



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

MCPB No. 19-128

Preliminary Forest Conservation Plan No. CU2018-08

Primrose Schools

Date of Hearing: November 7, 2019

DEC 17 2019

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 16, 2018, Primrose School Franchising Corporation ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 2.95 acres of land located at 7430 Needwood Road ("Subject Property") in the Upper Rock Creek Area Master Plan ("Master Plan") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU2018-08 Primrose Schools at Needwood ("Preliminary 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 October 25, 2019, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on November 7, 2019, 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

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Cichy, seconded by Commissioner Fani-Gonzalez, with a vote of 3-0; Commissioners Anderson, Cichy and Fani-Gonzalez voting in favor, with Commissioners Patterson and Verma absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVED Preliminary Forest Conservation Plan No. CU2018-08 on the Subject Property, subject to the following conditions:²

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.

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 as to
Legal Sufficiency:

Christa Sost 11/25/19

- 1) This Preliminary Forest Conservation Plan (PFCP) is conditionally approved and final approval is contingent upon approval by the Montgomery County Hearing Examiner of Conditional Use No. CU2018-08.
- 2) Within ninety days of the date of the Hearing Examiner's Opinion approving the Conditional Use Application CU2018-08, the Applicant must submit a Final Forest Conservation Plan (FFCP) to M-NCPPC Staff for review and approval. The FFCP must be approved prior to any clearing, grading or demolition on the project site. The FFCP must be consistent with the final approved PFCP and include the following:
 - a. Changes to the forest conservation plan as required by the Planning Board and/or the Hearing Examiner
 - b. Planting Plan for the afforestation area required by the FFCP
 - c. Signage along the boundaries of the forest conservation easement
- 3) Mitigation for the loss of specimen trees as determined by the FFCP must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
- 4) The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
- 5) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
- 6) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property

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. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Property on February 12, 2018. There are no forest or environmentally sensitive features on the Property. A Preliminary Forest Conservation Plan has been submitted for review as part of this Application. There is 0.07 acres of existing forest in the southeast corner of the Property. This forest will be preserved and augmented with 0.54 acres of forest planting. This will result in 0.61 acres of forest planting and protection.

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 nine 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.

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 impact to the nine trees is due to necessary improvements to develop the property with a daycare use and to provide access at a necessary access point along the property frontage with Needwood Road. Therefore, the Planning Board finds that the granting of this variance is not a special privilege that would be denied to other applicants.

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 not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, street standard requirements, parking lot location requirements within the zoning ordinance which drives the need to build parking lot access on the eastern side of the proposed building.

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 existing conditions and not as a result of 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.

The variance will not violate State water quality standards or cause measurable degradation in water quality. The critical root zone impacts to seven trees and the removal of two trees will not cause measurable degradation to water quality and will not conflict with the approved stormwater management concept that uses Environmental Site Design standards.

In the Staff Report for the Preliminary Forest Conservation Plan (PFCP), Staff made the appropriate recommendations to the Planning Board to allow granting of a Tree Variance for eight (8) of the nine (9) protected trees. The PFCP Staff Report did not make the correct Tree Variance findings for Tree SP-9 as identified in the report. At the Planning Board hearing on November 7, 2019, Staff orally presented updated findings to the Board for Tree SP-9 and they were accepted into the record. A Tree Variance was ultimately granted for impacts to seven protected trees and for removal of two protected trees. The following is a summary of that discussion.

Unwarranted Hardship

Tree SP-9 is a Silver Maple with a diameter at breast height of 44 inches and is, therefore; a tree afforded protection under Section 22A-12(b)(3) of the Forest Conservation Law. The tree is located on the eastern border of the property adjacent to two residential properties. Development of the property

for the proposed use will require unavoidable impacts to this tree to properly grade and construct the access driveway needed for the parking lot which must be located to the rear of the day care building as required by the Zoning Ordinance. For a determination of unwarranted hardship, Staff explained to the Board that throughout the extensive review history of this Application, all attempts to locate the driveway access in a different location became infeasible. Most notable of these efforts was the inability to require the Applicant to construct Carnegie Avenue to full roadway standards and have driveway access off Carnegie Avenue on the western side of the Subject Property. Sight distance at the intersection of Carnegie Avenue and Needwood Road proved to be inadequate for vehicles and the Montgomery County Department of Transportation eventually recommended that it no longer be pursued as a viable option for access to the project or as a required construction project for this development. Hence, access to the Property was necessarily moved from the western side of the property to the eastern side in order to attain suitable sight distance on to Needwood Road.

The location of the access driveway at Needwood Road was also driven by the location of the building which had to meet two 50-foot front yard setbacks from both the Needwood Road and the Carnegie Avenue rights-of-way and the side yard setback along the eastern boundary. The proposed building was also pushed back off Needwood Road in excess of the required 50-foot setback to meet other Master Plan goals to, *encourage community design to protect views from local roads and to maintain views along local roads by locating large lots along them.*

In summation, the driveway access road had to be located to the eastern side of the proposed building and reach the parking lot that is located to the rear of the proposed building. Because of this, the driveway had to impact Tree SP-9 which is also located on the eastern boundary line of the Property. The Planning Board determined that there would be an unwarranted hardship imposed upon the Applicant if a Tree Variance were not granted for impacts to Tree SP-9. The variance also meets all of the four additional requirements as detailed above.

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 DEC 17 19 (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 Cichy, seconded by Commissioner Verma, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor, and Commissioner Patterson absent at its regular meeting held on Thursday, December 5, 2019, in Silver Spring, Maryland.



Casey Anderson, Chair
Montgomery County Planning Board