



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

MCPB No. 21-109  
Forest Conservation Plan No. MR2021029  
Woodlin Elementary School  
Date of Hearing: September 30, 2021

**NOV 15 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 May 17, 2021, Montgomery County Public Schools ("Applicant") filed an application for approval of a Final Forest Conservation Plan on approximately 10.4 acres of land located at 2101 Luzerne Ave, Silver Spring, Maryland 20910 ("Subject Property") within the 2000 North and West Silver Spring Master Plan ("Master Plan") area; and

WHEREAS, the Applicant's Final Forest Conservation Plan Application was designated Forest Conservation Plan No. MR2021029, Woodlin Elementary School ("Final 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 20, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on September 30, 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 September 30, 2021, the Planning Board approved the Final Forest Conservation Plan, subject to certain conditions, on motion of Commissioner Cichy; seconded by Commissioner Verma; with a vote of 4-0, Chair Anderson, 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. MR2021029 on the Subject Property, subject to the following conditions:<sup>1</sup>

1. The Applicant should 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 I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final 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. 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 as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
5. 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 Rock Creek watershed to satisfy the afforestation requirement for a total of 1.13 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 Rock Creek watershed or by making a fee-in-lieu payment if mitigation credits are not available at any bank.
6. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the afforestation plantings, mitigation trees, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.

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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.

7. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.
8. The Applicant must install the Afforestation/Reforestation plantings for the planting area as shown on the approved FCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
9. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 87 caliper inches, or 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.
10. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the FCP.
11. 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.

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

Although there is no forest onsite, this Application is subject to Chapter 22A Forest Conservation Law and has included a Final Forest Conservation Plan with this Application. The Forest Conservation Plan shows that within the 10.40-acre site area, and the additional 0.34-acres of offsite work, there will be a calculated afforestation requirement of 1.61-acres. Of this requirement, 0.48-acres will be met onsite via afforestation planting areas to be protected with a Category 1 Conservation Easement. This area is proposed to be withheld from the impacted LOD and enhanced with native plantings. The remaining 1.13-acres of afforestation will be met via credits from an off-site forest bank or via fee-in-lieu, as conditioned.

#### 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.

In accordance with Section 22A-21(a), the Applicant requested a Variance. This Variance will allow the CRZ impact to nine (9) Protected Trees and the removal of ten (10) Protected Trees as identified in the Staff Report. The extents of impacts to critical root zones vary, as detailed within the associated Final Forest Conservation Plan sheets, however efforts to minimize impacts using tree protection measures have been specified in all plans and notes. Per Section 22A-21, a variance may only be granted if the Director or Planning Board as applicable, finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The Planning Board has determined that the Applicant has shown that enforcement of the Forest Conservation Law for the designated trees would result in an unwarranted hardship because the ability to implement the full program, as envisioned by MCPS, becomes quite limited when considering the need to protect the sensitive environmental features onsite, respect the necessary utility easements, and improve site accessibility/circulation. These competing priorities result in a constrained usable site area; without granting this variance, MCPS would then be faced with a virtual inability to create a well-designed school that fosters equity and community connection. The limits of disturbance as well as proposed tree protection and mitigation

measures have evolved throughout the review process in order to minimize disturbance and support protection and enhancement of the natural resources of the site. These factors are further supported via conditions of approval of the Final Forest Conservation Plan. Based on the limiting, but necessary, constraints on the site paired with MCPS's goal to provide a community serving facility that will be a lasting resource for years to come, The Board agrees that there is an unwarranted hardship without approval of this variance request.

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.*

The Applicant's proposal to construct a school is in conformance with the County's General plan. Further, any Applicant would be required to adhere to the utility easements onsite and limit impact to sensitive environmental features. With these factors considered, The Board concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted 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.*

As stated above, the requested variance and associated tree impacts are due to the concerns related to the improvement of site while adhering to certain constraints. This variance request is not based on circumstances which are the result of actions by the Applicant.

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 particular need for a variance.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The development proposal for the site includes the planting of variance mitigation trees, as well as tree plantings as potential replacement for trees not subject to the variance provisions of Chapter 22A but which

may be impacted/removed. Additionally, the Applicant proposes to reduce impervious cover within and near the existing stream buffer, provide supplemental plantings and afforestation plantings onsite, and support the native ecological community through removal of invasive species. Collectively, these actions will improve soil permeability, support the infiltration and uptake of water onsite, and reduce areas contributing to water runoff and erosion.

Further, the Applicant proposes a development which will meet current State and local stormwater management standards while the site currently does not; adherence to the current standards has been verified by the submission, and subsequent approval, of a Stormwater Management Plan to the Department of Permitting Services. MCDPS found the plan acceptable for providing the required stormwater treatment onsite without the use of waivers. Thus, the Application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

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" DBH for every 4" DBH removed, using trees that are a minimum of 3" caliper. No mitigation is required for Protected Trees impacted but retained. As a result of the proposed removal of ten subject trees, for a total of 348" DBH removed, the calculated mitigation requirement is found to be at least 87 caliper inches of native canopy trees sized at least 3 caliper inches each. The Applicant has proposed a total of 87 caliper inches of trees to be planted in order to meet the mitigation requirements. The Board supports this proposal as it adequately meets the requirements and will greatly enhance the natural features onsite following the proposed development.

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 NOV 15 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, Patterson, and Verma voting in favor of the motion, and Commissioner Rubin abstaining at its regular meeting held on Thursday, November 4, 2021, in Wheaton, Maryland.

  
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Casey Anderson, Chair  
Montgomery County Planning Board