



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM # 6
2/17/11

MEMORANDUM

DATE: February 4, 2011
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Area 3 *JAC*
FROM: Josh Penn, Senior Planner, Area 3 *JP*
PLAN NAME: Rockville Water Treatment Plant
PLAN NUMBER: MR 2011302
PLAN TYPE: Forest Conservation Plan Amendment in conjunction with Mandatory Referral #MR 2011302
REVIEW BASIS: Forest Conservation Law, Chapter 22A of the County Code
ZONE: RE-2
LOCATION: 10930 Sandy Landing Road, Potomac, MD
APPLICANT: Mayor and Council of Rockville
CIVIL ENGINEER: PHRA
HEARING DATE: February 17, 2011

STAFF RECOMMENDATION: Approval of the Forest Conservation Plan Amendment with the following conditions:

1. All areas being removed from Category I conservation easement as shown on the August 17, 2009, Forest Conservation Plan drawing must be mitigated at a 2:1 ratio.
2. The method of mitigation required in Condition #1 must be submitted to M-NCPPC technical staff within 60 days of the mailing date of the Planning Board Resolution.
3. Adjust Category I conservation easement line on the November 23, 2010 plan to protect the entire Critical Root Zone (CRZ) for tree #113.
4. All Category I conservation easements as shown on the November 23, 2010 plan as revised by Condition #3, must be recorded by deed within 90 days of the mailing date of the Planning Board Resolution.

DISCUSSION

There are two items for the Planning Board to review regarding the renovation of the Rockville Water Treatment Plant: 1) the Forest Conservation Plan and, 2) the Mandatory Referral application. This memorandum covers staff's review and recommendations for Board action on the Forest Conservation Plan for the entire site in accordance with Section 22A- 11(e)(2) of the Montgomery County Code.

The Board's actions on the Preliminary Forest Conservation Plans are regulatory and binding. The Planning Board must act on the Forest Conservations Plan before it can proceed to make recommendations on the mandatory referral.

BACKGROUND

The 5.51 acre site containing the existing Rockville Water Treatment Plant (“Plant”) is located at 10930 Sandy Landing Road, Potomac, MD (“Property”) and is owned by the Mayor and Council of Rockville. It is bounded by single family residential lots on the north, east and south and United States Government land (C&O Canal National Park) on the west (Figure 1). The applicant is proposing to improve and update the existing water treatment plant and to establish a 25 year master plan for the Property.

The original Forest Conservation Plan (FCP) application was submitted on June 20, 2008. The FCP was required to get a sediment control permit to address the relocation of an emergency generator for the Plant. The Property was subject to a FCP since an exemption could not be granted because the majority of the site is in the stream valley buffer (SVB) and the proposed relocation affected forest in the SVB and it did not meet the exemption criteria. The project was expedited because of the critical need for the generator for Plant operations. The FCP was approved for the property on July 9, 2008. The applicant proceeded to relocate the generator under the approved plan, however; based upon the expedited nature of the project and the public need, staff did not require the easements to be recorded prior to the land disturbing activities.

In June of 2009, the Plant experienced a septic system failure and the only place where the new field could be located was within the conservation easement. The City of Rockville asked staff to expedite and approve a FCP amendment to allow them to restore working facilities at the plant. While staff expressed significant concerns about the lack of conformance with previous amendments, due to the emergency nature of this amendment, staff again agreed to approve the amendment, but insisted that no future plans would be approved unless the easements were properly recorded. The City of Rockville received an approved amended FCP on August 17, 2009 and proceeded to repair the septic system under the approved plan.

In August of 2010, the Plant needed to install a surge tank to bring the facility up to current regulations or be forced to go offline. As explained by the City of Rockville, the public necessity and emergency nature of the project dictated that it could not wait for the easements that would allow the surge tank to be recorded. M-NCPPC staff concurred, and approved another FCP amendment on August 18, 2010. The approval conditions of this amendment required the City of Rockville to record the easements as shown on the plan amendment drawing within 90 days from the date of the approval of the amendment. The City of Rockville did not meet this condition of approval. After the 90 days had expired the City of Rockville submitted a set of conservation easement documents to be reviewed, however; the easements within the document were based on the 25 year master plan vision and had yet to be submitted to staff and the Board for review. M-NCPPC staff rejected the easement documents and required the City to submit a Mandatory Referral for the Plant’s 25 year master plan. On December 10, 2010, the City of Rockville submitted a Mandatory Referral application and an amended FCP based upon the 25 year master plan for the facility. This amended FCP properly addresses all of the previous FCP amendments approved to date and discussed above.

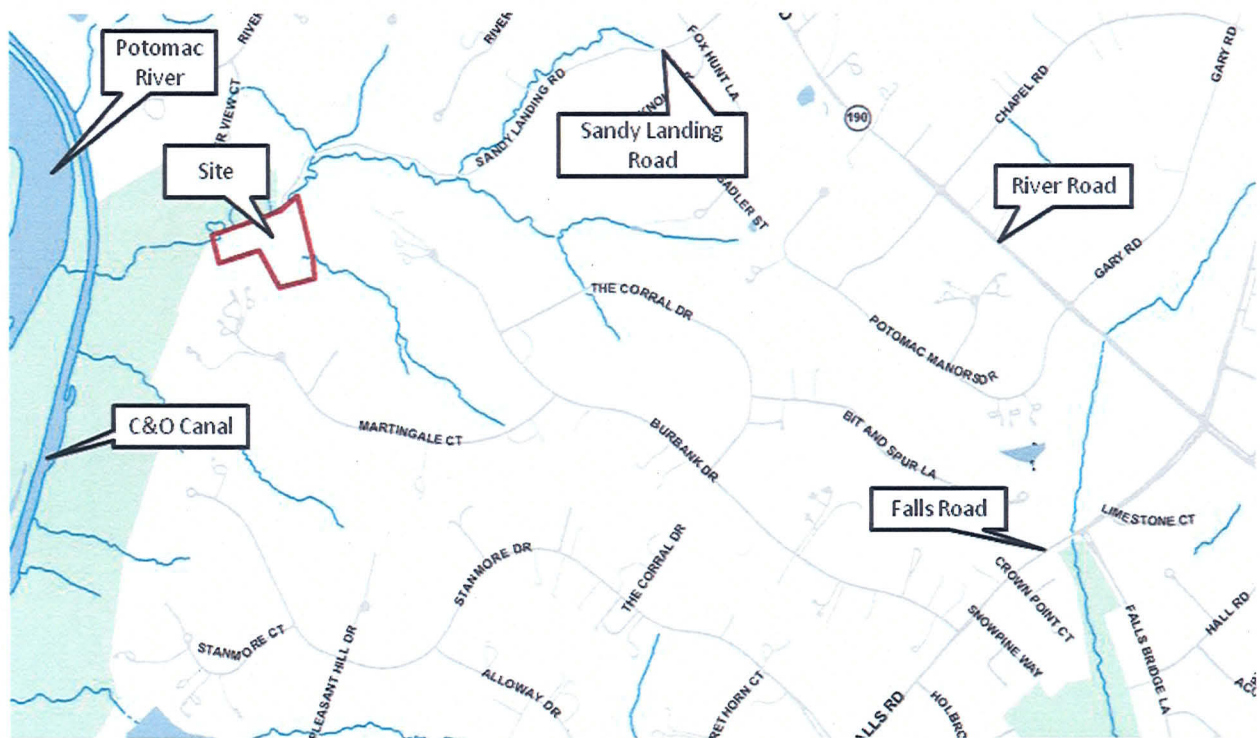


Figure 1: Site Location

Environmental Inventory

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was submitted for the Property and approved on June 13, 2008. The site lies within the Potomac River Direct watershed, a Use Class I-P watershed. There is an exposed stream on site that enters a system of pipes at the east side of the property continues under the plant and exits the pipe system at the north side of the property. There are additional streams to the north and southeast and the Potomac River is approximately 1,500 feet to the west

The topography of the site is very steep with the majority of the site being on slopes of 25% (or greater). There are highpoints on the north, east, west, and south sides of the property with the general slope of the sight funneling northwest. The existing water treatment facility is located at the low point of the site to the north.

The Property includes 4.03 acres of forest contained in four distinct forest stands. Each stand is delineated on the basis of dominant tree species mix, soils, topography, and location relevant to environmentally sensitive features. There are 3.67 acres of forest within the environmental buffers on the Property. Within the total on-site forest, there are 15 trees that are 24" diameter breast height (DBH), 3 of which are 30" DBH and greater.

Forest Stand 1, (0.67 acres) is a forest dominated by American Beech (*Fagus grandifolia*) in a Chestnut Oak association. The stand also contains a significant amount of Red Maple (*Acer rubrum*). The forest in Stand 1 contains no specimen sized trees, but it is rated as high priority for retention.

Forest Stand 2, (0.13 acres) is a forest dominated by Red Maple (*Acer rubrum*) and American Beech (*Fagus grandifolia*) in a White Oak association. The stand also contains a significant amount of Tulip Poplar (*Liriodendron tulipifera*) and only one specimen sized tree, but it also is rated as high priority for retention.

Forest Stand 3 (1.29 acres) is a forest dominated by American Beech (*Fagus grandifolia*) in a Chestnut Oak/White Oak association. The stand also contains a significant amount of Tulip Poplar (*Liriodendron tulipifera*). Stand 3 contains two specimen sized trees and is rated as high priority for retention.

Forest Stand 4 (1.94 acres) is a forest dominated by American Beech (*Fagus grandifolia*) in a Chestnut Oak/White Oak association. Stand 4 contains no specimen sized trees but is rated as high priority for retention.



Figure 2: 2010 Aerial Photograph of Site

FOREST CONSERVATION

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County Code) under section 22A-4(d) “a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger...”. The net tract is 5.51 acres in size.

The submitted FCP shows the removal of 1.03 acres of forest and the retention of 3.0 acres of the forest on site. Of the 1.03 acres to be removed, 0.83 acres are within the SVB and considered high priority for retention, however; the forest conservation worksheet indicates that there are no planting requirements associated with the forest removal. Staff concurs with the worksheet conclusions.

The removal of high priority forest is always a cause for concern and has to be reviewed very carefully. The FCP amendment proposes the loss of an additional .906 acres of high priority forest not on the previously approved plan. In this case the City of Rockville needs to expand the facility to meet increasing need and new regulations. Since the majority of the site is within the SVB and forested there are no alternatives to the removal of high priority forest. M-NCPPC staff has reviewed the plans and proposed improvements for the site and feels the City of Rockville has minimized the amount of high priority forest loss while maintaining the flexibility it needs to upgrade and maintain the water treatment facility.

While the applicant is proposing to remove an additional .906 acres of high priority forest which was to have been placed in Category I conservation easement as part of the July 9, 2008, August 17, 2009, and August 18, 2010 approvals. Staff understands the City of Rockville's need to maintain and update its water treatment facility to meet current and future demands and stay in compliance with all state and federal regulations regard water treatment facilities. The City of Rockville should be held to the same requirements that all other citizens and public agencies are required to meet and bases its recommendation to approve this application on recordation of the easements in the land records. As stated above, the additional 0.906 acres of forest removal is in an area that was required to be placed into category I conservation easement as part of the approval of the previous forest conservation plans. The fact that the City of Rockville never recorded the easements in the land records as required by the approval of the previous plans, should not exempt them from considering this area as protected forest in a conservation easement.

The Planning Board adopted a formal policy in November of 2008 which sets the minimum replacement ratio for removal for any conservation easement at 2:1, in-kind, regardless of whether the forest removal is above or below the conservation threshold. This policy has been supported in other forest conservation plan amendments involving easement removal and consistently applied to other applicants including private landowners, developers, State Highway Administration (SHA), Montgomery County Department of Transportation (MCDOT), Montgomery County Public Schools (MCPS), and M-NCPPC Parks. Staff believes that the same standards should be applied to the City of Rockville.

Although these easements were never recorded in the land records they are a part of an approved plan which has already been implemented by the applicant. The failure on the part of the applicant to record the easements, which is a violation of Chapter 22A, should not be an excuse to treat the removal of this area any differently.

Forest saved on parkland is not placed into Category I conservation easement, but is assumed protected and defined by the approved plans. The Rockville Water Treatment Plant plan clearly

shows the areas of protected forest and shows them to be placed in a Category I easement, even without the easements being recorded the Planning Board policy on removal and mitigation of easement areas should apply just like in the Rock Creek Maintenance Yard project.

Staff is recommending that a condition of approval of this plan be that the applicant mitigates for the removal of areas of protected forest at a 2:1 ratio and meet the same standards as all other applicants. The applicant is proposing the removal of .906 acres and based on the 2:1 ratio would have a 1.81 acre planting requirement. If the applicant chooses to retain existing forest rather than plant new forest they would need to protect 3.62 acres of existing forest.

Chapter 22A-12(e)(2)(B) - *Protection of existing off-site forest.* Acquisition of an off-site protective easement for existing forested areas not currently protected is an acceptable mitigation technique instead of off-site afforestation or reforestation planting, but the forest cover protected must be 2 times the afforestation and reforestation requirements.

Forest Conservation Variance

Section 22A-12(b)(3) of the County code requires applicants to identify certain trees, shrubs, plants, and specific areas as priority for retention and protection. This section of the code requires those areas to be left in an undisturbed condition unless the applicant obtains a variance in accordance with Chapter 22A-21 of the County code. More specifically the vegetation to remain undisturbed includes:

- A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
 - (1) *The federal Endangered Species Act of 1973,*
 - (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
 - (3) *COMAR 08.03.08;*
- B. *Trees that:*
 - (1) *Are part of an historic site,*
 - (2) *Are associated with an historic structure, or*
 - (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*
- C. *Any tree having a diameter measured at 4.5 feet above the ground of:*
 - (1) *30 inches or more, or*
 - (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

Under Chapter 22A-21 of the County Code a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant for a variance must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance;
and
- (4) Provide any other information appropriate to support the request.

Since this project will require two trees, 30 inches and greater DBH to be removed a variance is required.

County Arborist's Recommendation

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on January 31, 2010. The County Arborist has elected not to review the variance request. As such, the County Arborist's recommendation for the variance request is therefore presumed to be favorable.

Variance Findings

The Planning Board must make findings that the applicant has met all requirements of this Chapter 22A-21 before granting the variance. Staff has made the following determination on the required findings:

1. 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 as the removal of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is necessary and unavoidable in order to develop property for the intended public benefit and to serve the growing needs of the City of Rockville

2. 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 of the applicant. The variance is based upon the required future expansions required to maintain adequate public water supply to the City of Rockville and meet future regulations that the water treatment plant will be subject to.

3. 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.

4. Will not 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. A Stormwater Management Concept Plan has been approved by the Montgomery County Department of Permitting Services.

Forest Conservation Variance mitigation

The two specimen trees being removed are from within existing forest. They will be compensated for as part of the forest conservation plan in accordance with Chapter 22A of the County code. Staff is not requesting any mitigation, other than what is already required by the forest conservation plan, for the removal specimen these trees that are within existing forest.

SUMMARY

The proposed Forest Conservation Plan complies with the requirements of Chapter 22A, the Montgomery County Forest Conservation Law. Staff recommends approval of the Forest Conservation Plan with the conditions stated above.