



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

APR 13 2021

MCPB No. 21-028

Forest Conservation Plan No. MR 2021009

Northwood High School Amended Forest Conservation Plan

Date of Hearing: April 8, 2021

RESOLUTION

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

WHEREAS, on October 30, 2021, Montgomery County Public Schools ("Applicant") filed an application for approval of an Amended Forest Conservation Plan on approximately 29.5 acres of land located at 919 University Boulevard West in Silver Spring, Maryland ("Subject Property") associated with the reconstruction of the existing Northwood High School building to allow for an increased enrollment capacity of students and associated site improvements, located within the 2001 *Kemp Mill Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Amended Forest Conservation Plan No. MR2021009, Northwood High School ("Amended Forest Conservation Plan" or "Application");¹ 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 March 29, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on April 8, 2021, 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

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

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 Amended Forest Conservation Plan No. MR2021009 on the Subject Property, subject to the following conditions:²

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. 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 Inspection Staff.
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 all areas of forest retention, forest planting and environmental buffers as specified on the approved 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. The Book/Page for the easement must be referenced on the record plat.
4. Prior to the start of any demolition, clearing, grading or construction for this development Application, the Applicant must purchase credits for 1.24 acre from a forest mitigation bank or, if forest mitigation bank credits are not available, submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the remaining 1.24 acres of afforestation requirement.
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, as shown on the Certified Preliminary Forest Conservation Plan.
6. 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 Sligo Creek and Northwest Branch watersheds to satisfy the reforestation requirement for a total of 1.24 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Sligo Creek and

² 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.

Northwest Branch watershed. If mitigation bank credits are not available, the Applicant is subject to the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department.

7. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage and fencing along the perimeter of the conservation easements as shown on the FCP or as determined by the Forest Conservation Inspection Staff.
8. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a Maintenance and Management Agreement ("MMA") approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the FCP. The time period for the MMA will adhere to the requirements in place when the MMA is approved by the M-NCPPC Office of General Counsel.
9. The Applicant must provide invasive species management control measures within the proposed Category II Conservation Easement(s) at the direction of the M-NCPPC Forest Conservation Inspection Staff. The cost to control non-native invasive species must be incorporated into the forest conservation financial surety.
10. The Applicant must install the 3.17 Afforestation/Reforestation plantings including Planting Areas A, B, and C as shown on the certified FFCP, within 1 year following the preconstruction meeting (as seasonally appropriate), or as directed by the M-NCPPC Forest Conservation Inspection Staff.
11. The Applicant must install the Afforestation/Reforestation plantings for Planting Areas A, B and C (inside the LOD), as shown on the approved FCP, in the first planting season following stabilization of the applicable disturbed area.
12. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 45 caliper inches as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
13. The Applicant must install the variance tree mitigation plantings as shown on the certified FFCP within 1 year following the preconstruction meeting (as seasonally appropriate) or as directed by the M-NCPPC Forest Conservation Inspection Staff.
14. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
15. Copies of the Final Forest Conservation Plan and recorded Category II Conservation Easement must be kept at Northwood High School and given to

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

16. At the time of certification, the Applicant must coordinate with M-NCPPC Staff on minor corrections and clarifications as necessary.

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. Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD No. 420080600) for the Property on November 11, 2007. In preparation of this Application, recent field work was conducted by the Applicant to revise pertinent plan details such as the DBH of existing trees. The Subject Property is affected by steep slopes ($\geq 25\%$) found along the edges of the Property near the athletic fields to the rear of the Site, abutting the adjacent residences located on Caddington Avenue, and at the front driveway between the school's entrance and University Boulevard. The Property contains no forest, streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, known habitats of rare, threatened, and endangered species, historic resources, or erodible soils. The Property is located within the Sligo Creek and Northwest Branch watersheds. Most of the existing trees are located along the perimeter of the Site and function as screening between the abutting residential uses. The Property contains approximately 165 significant and specimen trees that measure $\geq 24"$ diameter and greater at breast height (DBH). The school building reconstruction has been designed to minimize environmental impacts and avoid impacts to individual specimen trees to the greatest extent feasible. Therefore, the proposed Project follows the Environmental Guidelines because the Applicant is avoiding impact to the existing natural resources as much as possible and will mitigate for the proposed removal of several trees.

B. Forest Conservation

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

There is no forest on-site, but there are several specimen trees present that are each considered a priority for retention. The Property is an institutional development which gives the Property an afforestation requirement of 15 percent of the net tract and a conservation threshold of 20 percent.

This Amended Forest Conservation Plan proposes an update to the forest conservation worksheet, landscape forest conservation credits, and a Category II Conservation Easement. The Site has a 4.43-acre requirement for afforestation and is subject to Section 22A-12.D.2 which states: "Afforestation should be accomplished by the planting of forest cover. However, if the applicant demonstrates to the satisfaction of the Planning Board that afforestation using forest cover is inappropriate for a site because of its location in an urban setting, redevelopment context, high-density residential, commercial, industrial, planned unit development, or institutional area (as defined in Section 22A-3), or similar reason, afforestation requirements may be satisfied by tree cover." The Planning Board finds that using tree cover is appropriate in this instance due to the Property's location in an urban setting, its redevelopment context, and on land occupied by a school use. Additionally, this finding is consistent with the original Forest Conservation Plan approval that permitted tree cover instead of forest cover on the Site.

The Application proposes to satisfy the 4.43-acre afforestation requirement with a combination of landscape forest conservation credits via 3.19 acres of on-site plantings to provide additional tree canopy coverage and 1.24-acre forest bank credits. The 3.19 acres of landscape credit areas are shown in three separate delineations on the Property and are proposed for preservation in a Category II Conservation Easement. The proposed plantings have been intentionally placed to address the lack of canopy in the parking area to the greatest extent feasible and along the Site's southern property line to address and reduce headlight glare from the new parking spaces onto existing homes. Plantings in this area include native evergreen trees that can provide a sufficient year-round buffer. Additional on-site plantings for tree cover within the Site are constrained by a new site circulation and parking arrangement and stormwater management facilities in various places strategically near existing parking on the Property. The Applicant proposes to satisfy the remaining 1.24-acre planting requirement by the purchase of credits in an off-site forest bank within the same watershed, or if unavailable, somewhere else in the County. If forest bank credits are unavailable, the Applicant will make a forest conservation fee-in-lieu payment to the M-NCPPC Planning Department.

The amended Preliminary/Final Forest Conservation Plan also requests a tree variance for the proposal to disturb the root zones of 24 specimen trees, which includes six (6) trees that will be removed and five (5) trees that require mitigation.

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 6 trees and impact to the CRZ of 18 trees that are considered 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 demolition and reconstruction of an outdated institutional structure that meets all the necessary and current State and County development standards. 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 and provide safe and efficient access while minimizing impacts to specimen trees. 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 new Site layout, including

recreation amenities and parking improvements to maximize specimen tree retention as permitted by the new building footprint.

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 specimen trees present near the parking areas on the Subject Property and the impacts associated with the new 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 Forest Conservation Law requires mitigation for the proposed variance trees in the form of tree planting or preservation. The Planning Board may 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 plant the required trees with a minimum 3" caliper native shade trees as required mitigation to replace the form and function of the variance trees proposed for removal. Water quality will improve with the proposed development and State water quality standards will not result in measurable degradation in water quality. The Protected Tree being impacted will remain to provide the same level of water quality protection as it currently provides.

Mitigation for Trees Subject to the Variance Provisions

The Applicant requests a variance to impact 24 specimen trees, of which 6 trees will be removed. The Board approves the removal of Protected Trees #3 (40" D.B.H.), #6 (42" D.B.H.), #C17 (32" D.B.H.), #C19 (30" D.B.H.), and #C20 (32" D.B.H.) and will be mitigated at a rate of 1" caliper per 4" DBH removed, using a minimum 3" caliper native shade tree. For mitigation, the Applicant will plant fifteen (15), 3-inch caliper trees, or a minimum of 45 caliper inches, which are shown on the Amended Preliminary/Final Forest Conservation Plan. No mitigation is required for one (1) tree that will be removed (Tree #293) and is located off-site.

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 'APR 13 2021 (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 Vice Chair Fani-González, seconded by Commissioner Patterson, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor of the motion at its regular meeting held on Thursday, April 8, 2021, in Wheaton, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board