



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

MCPB No. 18-093
Forest Conservation Plan No. MR2018017
Potomac Elementary School
Date of Hearing: September 13, 2018

SEP 21 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 January 17, 2018, Montgomery County Public Schools (“Applicant”) filed an application for approval of a forest conservation plan on approximately 9.64 acres of land located at 10311 River Road, Potomac (“Subject Property”) in the Potomac Policy Area and Potomac Subregion Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. MR2018017 Potomac 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 August 31, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 13, 2018, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

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

Approved as to
Legal Sufficiency: 

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2018017 on the Subject Property, subject to the following conditions:¹

1. Amend the submitted FFCP to show 71 caliper inches of mitigation and where trees will be planted.
2. Amend the submitted FFCP to show the revised limits of the modified Category II easement final delineation, with a final delineation to be determined prior to approval of Certified FFCP.
3. The Applicant must record a modified Category II Conservation Easement over all areas specified on the approved Forest Conservation Plan. The Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in and among the Montgomery County Land Records by deed prior to issuance of the Use and Occupancy Permit.
4. Mitigation for the removal of eight (8) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 71 caliper inches, with a minimum size of three (3) caliper inches. The trees must be planted in final locations to be shown on the 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.
5. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank for the total afforestation/reforestation requirement prior to any clearing, grading or demolition on the project site.
6. The Applicant must install permanent Conservation Easement signage along the perimeter of the conservation easements.
7. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.
8. 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 approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.

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

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.

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 FCP proposes no forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A is 9.64 acres. The proposed development on the Site generates a 1.45-acre afforestation planting requirement. The afforestation planting requirement is generated because the Site contains no existing forest and, under the "Institutional Development Areas" land use category, the Site has a 15 percent afforestation threshold for the net tract area. The Applicant proposes to meet the planting requirement through Mitigation Credit in an offsite forest conservation 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 or CRZ impact to 25 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 without the Variance.

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 the Protected Trees is due to the

reasonable development of the Site and the unique slope conditions. The Protected Trees are in the developable area of the Site. Granting a variance to allow land disturbance within the developable portion of the Site is not unique to this Applicant.

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

The need for the 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, including the location 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 surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

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 removed will be mitigated by planting new trees as well as the trees that are proposed next to the daylighted and restored stream which will provide water quality benefits offsetting those trees removed.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately 1-inch caliper for every 4 inches removed. 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 SEP 21 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).

* * * * *

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 Commissioner Patterson, 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, September 13, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board