



NOV 15 2011

MCPB No. 11-42
Forest Conservation Plan No. S-2802
Norbeck Montessori School
Date of Hearing: May 12, 2011

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 February 24, 2011 Norbeck Montessori Day School, Inc. ("Applicant"), filed an application for approval of a Forest Conservation Plan on 5.00 acres of land located at 15920 Emory Lane, approximately 500 feet north of its intersection with Muncaster Mill Road ("Property" or "Subject Property"), in the Olney master plan area ("Master Plan"); and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No.S-2802, Norbeck Montessori School Property ("Forest Conservation Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board 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, the Planning Board held a public hearing on the Application (the "Hearing") on May 12, 2011; and

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

WHEREAS, on May 12, 2011, the Planning Board approved the Forest Conservation Plan subject to certain conditions, on motion of Commissioner Presley; seconded by Commissioner Dreyfuss; with a vote of 4-0, Commissioners Alfandre, Dreyfuss, Presley, and Wells-Harley voting in favor, Commissioner Carrier being absent.

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

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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

provisions of Montgomery County Code Chapter 22A, the Planning Board approved Forest Conservation Plan No. S-2802 located on the Subject Property, in the Olney master plan area subject to the following conditions:

1. Compliance with the conditions of approval of 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. Conditions include, but are not limited to, the following:
 - 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 must 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 must place a Category I conservation easement over all retained and planted forest, and the entire stream valley/environmental buffer.
3. Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of the forest conservation easements.
4. Applicant must remove the existing shed that is currently located within the stream valley/environmental buffer.

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:

1. *The Application satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

A. Forest Conservation

There are approximately 0.49 acres of forest on the Property. All of the forest lies within the environmental buffer on the site. The Applicant will retain 0.49 acres of forest and plant about 0.51 acres of forest within the environmental buffer.

B. Forest Conservation Variance

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 under Section 22A-12(b)(3) of the County Code. Otherwise such resources must be left in an undisturbed condition.

As more specifically identified in the Staff Report, this project will not require any Protected Trees, 30 inches and greater DBH to be removed. Further, the project will impact one Protected Tree, therefore; a variance is required. Although the Applicant proposed tree preservation measures to help ensure the Protected Tree survives anticipated construction impacts, the variance is required simply due to the impact. Staff concluded that the applicant met the specific submittal requirements of the variance request.

The Board made the following findings necessary to grant the Tree Variance:

- i. *Granting the Tree 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 environmental buffer). Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this applicant.

- ii. *The need for the Tree Variance is not based on conditions or circumstances that are the result of the 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.

- iii. *The need for the Tree Variance is not based on a condition relating to land or building use, either permitted or non-conforming, 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.

- iv. *Granting the Tree Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The 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 Sediment Control Plan and Stormwater Management Plan will be approved by the Montgomery County Department of Permitting Services prior to any land disturbing activity on the property.

C. Forest Conservation Variance mitigation

The Board agreed with the Staff recommendation that no mitigation is required for trees impacted but retained.

The Board finds that with the conditions imposed by this Resolution the Preliminary Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 15 2011 (which is the date that this Resolution is mailed to all parties of record); and

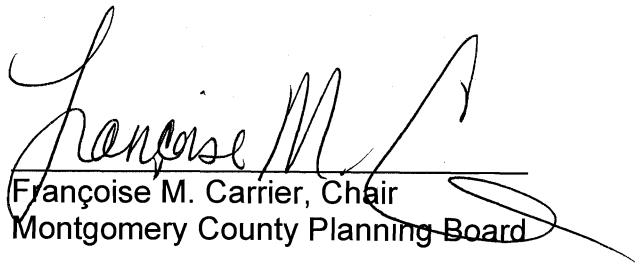
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland 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 Anderson, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners

Anderson and Dreyfuss voting in favor of the motion, and with Commissioner Presley absent, at its regular meeting held on Thursday, November 3, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board