



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

MCPB No. 20-067

Forest Conservation Plan No. MR2020022

Project Name: Woodward High School Reopening

Date of Hearing: July 23, 2020

AUG 14 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 April 31, 2020, the Montgomery County Board of Education ("Applicant"), filed an application for approval of a Preliminary Forest Conservation Plan for 11211 Old Georgetown Road, Rockville Maryland ("Subject Property") associated with the construction of the Charles W. Woodward High School, which will provide a new facility for the re-opening of the school in the fall of 2025, located within the 1992 *North Bethesda Garrett Park Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's Preliminary Forest Conservation Plan application was designated Forest Conservation Plan No. MR2020022, Woodward High School Reopening ("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 July 13, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 23, 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.

Approved as to  Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
Legal Sufficiency: www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Forest Conservation Plan No. MR2020022 on the Subject Property, subject to the following conditions:¹

1. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must submit and obtain approval of a Final Forest Conservation Plan to be approved by the Planning Board.
2. Prior to issuance of a Sediment Control Permit from the Montgomery County Department of Permitting Services (MCDPS), the Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Board. The limits of disturbance on the Final Forest Conservation Plan must be consistent with the limits of disturbance on the approved Preliminary Forest Conservation Plan.
3. The Limits of Disturbance on the Sediment Control Plan must be consistent with the Limits of Disturbance as shown on the approved Final Forest Conservation Plan to be approved by Planning Board.
4. Prior to approval of the Final Forest Conservation Plan, the Applicant may need to obtain approval of a Park Permit, to be confirmed by the Montgomery Parks Department.
5. Forest clearing for later phases of school construction will be determined and approved as a part of the Final Forest Conservation Plan to be approved by the Planning Board.
6. Prior to approval of the Final Forest Conservation Plan, the Applicant must obtain approval of a Storm Water Management concept plan by the MCDPS.
7. The Final Forest Conservation Plan submission must include an amended Tree Variance request that includes trees No. 45 and 47.
8. The variance to remove trees identified under 22A-12 of the County Code is limited to trees No. 57, 59, 60, 61, and 62.
9. The Final Forest Conservation Plan must show the planting locations of at least 43 total inches caliper of native shade trees, each at least 3 inches caliper, to mitigate the removal of variance trees number 57, 59, 60, 61, and 62.
10. The variance to remove trees identified under 22A-12 is limited to trees No. 57, 59, 60, 61, and 62. The Applicant must submit additional justification for the removal of other trees identified under 22A-12 through a revised tree variance request, to be approved by the Planning Board.
11. The mitigation in terms of caliper inches and location of the plantings for the removal of other trees protected under Section 22A-12 of the County Code must be shown on the Final Forest Conservation Plan.
12. All trees to be planted as mitigation for trees protected under Section 22A-12 must be planted prior to issuance of the Use and Occupancy Certificate.
13. 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.

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.

14. The Applicant must comply with all tree protection and tree save measures to be determined at the time of the approved of 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.
15. Prior to any demolition and/or land disturbing activities, the Applicant must hold a pre-construction meeting with the M-NCPPC Forest Conservation Inspector.
16. Prior to certification of the plans, coordinate with M-NCPPC Staff on minor corrections and clarifications as necessary.

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 Resources Inventory/Forest Stand Delineation (NRI/FSD # 420200230) for the Subject Property on 10/4/2019. The Property includes 2 forest stands for a total of 2.68 acres of forest onsite. There are some steep grades on the north-eastern and southern sides of the Property; some of the moderate slopes are on erodible soils. The site contains no wetlands, streams or stream buffers, critical habitats, or cultural features. The NRI/FSD does not include the "Edson Property," a forested 1.75-acre parcel north of the Property, which will be included in Phase 2.

B. Forest Conservation

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

The Property has 2.68 acres of forest, all of which is categorized as being the highest priority for retention due to the presence of slopes greater than 25 percent and the presence of numerous specimen trees.

The Applicant has proposed to remove all 2.68 acres of forest onsite, including impacts to 43 specimen trees which includes removal of 41 specimen trees.

The Applicant does not provide appropriate justification for most of the forest and variance tree impacts associated with Phase 0 and Phase 1. For example, there are areas proposed for clearing and impacts that do not correspond to any proposed development within Phases 0 or 1. Also, without an approved Stormwater Management Concept, the Board cannot confirm if the proposed infrastructure is valid within the shown limits of disturbance (LOD). These items must be reconciled, and additional justification must be provided prior to approval of the Final Forest Conservation Plan (FFCP) by the Planning Board as conditioned. Impacts to trees, forest, and offsite disturbance will be addressed at FFCP.

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.

The Applicant submitted a variance request in association with the PFCP. The Project will require the removal of 41 protected trees and disturbance but retention of 2 other trees. In total the Applicant's submission for the tree variance is for 43 trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. In addition, the Applicant did not include a variance request for 2 trees that are considered high propriety for retention under Section 22A-12 and are subject to the variance provisions found in 22A-21.

The Planning Board conditioned the Approval to update the tree variance request and submit the updated request with the FFCP to provide a more accurate description of the trees impacted for Phase 0 and Phase 1.

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 high 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 Property 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 variance is necessary due to the need to address stormwater run-off on-site and the requirements to reconstruct new facilities.

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 of the Subject Property and the impacts by the proposed layout with the 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.*

Staff generally recommends that the Planning Board approve 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 determine the overall mitigation at FFCP, once an updated tree variance is evaluated. Water quality will improve with the proposed development by reducing the untreated water runoff and providing new facilities during the redevelopment. 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 Board approves the removal of trees No. 57, 59, 60, 61, and 62. The Applicant will plant the required trees for mitigation to replace the form and function of the variance trees proposed for removal. The 5 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 43 caliper inches, which must 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 AUG 14 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 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, July 30, 2020, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board