



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAR 20 2012

MCPB No. 11-71
Forest Conservation Plan No. MR2011209
Viers Mill Elementary School Modernization
Date of Hearing: July 21, 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 June 15, 2011, Montgomery County Public Schools ("Applicant"), filed an application for approval of a forest conservation plan on approximately 9.98 acres of land located at the intersection of Joseph Mill Road and Dahill Road ("Property" or "Subject Property") in the Kensington/Wheaton Master Plan area ; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. MR2011209, Viers Mill Elementary School Addition ("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 July 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 July 21, 2011; and

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

WHEREAS, on July 21, 2011, the Planning Board approved the preliminary Forest Conservation Plan subject to certain conditions, on motion of Commissioner Anderson, seconded by Commissioner Presley, with a vote of 4-0; Commissioners Carrier, Wells-Harley, Anderson, and Presley voting in favor and Commissioner Dreyfuss being absent.

Approved as to
Legal Sufficiency:  3/8/12
8787 Georgia Avenue, Suite 200, Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
MNCPPC Legal Department
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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. MR2011209 subject to the following conditions:

1. 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 proposed development shall comply with the conditions of the preliminary Forest Conservation Plan.
 - b. The Applicant must obtain approval of the Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan, which must include:
 - i. Detailed and specific tree protection measure for on and off-site trees affected by development.
 - ii. Planting plan which includes 37 native canopy trees with a minimum size of 3" diameter at breast height (DBH) (or native canopy trees with a 111" cumulative DBH, individual trees with a minimum size of 3" DBH), as mitigation for loss of specimen trees.
 - c. Applicant must record a Category I Conservation Easement over all areas of forest retention.
2. Required site inspections by M-NCPPC monitoring staff must occur as specified in "Trees Technical Manual".
3. A copy of the maintenance and management agreement must be kept at Viers Mill Elementary School and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the 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. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and the protection of environmentally sensitive features:*

A. Forest Conservation

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.

The Applicant is clearing 0.73 acres of forest and retaining 1.89 acres of forest in order to modernize an elementary school. The Forest Conservation Plan protects 1.89 acres of forest in a Category I Easement. The development plan generates a planting requirement of 0.77 acres. The Applicant will meet this requirement with 0.15 acres of landscape credit and 0.62 acres of off-site planting. The Planning Board finds that the Application satisfies the applicable requirements of the Forest Conservation Law.

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. This project requires impact to Protected Trees as identified in the Staff Report as Table 1: Trees to be removed or potentially removed and Table 2: Trees to be affected but retained. Therefore, a variance is required.

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

- i. In accordance with Section 22A-21(a), the Applicant has shown that enforcement would result in unwarranted hardship due to special conditions peculiar to the property

While the Applicant's initial application lacked the requisite demonstration that alternatives that do not impact Protected Trees were not feasible, the Applicant was able to demonstrate an unwarranted hardship at the hearing.

At the hearing, it became evident that the transportation and stormwater management improvements, determined by existing infrastructure, limit flexibility in the site's design. The vast majority of the impact to Protected Trees is caused by transportation and stormwater management improvements rather than the location or design of the addition to the elementary school. Thus, the special conditions peculiar to the property make enforcement of the variance an unwarranted hardship.

- ii. 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. *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 and removal of the specified trees are due to the development of the site. The Protected Trees and/or their critical root zones lie within the limited 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 adequately enlarge this public school facility and ensure safety and to accommodate transportation and stormwater management improvements. Therefore, granting the variance does not confer a special privilege that would be denied to other applicants.

- b. *The need for the Tree Variance 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. As discussed previously, the location and design of the Applicant's addition has little to no impact on Protected Trees. Rather, the impact to Protected Trees arises from the transportation and stormwater management improvements.

- c. *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 variance is based on transportation and stormwater management improvements on the site, not on conditions on a neighboring property.

- d. *Granting the Tree Variance will not violate State water quality standards*

The variance will not violate State water quality standards or cause measurable degradation in water quality. Applicant has located the addition primarily on the existing developed area, used retaining walls to limit the need for grading, installed a vegetated roof to reduce the number of stormwater management structures required on-site. The trees to be removed, limited primarily to the central area of the site, are away from natural drainage systems. The property will be developed in accordance with Maryland Department of the Environment criteria and has a Stormwater Management Concept under review by the Montgomery

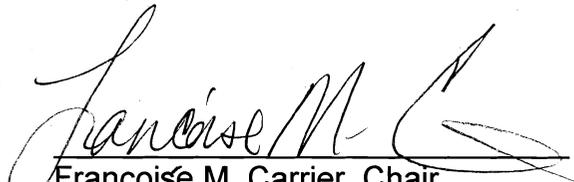
County Department of Permitting Services to ensure the criteria are enforced.

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 20 2012 (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).

* * * * *

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 Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent, at its regular meeting held on Thursday, March 15, 2012, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board