



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

JAN 28 2013

MCPB No. 13-03
Forest Conservation Plan No. MR2013014
Rock Creek Elementary School
Date of Hearing: January 10, 2013

RESOLUTION

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

WHEREAS, on November 1, 2012, Montgomery County Public Schools ("Applicant") filed an application for approval of a forest conservation plan on approximately 7.96 acres of land located at 8330 Grubb Road ("Subject Property") in the North & West Silver Spring master plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2013014, Rock Creek Forest Elementary School ("Forest Conservation Plan" or "Application");¹ 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 December 28, 2012, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 10, 2013, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board's action is with regard to the preliminary Forest Conservation Plan.

Approved as to
Legal Sufficiency:

Christina Sorrento 1/3/13

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Forest Conservation Plan No. MR2013014 on the Subject Property, subject to the following conditions:²

1. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to issuance of a Sediment Control Permit from the Department of Permitting Services. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
3. The Final Forest Conservation Plan must include detailed and specific tree protection measures for on and off-site trees affected by the Limits of Disturbance (LOD).
4. The tree save component of the Final Forest Conservation Plan must be appropriately signed by an International Society of Arboriculture certified arborist.
5. 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.
6. Applicant must record a Category I Conservation Easement over two (2) non-contiguous onsite forests stands (0.44 acres and 0.28 acres) and one (1) Category II Conservation Easement (0.08 acres). Recordation must occur prior to any clearing, grading or demolition occurring onsite.
7. The Applicant must plant 25 three-inch caliper native trees as mitigation for the removal of specimen trees and impacts to the critical root zones of existing trees. The species and location of plantings must be identified on the Final Forest Conservation Plan.
8. A copy of the maintenance and management agreement must be kept at the Rock Creek Forest Elementary School and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the Forest Conservation Plan.
9. Prior to any demolition, clearing, or grading, the Applicant must obtain Staff approval of a Certificate of Compliance Agreement for use of an M-NCPPC-

² 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.

approved offsite forest mitigation bank to satisfy the 0.85 acre reforestation requirement.

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 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.

The Applicant has met the requirements of the Forest Conservation Law and will be providing 0.85 acres of afforestation/reforestation offsite. Mitigation for specimen tree removal and impacts will result in the planting of 25 three-inch caliper native trees onsite. Additionally, three (3) noncontiguous areas will be placed in Category I and II Forest Conservation Easements.

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 eleven (11) Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant has requested a Variance and the Board agreed that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board made 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 school property is constrained and the proposed upgrades and associated modifications are designed to minimally intrude on the existing forested areas. The sites renovation and restoration will substantially reduce stormwater runoff resulting in improved water quality.

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 based on a balance of the proposed site layout and the need to provide a state of the art appropriately sized school. Significant efforts were made to reduce tree impacts, provide stormwater management, while leaving enough space for active recreation for the students.

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 a result of the current Application on the subject property and is not related to land or building use on a neighboring property.

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

A stormwater management plan was not included in this Mandatory Referral submission packet. However, a stormwater management concept plan was approved by the Department of Permitting Services (DPS) for the proposed project on June 8th, 2012. The concept plan proposes to meet the required stormwater management goals via installation of a grass swale, a 4"-thick green roof, and multiple micro bioretention facilities. The stormwater management systems provide both quantity and quality control. 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. In fact, it will greatly improve the quality of runoff from its present untreated condition.

Mitigation for the Variance should be at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees at a ratio of 1" diameter at breast height (DBH) for every 4" DBH removed with a minimum tree size of 3" DBH. The Applicant will satisfy this mitigation requirement by planting 25 trees onsite.

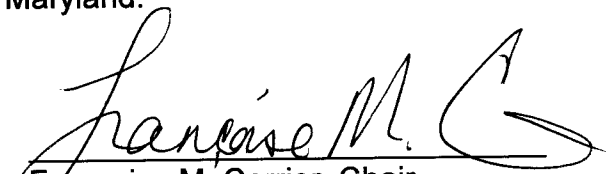
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is JAN 28 2013 (which is the date that this Resolution is mailed to all parties of record); and

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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor, at its regular meeting held on Thursday, January 17, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board