



MCPB
ITEM # 8
January 7, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief *mp*
Environmental Planning Division

FROM: Amy Lindsey, Senior Planner *ALL*
Environmental Planning Division

DATE: December 21, 2009

REVIEW: Preliminary Forest Conservation Plan No. MR2009709
TYPE Farmland Elementary School Mandatory Referral

LOCATION: 7000 Old Gate Road
Rockville, MD

APPLICANT: Montgomery County Public Schools

APPLICANT'S
ENGINEER: A Morton Thomas and Associates, Inc

The subject plan has been reviewed by Environmental Planning staff to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law), the Environmental Guidelines, Noise Guidelines, and other related requirements. The following determination has been made:

RECOMMENDATION: Approval subject to the following conditions:

1. The proposed development shall comply with the staff recommended conditions of approval for the preliminary forest conservation plan, as per the letter dated December 21, 2009. Conditions include:
 - a. Applicant to obtain MNCPPC – Parks Department permission and approval for all plantings and development located on MNCPPC property through the Park Permit process prior to approval of final forest conservation plan.

DISCUSSION

Farmland Elementary School is a 4.75-acre existing school located in the North Bethesda-Garret Park planning area at the corner of Old Gate Road and Farmland Drive. The school is directly adjacent to Farmland Drive Local Park, which is 6.85 acres, and the two facilities share infrastructure – the park provides recreational fields for the school and the school provides automobile access and parking for the park. While the two properties are owned and operated by separate County agencies, the relationship is a symbiotic one.

The proposed plan is to replace the majority of the existing school with new construction, including parking lots, playgrounds and stormwater management facilities and to provide for regraded ball fields on Farmland Drive Local Park. A portion of the existing school will be re-used. While the proposed school building itself is fully on MCPS property, the playgrounds associated with the school extend onto Farmland Drive Local Park. This forest conservation plan covers both properties, as both properties are part of the development site.

The Board's action on the Preliminary Forest Conservation Plan is regulatory and binding. The Planning Board must act on the Forest Conservation Plan before it finalizes its recommendations on the mandatory referral.

Environmental Guidelines

The applicant submitted and received approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) number 420090600 on September 9, 2009. There are no streams, wetlands, or environmental buffers on the property. While there is no forest on-site, Farmland Drive Local Park is ringed with white pines, many of which are specimens.

The subject property is located in both the Old Farm Branch and mainstem subwatershed of the Cabin John watershed, a Use Class I/I-P watershed. The *Countywide Stream Protection Strategy* (CSPS) identifies this subwatershed as having fair water quality.

Forest Conservation

This property is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Forest Conservation Plan has been submitted for approval. The forest conservation plan covers both the Farmland Elementary School and Farmland Drive Local Park, for a total of 11.60 acres. There is no forest on-site but there are 23 trees with a diameter at breast height (DHB) between 24 and 30 inches and an additional 23 specimen trees (trees typically greater than 30 inches DBH). The afforestation requirement for this development is 1.70 acres, which will be met by planting tree cover, as a combination of individual trees and large landscape areas. There are no priority planting areas and the planting is on both the school and park properties.

In order to develop the site as proposed, the applicant is required to obtain approval of a

variance for the removal of two specimen trees.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove the trees. The variance must be submitted prior to approval of the forest conservation plan. In general, the variance provision of SB Bill 666 applies to all trees 30" diameter at breast height (DBH) and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove two trees greater than 30 inches DBH a variance is required. The applicant has requested a variance to remove a 38" willow oak and a 31" black cherry tree.

Section 22A-21(c) of the County code requires the Planning Board to refer a copy of each 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 has 30 days to comment. The variance request was referred to the County Arborist on October 30, 2009. The County Arborist has elected not to review the variance request (see Attachment A).

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. Section 22A-21(d) of the County code states that a variance must *not* be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Findings

1. *Will 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 38 inch willow oak, requested to be removed, is located interior to the project site and in the location of required and necessary access for fire and rescue services. The other tree, a 31 inch black cherry is located within the public right-of-way of Old Gate Road, in the location

of the redesigned school access. Due to the constraints of the site frontage, the access cannot be redesigned. Neither tree is a champion tree nor 75% of the DBH of the state champion tree for that species. This variance is necessary to achieve the County goals of enlarging this public school facility to operate adequately and safely. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

2. *Is 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 requested variance is based on the proposed site layout and design to achieve adequate access to the property for fire and rescue services.

3. *Arises 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.

4. *Will 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. Under section 22A-16(d) of the County code “*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*” In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area and as such it is presumed that the removal of these individual trees would not cause degradation to water quality.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant’s request for a variance from individual tree retention requirements of the Forest Conservation Law to remove the two specimen trees. The variance approval is assumed into the Planning Board’s approval of the forest conservation plan.

RECOMMENDATION

Environmental Planning recommends approval of the Preliminary Forest Conservation Plan with the conditions above.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert Hoyt
Director

November 19, 2009

Royce Hanson, Chairman
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Victory Oaks at St. Camillus, S-2751 (NRI/FSD approved on 5/22/2009)
Farmland Elementary School, MR09709 (NRI/FSD applied for on 9/24/08)
Brooke Park, DAIC 120100030 (NRI/FSD applied for on 4/24/2009)
Montgomery Knolls Elementary School, MR2009743 (NRI/FSD applied for on 10/23/08)
New Hampshire Gardens, S-1424A (NRI/FSD approved on 9/3/2009)
Piedmont Road, DAIC 120090330, (NRI/FSD applied for on 7/24/2006)
Goddard School – Clarksburg, S-2759, (NRI/FSD applied for on 6/22/09)

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief

Division of Environmental Policy and Compliance