



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

MCPB No. 20-001

Forest Conservation Plan No. MR2020007

Project Name: Col. E. Brooke Lee Middle School

Date of Hearing: January 9, 2020

FFR 03 2020

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 9, 2020, the Montgomery County Department of Education ("Applicant"), filed an application for approval of a Preliminary Forest Conservation Plan for 11800 Monticello Avenue, Silver Spring, Maryland ("Subject Property") associated with the complete replacement of the Col. E. Brooke Lee Middle School, with a new 178,000 square foot facility with additional student capacity, located within the 2001 Kemp Mill Master Plan ("Master Plan") area; and

WHEREAS, Applicant's Preliminary Forest Conservation Plan application was designated Forest Conservation Plan No. MR2020007, Col. E. Brooke Lee Middle School ("Preliminary 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 December 24, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 9, 2020, 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 APPROVED Preliminary Forest Conservation Plan No. MR2020007 on the Subject Property, subject to the following conditions:¹

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 as to
Legal Sufficiency:

1. Prior to issuance of a Sediment Control Permit from the Department of Permitting Services, the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
2. The Final Forest Conservation Plan must show the planting of forty (40) 3-inch caliper or a minimum of 120 caliper inches of native shade trees as mitigation plantings for the loss of trees requiring a variance prior to issuance of Use and Occupancy Certificate.
3. All trees credited towards variance mitigation must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements, as shown on the Certified Preliminary Forest Conservation Plan.
4. 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 Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspector.
5. Prior to the start of any clearing, grading, or demolition on the property, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed.
6. At the direction of the M-NCPPC forest conservation inspector, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements. Exact locations of the signs to be determined by the M-NCPPC forest conservation inspector to best define the limits of the conservation easement.
7. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank to satisfy the reforestation requirement for a total of 2.23 acres of mitigation credit. Off-site requirement must be met by purchasing from a mitigation bank in the Anacostia watershed.
8. The Limits of Disturbance on the Final Sediment Control Plan must be consistent with the final Limits of Disturbance as shown on the approved Final Forest Conservation Plan.
9. Prior to any land disturbing activities, the Applicant must hold a pre-construction meeting with the M-NCPPC Forest Conservation Inspector.
10. The Applicant must schedule the required site inspections by M-NCPPC Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
11. Prior to certification of the Forest Conservation Plan, coordinate with M-NCPPC Staff on minor corrections and clarifications as necessary.
12. Copies of the Final Forest Conservation Plan and recorded Category I Conservation Easement must be kept at Col. E. Brooke Lee Middle School and

given to the school maintenance staff(s) to ensure compliance with conditions of the Final Forest Conservation Plan.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations 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 the protection of environmentally sensitive features.*

A. Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420191390) for the Property on April 17, 2019. Generally, the Property is encumbered from the presence of steep slopes ($\geq 25\%$) in the center of the Subject Property that effectively bisects the Property. However, the Property contains no streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, known habitats of rare, threatened and endangered species, historic resources, or erodible soils on the Property. An ephemeral channel is located off-site, north of the existing school building. However, the stream buffer does not come onto the Property. The Property contains a total of 115 trees $\geq 24"$ diameter at breast height (DBH) and is zoned R-90, which is assigned a Land Use Category of Institutional Development in the Land Use Table of the Environmental Guidelines. This gives the Property an afforestation requirement of 15% of the net tract and a conservation threshold of 20%.

While proposed infrastructure and recreation improvements along the Property lines pose impacts to some specimen trees, the relocation of the main building has been designed to minimize environmental impacts and avoid impacts to individual trees and the forest stands to the greatest extent feasible. The Application complies with the Environmental Guidelines because the Applicant is avoiding impacting the existing natural resources as much as possible and will mitigate for the proposed tree removals.

B. Forest Conservation

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

The Subject Property contains approximately 0.34 acres of forest considered Priority 1 for High Retention due to the specimen trees. A total of 0.03 acres of forest is proposed to be cleared, 0.31 acres of forest is proposed to be retained, and a total of 2.23 acres of forest is required for reforestation and afforestation, which will be met as conditioned.

C. 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 13 trees and cause CRZ impact to 12 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board finds 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.*

Removal of and disturbance to the trees is due to the need for the construction of a new elementary school to serve the public. 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 reconfigure the site while minimizing impacts to the forest. Redevelopment of the Subject Property is a continuation of an existing permitted use.

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 Applicant has minimized disturbance and designed the site to maximize forest retention. The variance is necessary due to the need to address stormwater run-off on-site, the requirements to reconstruct existing

facilities to current State standards, and the location of the existing trees on and around the Subject Property.

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 in the center and around the perimeter of the Subject Property and the impacts by the proposed layout with the enlarged school building, and not a result of characteristics or conditions 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 trees requested for removal are not located within a stream buffer, wetland or special protection area. The proposal includes substantial improvements to addressing stormwater management on-site. As a result, a few of the specimen trees will be impacted directly by the provision of a new stormwater management system on-site. Water quality will improve with the proposed development and State water quality standards will not result in measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The Planning Board generally approves variance requests with mitigation to replace the form and function of the trees proposed for removal, outside of areas of forest removal. The Applicant will plant the required trees for mitigation to replace the form and function of the variance trees proposed for removal. The thirteen (13) trees designated for removal outside of forest will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree. The Applicant must plant forty (40), 3-inch caliper trees, or a minimum of 120 caliper inches, which will be shown on the Final Forest Conservation Plan.

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 FEB 03 2020 (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 Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, January 9, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board