



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

OCT 14 2021

MCPB No. 21-053  
Final Forest Conservation Plan No. MR2021017  
**Burnt Mills Elementary School**  
Date of Hearing: June 24, 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 April 29, 2021, Montgomery County Public Schools ("Applicant") filed an application for approval of a final forest conservation plan on approximately 15.15 acres of land located at 11211 Childs Street, Silver Spring ("Subject Property") in the 1997 *White Oak Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's final forest conservation plan application was designated Forest Conservation Plan No. MR2021017 ("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 June 14, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on June 24, 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

WHEREAS, on June 24, 2021, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Cichy; seconded by Commissioner Verma; with a vote of 5-0, with Chair Anderson, Vice Chair Fani-Gonzalez, and Commissioners Cichy, Patterson, and Verma voting in favor.

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Approved as to  
Legal Sufficiency: /s/ Emily Vaias  
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Final Forest Conservation Plan No. MR2021017 on the Subject Property, subject to the following conditions:<sup>1</sup>

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 (FFCP). Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspector.
3. 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 retention and environmental buffers as specified on the approved 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.
4. The Limits of Disturbance (LOD) on the Final Forest Conservation Plan must be consistent with the LOD on the Sediment and Erosion Control Plan.
5. No clearing, grading, or any demolition may occur prior to receiving approval of the Sediment and Erosion Control Plan.
6. The Applicant must plant mitigation for the removal of two (2) trees subject to the variance provision, in the form of planting native canopy trees totaling 16 caliper inches, with a minimum planting stock size of three (3) caliper inches. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspector. The trees must be planted within six (6) months of Forest Conservation Inspector approval of the removal of tree protection fencing.
7. 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 Final Forest Conservation Plan.
8. The Applicant must install the variance tree mitigation plantings, as shown on the certified FFCP, within one (1) year following the preconstruction meeting (as seasonally appropriate) or as directed by the M-NCPPC Forest Conservation Inspection Staff.
9. Copies of the Final Forest Conservation Plan and recorded Category I Conservation Easement must be kept at Burnt Mills Elementary School and given to the school maintenance staff(s) to ensure compliance with conditions of the Final Forest Conservation Plan.

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<sup>1</sup> 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.

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

The Property has 6.13 acres of forest, but 1.54 acres of forest are within existing utility easements or rights-of-way (ROW), so this forest cannot be counted as removed or retained and is instead subtracted from all calculations. The Applicant is proposing to retain 3.89 acres of forest (of the 4.59 acres outside of easements and ROW) in a Category I Conservation Easement. While the worksheet shows 0.70 acres of forest clearing, the Applicant is only proposing to remove approximately 0.37 acres of forest for the construction of the entrance and parent drop-off loop and athletic field construction. The remaining 0.33 acres of forest are either not deep enough to be placed in a Category I Conservation Easement or are located adjacent to US Route 29 - Columbia Pike and will be cleared in the future as part of a planned bicycle path. All forest conservation requirements are being met on-site.

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 the removal or CRZ impact to 23 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 as a school 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 site layout to maximize forest retention.

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 existing development 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 Applicant is not disturbing any areas of stream valley buffer on-site and is protecting the forested stream valley buffer in a Category I Conservation Easement. The Applicant is also providing mitigation plantings for the loss of two (2) Protected Trees located outside of forest at a rate of 1-inch caliper per 4-inch DBH removed, using a minimum 3-inch caliper native shade tree. No mitigation is required for the three (3) trees located in forest that is counted as cleared and mitigated for as part of the forest removal. The Property redevelopment includes the addition of stormwater management facilities. Granting the

variance will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves replacement of Protected Trees at a ratio of approximately 1-inch caliper per 4-inch DBH removed, using a minimum 3-inch caliper native shade tree. The Applicant will plant 16 caliper inches of mitigation trees to mitigate for the loss of 62 inches of Protected Trees removed. No mitigation is required for Protected Trees impacted but retained.


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 14 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 Commissioner Cichy, seconded by Commissioner Verma, with Chair Anderson and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, September 23, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board