



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

MCPB No. 19-116
Preliminary Plan No. 11998015B
Norwood School
Date of Hearing: October 3, 2019

OCT 10 2019

RESOLUTION

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

WHEREAS, on September 28, 1989, the Planning Board approved Preliminary Plan No. 119891680, Norwood School, Inc. for the creation of one lot on 20.32 acres of land, zoned RE-2, located at 8821 River Road, Potomac, MD.

WHEREAS, on February 12, 1998, the Planning Board approved Preliminary Plan and Preliminary Forest Conservation Plan No. 119980150, Norwood School, Inc. for the creation of one lot by consolidating the existing 20.32 acres and two adjacent lots of land, 16.60 acres and 2.00 acres respectively, resulting in a total property acreage of 38.92 acres, zoned RE-2, located at 8821 River Road, Potomac, MD ("Subject Property") in the Potomac Policy Area and the *Potomac Subregion 2002 Master Plan* ("Master Plan") area; and

WHEREAS, on June 25, 1998, Staff Administratively approved the Final Forest Conservation Plan ("FFCP") No. 119980150; and

WHEREAS, on July 8, 2010, the Planning Board approved an FFCP amendment as part of Special Exception application, Plan No. S-285-E, to revise the on-site existing conservation easements to allow the Applicant to accomplish the master planned build-out of the school; and

WHEREAS, on June 4, 2019, Norwood School, Inc. ("Applicant") filed an application for approval of an FFCP amendment to remove 2,613.6 square feet (0.06 acres) of Category II Conservation Easement to facilitate the construction of the previously approved Classroom Connector Building and to install/relocate necessary utility connections for this and associated buildings; and

Approved as to
Legal Sufficiency:

 9/26/19

MNCPPC Legal Department
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WHEREAS, Applicant's FFCP amendment application was designated Preliminary Plan No. 11998015B, Norwood School ("Preliminary 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 September 16, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on October 3, 2019, 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 adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby APPROVES Preliminary Plan No. 11998015B on the Subject Property, subject to the following conditions:¹

Final Forest Conservation Plan

1. Prior to any demolition, clearing, grading or construction on the Subject Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the mitigation requirement of a 2:1 replacement rate for removing 2,613.6 square feet (0.06 acres) of Category II Conservation Easement by purchasing 5,227.2 square feet (0.12 acres) of forest mitigation credit in an off-site forest bank within the same watershed.
2. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a new Category II Conservation Easement reflecting the entire easement area including the area that is not authorized to be removed. The new easement agreement must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The entirety of the existing easement remains in full force and effect until the abandonment document and the revised easement have been approved and recorded in the Montgomery County Land Records.
3. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must abandon the entirety of the original Category II Conservation Easement recorded among the County Land Records in Liber 10728 at Folio 510 and identified on Plat 19170 on Lot 44 in a form

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.

- approved by M-NCPPC. The abandonment document must be recorded in the Montgomery County Land Records by deed.
4. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Final Forest Conservation Plan, the Applicant must submit a complete record plat application that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new revised Category II Conservation Easement.
 5. The revised Record Plat must be recorded in the Montgomery County Land Records within 365 days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan.
 6. The Applicant must comply with all required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 7. The Applicant must comply with all tree protection and tree save measures shown on the approved amended FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
 8. The limits of disturbance shown on the Final Sediment Control Plan must be consistent with the LOD shown on the approved amended FFCP.

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 Board finds that as conditioned, the Amendment complies with the requirements of the Forest Conservation Law.

The Amendment proposes to remove approximately 2,613.6 square feet (0.06 acre) of Category II Conservation Easement to allow the installation of necessary utility connections and for site grading for a previously approved Classroom Connector Building. The Applicant will mitigate for the removal of this easement area by purchasing 0.12 acres of credit in an M-NCPPC approved off-site forest 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 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 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 impacts to Tree #48 are due to the location of the tree and site design requirements to provide necessary electrical utility service to existing school buildings. Therefore, the Planning Board believes that the granting of this variance is not a special privilege that would 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and the necessity to connect required utilities to the building.

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 existing site conditions and not as 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 variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree is not located within any environmental buffer that would impact protected water resources nor is the tree being removed. The Protected Tree being impacted will remain providing the same level of water quality protection as it currently provides. No mitigation is required for the Protected Tree because it is impacted but retained.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, the Montgomery County Planning Board FINDS, with the conditions of approval, that this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments and that all findings remain in effect; and

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

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 OCT 10 2019 (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 Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, October 3, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board