



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

**FEB 08 2022**

MCPB No. 22-117  
Forest Conservation Plan No. MR2022007  
Neelsville Middle School  
Date of Hearing: January 27, 2022

**RESOLUTION**

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

WHEREAS, on December 3, 2021, Montgomery County Public Schools ("Applicant") filed an application for approval of a forest conservation plan on approximately 29.17 acres of land located at 11700 Neelsville Church Road Germantown ("Subject Property") in the Germantown East Policy Area and 1989 Germantown Master Plan ("*Master Plan*") area; and

WHEREAS Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2022007, *Neelsville Middle 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 January 14, 2022, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 27, 2022, 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

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Approved as to  
Legal Sufficiency: /s/ Matthew T. Mills  
M-NCPPC Legal Department

WHEREAS, on January 27, 2022, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Rubin; seconded by Commissioner Cichy; with a vote of 5-0, Chair Anderson, Patterson, Rubin and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. MR2022007 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. Prior to the start of any demolition, clearing, grading, or construction, whichever comes first, 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.
3. 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.
4. 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, 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.*

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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.

A. Forest Conservation

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

The total net tract area for forest conservation purposes is 28.95 acres, which subtracts 0.29 acres of right-of-way not being improved as part of this project. The Property is zoned R-200 and is classified as High Density Residential ("HDR") as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Site contains 11.53 acres of forest and the Applicant proposes clearing or counted as cleared 0.37 acres in the forest conservation worksheet. This results in no afforestation requirement as calculated in the Forest Conservation Worksheet. All forest retained will be placed in a Category I Conservation Easement.

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 three 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.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to required stormwater management. Granting a variance to allow for construction of required stormwater management facilities is not unique 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.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in proximity to required stormwater management.

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 need for a variance.

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

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being impacted are not located within a stream buffer, wetland, or a special protection area. Additional trees will be planted on the Subject Property as part of the forest conservation requirements.

In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

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 FEB 08 2022 (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 Rubin, with Chair Anderson and Commissioners Cichy, Patterson, Verma, and Rubin voting in favor of the motion at its regular meeting held on Thursday, February 3, 2022, in Wheaton, Maryland.



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Casey Anderson, Chair  
Montgomery County Planning Board