the vote certified below.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and approves Forest Conservation Plan No. 11993048A, subject to the following condition:

1. The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.

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

The Applicant proposes to clear 0.03 acres of forest protected by a Category I Conservation Easement. 0.03 acres of forest will be replanted within the Category I Conservation Easement. The disturbance and forest removal is necessary to allow the Applicant to replace an undersized culvert carrying a tributary of the Turkey Branch of Rock Creek under Connecticut Avenue.

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 CRZ impact to one Protected Tree 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 without the Variance. The unwarranted hardship is caused by the need to work within and directly adjacent to the stream channel in order to replace an undersized culvert. The tree is located on the stream bank and the disturbance cannot be avoided.

The Planning 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 disturbance to the specified tree is a result of the need to remove the existing undersized culvert and replace it with a new one. Such a variance would not 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 disturbance to the specified tree is a result of the tree's location on the stream bank and necessity to replace an undersized culvert, not conditions or circumstances that are the result of the Applicant's actions.

- 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 a result of the culvert replacement and associated disturbance 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 request Variance is for CRZ impacts to one tree that will be retained. Water quality should be improved by the replacement of the undersized culvert with a modern box culvert.


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 SEP 21 2016 (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).

\* \* \* \* \*

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 Fani-González, seconded by Vice Chair Wells-Harley, with Chair Anderson, Vice Chair Wells-Harley, and Commissioners Fani-González and Cichy voting in favor, and Commissioner Dreyfuss absent at its regular meeting held on Thursday, September 15, 2016, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Casey Anderson, Chair  
Montgomery County Planning Board