MCPB No. 23-0037
Forest Conservation Plan No. CU202306
The Diener School
Date of Hearing: May 4, 2023

JUN 09 2023

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, 2022, The Diener School ("Applicant") filed an application for approval of a preliminary forest conservation plan on approximately 2.52 acres of land located at 9312 Old Georgetown Road ("Subject Property") in the 1990 *Bethesda Chevy Chase Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. CU202306, The Diener School ("Forest Conservation Plan" 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 Planning Board dated April 10, 2023, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on May 4, 2023, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Piñero, seconded by Commissioner Hedrick, with a vote of 4-0; Chair Zyontz, Vice Chair Piñero, Commissioners Bartley and Hedrick voting in favor, with Commissioner Pedoeem being absent.

Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Forest Conservation Plan No. CU202306 on the Subject Property, subject to the following conditions:[1]

1. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 26 caliper inches. Planting locations must be shown on the Final Forest Conservation Plan ("FFCP"). Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

2. Applicant must submit a FFCP for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.

3. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or 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:

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 Preliminary Forest Conservation Plan shows that the Subject Property contains 0.19 acres of forest. This minor area of forest will be maintained and efforts to reduce the impact of the nearby invasive bamboo stand will be implemented in order to enhance the overall wooded area onsite. Although the forest will be maintained, a forest conservation easement is not proposed for the site given the small size of forest and isolated location in the rear of the Property; these factors create an obstacle for maintaining the integrity of the easement on a routine basis. As such, the 0.19 acres of forest are counted as cleared in the Forest Conservation Worksheet. In

[1] 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.

total, as a result of the tract area, the 0.19 acres of forest onsite being counted as cleared, and the institutional use of this project, the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated afforestation/reforestation requirement of 0.57 acres, which will be met via payment of a fee-in-lieu, as will be conditioned in the Final Forest Conservation Plan to be submitted at a later date.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a 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. The associated application (Conditional Use No. CU202306) will require the CRZ impacts to 4 Protected Trees and removal of 3 Protected Trees as identified in the Staff Report. The Conditional Use Application requests approval to allow conversion of an existing office building to a private educational institution in Phase 1, with a building addition for a gymnasium in Phase 2, for up to 120 students and 57 staff members.

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship results from the composition of the existing building and surface parking lot.

The trees to be removed are all located within close proximity to the proposed circular access/egress route around the existing building and require removal in order to implement safe and adequate access which meets the current standards and provides protection to the steep slopes which exist on the Property. The Protected Trees are located within this sloped area which is also near the curb/paved area of the site. In order to implement a route of circulation that does not impact the outdoor areas nearest to the school, which is needed for a safe environment for the students to conduct outdoor activities, impacts to the critical root zones of protected trees are required. Specifically, a retaining wall along the southern property line is needed to meet the access requirements of the site. The construction of this wall will impact trees 8, 9, 10 and 11, which are located along the property line and are in close proximity to the disturbance for the retaining wall. This amount of impact is too much for trees 8, 9, and 11 to be able to survive. The limited space between the existing building to remain and the property line does not give adequate

room to shift the wall away from the trees. Tree 10, a Tulip Poplar in fair condition, will be impacted but saved. It is further away from the disturbance than trees 9 and 11 and is smaller than both tree 9 and 11 and is in better condition than tree 11. Trees 9 and 11 will be removed carefully from the Applicants' side of the property potentially using temporary root matting and/or a lift bucket. Tree 10 will be protected with stress reduction measures as needed to prevent any disturbance during the removal of trees 9 and 11.

In the rear of the Property, the grading change also impacts trees 2, 14, and 17. These impacts are minor and these trees will be saved as well. The project is carefully designed to balance protection of the natural resources and environmental qualities of the Planning Area (also per the Master Plan recommendations) while generally keeping the redevelopment limited to the areas of existing development in order to provide an adaptive reuse of the existing building. With this proposed reuse of the existing office building, the disturbance proposed for the site is minimized; as such, the resulting variance request represents impacts which are much lower than the impacts which would occur if this site were to be completely cleared and redeveloped. However, since the site perimeter is mostly encompassed by subject trees, the proposal would not be possible without some impacts and removal of subject trees.

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.

Table 1: Trees to be Impacted but Retained

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	STATUS
2	White Oak	42"	1%	Good	**SAVE**
10	Tulip Poplar	30"	19%	Good	**SAVE**
14	Tulip Poplar	30"	1%	Good	**SAVE**
17	Tulip Poplar	33"	1%	Good	**SAVE**

Table 2: Protected Trees to be Removed

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	STATUS
*6	Tulip Poplar	40"	30%	DEAD	**REMOVE**
8	Tulip Poplar	30"	48%	Good	**REMOVE**
9	Tulip Poplar	34"	36%	Fair	**REMOVE**
11	Tulip Poplar	37"	37%	Poor	**REMOVE**

*Tree 6 was confirmed dead prior to this Application and is thus not included in variance mitigation calculations.

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.*

   The Applicant would not be afforded a special privilege that would be denied to others, as the variance is based on conditions of the site and existing building. As detailed above, both the removals and the root zone impacts are unavoidable in order to develop the Property to meet access and circulation requirements. The inability to remove and impact the subject trees would limit the development of the Property.

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 and necessary design requirements of this project, such as the existing sloped topography and the paved parking area and site circulation route which lie very near to existing specimen trees. In order to provide safe and adequate access while limiting overall site disturbance, impacts to some specimen trees are necessary.

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 on the Property, specifically the slopes and narrowness of the Site, 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 site is not located in the vicinity of a stream buffer, wetland or special protection area.

The landscape plan for this site includes areas of shrub and tree plantings which, in addition to the planting of variance mitigation trees, will address water quality goals by providing shading, water retention and uptake, and evapotranspiration.

Additionally, the area of proposed redevelopment generally coincides with the areas of existing development. The existing conditions have considerable impervious areas with very little existing stormwater management. Ultimately a stormwater management plan addressing water quality through Environmental Site Design will be provided for the development, for subsequent review and approval by the Montgomery County Department of Permitting Services, at the time of Preliminary Plan. At this time, the Applicant has proposed a stormwater management treatment area onsite which makes use of environmental site design methods and provides a vegetated area for stormwater to flow into. Collectively these efforts are anticipated to ultimately have an improvement on water quality. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately one-inch caliper for every four inches DBH of removal, using onsite trees that are a minimum of three inches caliper, overstory trees native to the Piedmont Region of Maryland. For the 101 diameter-inches of Protected Trees to be removed, the Applicant must provide mitigation of at least 26 caliper-inches of replacements. In this case, the Applicant proposes to plant 8 trees of 3-inch to 4-inch caliper size, however the final locations and quantities will be determined as part of the FFCP review. No mitigation is required for Protected Trees impacted but retained.

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 JUN 09 2023 (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 Bartley, seconded by Commissioner Hedrick, with a vote of 4-0-1; Chair Zyontz, Vice Chair Piñero, and Commissioners Bartley, and Hedrick, voting in favor of the motion, Commissioner Pedoeem abstaining at its regular meeting held on Thursday, June 1, 2023, in Wheaton, Maryland and via video conference.

Jeffrey Zyontz, Chair
Montgomery County Planning Board