



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #
January 14, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*
Stephen D. Federline, Master Planner, Environmental Planning *STF*

FROM: Lori Shirley, Planner Coordinator, Environmental Planning *LS*

DATE: January 4, 2010

REVIEW: Preliminary Forest Conservation Plan for
Special Exception #S-2751- Victory Oaks at St. Camillus

LOCATION: East side of Beacon Road (extended) at the St. Camillus Church
Property on the west side of Avenel Road, Silver Spring

APPLICANT: Victory Housing, Inc.

RECOMMENDATION

Staff recommends **approval** of the preliminary Forest Conservation Plan (PFCP) for the above referenced special exception subject to the following conditions:

1. The proposed development must comply with the conditions of the preliminary Forest Conservation Plan (PFCP) as stated in the Environmental Planning approval letter. The applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.

Background/Proposal

A full background description is included in the Special Exception #S-2751 staff report dated December 11, 2009. This special exception site contains no environmental buffers, wetlands, floodplains, or other sensitive resources, aside from a small area of forest and specimen/large trees as described below. The special exception proposal is for a 1.93-acre portion of the overall 16.15 acres St. Camillus Church property, most of which is developed with church-related buildings and off-street parking.

Regulatory Considerations

Special Exception #S-2751 includes a preliminary Forest Conservation Plan (PFCP) as a regulatory item requiring action by the Planning Board. The Planning Board's action on the PFCP is regulatory and binding. The Board must act on the PFCP before it finalizes a recommendation on the special exception proposal.

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In response to comments made on December 14, 2009 a revised PFCP was received on December 29, 2009. The amended PFCP received 12/29/09 is the version recommended for Planning Board approval.

Forest Conservation

The entire site is subject to Chapter 22A Montgomery County Forest Conservation Law. Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420091690 was approved on May 22, 2009. There are 1.49 acres of forest on the overall 16.15-acre site. There are a total of 32 specimen and 74 significant-sized trees on and off-site shown on NRI/FSD #420091690.

As a single tract of land, the overall site must be included in the preliminary forest conservation plan. However, for purposes of calculating the requirements, the site has two uses and two forest conservation thresholds: religious institution (i.e., the school and church uses) which are calculated under the Institutional Development Area - IDA – thresholds), and the special exception use (i.e., the senior housing special exception) which is calculated as high density residential (HDR) threshold based on its R-60 zoning designation. Two worksheets are necessary to calculate the overall site requirement: one worksheet for the 1.93 acres inside the special exception boundary and another worksheet for the remaining 14.22 acres.

The two worksheets together will determine the requirement for the overall site, and the scope of the PFCP review for the entire site. However, staff supports the review and approval of two separate final forest conservation plans (FFCP) which are consistent with the overall PFCP. Any proposed future expansion at the existing Church facilities can be reviewed at such time as an expansion is proposed with all detail as required with submission.

The total requirement for the overall site is 2.05 acres re/afforestation. The amount apportioned to the 1.93 acre special exception area alone is 0.82 acres. The SE requirement is proposed to be met with a combination of on-site landscape credit no greater than a maximum of 20% of the apportioned reforestation requirement of 0.82 acres (i.e., 0.164 acres or 7,140 square feet), with the remaining requirement to be met by off-site mitigation.

In addition to the SE worksheet, other revisions to the PFCP are required. These revisions relate to the need for supplemental tree save efforts for two significant trees (#15 and #17) and two specimen trees (#14 and #16, the latter on adjacent property) which have impacts to greater than 1/3 of their respective critical root zones (CRZ). In its approval letter, staff recommends an Arborist's Report for submittal with the FFCP to demonstrate tree preservation and protection including detailed and specific tree protection measure prepared, signed and stamped by an ISA-certified arborist with particular attention paid to trees #14, #15, #16 and #17. The report shall be forwarded by the applicant to the property owner of offsite specimen tree #16 in a timely fashion, to be accompanied by a cover letter requesting their written permission to implement such mitigation measures, or alternatively, to remove and replace the tree.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria to be incorporated into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan

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cannot be altered to protect these individual trees, the applicant is required to submit a variance to remove trees. In general, the variance provision of Bill 666 applies to: all trees 30" 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 three trees greater than 30 inches DBH, a variance is required. The applicant has requested a variance to remove the four following trees – 31" tulip tree in good condition, 36" tulip tree in good condition, and 31" red oak in good condition and a 47" red oak in fair condition. The variance request relates only to the special exception portion of the site and does not include any specimen trees on the remainder church/school site.

Montgomery County Code 22A (Forest Conservation Law (FCL)) Section 22A-21(c) 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. If the County Arborist does not provide a recommendation within 30 days the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within the Montgomery County Department of Environmental Protection (DEP) on October 19, 2009. The County Arborist has elected not to review the variance request (see Attachment A). By law, the County Arborist's recommendations for the variance request are therefore presumed to be favorable.

FCL Section 22A-21(e) states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. FCL Sect. 22A-21(d) 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. Three of the four trees requested to be removed are located interior to the project site and outside the stream valley buffer. The fourth tree is located in close proximity to the proposed building and if saved, would likely not survive and could become a hazardous tree. None of the trees are champion trees or 75% of the DBH of the state champion tree for that species. The circumstances related to this variance are not unique or avoidable, except by denying development. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

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- 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 site layout and design for a 49-unit residential building for senior development in the R-60 zone. An alternate site layout would not alter the need for the removal of these four trees.

- 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 Forest Conservation Law to remove the four specimen trees. The approval is assumed into the Planning Board’s approval of the forest conservation plan.

Attachment A

MP & SDF:LS



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