



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

MCPB No. 10-134
Variance Request Plan No. SC2010014
8809 Chalon Drive
Date of Hearing: September 16, 2010

FEB 16 2011

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 May 19, 2010, The Barnes Trust (“Applicant”), filed an application for approval of a variance request on 1.05 acres of land known as 8809 Chalon Drive 280 feet northeast of Blaisedell Road, Potomac, Maryland; in the Potomac Subregion master plan area (“Property” or “Subject Property”); and

WHEREAS, Applicant’s Variance Request was designated SC201014, 8809 Chalon Drive (“Variance Request” or “Application”); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated September 3, 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”) and the staff of other governmental agencies, on September 16, 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 September 16, 2010, the Planning Board approved the Variance Request, on motion of Commissioner Dreyfuss and seconded by Commissioner Wells-Harley with a vote of 4-0; Commissioners Alfandre, Carrier, Dreyfuss, and Wells-Harley voting in favor; Commissioners Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Variance

Approved as to
 Legal Sufficiency:

Christina Sorrento 1/19/11

8787 Georgia Avenue, NCFPC Legal Department 2010 Chairman’s Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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Request Plan No. SC2010014 on 1.05 acres of land known as 8809 Chalon Drive 280 feet northeast of Blaisedell Road, Potomac, Maryland; in the Potomac Subregion Master Plan area.

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.

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 trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. The law requires no impact to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater measured at 4.5 feet above the ground than the diameter of the current State champion for that species as designated by the Department of Natural Resources; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the FCP proposes to impact and/or remove trees \geq 30 inches DBH, the Applicant must apply for a variance.

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 and other appropriate officials or agencies for a written recommendation prior to acting on the request. The County Arborist responded on August 19, 2010 and declined to review the application.

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.*

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Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the Property as illustrated on the Forest Conservation Plan.

- b) *The variance is not based on conditions or circumstances which are the result of the action 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 the R-200 zoning, proposed site development, and required stormwater management best management practices. Furthermore, the owner has worked to reduce disturbance / impact to specimen trees by creating tree save areas and minimizing grading in those areas.

- 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 development and not 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 requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Plan will be approved by Montgomery County. Additionally, only six (6) trees subject to the variance process will be physically removed from the property.

Staff is not requesting any additional mitigation for the impact and removal of specimen trees as they will be compensated for as part of the Planning Director's or designee's approval of the Forest Conservation Plan. All of the specimen trees being impacted or removed are within existing forest and the forest to be removed and impacted will be compensated for as part of the Forest Conservation Plan in accordance with Chapter 22A of the County code. This project generates a 0.61 acre forest conservation planting requirement which acts as a mitigation for all forest clearing on the site.

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Therefore, the Planning Board finds that all criteria have been met and grants the Applicant's variance request.

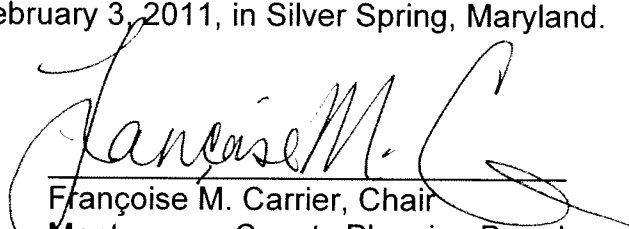
BE IT FURTHER RESOLVED, that the date of this Resolution is FEB 16 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Presley voting in favor of the motion, and with Commissioner Dreyfuss absent, at its regular meeting held on Thursday, February 3, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board