

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

MCPB No. 10-80
Forest Conservation Plan No. S-2759
Goddard School
Date of Hearing: June 10, 2010

OCT 18 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 22A, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review forest conservation plan applications; and

WHEREAS, on October 27, 2009, Mr. Ross Flax ("Applicant"), filed an application for approval of a Preliminary Forest Conservation Plan (PFCP) on 4.70 acres of land located at 22010 and 22014 Frederick Road (MD 355), 1000 feet north of the intersection of MD 355 and West Old Baltimore Road in the Clarksburg master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. S-2759, Goddard School ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated May 18, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") on June 10, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on June 10, 2010, the Planning Board approved the Preliminary Forest Conservation Plan subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Hanson, Presley, Wells-Harley, Alfandre and Dreyfuss voting in favor.

Approved as to
Legal Sufficiency

Christina Sorrent 8/31/10

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NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board APPROVES Preliminary Forest Conservation Plan No. S-2759 on 4.70 acres of land located at 22010 and 22014 Frederick Road (MD 355), 1000 feet north of the intersection of MD 355 and West Old Baltimore Road in the Clarksburg master plan area ("Master Plan subject to the following conditions:

1. Applicant to comply with the conditions of approval of the Preliminary Forest Conservation Plan.
2. Applicant to submit a Final Forest Conservation Plan in accordance with Forest Conservation Regulations 22A.00.01.09(B).
3. Applicant to record a Category I Forest Conservation Easement(s) over all areas of retained and planted forest prior to any land clearing activities occurring on-site.
4. Applicant to install temporary construction fencing and permanent signage along the limits of disturbance that is interior to the site and permanent forest conservation fencing along the Property boundary as shown on the Preliminary Forest Conservation Plan.
5. Applicant to place all retained forests and planted forests in a category I conservation easement, which may be modified to allow for limited impact encroachments such as natural surface trails and interpretive signage for educational purposes and activities. The easement shall be approved by M-NCPPC Environmental Planning staff and the Office of General Counsel.
6. Applicant to install the required reforestation material by the first planting season following the release of the first grading permit.
7. Applicant to install the required landscape planting material being used for reforestation credit by the first growing season following building completion.
8. Applicant to remove all existing structures, fencing, play equipment and debris from the proposed Category I Forest Conservation Easements.

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.

The Forest Conservation Plan will remove 3.03 acres of forest and preserve 1.20 acres of forest, which generates a reforestation requirement of 0.62 acres. This requirement will be met onsite with 0.54 acres of on-site forest planting and 0.08

acres of landscape credit. All retained and planted forest will be protected in a category I conservation easement.

Forest Conservation Variance Request

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to any trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as a county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; trees associated with a historic site or structure; and rare, threatened and endangered species. The Applicant has requested a variance for impacts to 18 trees.

In accordance with Montgomery County Code, Section 22A-21(c), the Planning Board referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. In this case, the variance request was referred to the Montgomery County Arborist on November 18, 2009. The County Arborist responded to the variance request on November 19, 2009 with no recommendations.

The Planning Board finds, based on the following justifications, that the Applicant has met all criteria required to grant the variance.

The Planning Board finds as follows:

a) The variance will not 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 loss of 18 trees is necessary and unavoidable to realize the objectives of the development. The Application was reviewed for options to reasonably and feasibly minimize the impact to trees on site.

b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The site layout and design for the daycare center within the R-200 zone necessitates the removal of the 18 trees. The use does provide some clustering of disturbance that may not have occurred with another use in the existing zoning. The Applicant has worked to reduce the impact of the development by decreasing the parking area.

c) The variance does not arise 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.

d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The Application will not violate State water quality standards or cause measurable degradation in water quality. The trees in question are located in an upland area on relatively flat ground far removed from any stream or associated buffer. Therefore, the removal of the specimen trees does not directly impact stream temperature or stream quality. In addition, the Subject Property is being developed under the new stormwater management regulations.

The Planning Board finds that the Application satisfies all the applicable requirements of the Forest Conservation Law.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and the date of this Resolution is Oct 18 2010 (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).

* * * * *

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 Alfandre, seconded by Vice Chair Wells-Harley, with Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Chair Carrier abstaining, and Commissioner Presley absent at its regular meeting held on Thursday, September 16, 2010, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board