

JAN 19 2012



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

**MCPB No. 11-83**

**Amendment to Final Forest Conservation Plan No. MR2002202-MCPS-1**

**Church of the Little Flower**

**Date of Hearing: September 15, 2011**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on March 2, 2011 Church of the Little Flower ("Applicant") filed an application for approval of an Amendment to the Final Forest Conservation Plan on 11.49 acres of land located at 5607 Massachusetts Avenue, west of Little Falls Parkway ("Property" or "Subject Property"), in the Bethesda-Chevy Chase master plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Amendment to Forest Conservation Plan No. MR2002202-MCPS-1, Church of the Little Flower ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, the Planning Board held a public hearing on the Application (the "Hearing") on September 15, 2011; and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 15, 2011, the Planning Board approved the Forest Conservation Plan subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Anderson; with a vote of 5-0, Commissioners Anderson, Carrier, Dreyfuss, Presley, and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved the

Approved as to  
Legal Sufficiency:

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Amendment to Forest Conservation Plan No. MR2002202-MCPS-1 located on the Subject Property, in the Bethesda-Chevy Chase Master Plan area subject to the following conditions:

1. Applicant must revise the submitted forest conservation plan to show the following information:
  - a. Existing utility lines along Massachusetts Avenue that are adjacent to existing conservation easement areas.
  - b. A note that any tree removed from a conservation easement area due to PEPCO's determination of hazard conditions must be mitigated by planting native trees within the conservation easement area. Planting plan must be reviewed and approved by Planning Department Forest Conservation Inspector.
2. The following must be completed by the Applicant no later than December 1, 2011:
  - a. Recordation of the reconfigured onsite Category I conservation easements and associated conservation easement agreement in the land records.
  - b. Submission and approval of a certificate of compliance to use 0.08 acres at an approved offsite forest mitigation bank.
3. Applicant must include language in the Category I conservation easement agreement to provide for the following items:
  - a. Recognition of a specific area within the easement area where existing memorial benches can remain and be maintained.
  - b. Allowances over time for M-NCPPC Planning Department review and approval of limited removal of trees that are determined by PEPCO to create hazardous conditions with existing PEPCO power lines located in or near conservation easement areas that are shown on the approved Final Forest Conservation Plan Amendment.
  - c. Requirement to plant native trees to compensate for the removal of trees in conflict with PEPCO electric lines that the M-NCPPC Planning Department has approved for removal.
  - d. Requirement for mitigation planting plan to be reviewed and approved by M-NCPPC Planning Department.
4. Applicant must submit by November 1, 2011, a tree planting plan for Planning Department Staff review and approval to mitigate for the removal of the 37-inch tulip poplar. The planting plan must include a schedule for planting that will occur no later than April 2012.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and

incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County 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 the protection of environmentally sensitive features:*

- A. Forest Conservation

The Final Forest Conservation Plan included three onsite forest retention areas, covering a total of 1.39 acres, which were required to be placed in Category I conservation easements. The approved Amendment will reduce the onsite forest retention areas by 0.08 acre due to encroachment by a playground area and reconfiguration of a retention area to reduce future conflicts between existing electric power lines and trees within a conservation easement. The loss of onsite forest retention areas will be mitigated by the purchase of offsite forest bank credits at the rate of 2 acres of forest bank credits for every acre of onsite conservation easement area removed.

- B. Forest Conservation Variance

Section 22A-12(b)(3) of the County Code 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-21 of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will require one Protected Tree, 30 inches or greater in diameter at breast height (DBH), to be removed. Therefore, a variance is required.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Given the developed nature of the church site and surrounding properties, there is no alternative location for the electrical lines that both serves the convent building and avoids the approved conservation easement areas. If the line is removed from the conservation easement area to avoid removing the tree, the convent building may not have electrical power. Lack of electrical

power to the building, which serves as a residence for religious sisters of the church, would deprive the church of rights commonly enjoyed by others in the surrounding area. Alternatively, if the tree is not removed and the line remains, a hazardous condition, as identified by PEPCO exists. Correcting a documented hazardous condition would also be required for other uses in similar areas and is not a special privilege.

- ii. The need for the Tree 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. Based on the record, it appears that at the time the convent building was constructed, the only nearby source of electricity to serve the building was from existing lines along Massachusetts Avenue. The power line would have required a north-south alignment, roughly similar to the existing alignment, to provide electrical service to the convent building.

- iii. The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the church school site and not a result of land or building use on a neighboring property.

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

State water quality standards will not be violated and a measurable degradation in water quality will not occur. The area where the power line is located and where the tree will be removed is not adjacent to a stream or wetland and is not within an environmental buffer. In addition, the approved Amendment to the Final Forest Conservation Plan will include a planting plan to mitigate for the loss of the tree within the conservation easement that will be cut due to hazardous conditions as defined by PEPCO. Over time, it is anticipated that there may be additional trees within the easement area that will grow larger and eventually cause a hazardous condition by being too close to the power lines. The Category I conservation easement agreement will include language requiring the Applicant to plant native trees to mitigate for the loss of any trees within a conservation easement due to hazardous conditions with existing PEPCO power lines. The required mitigation planting will keep the conservation easement areas forested.

C. Forest Conservation Variance mitigation

Mitigation will be provided for the tree removed as specified in a planting plan that takes into consideration the size, species, health, and location of the tree to be removed, and the health and condition of the forest within the conservation easement.

Thus, the Board finds that with the conditions imposed by this Resolution the Amendment to the Final Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

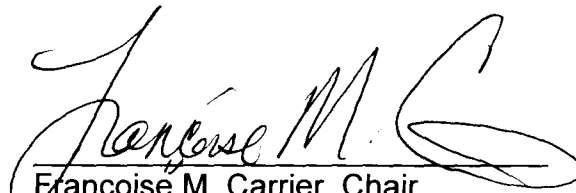
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is JAN 19 2012 (which is the date that this Resolution is mailed to all parties of record); and **JAN 19 2012**

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).

\* \* \* \* \*

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley abstaining, at its regular meeting held on Thursday, January 12, 2012, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board