

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

**April 24, 2024**

MCPB No. 24-039

Forest Conservation Plan No. F20240370

**JoAnn Leleck Elementary School**

Date of Hearing: March 21, 2024

## **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 1, 2023, Montgomery County Public Schools (“Applicant”) filed an application for approval of a forest conservation plan, filed concurrently with Mandatory Referral No. MR2024007, on approximately 6.35 acres of land located at 710 Beacon Rd, (“Subject Property”) in the Silver Spring East Policy Area and Silver Spring East Master Plan (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240370, Joann Leleck Elementary 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 March 11, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on March 21, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240370 on the Subject Property, subject to the following conditions:<sup>1</sup>

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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.

1. Before certification of the Final Forest Conservation Plan, the Applicant must update the plan per the following:
  - a. Update all FCP sheets for consistency regarding tree removals, variance tables, mitigation and supplemental plantings, and associated plan elements as shown in the staff report and/or approved by the Planning Board.
  - b. Update overall plans as applicable so that all the credited mitigation plantings are at least five (5) feet away from any structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
  - c. Provide specifications for the control of invasive species and supplemental native species as needed.
  - d. Add specifications for soil restoration associated with any disturbed areas within the proposed Category I Easement.
  - e. Revise applicable tree tables and plan notes regarding Tree No. 20, to clarify that all onsite portions of the tree care/stress reduction measures are to be performed, while portions of the recommended work to occur offsite would need prior permission from the neighboring owner(s); add plan notes requiring that good faith efforts to obtain the permission(s) shall be performed in a timely manner.
  - f. Clarify/correct notes and graphics as needed.
2. 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.
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 certified Final Forest Conservation Plan.
5. Before the start of any clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
  - a. Record a Category I Conservation Easement over all areas of forest retention/planting 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.

- b. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - c. Install the permanent conservation easement fencing and signs along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - d. Execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas and mitigation tree plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - e. Work with an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert to implement the tree-save plan, which includes protective measures for Trees No. 20 and No. 23. Additionally, an appropriate tree care professional will implement a five-year tree care program to ensure the long-term maintenance and monitoring of the prominently featured specimen Tree No. 20.
  - f. The Applicant must install the Afforestation/Reforestation plantings for Areas A outside of the limits of disturbance ("LOD") 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.
  - g. The applicant must install the afforestation/reforestation plantings for planting Areas A (inside the LOD), as shown on the approved FCP, in the first planting season following stabilization of the applicable disturbed area.
6. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Anacostia River Watershed or Priority Area to satisfy the reforestation requirement of 1.32 acres of mitigation credit. If no off-site forest banks exist within the Anacostia River Watershed or Priority Area, then the off-site requirement may be met by purchasing 1.40 acres of mitigation credits from a mitigation bank within Montgomery County outside of the Anacostia River Watershed or Priority Area, subject to Staff approval. If forest mitigation bank credits

are not available for purchase, a fee-in-lieu payment must be made to M-NCPPC for the appropriate mitigation credits.

7. Before initial planting acceptance inspections of the required on-site supplemental reforestation, the Applicant must install the permanent split-rail fence and signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
8. 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 on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 8 caliper inches and located outside of any right-of-way or utility easements, including stormwater management easements, 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.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or 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

Final Forest Conservation Plan (“FFCP”) No. F20240370 was submitted for review and approval concurrently with the Mandatory Referral No. MR2024007. The Mandatory Referral application would replace the existing JoAnn Leleck Elementary School building and associated site features with a new, larger elementary school building, new larger parking lot with 116 spaces, separated bus and student drop-off areas, outdoor play spaces, and series of stormwater management facilities.

The total net tract area for forest conservation purposes is 6.21 acres. The Property is within the R-60 zone and is classified as Institutional Development

Areas (“IDA”) as defined in Section 22A-3 of the Forest Conservation Law and specified in the Trees Technical Manual. The Property contains 0.34 acres of forest. Therefore, due to the proposed disturbance and the institutional development use classification of the subject property, there is an afforestation requirement of 1.00 acres, as calculated in the Forest Conservation Worksheet. There is an offsite afforestation requirement of 1.32 acres within the same Watershed or Priority Area and, conversely, 1.40 acres outside of the Watershed or Priority Area as calculated in the Forest Conservation Worksheet. The Applicant proposes to meet this requirement by reforesting 0.05 acres on-site in a Forest Conservation Easement Category I, and meeting the balance of the reforestation requirement, either 1.27 acres or 1.35 acres, by purchasing credits from an M-NCPPC approved off-site forest bank.

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

**B. Forest Conservation Variance**

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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.

The Applicant submitted a variance request in a letter dated December 1, 2023 in conjunction with Mandatory Referral No. MR2024007. The Applicant proposes to impact three (3) Protected Trees and remove one (1) Protected Tree, all of which are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

*Table 1: Removed and Impacted Protected Trees*

<b>Tree ID</b>	<b>Common Name</b>	<b>DBH</b>	<b>% Impact</b>	<b>Status</b>
1	Red Oak	30	100%	Remove
6	Red Oak	35	13%	Save
10	Red Oak	41	10%	Save
20	Black Oak	33	41%	Save

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, thereby denying the applicant reasonable and significant use of their property. In this case, the unwarranted hardship stems from the obsolete school

building. Furthermore, the Master Plan supports the enhancement of existing structures, such as schools, and promotes connectivity among communities as the county continues to grow. The project is carefully designed to balance protection of the natural resources and improving stormwater management with the site project. Such improvements recommended by the Sector Plan (which is a reasonable and significant use of the Property) would not be possible without impacts and removal of subject trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a 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.*

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the specified trees are due to the development of the Property, location of the trees, site constraints, and necessary site design requirements. The Property contains large trees located within or in close proximity to the developable area of the site. Granting a variance to allow development of the site is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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 which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and constraints, and necessary design requirements of this Application. The project was configured in a way that would maximize the retention of existing forest on the Property and to avoid impacts to the existing Protected Trees, wherever possible.

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 based upon existing and proposed conditions and use of the Subject Site and not those of neighboring properties.

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 Tree being removed is

not located within a stream buffer, wetland, or Special Protection Area. The Application proposes mitigation for the removal by planting new trees on-site. These trees will ultimately replace water quality functions that may be lost by the removed tree. Therefore, Staff concurs that the Application will not violate State water quality standards or cause measurable degradation in water quality.

Furthermore, in their letter dated March 5, 2024, DPS Water Resources Section determined the stormwater concept plan for the Proposal to be acceptable.

As conditioned, the Applicant will be required to mitigate the removal of 30 diameter-inch Protected Tree with at least 8 caliper-inches of mitigation planting. In this case, the applicant must plant at least 3 trees of 3-inch caliper each. No mitigation is required for trees that are 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

**April 24, 2024**

(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 consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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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 Hedrick, seconded by Vice Chair Pedoeem, with a vote of 5-0, Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, April 4, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board