



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-121
Forest Conservation Plan No. MR2012006
Westbrook Elementary School
Date of Hearing: December 1, 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 September 29, 2011, the Montgomery County Department of Public Schools ("Applicant") filed an application for approval of a Forest Conservation Plan on approximately 12.13 acres of land located at 5112 Allan Terrace, ("Property" or "Subject Property") in the Palisades sub area of the 1990 Bethesda-Chevy Chase Master Plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2012006, Westbrook Elementary School ("Forest Conservation Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 18, 2011 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 Staff and the staff of other governmental agencies, the Planning Board held a public hearing on the Application (the "Hearing") on December 1, 2011; and

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

WHEREAS, on December 1, 2011, the Planning Board approved the Forest Conservation Plan including all findings necessary for granting, in part, the variance

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Spring, Maryland 20910

Christina Sonnet 2/29/12

MNCPPC Legal Department

Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

request, subject to conditions as revised, on motion of Commissioner Dreyfuss, and seconded by Commissioner Presley, 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 Preliminary Forest Conservation Plan No. MR2012006 on approximately 12.13 acres of land located at 5112 Allan Terrace, in the Palisades sub area of the 1990 Bethesda-Chevy Chase Master Plan, subject to the following revised conditions:

1. Approval of a Final Forest Conservation Plan must be secured, consistent with the approved Preliminary Forest Conservation Plan and associated conditions, prior to any clearing, grading or demolition on the site.
2. Final Forest Conservation Plan must include detailed and specific tree protection measures for on and off-site trees affected by the LOD, particularly for the trees fronting Allan Terrace.
3. The tree save component of the Final Forest Conservation Plan must be appropriately signed by an International Society of Arboriculture certified arborist.
4. The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the Limits of Disturbances (LODs) and the associated tree/forest preservation measures.
5. Applicant must appropriately record a Category I Conservation Easement over all areas of forest and tree stands associated with onsite stream valley buffers and/or 100 year floodplains except for areas that are not owned by the Applicant. Recordation must occur prior to any clearing, grading or demolition occurring onsite. The easement area shall exclude the concrete channel.
6. Revise the Forest Conservation Worksheet to deduct only the concrete stream channel from the net tract area.
7. Extend the limits of disturbance for the stormwater management retrofits (at the northwest side of the school) shown on sheets L-2.1 to connect with the remainder of the work proposed along the west side of the school.
8. Revise root pruning detail and plan graphics/notes as needed to show no trenching or other disturbance beyond the LOD.
9. Revise the invasives control note to apply to existing forest/woodlands within the

Stream Valley Buffer. A copy of the maintenance and management agreement must be kept on-site and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the Final Forest Conservation Plan.

10. Prior to approval of the Final Forest Conservation Plan the Applicant must provide information to Staff confirming the ownership of the utility rights of way. If the information shows that the Applicant does not own the utility rights of way then the rights of way must be removed from the Forest Conservation Plan tract area.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the revised conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and Forest Conservation Regulations Section 109A (COMCOR 22A.00.01.09A).*

The Forest Conservation Plan includes approximately 0.09 acres of active forest clearing within the limits of disturbance (LOD). The Application proposes additional areas of forest clearing outside of the LOD based on technical definitions rather than active forest clearing. Supplemental information described in condition 10 will be necessary to determine the ultimate amount of forest clearing. In addition, the Forest Conservation Plan requires planting of a minimum of 56 two-and-one-half-inch caliper native trees to mitigate for the removal and impacts to trees which are subject to the variance.

Forest Conservation Variance Request

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection ("Priority Trees"). Any impact to these Priority Trees, including removal or any disturbance within a Priority Tree's critical root zone (CRZ), requires a variance under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition. Among those listed as Priority Trees in Section 22A-12(b)(3) are any tree with a diameter, measured at 4.5 feet above the ground, of 30 inches or more. Because the Forest Conservation Plan proposes to impact and/or remove trees greater than 30 inches at 4.5 feet above the ground, and the project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009, the effective date of Section 5-1607, a variance is required.

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection on November 9, 2011 for a written recommendation prior to acting on the request. The County Arborist responded on November 14, 2011 with a favorable recommendation on the condition that appropriate mitigation is provided for the resources disturbed. Additionally the County Arborist provided general recommendations which included reduction of the amount of permanent impacts to critical root zones by implementing temporary protective matting.

The Applicant's variance request included the removal of Priority Trees solely because of the proposed widening of Allan Terrace, which fronts the Property. The Priority Trees include trees #142, 147, 148, and 149. However, the Applicant has not demonstrated that the Applicant would suffer an unwarranted hardship without a variance to allow removal or impact to the CRZ of these Priority Trees for the proposed widening of Allan Terrace. Therefore the variance is **not** granted for removal of trees #142, 147, 148, and 149. With regard to these four trees, a variance is granted, as described below, only for impacts to the CRZ on the school side associated with redevelopment of the school building, not for impacts from the street side associated with the widening of Allan Terrace. The Applicant cannot remove trees #142, 147, 148, and 149 under any circumstances. Any impacts to these four Priority Trees due to the widening of Allan Terrace would require further Planning Board action.

The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance as revised above.

The Planning Board finds as follows:

- a) *Approval of the variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The Property is relatively constrained and the proposed addition and associated modifications are designed to be minimally intrusive to environmentally sensitive areas. Furthermore, the maintenance and upgrading of regional facilities such as the school is the responsibility of public agencies in executing their duties to the community. Therefore, the variance request would be granted to any Applicant in a similar situation.

- b) *Approval of the variance is not based on conditions or circumstances which are the result of the action by the Applicant.*

The variance is based on constraints due to existing site conditions, as well as a balance of the proposed work and the need to provide appropriate public facilities. Alternate designs were incorporated to work within the existing constraints and mitigation is provided for the resources disturbed.

- c) *Approval of the 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 current Application on the Subject Property and is not related to land or building use on a neighboring property.

- d) *Approval of the variance will not violate State water quality standards or cause measurable degradation in water quality.*

A stormwater management concept plan was approved by the Department of Permitting Services for the proposed project on August 4, 2011. The concept plan proposes to meet required stormwater management goals via installation of porous pavement, micro bioretention facilities and a green roof. The final stormwater management plans will be approved for this project by the Montgomery County Department of Permitting Services. The approved stormwater management plan will ensure that water quality standards will be met in accordance with State and County criteria. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Therefore, the Planning Board finds that the Application, with conditions as revised, satisfies all applicable requirements of the Forest Conservation Law.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of Planning Board in this matter and the date of this Resolution is MAR 14 2012 (which is the date that this Resolution is mailed to all parties of record); and

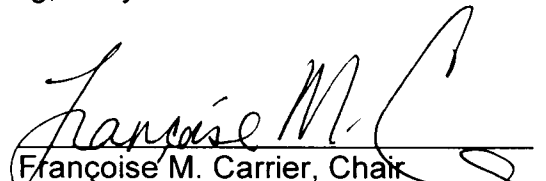
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor of the motion, at its regular meeting held on Thursday, March 8, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board