



MCPB
ITEM #
January 7, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief *MP*
Environmental Planning Division

FROM: Amy Lindsey, Senior Planner *AL*
Environmental Planning Division

DATE: December 24, 2009

SUBJECT: Preliminary Forest Conservation Plan No. MR2009743
Montgomery Knolls Elementary School Mandatory Referral

LOCATION: 807 Daleview Drive
Silver Spring, MD 20901

APPLICANT: Montgomery County Public Schools

ENGINEER: Century Engineering, Inc.

The subject plan has been reviewed by Environmental Planning staff to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law) and Forest Conservation Regulations (COMCOR 18-01 AM). The following determination has been made:

RECOMMENDATION: Approval subject to the following conditions:

1. Applicant must comply with the staff recommended conditions of approval for the preliminary forest conservation plan, as per the letter dated December 22, 2009.
2. Applicant must record a conservation easement over all retained and planted forests prior to any land disturbing activities occurring onsite.

DISCUSSION

Montgomery Knolls Elementary School is a 10.33-acre existing school located in the East Silver Spring planning area on Daleview Drive. The property is directly adjacent to the Northwest Branch Stream Valley Park. The proposed plan is to retain the existing school and build a two-story addition, expanded bus loop and parking, reconfigured playgrounds and fields, and all associated stormwater management.

The Board's action on the Preliminary Forest Conservation Plan is regulatory and binding. The Planning Board must act on the Forest Conservation Plan before it finalizes its recommendations on the mandatory referral.

Environmental Inventory

The applicant submitted and received approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) number 420090790 on February 20, 2009. There are 2.24 acres of forest on-site and numerous large and specimen trees. Both forest stands are considered high priority for retention, due to stream valley buffer, highly erodible soils, and numerous specimen trees. There are substantial steep slopes with highly erodible soils on the property, as well as 1.08 acres of stream valley buffer. This plan proposes no encroachments to the stream valley buffer, even for necessary infrastructure. Existing stormwater management outfalls and conveyances will be used to carry all stormwater. The property is within the Northwest Branch watershed: a Use Class IV/IV-P watershed. The *Countywide Stream Protection Strategy* (CSPS) identifies this subwatershed as having fair water quality.

The steep slopes are primarily in the area draining to an unnamed intermittent tributary of the Northwest Branch originating in the east corner of the property and are characteristic of this area of the county. While there will be some grading on the steep slopes for a construction access road, this disturbance is temporary and the area will be planted with forest after construction is complete.

Forest Conservation

This property is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Forest Conservation Plan has been submitted for approval. The proposed project will remove 0.79 acres of forest and retain 1.45 acres of forest. The forest conservation plan shows a reforestation requirement of 1.28 acres, which will be met by planting 1.08 acres of new forest onsite and planting 0.2 acres of landscape/tree canopy coverage outside of the forest. All forest planting is either in high priority areas or increasing the depth of existing forest and the remainder is a mixture of individual trees and large landscape areas. A Category I easement will be placed over all planted and retained forest areas.

In order to develop the site as proposed, the applicant is required to obtain approval of a

variance for the removal of seven specimen trees. The applicant has also chosen to obtain approval for the removal of three additional trees that are proposed to be retained but may need to be removed as a result of a detailed field analysis later in the development process. Obtaining a variance now will allow the development to proceed without returning to the Planning Board for a new variance. The applicant has proposed tree protection measures to ensure the best chances of survival for these trees.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove the trees. The variance must be submitted prior to approval of the forest conservation plan. In general, the variance provision of SB Bill 666 applies to all trees 30" diameter at breast height (DBH) and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove ten trees greater than 30 inches DBH a variance is required. The applicant proposes to remove seven trees 30" diameter at breast height (DBH) and greater. These trees are: a 24"-29"-33" multistem yellow poplar; a 40" yellow poplar; a 27"-30" multistem yellow poplar; a 33" yellow poplar; a 19"-24"-32" multistem yellow poplar; a 42" willow oak; and a 31" yellow poplar. An additional three trees greater than 30" DBH may need to be removed but the disposition will be field determined. These are a 36" yellow poplar, a 52" pin oak, and a 19"-35" multistem yellow poplar.

Section 22A-21(c) of the County code requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. The variance request was referred to the County Arborist on December 4, 2009. The County Arborist has elected not to review the variance request (see Attachment A).

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. Section 22A-21(d) of the County code states that a variance must *not* be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Findings

1. *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. Five of the trees (40" yellow poplar, 27"-30" multistem yellow poplar, 33" yellow poplar, 19"-24"-32" multistem yellow poplar, 42" willow oak) are within the footprint of the proposed building addition. Two of the trees (31" yellow poplar, 24"-29"-33" multistem yellow poplar) are within the limits of necessary grading. Three of the trees (36" yellow poplar, 52" pin oak, and 19"-35" multistem yellow poplar) are impacted by grading but the applicant has committed to try to save. None of these trees are a champion for that species. However, the 52" pin oak is within 75% of the DBH of the state champion tree for that species. As this tree is one of the trees proposed for retention with tree protection measures and the disturbance to the critical root zone has been minimized, staff believes that the applicant is making a good faith effort to retain this tree. In addition, this tree is located on adjoining parkland and will require a park permit to remove and will undergo a further review at that time, if necessary. This variance is necessary to achieve the County goals of enlarging this public school facility to operate adequately and safely. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

2. *Is 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 on the proposed site layout and design to achieve adequate access to the property for fire and rescue services. The disturbance has been minimized by the building of a two-story addition.

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

4. *Will 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. Under section 22A-16(d) of the County code "The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the

clearing had an adverse impact on water quality.” In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant’s request for a variance from individual tree retention requirements of the Forest Conservation Law to remove the two specimen trees. The variance approval is assumed into the Planning Board’s approval of the forest conservation plan.

RECOMMENDATION

Environmental Planning recommends approval of the Preliminary Forest Conservation Plan with the conditions above.