



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

MCPB No. 20-097
Forest Conservation Plan No. MR2020022
Charles W. Woodward High School
Date of Hearing: September 24, 2020

OCT 06 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 27, 2020, Montgomery County Public Schools ("Applicant") filed an application for approval of a forest conservation plan on approximately 27.31 acres of land located at 11211 Old Georgetown Road, Rockville MD ("Subject Property") in the 1992 *North Bethesda-Garrett Park Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2020022, Charles W. Woodward High 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 September 14, 2020, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 24, 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 Forest Conservation Plan No. MR2020022 on the Subject Property, subject to the following conditions:¹

1. Prior to issuance of a building permit 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 Lower Rock Creek or Cabin John watershed to satisfy the reforestation requirement for a total of 6.82 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 Lower Rock Creek or Cabin John watershed.
2. 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 the Planning Board.
3. The Applicant must provide the trail connection to Timberlawn Local Park to justify the removal of Tree No.17 per Phase 1, with the final location of the trail to be confirmed by the M-NCPPC Parks Department during the Park Permit approval process.
4. The Final Forest Conservation Plan must show the planting locations of at least 145 total caliper inches of native shade trees, each at least three inches caliper, to mitigate the removal of 579 inches of specimen trees. The planting locations must be approved by Planning staff. 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 of Phase 1.
5. 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.
6. 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.
7. Prior to any demolition or land disturbing activities, the Applicant must hold a pre-construction meeting with the M-NCPPC Forest Conservation Inspector.
8. The Certified Final Forest Conservation Plans must include an updated worksheet to show 2.68 acres of forest being cleared.

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

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.

(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. Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD # 420200230) for the Subject Property on October 4, 2019. The Property includes two 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 Applicant has proposed to remove 2.68 acres of forest onsite in Phases 0 and 1. The resulting forest mitigation requirement of 6.82 acres will be met by providing equivalent credit in an approved off-site forest mitigation bank. The mitigation must occur in the same watershed as the school location. Since the school Property is located in both the Lower Rock Creek and Cabin Branch watersheds, the mitigation must occur in either of those watersheds. If there are no approved mitigation banks in either of those watersheds, then the Applicant could use any mitigation bank elsewhere in the county. There also will be impacts to thirty-one (31) specimen trees. Twenty-seven (27) of the specimen trees are to be removed.

The Applicant has provided appropriate justification to justify the impacts/removals of the variance tree impacts associated with Phases 0 and 1. Since the Stormwater Management Concept is now approved, Staff can confirm if the impacts to the variance trees are associated with the proposed stormwater management sediment control infrastructure.

At the July 23 Planning Board hearing for the PFCP, there were conditions of approval requiring adjustments to the Forest Conservation Plan. These adjustments are reflected in the submitted 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.

This Application will require the removal or CRZ impact to thirty-one (31) 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.*

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 on 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.

The tree removals have been minimized by compact design of the layout ensuring the preservation of as many specimen trees as possible. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes limiting the impervious areas and providing on-site stormwater management systems. Additional improvements to the property include control of erosion and outfall stabilization. The specimen trees being removed outside of forest areas will be mitigated by the planting of 49 three-inch caliper trees on-site. In time, the canopy growth of the new trees will replace the water quality form and function of the trees proposed for removal. Specimen trees being removed as part of the overall forest removal are included in the mitigation for the forest removal. Therefore, the proposed activity will not degrade the water quality of the downstream areas and 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 and areas of forest removal. The Board approves the removal of 27 trees. The Applicant will plant the required trees for mitigation to replace the form and function of the variance trees proposed for removal. The trees 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 a total of 145 caliper inches of native shade trees to mitigate the removal of 579 inches of specimen trees caliper inches, as conditioned on the Final Forest Conservation Plan.

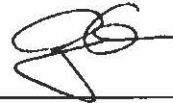
BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is OCT 06 2020 (which is the date that this Resolution is mailed to all parties of record); and

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 and Commissioners Cichy and Verma voting in favor, and Vice Chair Fani-González and Commissioner Patterson absent at its regular meeting held on Thursday, September 24, 2020, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board