



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

MCPB
ITEM # 6-A
5/12/11

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John Carter, Chief *JAC*
Planning Department, Area 3

FROM: Mary Jo Kishter, Senior Planner (301) 495-4701 *MOJK*
Planning Department, Area 3

SUBJECT: Preliminary Forest Conservation Plan S-2802
Norbeck Montessori School, Inc.
15920 Emory Lane; Rockville

STAFF RECOMMENDATION: Approval of Preliminary Forest Conservation Plan with the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated April 26, 2011. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permit(s), as appropriate.
 - a. Approval of Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
 - b. Final Forest Conservation Plan to include detailed tree information and tree protection measures for off-site areas included in the limits of disturbance.
 - c. Final Sediment Control Plan must be consistent with final limit of disturbance as approved by the M-NCPPC staff.
2. Applicant shall place a Category I conservation easement over all retained and planted forest, and the entire stream valley/environmental buffer.
3. Applicant to install permanent Category I Forest Conservation Easement signage along the perimeter of the forest conservation easements.
4. Applicant shall remove the existing shed that is currently located within the stream valley/environmental buffer.

PROJECT DESCRIPTION

The 5.0-acre property is located at 15920 Emory Lane, approximately 500 feet north of its intersection with Muncaster Mill Road. The subject property is zoned RE-1 and is covered by the *Olney Master Plan*. The property is currently developed with a house, a barn, a shed, a swimming pool and a gravel outdoor riding arena. The applicant proposes to retain the existing house and barn, relocate the existing driveway, construct four classrooms, two small sheds, and a parking lot for use of the property as a private educational institution. There is 0.49-acre of forest onsite and twenty-nine (29) large or specimen trees located on or adjacent to the property. The property contains area within the environmental buffer that is associated with streams, wetlands and floodplain, located on and offsite. The property is within the North Branch Rock Creek, a Use III watershed. The project does not propose to impact any area within the existing forest or environmental buffer, nor does it propose to remove any specimen or other large trees (\geq 24 inches DBH). The critical root zone of one specimen tree will be impacted by the proposed development.

ANALYSIS

Environmental Guidelines

The applicant meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Regulations. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 5.0-acre site on July 14, 2010. The NRI/FSD identified all of the required environmental features on and adjacent to the property, as further described in the *Environmental Guidelines for Environmental Management of Development in Montgomery County*. The topography on the property is gently sloping to the south and west, with steep slopes in the western corner of the property, within the forested environmental buffer. The property contains two springs. The first spring is located in the northwest corner of the property. There is a small pond at this location and the spring feeds an intermittent stream that flows along the western property line. The majority of this stream is located off-site on M-NCPPC parkland. The second spring is located in the southwestern corner of the property. This spring feeds a second intermittent stream that flows off-site in a southerly direction. Both of these streams drain into the North Branch Rock Creek, a Use III waterway. There are no wetlands or 100-year floodplain located on the property; however, there is a large wetland area and floodplain located adjacent to the property. The property contains area within the environmental buffer that is associated with the streams, wetlands and floodplain. There are steep slopes (\geq 25%) and highly erodible soils on site and these features are also primarily located in the southwestern corner of the property. This property is not located within a Special Protection Area (SPA), nor is it located within the Patuxent River Primary Management Area (PMA).

Forest Conservation

The applicant meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan has been submitted for

review. All forest conservation requirements are being met on-site through retention and planting. There is approximately 0.49 acres of existing, high priority forest on the property. The forest is dominated by tuliptree (*Liriodendron tulipifera*), red maple (*Acer rubrum*), and sycamore (*Platanus occidentalis*). All of the forest is located in the western portion of the site, within the environmental buffer, and contiguous with M-NCPPC forested parkland. There are fifteen (15) specimen trees and fourteen (14) large trees (≥ 24 " DBH) located on or adjacent to the site. The proposed plan has a forest planting requirement of 0.51 acres. The applicant proposes to satisfy the afforestation requirement on-site, within the unforested portion of the environmental buffer. The Preliminary Forest Conservation Plan proposes to retain all of the existing forest and all of the specimen and large trees. The existing forest, proposed afforestation area, and the entire environmental buffer will be protected in a Category I conservation easement.

Variance Request for Impacts to or Removal of Trees that are at least 30 inches, DBH (Section 22A-12(b)(3)(C)) - Section 22A-12(b)(3) of the County Forest Conservation Law identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or any 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 or greater, DBH; trees that are part of a historic site or designated with a historic structure; trees that are designated as a national, State, or County champion tree; trees that are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The applicant submitted a variance request on February 24, 2011 (Attachment A). The applicant currently proposes to impact the critical root zone (CRZ) of one tree that is 30 inches and greater, DBH, a 36-inch DBH sugar maple (*Acer saccharum*) that has been determined to be in "fair" condition. This tree is located behind the existing residence and the CRZ is currently impacted by the existing driveway and barn.

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. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

- (1) Approval of 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 disturbance to the tree is due to the development of the site. The critical root zone of this tree is currently impacted by the existing driveway and barn, and is within the developable area of the site (outside of the forest and environmental buffer). Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this applicant.

- (2) Approval of the variance is not based on conditions or circumstances which result from the actions by the applicant:

The requested variance is not based on conditions or circumstances which are the result of actions of the applicant. The variance is based upon existing site conditions, required site development and stormwater management best management practices. The impacts are due to the required widening of an existing driveway and the construction of required stormwater management features.

- (3) Approval of the variance is not based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property:
The requested variance is a result of the project requirement to provide stormwater management features and access through the property. It is not a result of land or building use on a neighboring property.

- (4) Approval of the variance will not violate State water quality standards or cause measurable degradation in water quality:

The variance request proposes impacts to the CRZ of one tree that is currently impacted by the existing development on the property. The tree will not be removed by the proposed development. A sediment control plan and stormwater management plan are currently under review by Montgomery County Department of Permitting Services. In addition, there are no impacts to trees or forest within environmental buffers. Therefore, staff believes the project will not violate State water quality standards or cause measurable degradation in water quality.

In conformance with the above findings, staff recommends that the Planning Board approve the applicant's request for a forest conservation variance to impact one tree that is 30 inches or greater, DBH.

In accordance with Section 22A-21(c), a copy of the variance request was referred to the County Arborist. The Arborist recommended granting the variance with a mitigation requirement (Attachment B).

Mitigation for Trees Subject to the Variance Provisions - Staff does not recommend that compensation be required beyond the reforestation requirement of the forest conservation plan for the proposed impact to the one tree. This tree, a 36-inch DBH sugar maple, is currently impacted by the existing driveway and has been determined to be in "fair" condition. It is located outside of the forest and will not be removed. The tree will be impacted for the construction of drywells for stormwater management and for the widening of the existing driveway that is necessary for the safe conveyance of vehicles through the site. Staff believes such impacts are due to necessary infrastructure and are unavoidable. Mitigation should not be required for these necessary and unavoidable impacts.

CONCLUSION

In conformance with the above findings, staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions described above, and the request for a Forest Conservation Variance to impact the critical root zone of one specimen tree.

Attachments:

- A. MHG letter, dated February 24, 2011
- B. DEP letter, dated March 16, 2011

Macris, Hendricks and Glascock, P.A.
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February 24, 2011

Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Norbeck Montessori School PFCP
Special Exception #S2802
MHG Project No. 10.108.11

To Whom It May Concern:

On behalf of Norbeck Montessori Day School, the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for the impact to one specimen tree, required by the revisions to the Maryland Forest Conservation Act, effective October 1, 2009, outlined in Senate Bill 666. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed impact to one tree over thirty inches in diameter would satisfy the variance requirements.

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property consists of a parcel with a total tract area of 5.00 acres along Emory Lane. The property currently contains a single family home. There is 0.49 acres of existing forest onsite. The site contains 1.48 acres of stream valley buffer that will be forested limiting the developable area of the site. The tree to be impacted is at the center of the property and impact of the tree is unavoidable. The tree will be saved and impacts will be minimized. Necessary stress reduction requirements will be made to save the tree.

2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

The inability to impact the subject tree would limit the development of the property. The critical root zone of the tree encompasses much of the existing driveway and comes close to the existing house and existing barn. Both drive aisle requirements and stormwater requirements (drywells) make it impossible to do any development of this site without impacting the tree. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.

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;*

A Stormwater Management Concept was submitted for the property to the Department of Permitting Services on February 8, 2011. This plan and its accompanied computations will confirm that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site. Copies of the plan, computations, and submittal letter have been enclosed.

4. *Provide any other information appropriate to support the request.*

A copy of the Preliminary Forest Conservation Plan has been provided as part of this variance request. The proposed impact of the one specimen trees, a 36 inch caliper Sugar Maple are indicated on the plan. Please let us know if any other information is necessary to support this request.

Please contact me via email, at fjohnson@mhgpa.com, or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

March 16, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Norbeck Montessori School, S2802, NRI/FSD applied for on 6/4/2010

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law 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.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

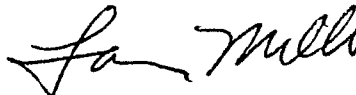
1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

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 Pfefferle, Acting Chief