



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

MCPB No. 20-061
Preliminary Forest Conservation Plan No. MR2020034
Dufief Elementary School
Date of Hearing: July 16, 2020

AUG 10 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 May 21, 2020, Montgomery County Public Schools ("Applicant") filed an application for approval of a forest conservation plan on approximately 9.99 acres of land located at 15001 Dufief Drive, North 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 Preliminary Forest Conservation Plan No. MR2020034 Dufief Elementary School ("Preliminary Forest Conservation Plan", "PFCP" 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 July 2, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 16, 2020, 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.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Forest Conservation Plan No. MR2020034 on the Subject Property, subject to the following conditions:¹

Approved for legal sufficiency
M-NCPPC Office of the General Counsel

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.

1. The Applicant must submit a Final Forest Conservation Plan ("FFCP") that is consistent with the approved Preliminary Forest Conservation Plan for review and approval prior to the issuance of the Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services ("DPS") for the Subject Property.
2. Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest planting as specified on the approved Preliminary Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
3. Prior to the start of any demolition, clearing, grading, or construction for this development Application, the Applicant must record a Category II Conservation Easement over the 0.21-acre area of tree cover planting as specified on the approved Preliminary Forest Conservation Plan. The Category II Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
4. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Muddy Branch watershed to satisfy the afforestation requirement for a total of 0.66 acres of mitigation credit. The offsite requirement may be met by purchasing from a mitigation bank elsewhere in the County, subject to Staff approval, if forest is unavailable for purchase within the Muddy Branch watershed.
5. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements.
6. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the permanent conservation easement fencing along the perimeter of the conservation easements.
7. The limits of disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the FFCP for the Subject Property.

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 Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The PFCP proposes no forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A is 10.19 acres which consists of 9.99 acres onsite and .20 acres offsite. The proposed development on the Site generates a 1.53-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 on-site Afforestation, Landscape Credit and Mitigation Credit in an M-NCPPC approved off-site 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 CRZ impacts to six (“6”) 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. The Protected Trees are outside of the developable area of the Site, but their CRZs extend into the limits of disturbance. 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 are only being minimally impacted and will not be removed.

No mitigation is required for Variance trees that are only being impacted and not removed.

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 AUG 10 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).

* * * * *

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, July 16, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board