



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

MCPB No. 18-047
Forest Conservation Plan No. MR2007203
Luxmanor Elementary School
Date of Hearing: June 14, 2018

JUL 16 2018

RESOLUTION

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

WHEREAS, on October 11, 2007, the Planning Board approved Mandatory Referral No. MR2007203 for the construction of an addition to the existing Luxmanor Elementary School, with supporting infrastructure, on approximately 12.99 acres of R-200-zoned land, located at 6201 Tilden Lane ("Subject Property"), in the 1992 North Bethesda/Garret Park Master Plan ("Master Plan") area; and

WHEREAS, on June 24, 2008, Planning Department Staff ("Staff") approved an administrative amendment to Forest Conservation Plan No. MR2007203; and

WHEREAS, on November 5, 2012, Staff approved an administrative amendment to Forest Conservation Plan No. MR2007203; and

WHEREAS, on April 18, 2018, Montgomery County Public Schools ("Applicant") filed an application to amend the Forest Conservation Plan to demolish the two oldest wings of the existing building and build a new three-story wing and associated circulation and stormwater management facilities; and

WHEREAS, Applicant's forest conservation plan application to amend the final Forest Conservation Plan was designated Forest Conservation Plan No. MR2007203, Luxmanor Elementary School ("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 June 4, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 14, 2018, 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

Approved as to
Legal Sufficiency:

WHEREAS, on June 14, 2018, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; seconded by Commissioner Patterson; with a vote of 4-0, Commissioners Anderson, Cichy, Fani-Gonzalez, and Patterson voting in favor, and Commissioner Dreyfuss absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2007203 on the Subject Property, subject to the following conditions:¹

1. Limits of disturbance on the Sediment Control Plan must match the limits of disturbance shown on the Amended Final Forest Conservation Plan.
2. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a deed of release to remove the 4,293 square feet of Category I Conservation Easement on the Subject Property as shown on the Amended FFCP. The deed of release must be in a form approved by the Maryland-National Capital Park & Planning Commission Office of the General Counsel.
3. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record in the Land Records of Montgomery County, Maryland a Certificate of Compliance, approved by the M-NCPPC Office of General Counsel, to use an offsite forest mitigation bank. The Certificate of Compliance must certify the purchase of 8,586 square feet of mitigation credit equivalent to either 8,586 square feet of forest planting or 17,172 square feet of existing forest retention for the partial removal of Category I Forest Conservation Easement on the Subject Property.
4. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must submit a forest conservation maintenance and management agreement and have it approved by the Planning Department.
5. A copy of the maintenance and management agreement must be kept at Luxmanor Elementary School and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the Forest Conservation Plan.
6. The Applicant must coordinate with M-NCPPC Department of Parks Urban Forester on tree protection measures for the playground demolition to ensure adequate protection for Park trees.

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.

7. Mitigation for the removal of nine (9) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 81 caliper inches, with a minimum planting stock size of three (3) caliper inches. The trees must be planted on the Property, as shown on the Amended Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector. The trees must be planted within six months of forest conservation inspector approval of tree protection fencing.

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 Forest Conservation Plan includes approximately 0.10 acres of forest loss and Category I Forest Conservation Easement removal. The Applicant will compensate for this forest loss and easement removal by purchasing a Certificate of Compliance at an off-site forest mitigation bank.

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 of nine trees and CRZ impact to 15 Protected Trees as identified in the Staff Report. 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 requested

Variance is necessary due to the location of the existing trees on and around the Subject Property, the need to demolish the two wings of the existing school building and circulation facilities prior to constructing the new wing and associated circulation facilities, and the requirement to provide stormwater management for all facilities.

Leaving the Protected Trees in an undisturbed condition would cause an unwarranted hardship because the Applicant could not remove part of the existing building or construct a new building and circulation system on the Subject Property.

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 this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of the need to demolish existing school buildings and build new expanded buildings and associated circulation and parking facilities. The proposed development is the continuation of an existing, reasonable use of the site and disturbance has been minimized to retain trees where possible. The size and configuration of the site preclude alternative site designs that would allow the variance trees to remain undisturbed.

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 that are the result of actions by the Applicant. The variance is necessary due to the constraints of size, the requirements to demolish existing facilities, and the location of the existing trees on and around the site. The Applicant has designed the proposed school to minimize forest removal, which adds an additional constraint. The Applicant has redesigned the service area to minimize impacts to trees on adjacent property and has worked with Montgomery County Parks Department Staff to protect trees on Luxmanor Local Park.

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 trees and the impacts by the proposed layout of the new school facility, which must meet the grades of the retained school facility, and not a result of land or building use on a neighboring property. The impact to the trees is the minimum disturbance

necessary to demolish a portion of the existing school building and build the new facility and associated upgrades to the site.

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

The Applicant will plant 27 3" caliper native shade trees to replace the form and function of the variance trees proposed for removal. In addition, the site will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management, including the provision of Environmental Site Design to protect natural resources to the maximum extent practicable. Water quality will improve with the proposed development and State water quality standards will not be violated.

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 Jul 16 2018 (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 Cichy, seconded by Commissioner Fani-González, with Chair Anderson and Commissioners Fani-González, Cichy, and Patterson voting in favor, and Vice Chair Dreyfuss absent at its regular meeting held on Thursday, June 28, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board