



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

MCPB No. 10-160
Variance Request Plan No. SC2011001
Allcock Property
Date of Hearing: November 4, 2010

JAN 19 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 August 11, 2010, Shannon Allcock (“Applicant”), filed an application for approval of a variance request on 1.1 acres of land known as 6812 Olney-Laytonsville Road (MD Route 108) 550 feet southeast of Maple Knoll Lane, Laytonsville, Maryland; in the Upper Rock Creek master plan area (“Property” or “Subject Property”); and

WHEREAS, Applicant’s Variance Request was designated SC2011001, Allcock Property (“Variance Request” or “Application”); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated October 22, 2010, 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, on November 4, 2010, the Planning Board held a public hearing on the Application (the “Hearing”); and

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

WHEREAS, on November 4, 2010, the Planning Board approved the Variance Request, on motion of Commissioner Wells-Harley and seconded by Commissioner Dreyfuss with a vote of 3-0; Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor; Commissioners Presley and Alfandre being absent.

Approved as to
 Legal Sufficiency: *Christina Sonnet* 12/21/10
 8787 Georgia Avenue, N.C. Legal Department Chairman's Office: 301.495.4605 Fax: 301.495.1320
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NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Variance Request Plan No. SC2011001_on 1.1 acres of land known as 6812 Olney-Laytonsville Road (MD Route 108) 550 feet southeast of Maple Knoll Lane, Laytonsville, Maryland; in the Upper Rock Creek master plan area (“Property” or “Subject Property”); and

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:

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

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. Any impact to trees, including removal or any disturbance within a tree’s critical root zone (CRZ), requires a variance. The law requires no impact to all trees that measure 30” diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the FCP proposes to impact and/or remove trees ≥ 30 inches DBH, the Applicant must apply for a variance.

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 and other appropriate officials or agencies on August 19, 2010 for a written recommendation prior to acting on the request. The County Arborist responded on October 7, 2010 and recommended mitigation based on loss of Critical Root Zone.

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

The Planning Board finds as follows:

- a) 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 as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the Forest Conservation Plan. The development of this lot is consistent with the development of the surrounding areas. The tree removals are based upon required septic easement area, site access, required stormwater management, and the hazardous condition of the trees. The proposed impacts are reasonable and would be allowed for any applicant in a similar situation.

- b) The requested variance is not based on conditions or circumstances which are the result of actions of the Applicant.

The variance is based upon required septic easement area, site access, required stormwater management, and the condition of the trees. Trees #4 and #5 are listed as poor/hazard trees and are recommended, by an arborist, to be removed with or without new development. Even if a smaller house footprint was used these trees would remain hazardous and would pose a threat to both the existing site and/or any new development on the Property.

- c) The variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

- d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. A Stormwater Management Plan will be approved by Montgomery County.

Therefore, the Planning Board grants the variance and finds that the Application satisfies all applicable requirements of the Forest Conservation Law.

JAN 19 2011 ~~BE~~ IT FURTHER RESOLVED, that the date of this Resolution is _____ (which is the date that this Resolution is mailed to all parties of record); and

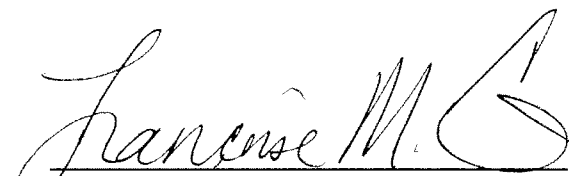
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, January 6, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board