



NOV 22 2011

**MCPB No. 11-46**  
**Forest Conservation Plan No. MR2011204**  
**Weller Road Elementary School Modernization**  
**Date of Hearing: May 19, 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 March 22, 2011, Montgomery County Public Schools ("Applicant"), filed an application for approval of a preliminary forest conservation plan on approximately 10.01 acres of land located at 3301 Weller Road known as the Weller Road Elementary School ("Property" or "Subject Property"), in the Kensington-Wheaton Master Plan ("Master Plan") area; and

WHEREAS, Applicant's preliminary forest conservation plan application was designated Forest Conservation Plan No. MR2011204, Weller Road Elementary School Modernization ("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 May 5, 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 May 19, 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 19, 2011, the Planning Board approved the Forest Conservation Plan subject to certain conditions, on motion of Commissioner Presley;

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](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

seconded by Commissioner Wells-Harley; with a vote of 5-0, Commissioners Carrier, Wells-Harley, Alfandre, Presley, and Dreyfuss voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 22A, the Planning Board approved Preliminary Forest Conservation Plan No. MR2011204 subject to the following conditions:

1. The proposed development shall comply with the conditions of the Preliminary Forest Conservation Plan. The Applicant shall satisfy the following conditions 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:
  - a. The Applicant must obtain approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan.
2. Final Forest Conservation Plan must include:
  - a. Planting plan with canopy cover on both Weller Road Elementary School and A. Mario Loiederman Middle School.
  - b. Detailed and specific tree protection measures for on and off-site trees affected by development.
3. Required site inspections by M-NCPPC monitoring staff must occur as specified in "Trees Technical Manual".
4. Applicant must enter into a Maintenance and Management Agreement approved by the Office of General Counsel to ensure compliance with conditions of the Final Forest Conservation Plan. A copy of the Maintenance and Management Agreement must be kept at both Weller Road Elementary School and Loiederman Middle School and given to the Montgomery County Public Schools (MCPS) maintenance staff.

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 under Section 22A-12(b)(3) of the County code, and without grant of the variance will cause unwarranted hardship to the Applicant as set forth on pages 5-7 of the Staff Report. Otherwise such resources must be left in an undisturbed condition.

The following Protected Trees require a variance for disturbance within their CRZ:

<b>Tree Number</b>	<b>Species</b>	<b>D.B.H</b>	<b>Approved for Disturbance (D) or Removal (R)</b>
5	Pin Oak	38"	R
6	Pin Oak	33"	R
7	Silver Maple	39"	D
9	Green Ash	33"	R
19	White Pine	30"	D
21	Mockernut Hickory	35"	D
22	Norway Maple	40"	D
24	Black Cherry	30"	D
25	Black Cherry	30"	D
26	Silver Maple	32"	R
27	Silver Maple	30"	R
32	Silver Maple	75"	R
34	White Pine	37"	R
36	Black Cherry	30"	R
39	White Pine	31"	D
40	Mockernut Hickory	32"	D
42	Silver Maple	30"	D
43	White Pine	33"	R
49	Red Maple	31"	R
52	Silver Maple	30"	R
55	Silver Maple	39"	R
56	Silver Maple	38"	R

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. *Approval of the variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The trees and/or their critical root zones lie within the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this Applicant. This variance is necessary to achieve the County goals of enlarging this public school facility to operate adequately and safely.

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

The requested variance is based on the proposed site layout and design to achieve adequate level of service and safety for the school.

*c Approval of the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The variance is a result of the proposed site design and layout on the Subject Property.

*d. Approval of the variance will not violate State water quality standards or cause measurable degradation in water quality.*

DPS has approved a stormwater management concept, dated April 18, 2011 for the proposed project. The approved concept will consist of Environmental Site Design in accordance with the latest revisions to the MDE Stormwater Design Manual. In addition, there are no impacts to trees or forest within environmental buffers.

- 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).*

The Applicant is planting 1.56 acres of tree canopy cover to meet Forest Conservation Law requirements. The Planning Board finds that the Application satisfies the applicable requirements of the Forest Conservation Law.

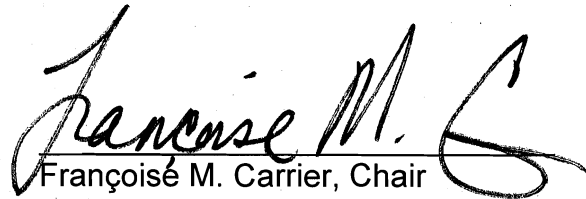
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is NOV 22 2011 (which is the date that this Resolution is mailed to all parties of record); and

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 10, 2011, in Silver Spring, Maryland.

  
Françoise M. Carrier, Chair  
Montgomery County Planning Board