



MCPB
ITEM #
April 8, 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: March 17, 2010

SUBJECT: Preliminary Forest Conservation Plan No. MR2009736
Seven Locks Elementary School Mandatory Referral

LOCATION: 9500 Seven Locks Road
Bethesda, MD

APPLICANT: Montgomery County Public Schools

ENGINEER: Century Engineering

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. The proposed development shall comply with the staff recommended conditions of approval for the preliminary forest conservation plan, as per the letter dated March 17, 2010. Conditions include, but are not limited to:
 - a. Applicant shall place a Category I conservation easement over all retained forest prior to any demolition, clearing or grading.

DISCUSSION

Seven Locks Elementary School is a 9.98-acre existing school located in the Potomac Subregion planning area at the corner of Seven Locks Road and Bradley Boulevard and includes the existing school, parking lot and ballfields. The property is directly adjacent to Mater Dei School to the north and residential properties to the northwest and west. The proposed plan is to replace the existing building, reconfigure the parking lot, and replace the ballfields.



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 420090940 on January 29, 2009. There are 1.50 acres of forest, in two separate stands, on-site and numerous large and specimen trees, mostly along the west and south property lines. There are also steep slopes within the forested area.

The property is within the Middle Mainstem subwatershed of the Cabin John watershed: a Use Class I/I-P watershed. The *Countywide Stream Protection Strategy* (CSPS) identifies this subwatershed as having fair water quality.

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. There are 1.50 acres of forest in two separate stands on the subject property. Both forest stands are

considered high priority for retention, due to steep slopes and specimen trees. Through the redevelopment of this school, all forest will be retained and a Category I easement will be placed over all areas of forest retention. All forest conservation requirements will be met on-site through forest retention.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and 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 applies to all trees 30" diameter at breast height (DBH) and greater; trees that are 75% the diameter of the state champion for that species; all County champion trees; and rare, threatened and endangered species.

Since the applicant is proposing to remove six trees that meet the above criteria, a variance is required. These trees include: a 28" white pine in poor condition, a 21" Virginia pine in good condition (larger than the current County champion), a 31" white pine in poor condition, a 36" yellow poplar in good condition, a 34" sugar maple in good condition, and a 32" white pine in good condition.

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 variance was submitted to the County Arborist on December 7, 2009 and has elected not to review the variance request (see Attachment A). As such, the County Arborist's recommendation for the variance request is therefore presumed to be favorable.

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. The 31" white pine and 31" white pine are in the development footprint. The 34" sugar maple, 28" white pine, 21" Virginia pine and the 36" yellow poplar are all within 20' of the LOD. The LOD has been minimized as much as possible to restrict disturbance to the limits of development and necessary grading. It may be possible to retain the 34" sugar maple, 36" yellow poplar, and 21" Virginia pine but this determination will need to be made in the field, when both the LOD and trees have been survey located. This variance is necessary to achieve the County goals of redeveloping and 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 separate access to the property for bus and parent drop-off traffic. 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.

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 six 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.

Attachments:

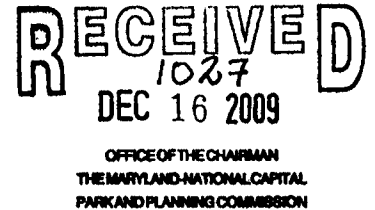
- A. Letter from County Arborist
- B. Copy of forest conservation plan submitted for PB approval

Attachment A



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive



Robert G. Hoyt
Director

December 14, 2009

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Garrett Park Elementary School, no Mandatory Referral #, NRI/FSD applied for on 10/13/2008
Seven Locks Elementary School, MR2009736, NRI/FSD applied for on 11/21/2008
Montgomery Knolls Elementary School, Revision, MR2009743, NRI/FSD applied for on 10/23/2008
First Baptist Church of Damascus, DAIC 420090050 (NRI/FSD applied for on 5/7/2008)

Dear Dr. Hanson:

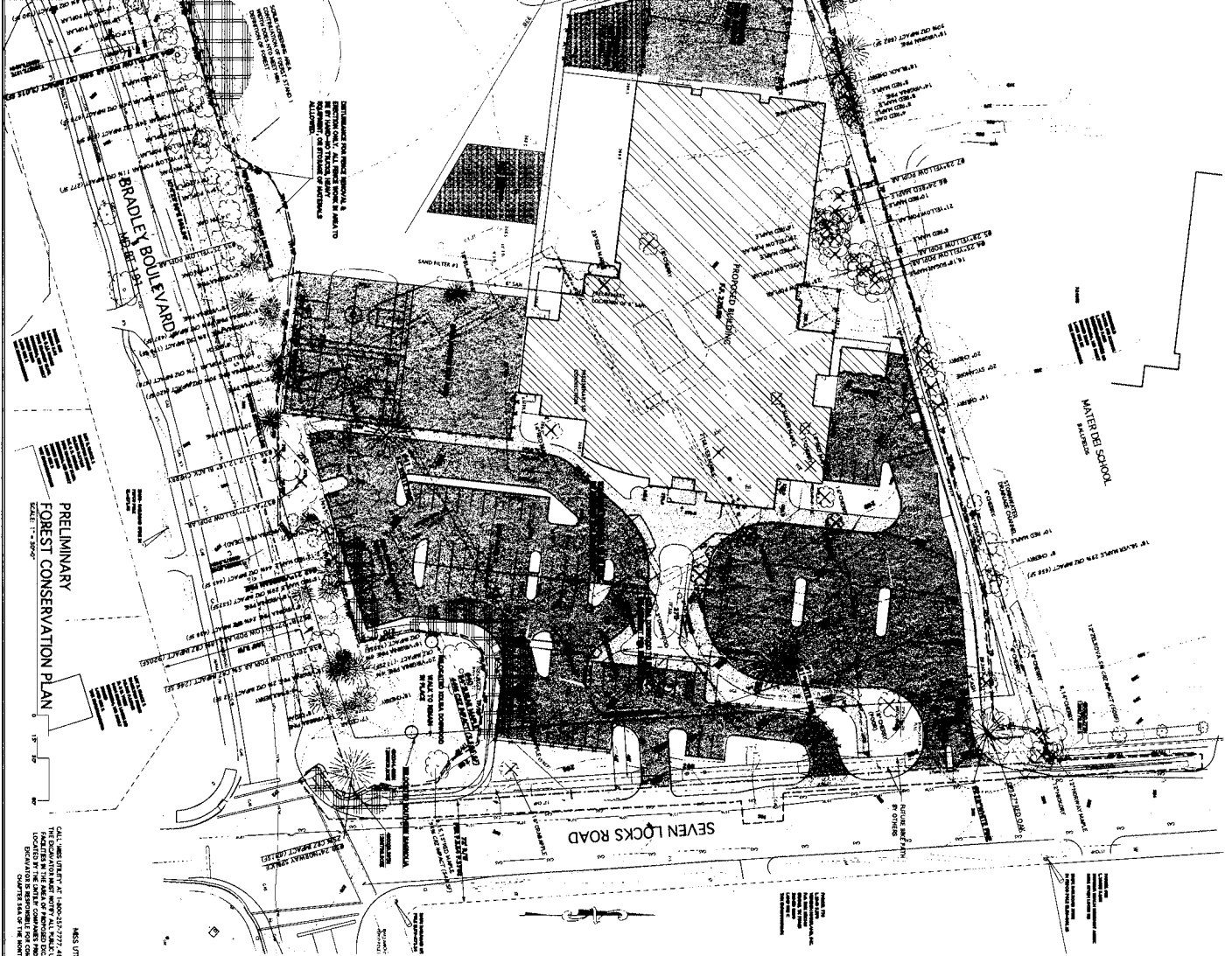
As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfeifferle, Acting Chief



PRELIMINARY FOREST CONSERVATION PLAN

CALL THIS NUMBER AT 7:30 AM TO 4:30 PM TO THE STATE OF MARYLAND... FOREST CONSERVATION PLAN

M&S UTILITY

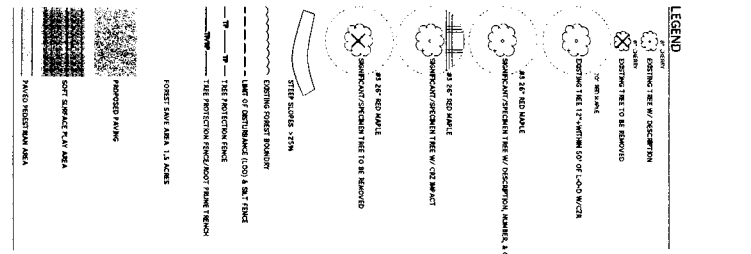
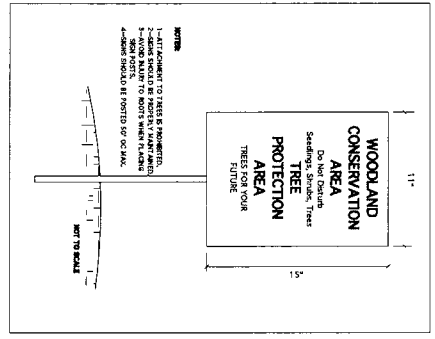


Table with columns: SITE TABULATIONS, ACRES OF SITE, AMOUNT OF TOTAL FOREST BENEFITS, AMOUNT OF FOREST BENEFITS, etc.



WOODLAND CONSERVATION AREA (WCA) - 11' x 51' - Do Not Disturb... FOREST CONSERVATION PLAN

PREPARED FOR MARYLAND DEPARTMENT OF GENERAL SERVICES... FOREST CONSERVATION PLAN

PREPARED FOR MARYLAND DEPARTMENT OF GENERAL SERVICES... FOREST CONSERVATION PLAN

SEVEN LOCKS ELEMENTARY SCHOOL MODERNIZATION 9500 SEVEN LOCKS ROAD BETHESDA, MARYLAND 20817

