Martha B. Gudelsky Child Development Center, 8901 and 8907 Colesville Road: Preliminary Forest Conservation Plan, Conditional Use No. CU202008

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Completed 9-04-20

Description

- Request for approval of a preliminary forest conservation plan and associated variance request for a Day Care Center of up to 180 children to be established in the former Silver Spring Library building
- Location: 8901 and 8907 Colesville Road, Silver Spring
- Zone: R-60
- Master Plan: 2000 North and West Silver Spring Master Plan
- Current Property Size: 95,906 square feet (2.2 acres)
- Application Accepted: May 22, 2020
- Applicant: Martha B. Gudelsky Child Development Center, Inc.
- Review Basis: Chapter 22A
- Hearing Examiner Public Hearing: October 12, 2020

Summary

- Staff recommends approval with conditions.
- Preliminary Forest Conservation Plan for a Conditional Use request to allow a Day Care Center for up to 180 children to be established in the existing, former Silver Spring Library building located at 8901 Colesville Road, Silver Spring, MD; The proposal includes an addition to the building. The property lies within the North and West Silver Spring Master Plan and is in the R-60 Zone.
- The Recommendations for Conditional Use Application CU2020-08 are described in a separate report.
STAFF RECOMMENDATION

Down County Planning Staff recommends approval of the Preliminary Forest Conservation Plan with the following conditions:

1. Prior to any clearing, grading or demolition on the site, the Applicant must submit and receive approval of a Final Forest Conservation Plan, which must be consistent with the approved Preliminary Forest Conservation Plan and associated conditions.

2. Prior to demolition or any land disturbing activities occurring onsite the Applicant must receive approval from the M-NCPPC Office of the General Counsel for a Certificate of Compliance for an off-site forest mitigation bank for an equivalent credit of 0.33 acres or as determined by the Final Forest Conservation Plan.

3. The development must comply with the Final Forest Conservation Plan which is to include a Tree Save Plan prepared by an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert. Additionally, as part of the preconstruction activities, the Applicant must enter into a contract with the tree care professional to implement a five-year maintenance and management plan for Tree 8. Mitigation plantings will be required if the tree dies or severely declines within the five-year timeframe.

4. Any proposed activity that triggers the requirements of a Forest Conservation Variance must be addressed per Section 22A-21 of the County Forest Conservation Law.
Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Subject Property on April 17, 2020. The Subject Property is located within the Sligo Creek watershed, a Use I watershed, which is also a tributary to Anacostia River. The main stem of Sligo Creek lies about 2,500 feet, north of the site. The Property, which consists of Parcel P933 to the North and Parcel P959 to the South, contains mature trees subject to the Variance provision of the Forest Conservation law, including specimen trees which measure 30-inches or greater in diameter-at-breast height (DBH). The northern portion of the site is bordered on three sides by pockets of man-made steep slopes having gradients of 25% or greater as well as slopes of 15-25% gradients. Soils on the property are largely 2B Glenelg silt loam and soil defined as Urban land; neither soil type is considered to be highly erodible or hydric.

There are no known rare, threatened, or endangered species on site; there are no 100-year floodplains, stream buffers, or wetlands on site. Other than the watershed itself and mature specimen trees, there are generally no environmentally sensitive resources associated with the Subject Property.

Forest Conservation

Although there is no forest on-site, this Application is subject to Chapter 22A Forest Conservation Law and has included a Preliminary Forest Conservation Plan with this Application. The Forest Conservation Worksheet included in the Plan shows a calculated Afforestation Requirement of 0.33-acres, which Staff recommends be met through credits purchased from an off-site Forest Conservation Bank.

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1 WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.
Although the Applicant proposes to retain much of the existing building currently onsite, this work will have impact on specimen trees, triggering the need for a Variance Request for impacts of these mature trees. In addition to the mature native trees, which should be saved as possible, some of the trees are jointly owned by the neighboring property, which is parkland and would require Park Permit requirements for the related construction impacts.

**Tree Save and Forest Conservation Variance**

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that measure 30 inches DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75% of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The subject Application includes disturbance of trees that are ≥ 30” DBH, therefore a variance is required. The Applicant submitted a variance request on August 14, 2020 (Attachment B) for the impacts to four subject trees that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Although the submitted variance request includes the removal of Tree #12, the Applicant has decided to retain this street tree and is instead proposing very minor impacts to its CRZ.

<table>
<thead>
<tr>
<th>TREE #</th>
<th>TYPE</th>
<th>DBH</th>
<th>Percent of CRZ Impacted by LOD</th>
<th>CONDITION</th>
<th>PROPOSED STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>American basswood</td>
<td>34”</td>
<td>0.4%</td>
<td>Good</td>
<td>SAVE</td>
</tr>
<tr>
<td>6</td>
<td>Red Mulberry</td>
<td>34”</td>
<td>11.1%</td>
<td>Poor</td>
<td>SAVE</td>
</tr>
<tr>
<td>8</td>
<td>Scarlet Oak</td>
<td>33”</td>
<td>48.3%</td>
<td>Good</td>
<td>SAVE</td>
</tr>
<tr>
<td>12</td>
<td>Ailanthus</td>
<td>31”</td>
<td>5.7%</td>
<td>Poor</td>
<td>SAVE</td>
</tr>
</tbody>
</table>

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, Staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship due to a number of distinct, yet related reasons. The mature trees existing onsite are associated with an older defunct facility in need of repurposing; the impacts to the subject trees are due to construction and demolition activities for this proposed redevelopment and are unavoidable if this building and site are to be refitted for future use. The proposed layout, which has been coordinated between the Applicant and MNCPPC Staff, as conditioned, has been established to minimize CRZ impacts to existing specimen trees by utilizing specialized construction techniques, minimizing limits of

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2 The Applicant initially submitted a variance request dated August 14, 2020 which included the removal of Tree #12. However, a revised variance request for the impact of four trees, with no subject tree removals, was submitted September 4, 2020. This updated variance request was also forwarded to the County Arborist on September 4th.
disturbance as feasible and implementing a five-year maintenance and management plan for the tree which is most impacted (Tree #8).

Staff has reviewed this Application, and, based on the existing circumstances and conditions on the Property, Staff agrees that there is an unwarranted hardship.

Figure 2: PFCP showing impacted variance trees;

Variance Findings
Staff has made the following determination based on the required findings for granting of the requested variance:

1. **Will not confer on the applicant a special privilege that would be denied to other applicants.**

The Applicant’s proposal to reuse and expand the existing building onsite greatly reduces the impacts that would otherwise occur if the Applicant proposed demolition of the existing building and construction of a completely new building and infrastructure. Further, the Applicant’s proposal will provide a use cited by the Master Plan as a fulfilling a need for this community. With these factors considered, Staff concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.
2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

As stated above, the requested variance and associated tree impacts are due to the programmatic concerns related to the improvement of the site and existing building which are essential to the rejuvenation of the existing structures included in the proposed development. The variance request submitted by the Applicant reflects efforts to lessen overall site impacts and retain mature trees which provide shade and buffering from adjacent uses. Without this flexibility in the proposed design and construction, far greater subject tree impacts would be expected. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

3. *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 proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The subject property does not currently contain any stormwater management features. The Applicant proposes a development which will meet current State and local stormwater management standards; this will be verified by the submission of a Stormwater Management Plan to the Department of Permitting Services. A measurable degradation in water quality is not anticipated as the development will provide Best Management Practices (BMP) areas to meet ESD requirements for the site in order to achieve water quality standards. This Application contains limited additional impervious surfaces, as the proposed building addition falls mainly on the existing parking lot. This development will also provide stormwater management on-site, where there are currently no such measures. Thus the application will ultimately result in an improvement of water quality, rather than cause measurable degradation.

**County Arborist’s Recommendations**

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The Applicant’s request was forwarded to the County Arborist on August 14, 2020. Any response received will be presented at the time of Planning Board Hearing.

**Maintenance & Monitoring for Impacted Trees Subject to the Variance Provisions**

It is important to disclose additional information regarding the proposed significant impact on Tree 8, a 33” DBH Scarlet Oak. This tree is located on the Property Line between Parcel P959 and the adjacent park. Although the work proposed at this location is planned to consist of mostly surface work, rather than traditional excavation or grading, this tree is subject to a significant amount of disturbance as indicated by its 48.3% CRZ impact. Staff recommends the Applicant work with an ISA Certified Arborist who is also a Maryland Licensed Tree Care Expert to prepare a tree-save plan which includes protective measures for Tree 8. Staff further recommends the Applicant enter into a contract with an appropriate tree care professional to implement a five-year tree care program to ensure the long-term health of this tree and safety of future CentroNia patrons. This level of care is needed due to the combination of impact proposed and the location of Tree 8, which has a canopy that extends over the proposed outdoor play and outdoor classroom areas for the proposed daycare. The detailed terms of the program shall be determined in coordination with the tree care professional and M-NCPPC at the time of Preliminary Plan submission.
Staff Recommendation on the Variance
As a result of the above findings, Staff recommends approval of the Applicant’s request for a variance from the Forest Conservation Law to impact, but retain, four subject trees associated with the application. There are no subject tree removals approved under this application.

Stormwater Management (SWM)
The Project must comply with the requirements of Chapter 19 of the Montgomery County Code. There are no known stormwater management facilities located on the Property. As such, the Applicant will utilize Environmental Site Design ("ESD") to the Maximum Extent Practicable to significantly improve the onsite treatment of stormwater runoff. Stormwater management treatment for quality will be provided on site through several micro-bioretention planters. A stormwater waiver will be requested from DPS for any remaining treatment that cannot be provided for the existing site. The Property is not in a Special Protection Area, so no separate water quality monitoring plan is required. A Sediment and Erosion Control Plan will be prepared and submitted to DPS for approval prior to construction.

Conclusion
Staff recommends approval of the Preliminary Forest Conservation Plan, with conditions as enumerated in the Staff Report. Staff also recommends approval of the variance request as submitted on September 4, 2020 and described in this report.

ATTACHMENTS:
Attachment A: Preliminary Forest Conservation Plan
Attachment B: Applicant’s variance request letter
September 4, 2020

VIA E-MAIL

Mr. Marco Fuster
M-NCPPC
2425 Reedie Drive, 4th Floor
Wheaton, MD 20902

Re: Specimen Tree Variance Request 8901 Colesville Rd., Silver Spring, MD 20910
    Conditional Use Plan 20-08

Dear Mr. Fuster:

On behalf of the Applicant, Martha B. Gudelsky Child Development Center, Inc., we are requesting a tree variance pursuant to the provisions of Section 22A-21 of the Montgomery County Code from Section 22A-12(b)(3) for significant impacts to specimen trees. More specifically, Section 22A-12(b)(3) provides for the non-disturbance of “any tree with a diameter, measured at 4.5 feet above the ground, of: (i) 30 inches or more; or (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.”

I. APPLICANT’S PROPOSAL

The Applicant has submitted a Preliminary Forest Conservation Plan as part of a Conditional Use application (CU-20-08) for the Project, “MGCDC-CentroNia”. The proposed development will establish a Day Care Facility with a secure playground.

There is a total of seven (7) specimen trees on or near the Property. Four (4) specimen trees are being impacted by construction and demolition activities. The trees identified in this variance request for CRZ impacts are shown on the Forest Conservation Plan.

II. GENERAL DESCRIPTION AND JUSTIFICATION FOR TREES FOR WHICH A VARIANCE IS REQUESTED

The proposed disturbance of trees 30” DBH or greater (specimen trees) is being requested to allow the proposed development of the day care facility. The proposed layout has been thoroughly vetted in coordination with MNCPPC Staff in an effort to significantly minimize CRZ impacts to existing specimen trees by minimizing limits of disturbance and limiting impervious areas.

For reasons described in Sections III and IV below, the Applicant respectfully requests the approval of the variance trees listed, in order to construct the day care facility, fenced in playground, associated open space, amenities, and infrastructure.

Tree #8, scarlet oak (Quercus coccinea) with a 33’ DBH. The tree is listed in good condition by the environmentally qualified professional. Due to the proposed improvements, including the proposed building, sidewalk and drive aisles, there is a 48.3% impact on the critical root zone. Given that the impact for each tree is primarily at or near the surface of the ground, the applicant will use reasonable...
efforts to preserve this tree but requires approval of a variance for impacting the critical root zone by greater than 30%.

**Critical Root Zone (CRZ) impacts**

There are three (3) additional specimen trees impacted by the limit of disturbance within the limits of the Property. Tree # 5, American basswood, has a 0.4% critical root zone impact and is located off-site. All effort shall be made to coordinate with the adjoining property to save the offsite tree. Tree #12, tree of heaven, has a 5.7% critical root zone impact. Tree #6, red mulberry, has a 11.1% critical root zone impact. The impacts associated with these trees are the result of the grading and proposed playground associated with the proposed day care facility on the Property. Tree protection measures will be adopted to protect them from being damaged during and after construction.

<table>
<thead>
<tr>
<th>No.</th>
<th>Common Name</th>
<th>Scientific Name</th>
<th>DBH (Inches)</th>
<th>Condition Rating</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Siberian elm</td>
<td>Ulmus pumila</td>
<td>37</td>
<td>Good</td>
<td>Split at 6 ft, scarring on one of leaders and healed over, fungus on bark, large dead wood, broken branches, damaged and exposed roots, non-native, potentially invasive species</td>
</tr>
<tr>
<td>3**</td>
<td>Japanese zelkova**</td>
<td>Zelkova serrata</td>
<td>30</td>
<td>Good</td>
<td>Located off-site in park north of property, few broken branches</td>
</tr>
<tr>
<td>4</td>
<td>white pine</td>
<td>Pinus strobus</td>
<td>33</td>
<td>Fair</td>
<td>One-sided branching, large dead wood, cut and broken branches, located on steep slope, slightly leaning and slightly curved trunk</td>
</tr>
<tr>
<td>5**</td>
<td>American basswood**</td>
<td>Tilia americana</td>
<td>34</td>
<td>Good</td>
<td>Few broken branches, exposed roots</td>
</tr>
<tr>
<td>6</td>
<td>red mulberry</td>
<td>Morus rubra</td>
<td>34</td>
<td>Poor</td>
<td>One-sided, split at base with codominant leaning leader, second leader split at 62 inches, poor structure, large dead wood, broken branches, growth into power lines, lichen growth on trunk, trunk leaning and curved, English ivy (Hedera helix) growth on trunk</td>
</tr>
<tr>
<td>8</td>
<td>scarlet oak</td>
<td>Quercus cocinea</td>
<td>33</td>
<td>Good</td>
<td>Few broken branches</td>
</tr>
<tr>
<td>12</td>
<td>tree of heaven</td>
<td>Atlanticus altissima</td>
<td>31</td>
<td>Good</td>
<td>Non-native highly invasive species, fairly 1-sided, broken limbs and branches, some large dead wood, cut and broken branches</td>
</tr>
</tbody>
</table>

**III. SATISFACTION OF THE CRITERIA LISTED IN SECTION 22A-21(b) OF THE MONTGOMERY COUNTY CODE**

Section 22A-21(b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above. This Forest Conservation Plan variance request is for one (1) on-site specimen tree to be impacted greater than 30% and three (3) Specimen trees to be impacted less than 30% (two on-site and one off-site).
“(1) describe the special conditions peculiar to the property which caused the unwarranted hardship.”

There are a number of special conditions peculiar to the Property which would cause unwarranted hardship, absent the variance.

- Specimen Tree 8 is currently located along the northern edge of the property line directly in front of the existing and proposed building footprint. The proposed demolition, grading, and site layout are in proximity of the Specimen Tree. In order to accommodate all required aspects of development - installation of a secured playground facility for the daycare - it is necessary to impact the specimen tree. Given a number of factors associated with the Property, there are no other feasible locations for the playground. Because it is important to preserve the design aesthetic of the existing building and its visibility from Colesville Road, locating the playground in the front of the building was not an option. Moreover, this exposed location also would create security concerns. The proposed location is desirable given its close proximity to the building. The center will serve very young children and the transition times involved in moving from an indoor activity to the playground takes a considerable amount of time. For this reason, locating the playground close to the building is important to the operation of the center. Given the existing layout of the remainder of the Property and the need for the existing parking spaces, no alternative locations were available for the playground.

“(2) Describe how enforcement of these rules will deprive the owner of rights commonly enjoyed by others in similar areas.”

Without the allowance of variance tree impacts, the Applicant would not be able to provide the square footage of the building and fenced in playground needed to achieve the operations of the facility and provide needed childcare to the desired number of children. The size of the playground is mandated by State licensing requirements. Given the distribution of the specimen trees, precluding the impacts of the trees will severely restrict the development of the Property. Strict enforcement which prevents impacts of a specimen tree will prevent the desired redevelopment of the Property, which will deprive the applicant of rights commonly enjoyed by others in similar areas. Specimen Tree 8 would prevent demolition of the existing site features and the grading for the proposed improvements. Additional tree plantings to replace existing trees are proposed which will ultimately grow into healthier stronger specimen trees.

“(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance.”

The proposed stormwater management design will meet current State and local stormwater management standards. The state water quality standards will not be violated. A measurable degradation in water quality will not occur as a result of the granting of the variance. The proposed development will provide Best Management Practices (BMP) areas to meet ESDv requirements for the site and in turn ensure water quality is achieved. The development of the property will require approval of a Stormwater Management Plan which will ensure that water quality measures are implemented on the property.

“(4) Provide any other information appropriate to support the request.”

The Applicant believes the information set forth above is adequate to justify the requested variance to impact the specimen trees on the subject property.
The specific rationale in support of the request for this variance is as follows:

1. The requested tree variance is necessary for implementation of this redevelopment project consistent with the overall planning principles for the site. There is no forest on the subject property nor are there any environmental buffers. The conditions related to this request are the unavoidable consequence of the development process under the zoning. Not granting the variance is an unwarranted hardship. The three subject trees are impacted by the proposed redevelopment, and necessary location of the daycare to meet the objectives of the development.

2. The requested variance is based on development plans that are consistent with the zoning approved through the County planning process, not conditions or circumstances resulting from actions by the applicant. The County awarded the Property to the applicant in order to redevelop it to provide needed childcare for up to 180 children. The variance trees are impacted by the proposed redevelopment for which a Conditional Use Plan has been submitted. Strict protection of the variance trees would deprive the applicant from making changes to the site and complying with the County’s policy and planning objectives. The impacts to trees 5, 6, 8, and 12 are required to implement the location of the building and fenced in playground area. There are no conditions relating to land or building use, either permitted or non-conforming, on a neighboring property that have played a role in the need for this variance.

3. The stormwater management plan incorporates environmental site design. The specimen trees being impacted are not in a stream valley buffer, wetland or special protection area. The plan provides stormwater treatment to the MEP of the project site. Therefore, granting the variance with respect to these two trees will not result in any violation of state water quality standards or degradation of water quality.

Upon your review, should you have any questions or require additional information, please do not hesitate to contact this office at (301) 809-4500. Thank you.

Sincerely,
Bohler Engineering VA, LLC

Bradford Fox, P.E.
Sr. Project Manager

cc: Matthew K. Jones, P.E., Bohler Engineering (w/o Enc)

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