



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

MCPB No. 18-026
Preliminary Plan No. 12008003C
Bullis School
Date of Hearing: April 5, 2018

MAY 04 2018

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on March 12, 2009, the Planning Board, by Resolution MCPB No. 09-30, approved Preliminary Plan No. 120080030, creating one lot on 77.63 acres of land in the RE-2 zone, located on the northeast quadrant of the intersection of Falls Road (MD 189) and Democracy Blvd at 10601 Falls Rd ("Subject Property"), in the Potomac Policy Area and 2002 Potomac Subregion Master Plan ("Master Plan") area; and

WHEREAS, on May 3, 2017, Planning Staff approved an amendment to Preliminary Plan No. 12008003A to amend the Final Forest Conservation Plan on the Subject Property to add new site improvements; and

WHEREAS, on January 12, 2017, the Planning Board approved an amendment to Preliminary Plan No. 12008003B (MCPB No. 16-143) to amend the Final Forest Conservation Plan and remove 11,875 square feet of Category I conservation easement on the Subject Property; and

WHEREAS, on April 28, 2017, The Bullis School ("Applicant") filed an application for approval of an amendment to the previously approved preliminary plan(s) to amend the Final Forest Conservation Plan to add additional site improvements and remove 6,033 square feet of Category I conservation easement on the Subject Property; and

WHEREAS, Applicant's application to amend the preliminary plan was designated Preliminary Plan No. 12008003C, Bullis School ("Preliminary Plan," "Amendment," 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

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M-NCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

Planning Board, dated March 23, 2018, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on April 5, 2018, 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

WHEREAS, on April 5, 2018, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzales, with a vote of 5-0; Commissioners Anderson, Cichy, Dreyfuss, Fani-Gonzales, and Patterson voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 12008003C to add two parking areas, two new access roads, update a playfield, and remove 6,033 square feet of Category I conservation easement the following conditions:¹

1. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a deed of release to remove the 6,033 square feet of Category I Conservation Easement on the Subject Property as shown on the Revised FFCP. The deed of release must be in a form approved by the Maryland-National Capital Park & Planning Commission Office of the General Counsel.
2. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record in the Land Records of Montgomery County an M-NCPPC approved Certificate of Compliance for the purchase of 12,066 square feet (2:1) of forest credit for planted forest or 24,132 square feet (4:1) of forest credit for existing forest in an M-NCPPC approved off-site forest bank to satisfy the mitigation requirement of a 2:1 replacement rate for removing 6,033 square feet of Category I Conservation Easement on the Subject Property.
3. Within 60 days of the pre-construction meeting the Applicant must plant four native canopy trees with a minimum planting stock size of three caliper inches on the Subject Property. The planting locations of these trees and the determination of species are subject to the approval of the M-NCPPC forest conservation inspector.

¹ For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

4. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
5. The limits of disturbance on the Final Sediment and Erosion Control Plan must be consistent with the limits of disturbance on the approved Forest Conservation Plan.

BE IT FURTHER RESOLVED that all other preliminary plan conditions of approval for this project remain valid, unchanged and in full force and effect.

BE IT FURTHER RESOLVED that having considered 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 (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved preliminary plan as revised by previous amendments, and all findings not specifically addressed remain in effect.

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

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

The approved revisions are all typical of a private educational facility and are consistent with the approved use on the Subject Property. This Application provides adequate interconnectivity between the existing school property and the newly acquired Kentsdale Estates properties and updates the Final Forest Conservation Plan to reflect the new land disturbing activities.

The required mitigation meets the Planning Board's easement removal policy of 2:1 planting requirement. The Applicant will satisfy the 2:1 replacement rate for removing 6,033 square feet of Category I conservation easement by purchasing 12,066 square feet (2:1) of forest credit for planted forest or 24,132 square feet (4:1) of forest credit for existing forest in an off-site forest bank.

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 six 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. Without the Variance, the Subject Property could not be connected and developed as an integrated school campus.

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 reasonable modifications to the existing features on the Subject Property to better serve the operation of the School. The proposed location of the access road from the existing school to the newly acquired adjacent land is the least impactful location and minimizes tree loss, tree impacts, and easement impacts. Granting a variance to allow land disturbance within the Subject Property to better fulfill the operation of the school while minimizing impacts 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 upon existing conditions on the Subject Property, including the location of the protected trees within the area of the Subject Property and connectivity between commonly owned pieces of land.

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 need for a Variance is a result of the existing conditions and the desire for the Applicant to reconfigure existing features to better serve the existing school and is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

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. One tree is proposed to be removed and five trees will be impacted. The tree that will be removed will be mitigated for by planting trees on the site to replace the functions lost by the removal of this tree. The five trees that will be impacted but not removed will continue to provide their existing functions. In addition, Montgomery County Department of Permitting Services will require a detailed sediment and erosion control plan for the land disturbance and a stormwater management plan to treat all runoff from impervious surfaces on the Subject Property prior to discharging into the receiving waterway.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Tree removed. The Board approves replacement of Protected Trees at a ratio of approximately one inch to four inches removed. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is MAY 04 2018 (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 Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Dreyfuss, and Commissioners Fani-González, Cichy, and Patterson voting in favor at its regular meeting held on Thursday, April 26, 2018, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board