

MAR 24 2011



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-19

Final Forest Conservation Plan No. MR2010720

Downcounty Consortium School #29 (McKenney Hills)

Date of Hearing: February 17, 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 December 8, 2010, Montgomery County Public Schools ("Applicant"), filed an application for approval of a final forest conservation plan on approximately 12.6 acres of land located at the terminus of Hayden Drive ("Property" or "Subject Property"), in the Kensington-Wheaton master plan area ("Master Plan"); and

WHEREAS, Applicant's final forest conservation plan application was designated Forest Conservation Plan No. MR2010720, Downcounty Consortium School #29 (McKenney Hills) ("Final Forest Conservation Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, Staff issued a memorandum to the Planning Board, dated February 7, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, the Planning Board held a public hearing on the Application (the "Hearing") on February 17, 2011; and

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

WHEREAS, on February 17, 2011, the Planning Board approved the Final Forest Conservation Plan subject to certain conditions, on motion of Commissioner Wells-Harley; seconded by Commissioner Presley; with a vote of **4-0**, Commissioners Carrier, Wells-Harley, Presley, and Dreyfuss voting in favor and Commissioner Alfandre being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, N. MNCPPC Legal Department 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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of Montgomery County Code Chapter 22A, the Planning Board approved Final Forest Conservation Plan No. MR2010720 on the Property, subject to the following conditions, which Applicant shall satisfy prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits and any land disturbing activities, including clearing or grading onsite:

1. As per Planning Board approval of the preliminary Forest Conservation Plan (MCPB Resolution No. 10-150), applicant must record a Category I conservation easement over all areas of forest retention.
2. Inspections consistent with Section 22A.00.01.10 of Forest Conservation Regulations.
3. A two year maintenance and management agreement must be approved and fully executed prior to MNCPPC accepting any on-site planting.
 - a. Maintenance and management agreement must include a three year monitoring plan for impacted trees.
 - b. A copy of the maintenance and management agreement must be kept on-site and given to MCPS maintenance staff to ensure compliance with conditions of the Final Forest Conservation Plan.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *Applicant has met all criteria required to grant a variance to Section 5-1607(c) of the Natural Resources Article, MD Ann. Code in accordance with Section 22A-21 of the Montgomery County Code.*

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone (CRZ), requires a variance. The following Protected Trees require a variance for disturbance within their CRZ:

| Tree # | Species | D.B.H (inches) | Tree Condition | Ownership | % Impact on Trees to Remain | Status |
|--------|---------------|----------------|----------------|---------------|-----------------------------|--------------------------------|
| 2 | WHITE PINE | 32 | FAIR | SCHOOL | | REMOVE |
| 18 | YELLOW POPLAR | 35 | DEAD | SCHOOL | | REMOVE |
| 29 | RED OAK | 33 | GOOD | SCHOOL | | REMOVE |
| 30A | YELLOW POPLAR | 30 | POOR | SCHOOL | | REMOVE |
| 31 | YELLOW POPLAR | 30 | GOOD | SCHOOL | | REMOVE |
| 32 | RED OAK | 34 | GOOD | SCHOOL | | REMOVE |
| 59 | YELLOW POPLAR | 42 | GOOD | SCHOOL | | REMOVE |
| 77 | YELLOW POPLAR | 34 | GOOD | CO-OWNED | | REMOVE |
| 78 | BLACK LOCUST | 37 | POOR | CO-OWNED | | REMOVE |
| 79 | BLACK LOCUST | 31 | FAIR | CO-OWNED | | REMOVE |
| 102 | BLACK LOCUST | 33 | DEAD | PARK PROPERTY | | REMOVE |
| 302 | YELLOW POPLAR | 32 | GOOD | SCHOOL | | REMOVE |
| 308 | YELLOW POPLAR | 42 | GOOD | SCHOOL | | REMOVE |
| 310 | WHITE OAK | 41 | GOOD | SCHOOL | | REMOVE |
| 403 | WHITE OAK | 38 | DEAD | PARK PROPERTY | | REMOVE |
| 4 | BLACK CHERRY | 46 | FAIR | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 5 | YELLOW POPLAR | 32 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 7 | YELLOW POPLAR | 34 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 44 | YELLOW POPLAR | 33 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 45 | YELLOW POPLAR | 30 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 46 | YELLOW POPLAR | 33 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 301 | YELLOW POPLAR | 37 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 315 | YELLOW POPLAR | 34 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |

| Tree # | Species | D.B.H (inches) | Tree Condition | Ownership | % Impact on Trees to Remain | Status |
|--------|---------------|----------------|----------------|---------------|-----------------------------|--------------------------------|
| 323 | YELLOW POPLAR | 36 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 402 | RED OAK | 39 | FAIR/PO OR | PARK PROPERTY | | SAVE WITH PERMISSION TO REMOVE |
| 404 | RED OAK | 31 | GOOD | PARK PROPERTY | | SAVE WITH PERMISSION TO REMOVE |
| 405 | WHITE OAK | 30 | GOOD | PARK PROPERTY | | SAVE WITH PERMISSION TO REMOVE |
| 406 | RED OAK | 36 | GOOD | PARK PROPERTY | | SAVE WITH PERMISSION TO REMOVE |
| 407 | LINDEN | 34 | GOOD | PARK PROPERTY | | SAVE WITH PERMISSION TO REMOVE |
| T515 | YELLOW POPLAR | 33 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| T517 | YELLOW POPLAR | 45 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| T573 | YELLOW POPLAR | 37 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| T574 | YELLOW POPLAR | 46 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| T576 | YELLOW POPLAR | 44 | GOOD | SCHOOL | | SAVE WITH PERMISSION TO REMOVE |
| 11 | YELLOW POPLAR | 33 | GOOD | SCHOOL | 17% IMPACT | IMPACTS ONLY |
| 16 | YELLOW POPLAR | 44 | GPPD | SCHOOL | <1% IMPACT | IMPACTS ONLY |
| 36 | RED OAK | 36 | GOOD | SCHOOL | <1% IMPACT | IMPACTS ONLY |
| 53 | YELLOW POPLAR | 39 | GOOD | SCHOOL | 9% IMPACT | IMPACTS ONLY |
| 58 | RED OAK | 58 | GOOD | PARK PROPERTY | 16% IMPACT | IMPACTS ONLY |
| 66 | RED OAK | 32 | GOOD | SCHOOL | <1% | IMPACTS ONLY |
| 67 | PIN OAK | 36 | GOOD | SCHOOL | 8% IMPACT | IMPACTS ONLY |
| 68 | WHITE OAK | 34 | GOOD | SCHOOL | 22% IMPACT | IMPACTS ONLY |
| 69 | YELLOW POPLAR | 38 | GOOD | SCHOOL | 14% IMPACT | IMPACTS ONLY |
| 70 | RED OAK | 40 | GOOD | SCHOOL | 16% IMPACT | IMPACTS ONLY |
| 103 | YELLOW POPLAR | 30 | GOOD | PARK PROPERTY | 7% IMPACT | IMPACTS ONLY |

| Tree # | Species | D.B.H (inches) | Tree Condition | Ownership | % Impact on Trees to Remain | Status |
|--------|---------------|----------------|----------------|---------------|-----------------------------|--------------|
| 106 | YELLOW POPLAR | 30 | GOOD | PARK PROPERTY | 2% IMPACT | IMPACTS ONLY |
| 115 | WHITE OAK | 34 | GOOD | SCHOOL | 14% IMPACT | IMPACTS ONLY |
| 116 | YELLOW POPLAR | 46 | GOOD | SCHOOL | 7% IMPACT | IMPACTS ONLY |
| 142 | BLACK LOCUST | 37 | GOOD | PARK PROPERTY | <1% IMPACT | IMPACTS ONLY |
| 322 | RED OAK | 46 | GOOD | SCHOOL | 7% IMPACT | IMPACTS ONLY |
| 401 | RED OAK | 41 | GOOD | PARK PROPERTY | <1% IMPACT | IMPACTS ONLY |

In accordance with Section 22A-21(e), the Board finds that the Applicant has met all of the following criteria required to grant the variance.

a. *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 Applicant has made considerable efforts to minimize impacts to the Protected Trees by restricting limits of disturbance as more specifically detailed by the following steps:

- a) Using a compact building form that works with the natural landform. The proposed school is a three-storey building that takes advantage of the natural grade in the design of outdoor spaces associated with the building and the needed ingress/egress points.
- b) Reducing the parking constructed to support the school by working with the adjacent Glenwood Recreation Club to share an existing parking lot on the recreation club's property.
- c) Minimizing outdoor recreation facilities associated with the school. An optimal elementary school facility incorporates two softball fields (with a 200' radius) and one soccer field (sized 150' x 240') superimposed over them. This school proposes only one multipurpose field (sized 85' x 160'), with a single backstop (with a 80' radius).
- d) Using facilities provided to meet multiple functions. For example, the basketball courts also serve as required turnarounds for fire and rescue equipment.

- e) Field locating the stormwater management outfall and new sewer line. The exact placement of the necessary outfall and conveyance was determined in the field to minimize tree loss and the design takes advantage of the natural landform by using an existing gully.
- f) Using an arborist to provide detailed and specific tree protection measures to retain trees impacted by development.
- g) Developing a detailed planting plan to replant areas of clearing, where possible, and minimize further tree loss due to the creation of new forest edges.
- h) Using construction techniques that minimize damage to tree critical root zones.

Any development of this site would have required significant restrictions on the limits of disturbance, similar to what is being required of the Applicant. This site was previously developed as a public elementary school, and it is being redeveloped for the same use, albeit for many more students without significant enlargement of the limits of disturbance.

b Is not 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 inherent site characteristics of stream valley buffer and steep slopes with highly erodible soils severely limit the development footprint of the school. The Board finds that the Applicant has dealt with the site conditions by using non-standard engineering and construction techniques to minimize impact to the Protected Trees.

c 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 a result of land or building use on a neighboring property.

d. Will not violate Site 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. While some trees are proposed to be removed within the stream valley buffer, the site currently

has no stormwater management controls on it. On balance, development of this site should be a positive contribution to water quality, even with the loss of trees.

2. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and Forest Conservation Regulations Section 1.09(B) (COMCOR 22a.00.01.09B).*

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is MAR 24 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 Vice Chair Wells-Harley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, March 10, 2011, in Silver Spring, Maryland.


Marye Wells-Harley, Vice Chair
Montgomery County Planning Board

