



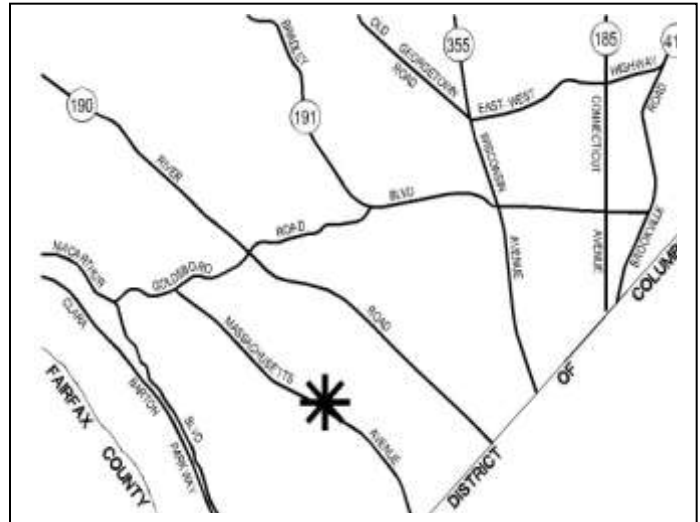
Forest Conservation Plan Amendment Review, Church of the Little Flower, MR2002202-MCPS-1

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description

Church of the Little Flower

- 5607 Massachusetts Avenue, Bethesda
- 11.49 acres zoned R-60 in the Westbard Sector Plan
- Proposal to change onsite Category I conservation easements required by the approved Final Forest Conservation Plan covering the site and to record these onsite conservation easements in the land records.



summary

Staff recommends **approval of the Amendment to the Final Forest Conservation Plan with conditions**. Staff’s analysis addresses the following issues:

- The applicant has agreed to record Category I conservation easements, with some modifications from what was required by the Final Forest Conservation Plan, approved March 10, 2004.
- The conservation easements are proposed be modified from what was originally required with the Final Forest Conservation Plan (FCP), approved March 10, 2004, to account for: (1) a playground area that was expanded into existing forest that was identified to be within a conservation easement area; (2) unauthorized clearing and installation of memorial benches within a forested stream buffer, and (3) location of an existing, PEPCO electrical, overhead line within a forested, conservation easement area.
- The applicant has submitted a variance request as part of the FCP Amendment to remove a 37-inch tulip poplar within existing forest identified in both the original FCP and the proposed Amendment as protected. The applicant can remove the tree if the Planning Board grants the variance, in accordance with the County Forest Conservation Law. The removal is required because the tree has grown over time and now is so close to the PEPCO electrical line within the conservation easement that it creates a hazardous condition, according to the PEPCO senior staff forester.

Conditions

1. Applicant must revise the submitted forest conservation plan to show the following information:
 - a. Existing utility lines along Massachusetts Avenue that are adjacent to existing conservation easement areas.
 - b. A note that any tree removed from a conservation easement area due to PEPCO's determination of hazard conditions must be mitigated by planting native trees within the conservation easement area. Planting plan must be reviewed and approved by Planning Department Forest Conservation Inspector.
2. The following must be completed by the applicant no later than November 1, 2011:
 - a. Recordation of the reconfigured onsite Category I conservation easements and associated conservation easement agreement in the land records.
 - b. Submission and approval of a certificate of compliance to use 0.08 acres an approved offsite forest mitigation bank.
3. Applicant must include language in the Category I conservation easement agreement to provide for the following items:
 - a. Recognition of a specific area within the easement area where existing memorial benches can remain and be maintained.
 - b. Allowances over time for M-NCPPC Planning Department review and approval of limited removal of trees that are determined by PEPCO to create hazardous conditions with existing PEPCO power lines located in or near conservation easement areas that are shown on the approved Final Forest Conservation Plan Amendment.
 - c. Requirement to plant native trees to compensate for the removal of trees in conflict with PEPCO electric lines that the M-NCPPC Planning Department has approved for removal.
 - d. Requirement for mitigation planting plan to be reviewed and approved by M-NCPPC Planning Department.
4. Applicant must submit by November 1, 2011, a tree planting plan for Planning Department staff review and approval to mitigate for the removal of the 37-inch tulip poplar. The planting plan must include a schedule for planting that will occur no later than April 2012.

Site Description

The church site, covering about 11.49 acres, lies within the Little Falls watershed. The stream system is designated by the Maryland Department of the Environment as Use I. An unnamed tributary of Little Falls originates on the eastern portion of the site and continues into the middle school site. The environmental buffer associated with the stream covers the southeastern edge of the church site.



The original forest conservation plan, submitted in 2002, indicated the subject site had roughly 1.91 acres of forest located in four stands. Two of the stands lie along the southern and southwestern boundaries of the site. A third stand is associated with the onsite environmental buffer area. The forest stand along Massachusetts Avenue appears to have remained intact. An area within the forest stand in the environmental buffer was disturbed to install memorial benches. A part of the forest stand at the southwest corner of the site has been cleared to enlarge a playground.

The fourth stand extended onto the Westland Middle School site along the northeastern portion of the site. The part of the forest on the church site that is associated with the fourth stand was cleared when an athletic field was approved and constructed as part of the original Final Forest Conservation Plan (see discussion below).

The remainder of the site includes tree cover scattered among a complex of a church, rectory, convent, school, gymnasium, parish hall and surface parking lots. The site moderately slopes downward from the northwest to the southeast.

BACKGROUND

The original project consisted of an athletic field that was to be located on two adjoining sites: the Little Flower Church School and Westland Middle School (a public school). These two sites are located on the north side of Massachusetts Avenue within the Bethesda-Chevy Chase Master Plan area.

The project was reviewed by the Planning Board three times: June 13, 2002; March 20, 2003; and April 3, 2003. It was submitted and reviewed as a mandatory referral with the Montgomery County Public Schools (MCPS) identified as the applicant. At the first two hearings, the applicant requested, and the Planning Board agreed to, defer action on the project due to significant issues that included the private use of public property, lack of compatibility with adjacent residences due to proposed forest loss, inadequate provisions for public use of the field, and the need to preserve mature, high priority forest as required by the County Forest Conservation Law (see Attachment 1).

The original proposal was to create a multi-purpose field that would be located in a forested, undeveloped area along the common property line of the northern portions of the church school and the public middle school sites. This proposal would have resulted in the clearing of 1.02 acres of a 3.5-acre high priority forest stand. The majority of the proposed forest clearing (0.62 acre) would have been located on the public school site. Environmental Planning staff had concluded that the proposed forest removal would take a "critical mass out of the center leaving a greatly diminished stand."

Environmental Planning staff had recommended that the proposed field be reduced in size and reconfigured to greatly reduce the loss of high priority forest and to provide a better vegetated screen for adjacent residences from the proposed field. After two deferrals of the Planning Board hearing, the applicant submitted a revised Preliminary Forest Conservation Plan (FCP) that was approved by the Planning Board at its April 3, 2003 public hearing, consistent with staff recommendations (see Attachments 2 and 3).

The Final FCP, approved and signed by staff on March 10, 2004, showed the proposed field located entirely on the church school site (Attachment 4). The Final FCP defines the net tract area as covering over 11 acres. The net tract area covered the entirety of the church school site. The public school site was considered to be an offsite area, and only the small portion of the public school site that was proposed for land disturbance was added to the FCP's net tract area.



Current Location of Multi-Purpose Field

As noted above, the majority (about 42,650 square feet) of the land disturbance associated with the field construction was shown to be on the church school site, and included most of the 0.52-acre of forest clearing. Only a very small forested area (820 square feet) was identified to be disturbed on the public school site. The approved Final Forest Conservation Plan also identified 1.39 acres of existing forest on the church school site that would be retained within three Category I conservation easement areas.

From documents in the FCP file for this project, it appears that the applicant changed from MCPS to Church of the Little Flower during the review of the Final FCP due to the ultimate, proposed location and use of the field being exclusively on the church school site. In March 2004, one of the items that staff had identified as a required step was the recording of the Category I conservation easements in the county land records (Attachment 5). However, conservation easements were never recorded.

In May 2010, as part of the Planning Department forest conservation inspectors' work program element of identifying outstanding issues on old forest conservation plans, it was determined that the forest conservation plan for the Church of the Little Flower had several issues that were unresolved. These issues included:

- The Category I conservation easements were never recorded in the land records as required by the previous approval
- A playground area on the southwestern corner of the site was expanded and forest removed in one area that was required to be protected by a conservation easement
- Unauthorized clearing of forested stream buffer to install memorial benches; the buffer was identified to be preserved in a conservation easement on the approved Final FCP.

Representatives of the church and Planning Department staff met to start discussions on resolving these issues. Subsequent to the meeting, one of the church representatives contacted the forest conservation inspector regarding the need to remove a large tree within one of the conservation easement areas due to the tree's proximity to an existing PEPCO electrical line also located within the conservation easement.

The Amendment to the Final Forest Conservation Plan is the applicant's proposal to deal with the three identified issues and to remove the large tree near the PEPCO line. Staff has met with church representatives several times to identify options for dealing with the various issues in the forest conservation plan amendment.

PROPOSAL

On March 2, 2011, the Church of the Little Flower submitted an application to amend the Final Forest Conservation Plan (Attachment 6). The Amendment to the Final FCP includes the following elements:

- Proposed, reconfigured Category I conservation easement areas:
 - The western conservation easement area is proposed to be reduced by 0.04 acre to exclude the playground area from the Category I conservation easement.
 - The southern conservation easement area is proposed to be reduced by 0.04 acre to exclude the two edges of the forest stand in which overhead utility lines are located. This change is in response to staff's recommendation to reduce the potential for future conflicts within the conservation easement areas between utility lines and trees.
- Identification of the memorial bench area within the eastern conservation easement area.
- Provision for the installation of permanent signs to physically demarcate the boundaries of the conservation easement areas.
- An acknowledgment that the removal of onsite conservation easement areas will be compensated by the purchase of offsite forest bank credits at the rate of 2 acres of forest bank credits for every acre of onsite conservation easement area removed.

PLANNING BOARD REVIEW AUTHORITY

The County Forest Conservation Regulations require Planning Board action on certain types of modifications to an approved FCP. Major amendments which involve more than 5000 square feet of additional forest clearing must be approved by the Planning Board if the forest conservation plan was approved by the Planning Board. However, Section 22A.00.01.13.A(1) of the Forest Conservation Regulations states:

"Minor amendments which do not result in more than a total of 5000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis..."

Although the applicant's proposed removal of conservation easement areas is less than 5000 square feet, the Planning Board has established through its actions in other FCP cases that the removal of a conservation easement area, regardless of the size of the removed area, warrants consideration in a public forum with Planning Board action.

REVIEW

The submitted amendment to the Final Forest Conservation Plan is in response to Planning Department forest conservation inspection staff identifying the lack of recorded conservation easements for the church school site, the encroachment of various features within the approved conservation easement areas, and the request to remove a large tree near a PEPCO utility line within a conservation easement area.

The applicant proposes to reduce the onsite forest conservation easements by 0.08 acre, with mitigation through the purchase of forest bank credits at an offsite location. This mitigation is recommended at a rate of 2 acres of offsite forest bank credits for each acre of onsite forest conservation easement removal. This mitigation rate is consistent with the rates that the Planning Board has required in other cases where applicants have proposed to remove approved or recorded conservation easements from a site.

Part of the forest bank credits that the applicant had purchased in 2003 to meet the offsite reforestation requirement of the original Final Forest Conservation Plan may be used to apply towards the mitigation of the proposed reduction of onsite forest conservation easements. The applicant purchased 1.12 acres of forest bank credits in 2003 to apply towards a 1.04-acre reforestation requirement of the approved Final Forest Conservation Plan. Therefore, there is a 0.08-acre "excess" of forest bank credits that staff believes the applicant already has and can use to apply towards the 0.16 acre amount that staff recommends as the mitigation for the proposed 0.08-acre reduction of onsite conservation easements. The applicant, then, has a net requirement of an additional 0.08-acre forest bank credit that remains to be acquired in order to meet staff's recommended 0.16 acre mitigation amount for 0.08 acre of loss of onsite conservation easement area.

Forest Conservation Variance

Section 22A-12(b)(3) of the County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to the following categories of trees: trees that measure 30 inches or greater, diameter at breast height (DBH); trees that are part of a historic site or designated with a historic structure; trees that are designated as a national, State, or County champion; trees that are at least 75 percent of the diameter of the current State champion for that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

The applicant submitted a request for a variance dated June 2, 2011 (Attachment 7) with supplemental information provided in emails (Attachment 8). The applicant proposes to remove a 37-inch tulip poplar (*Liriodendron tulipifera*) that lies within the western conservation easement area next to an existing PEPCO electrical line.

The applicant has offered the following justification of the variance request:

- (1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

Applicant response: “The tree must be removed due to conflicts with existing above ground utilities.”

Staff response: The applicant (i.e., church school) believes that the electric lines and poles within the conservation easement area were installed around the time that the convent building was constructed, which was about 1953. The lines serve the convent building, and they convey electricity from the main lines along Massachusetts Avenue. The electric lines along Massachusetts Avenue were the closest source of electricity at that time. Staff agrees that given that the construction of the site and of the electric lines occurred long before the Forest Conservation Law, conflicts between the power lines and nearby trees are likely to cause unwarranted hardship.

- (2) *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Applicant response: “If required to keep the tree, a hazard condition will continue with this tree rubbing the powerlines.”

Staff response: Staff does not believe that, given the developed nature of the church site and surrounding properties, there is an alternative location for the electrical lines that serve the convent building and avoid the approved conservation easement areas. If the line is removed from the conservation easement area to avoid removing the tree, the convent building may not have electrical power. Lack of electrical power to the building, which serves as a residence for religious sisters of the church, would deprive the church with rights commonly enjoyed by others in the surrounding area. Alternatively, if the tree is not removed and the line remains, a hazardous condition exists, as identified by PEPCO (Attachment 8). Correcting a documented hazardous condition would also be required for other uses in similar areas and situations.

- (3) *Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;*

Applicant response: “The specimen tree to be removed is within an existing forest setting. The tree will be removed with care toward the forest and powerlines. This results in maximum preservation of local habitat. The proposed activity will not degrade the water quality of the downstream areas and will not result in measurable degradation in water quality.”

Staff response: Staff agrees that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. The area where the power line is located is not adjacent to a stream or wetland and is not within an environmental buffer. In addition, staff is recommending that for each tree within the conservation easement that will be cut due to hazardous conditions as defined by PEPCO, the applicant must plant native trees within the easement area as compensation. Staff anticipates that over time, there may be additional trees within the easement area that will grow larger and eventually cause a hazardous condition by being too close to the power lines. Therefore, staff believes that replanting with native trees as compensation for cutting trees to avoid hazardous conditions with existing power lines will keep the conservation easement area forested.

- (4) *Provide any other information appropriate to support the request.*

Applicant response: “Pepco has notified the Owner of the need to remove the tree.”

Staff response: Staff has requested, and the applicant has provided, a series of emails (Attachment 8) that include an assessment by PEPCO senior staff forester that the tree is in contact with the primary power line and is creating a hazard condition.

Section 22A-21 of the County Forest Conservation Law sets forth findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed amendment to the final forest conservation plan. Staff’s determinations are based on the required findings that granting of the requested variance:

1. Will not confer on the applicant a special privilege that would be denied to other applicants.

Staff does not believe that, given the developed nature of the church site and surrounding properties, there is an alternative location for the electrical lines that serve the convent building and avoid the approved conservation easement areas. If the line is removed from the conservation easement area to avoid removing the tree, the convent building may not have electrical power. Lack of electrical power to the building, which serves as a residence for religious sisters of the church, would deprive the church with rights commonly enjoyed by others in the surrounding area. Alternatively, if the tree is not removed and the line remains, a hazardous condition, as identified by PEPCO (Attachment 8) exists. Correcting a documented hazardous condition would also be required for other uses in similar areas and is not a special privilege.

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 by the applicant. Based on the applicant’s email (Attachment 8), it appears that at the time the convent building was constructed, the only nearby source of electricity to serve the building was from existing lines along Massachusetts Avenue. The powerline would have had to have a north-south alignment roughly similar to the existing alignment in order to provide electrical service to the convent building.

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 site design and layout on the church school site 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.

As previously stated, staff believes that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. The area where the power line is located is not adjacent to a stream or wetland and is not within an environmental buffer. In addition, staff is recommending that for each tree within the conservation easement that will be

cut due to hazardous conditions as defined by PEPCO, the applicant must plant native trees within the easement area as compensation. Staff anticipates that over time, there may be additional trees within the easement area that will grow larger and eventually cause a hazardous condition by being too close to the power lines. Therefore, staff believes that replanting with native trees will keep the conservation easement area forested.

Mitigation for Trees Subject to the Variance Provisions

At this time, there is one tree proposed for removal as a result of the presence of a PEPCO powerline in a conservation easement area. As previously noted, staff believes the applicant will need to submit a variance request to remove a tree or trees that are covered by the variance provision of the County Forest Conservation Law over time as trees grow larger and some of them grow too close to the existing power line. Staff recommends that for any tree within an existing conservation easement area on the site that PEPCO determines needs to be removed because of hazardous condition, the applicant must submit a plan for planting native trees within the conservation easement area to replace the removed tree and to maintain forest cover within the conservation easement. Staff believes that any tree approved for removal within the conservation easement, regardless of size should be replaced. Staff also believes that there should not be a specific replacement rate of trees to be replanted. Instead, the mitigation planting plan would be dependent on the size, species, and location of tree(s) to be removed, and the health and condition of the forest within the conservation easement at the time the trees are reviewed for removal.

County Arborist's Recommendation on the Variance Request

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department referred a copy of the variance request to the County Arborist at 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 June 10, 2011. The County Arborist issued her recommendations on June 29, 2011 (Attachment 9) and recommended that the variance be approved with mitigation.

Variance Recommendation

Staff recommends that the variance request be granted.

STAFF RECOMMENDATIONS

Staff recommends that the Planning Board approve the Amendment to the Final Forest Conservation Plan with conditions cited in this staff report. The variance approval is assumed into the Planning Board's approval of the Amendment to the Final Forest Conservation Plan.

ATTACHMENTS:

1. Planning Board letter recommending deferral of mandatory referral, dated June 24, 2002
2. Planning staff memorandum for Planning Board hearing of April 3, 2003
3. Planning Board letter recommending approval of mandatory referral with comments and approving Preliminary FCP, dated April 21, 2003
4. Final FCP approved March 10, 2004
5. Environmental Planning staff emails dated March 2004
6. Applicant's proposed Amendment to Final Forest Conservation Plan
7. Applicant's request for variance dated June 2, 2011
8. Emails providing additional information from PEPCO staff, April – June 2011
9. County Arborist review of applicant's request for a variance, dated June 29, 2011



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

June 24, 2002

Dr. Jerry Weast, Superintendent
Montgomery County Public Schools
850 Hungerford Drive
Rockville, MD 20850

Re: Mandatory Referral No. 02202-MCPS-1

Dear Dr. Weast:

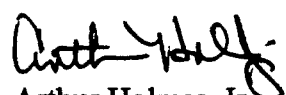
At the regular meeting on June 13, the Planning Board reviewed the mandatory referral for the construction of an athletic field for Westland Middle School and Little Flower Church School, located at 5511 Massachusetts Avenue, Bethesda, in the R-60 Zone. After an extended discussion with our staff, the Little Flower School, and several members of the community, the applicant requested and the Planning Board agreed to recommend that further action on this project be **DEFERRED**.

This deferral by the applicant is intended to give the school system and Little Flower Church School the opportunity to relocate the athletic field away from the public property at Westland Middle School. The Planning Board recognizes that the relocation will require a reduction of the number of existing parking spaces and existing green space on the Little Flower Church School site.

The Planning Board expressed concerns regarding the balancing of several priorities: the need for more fields in the down county area, particularly for smaller children; the private use of public property; compatibility with adjacent residences; the church school's parking requirements; the public benefit from the field; and the need to preserve a mature forest with significant specimen trees as required by the Forest Conservation Law. The Forest Conservation Law requires providing an alternative that preserves additional trees.

Thank you for providing the necessary information to make this mandatory referral review possible. We look forward to our continued work with your staff and those of Little Flower Church School on a mutually satisfactory location of this much-needed field.

Sincerely,


Arthur Holmes, Jr.
Chairman

AH:MWF:KO

MCPB
Item #2 & 3
04/03/03

(1 of 7)



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 28, 2003

MEMORANDUM

TO: The Montgomery County Planning Board

VIA: John A. Carter, Chief *JAC*
Community-Based Planning Division

FROM: *KO*
Kristin O'Conor, Bethesda-Chevy Chase/North Bethesda Team
Community-Based Planning Division

Marion Clark, Environmental Section
Countywide Planning Division

SUBJECT: Forest Conservation Plan:
Athletic Field for Westland Middle School and Little Flower Church
School, 5511 Massachusetts Avenue
Bethesda-Chevy Chase Master Plan, and

Mandatory Referral No. 02202-MCPS-1
Athletic Field for Westland Middle School and Little Flower Church
School, 5511 Massachusetts Avenue
Bethesda-Chevy Chase Master Plan

This combined staff report provides recommendations on 1) the Forest Conservation Plan, and 2) the Mandatory Referral for the Athletic Field for Westland Middle School and Little Flower Church. This project was deferred from the Planning Board hearing of June 6, 2002, and postponed from the Planning Board hearing on March 20, 2003.

1. STAFF RECOMMENDATION: Forest Conservation

The staff recommends approval of the Preliminary Forest Conservation Plan with the following conditions:

- A Final Forest Conservation Plan (FCP) must be submitted and approved prior to issuance of sediment and erosion control permits. The FCP must address all of the following issues before approval will be granted:

- 1) The Final FCP shall be prepared by a qualified professional and shall fully meet the directives of the M-NCPPC Forest Conservation Regulations #1-01, Section 109B. The FCP shall include the delineation of significant and specimen tree critical root zones (CRZ) and determination of significant impacts (greater than 30% encroachment) based on the proposed grading and site plan.
- 2) The proposed grading and location of the retaining wall shall be adjusted and moved to reduce encroachment on the CRZ of the 45" Black Oak tree (identified as tree no. 30 on the NRI/FSD) to less than 30%. Subject to the Department of Permitting Services the number, size and location of proposed stormwater management structures shall be examined to reduce the total amount of encroachment.
- 3) After disturbance has been minimized, stress reduction measures shall be identified on the plan, as recommended by the qualified professional. The plan shall identify appropriate stress reduction measures designed to minimize root destruction and maximize root regrowth. Tree save measures shall include, but not be limited to, pre-construction watering and fertilizing, fencing, root pruning and dead wood pruning of any trees impacted by construction activities.
- 4) Mitigation for forest loss must be indicated on the Final FCP.

2. STAFF RECOMMENDATION: Mandatory Referral No. 02202-MCPS-1

The staff recommends the approval of the Mandatory Referral, and the following comments should be transmitted to the Montgomery County Public Schools (MCPS):

- a. Restripe the parking lot to meet the parking standards for the church.
- b. Retain the trees along the property line on the north side of the field.
- c. Provide sufficient landscaping and screening to buffer the adjacent neighbors from the proposed field.
- d. Submit and obtain approval of a Final Forest Conservation Plan prior to permitting.

PROJECT HISTORY

On June 13, 2001, the Planning Board reviewed the mandatory referral for the construction of an athletic field for the Westland Middle School and the Little Flower Church School. After extended discussion regarding forest retention and public access from the Planning Board and the community, the applicant agreed that action on this project be deferred. This deferral by the applicant was intended to give the school system and the Little Flower Church School the opportunity to relocate the athletic field away from MCPS property. The Planning Board recognized that the relocation would require a reduction of the number of existing parking spaces and existing green space on the Little Flower Church School site.

The Planning Board expressed concerns regarding the balancing of several priorities: the need for more fields in the down-county area, particularly for smaller children; the private use of public property; compatibility with adjacent residences; the church school's parking requirements; the public benefit from the field; and the need to preserve a mature forest with significant specimen trees as required by the Forest Conservation Law. The Forest Conservation Law requires providing the best alternative plan that preserves additional trees. The Planning Board recognized the need for the field for the school and as an additional field in the down-county area, but expressed concern about tree preservation and inadequate provisions for public use of the field. The Planning Board strongly supported the relocation of the field and the removal of parking, with reconfiguration of the lot. The Planning Board deferred action to allow the applicant to review the possibilities related to relocating the field and preserving more forest.

Several meetings with the applicant and the community were held after the Planning Board hearing to discuss the outstanding issues regarding the Little Flower field plan and complying with Chapter 22a of the Montgomery County Code, the Forest Conservation Law. At these meetings, several options for the field's orientation were shown in an effort to improve the layout of the field.

PROJECT DESCRIPTION

Little Flower and Montgomery County Public Schools (MCPS) have significantly revised the plan to create a field, measuring 130-feet by 220-feet. The plan shifts the location of the field onto a portion of the Little Flower parking lot (removing 15,900 s.f. of pavement). To meet the Forest Conservation Law and to address the comments suggested at the June 2002 Planning Board hearing, staff and the applicant explored various "options" that would be suitable for the community, the school and the church, and meet Forest Conservation Law. The applicant selected an option that sites the majority of the field on the Little Flower site and a small fraction on the Westland Middle School site (MCPS property). The plan demonstrates less tree removal, including significant and specimen trees, than the applicant's previously submitted plans.

Site Description

Westland Middle School property consists of 25.1 acres in the R-60 zone. The school building is situated on the eastern portion of the property on a bluff adjacent to Westbard Avenue. The only vehicular entrance to the public school is from Massachusetts Avenue via a shared driveway (with the library). The school's current athletic fields are located on the northern boundary also adjacent to Westbard Avenue. There are two parking areas located on school property. One parking area is adjacent to the south side of the building, and the larger parking area extends westerly across the mid-portion of the site, almost to the Little Flower property. The current school population is 1,029 students. There are currently 124 parking spaces, two delivery-loading spaces and a bus-loading area. A wooded area containing some steep slopes and a drainage path runs along the western boundary adjacent to Little Flower.

The Little Flower Church School is located on 11.35 acres in the R-60 zone on the north side of Massachusetts Avenue adjacent to the western boundary of Westland Middle School. The school is a Catholic elementary school sponsored by the Church of the Little Flower Parish. It is operated in accordance with the mandates of the State of Maryland under the supervision of the Catholic Schools Office of the Archdiocese of Washington. Little Flower has an enrollment of 270 students (pre-kindergarten through eighth grade). The Little Flower Church property is improved with the school buildings, gymnasium, Rectory, and Sanctuary. The site currently provides 305 parking spaces. The church seats 900, requiring 225 parking spaces.

The proposed field is bounded on the north by Jordan Road, on the west by the Little Flower Church and parking lot, on the south by Massachusetts Avenue, and to the east by the School Board's property line and a fraction of Westland Middle School. The proposed site topography is severe and the grade change is 30 feet across the property from west to east.

Cooperation Between the Church of the Little Flower and Westland Middle School

The Church of the Little Flower and the Westland Middle School have existed cooperatively as neighbors for many decades. The church and the school have maintained a good neighbor status with each other as well as the neighboring residential community.

In 1959, the church and the school exchanged parcels of land with each other to square-up their individual properties. The new boundary configuration provided more efficient use of their sites. The church parking area, which is immediately adjacent to the school, has provided overflow parking for many school functions. There is an existing pedestrian walkway between the two sites that connects their parking.

ANALYSIS

Master Plan Findings

Both schools are in the Bethesda-Chevy Chase Master Plan area. The 1990 Master Plan includes the following guidance:

When new uses are programmed for school sites, compatibility with the neighborhood must be maintained. The degree to which a new use is incorporated into the existing community fabric is crucial. The mandatory referral process should be used to ensure that proposals for school modernization, additions and reuses are compatible with the surrounding area. Issues to address include:

- 1. Traffic and parking controls*
- 2. Sensitive siting of additions*
- 3. Landscaping and parking lot screening*

Traffic and Parking: The field is not expected to generate any additional traffic or parking challenges. The proposed field will not be used for increased activities or will it add more students to either school. The field is being proposed for existing MCPS programs, the Little Flower School physical education program and the community.

Sensitivity Siting: The proposed field provides for greater sensitivity to the specimen trees and provides further compatibility with the adjacent neighborhoods. The relocation of the field onto the majority of Little Flower's property will save 17 more significant trees and meet Forest Conservation requirements. Since the intention of the proposed field is to allow for programmed school classes and for activities during recess periods, the proposed field will protect much of the tree stand while providing the necessary recreation space required for school activities.

In sum, staff supports the proposed field to retain a significant portion of the highest priority forest that will supply sufficient screening to buffer the field from the neighbors. In addition, a northwest to southeast orientation is the preferable option for regulation and junior size soccer fields, as denoted in the *Recreation Guidelines: Guidelines for the Recreation Amenities in Residential Developments*, approved and adopted by the Planning Board in September 1992.

Landscaping and Screening: The applicant proposes screening along the field from the neighbors along Jordan Road.

The Master Plan also recommends that:

Existing public facilities already provide a range of programs and activities that enhance life in the Planning Area. But where there is space available on the site for expansion, community-enhancing functions should be planned. Such facilities should be linked to the neighborhood by pedestrian and bicycle paths. (Page 149)

The field proposal will serve as outdoor classroom space for the Physical Education program and for activities during recess periods throughout the Little Flower school day. The field will be utilized for various sports such as soccer, lacrosse, football, baseball, and softball. Additionally, it will be used as a practice field for teams that participate in the parish sports programs. It is anticipated that other community athletic opportunities will present themselves after the field becomes operational.

Development Standards

The project will meet the parking requirements of the school (with 28 faculty and staff) as well as provide the necessary parking for the 900-seat church (225 spaces).

Environmental Findings (See Attachment 4)

All Mandatory Referrals must meet Forest Conservation requirements. A Final Forest Conservation Plan must be approved prior to issuance of sediment and erosion control and stormwater management permits by the Department of Permitting Services (DPS).

Approval of the final Forest Conservation Plan by the Planning Board is required for issuance of the DPS permits. The Forest Conservation Law requires that "*any available planning and zoning options that would result in the greatest possible forest retention*" be employed for highest priority forest stands. The applicant's smaller and reoriented field removes significantly less specimen trees than the previous application.

Forest Conservation: The health, composition, and size of trees within this 3.5-acre highest priority forest¹ stand are unusual in the down-county setting of this site. The mature forest stand is dominated by healthy Black Oak, White Oak and Yellow Poplar with an understory composed of Cherry, Red Maple, Beech, Holly, Muscledwood, and Dogwood. Most of the trees are between 20" and 30" diameter breast high (dbh), however there are 19 specimen trees (30" dbh and over) and 26 significant trees (24" – 30" dbh).

Transportation Findings

The proposed field will have no significant impact on the area's transportation system. The proposal will not add any new students or increase activities on site; therefore, no additional trips are expected to be generated to the site. Since the field is being established for existing MCPS programs, Little Flower School physical education program and the community, staff believes the athletic field has no traffic impact.

Access and Circulation: Access to the field will be gained from the existing Westland Middle School's north parking lot and from the Little Flower Church School parking lot. Based on the location of the proposed field, there is no need for additional roads or driveways to access the field.

Policy Area Review/Staging Ceiling Analysis: The site is located within the Bethesda-Chevy Chase policy area, which has a remaining capacity of 301 jobs and 5,627 housing units as of January 31, 2003.

COMMUNITY CONCERNS

Representatives from the adjacent community were involved throughout the development of this project and are convinced that the new field design will provide for the preservation of the old growth forest and provide compatibility with the neighborhood. (Note: The attached letters are in response to the applicant's previously submitted plan.) Staff met with the community and received support for any field location options that would preserve the mature forested area.

¹ Highest priority forest stands are those that exhibit all of the following characteristics: high structural and species diversity; few alien or invasive species present; very good overall stand health; and high potential to provide a significant amount of habitat for forest interior dwelling plant, animal and bird species. Additionally individual trees that are specimens of a species.

CONCLUSION

Staff recommends approval of Mandatory Referral No. 02202-MCPS-1. The proposal complies with the Forest Conservation Law and preserves significant and specimen trees in a designated highest priority forest stand in the down-county area.

KO:ha: a:\o'connor1\final staff report.doc

Attachments

1. Vicinity Map
2. Site Plan for Proposed Athletic Field
3. Community Letters
4. Memorandum from Environmental Planning



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

April 21, 2003

Dr. Jerry Weast, Superintendent
Montgomery County Public Schools
850 Hungerford Drive
Rockville, MD 20850

SUBJECT: Mandatory Referral No. 02202-MCPS-1
Westland Middle School and Little Flower Church School

Dear *Jerry* Dr. Weast:

At the regular meeting on April 3, the Planning Board reviewed the mandatory referral for the construction of a multi-use athletic field at Westland Middle School (Montgomery County Public Schools (MCPS)) and Little Flower Church School, located at 5601 Massachusetts Avenue, Bethesda, in the R-60 Zone. The majority of the field is located on Little Flower property, with a small fraction on the Westland Middle School site (MCPS property).

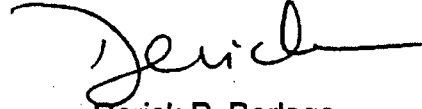
In June of 2002, the applicants' deferred further action on Mandatory Referral No. 02202-MCPS-1 so that the school system and Little Flower Church School would identify other options to relocate the athletic field away from the public property at Westland Middle School to preserve trees and abide by the Forest Conservation Law.

After exploring various options, the applicant resubmitted a plan that shifts the location of the field onto a portion of the Little Flower parking lot (removing over 44 parking spaces and 15,900 square feet of pavement). The plan meets the Forest Conservation Law and the needs of the school, church, and MCPS. On April 3, the Planning Board unanimously approved the Preliminary Forest Conservation Plan and approved to transmit the following comments to MCPS:

- 1) Restripe the Little Flower parking lot to meet the parking standards for the church.
- 2) Retain the trees along the property line on the north side of the field.
- 3) Provide sufficient landscaping and screening to buffer the adjacent neighbors from the proposed field.
- 4) Submit and obtain approval of a Final Forest Conservation Plan prior to permitting.

Thank you for providing the necessary information to make this mandatory referral review possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Derick", with a long horizontal flourish extending to the right.

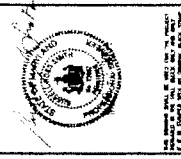
Derick P. Berlage
Chairman

DPB:KO:ha: a:\o'connor1\little flower 02202-mcps

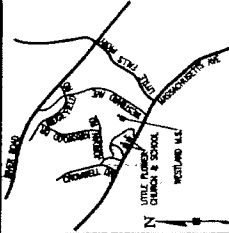
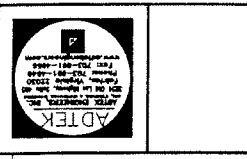
CHURCH OF THE LITTLE FLOWER
5601 MASSACHUSETTS AVE.
BETHESDA, MARYLAND

DATE: 8/30/03
PROJECT: 0201-1087
SHEET: 1 of 2

FOREST CONSERVATION PLAN



NO.	DATE	ISSUE
1	3/20/03	APPROVAL
2	3/20/03	APPROVAL



VICINITY MAP
SCALE: 1"=100'

NOTES

- BOUNDARY AS SHOWN FROM PLAT OF SURVEY OF LITTLE FLOWER PARISH, PREPARED BY BERNARD LOCKHART CIVIL ENGINEERS, DATED JAN. 1972.
- TOPOGRAPHY AS SHOWN FROM SURVEY BY WITMER ASSOCIATES, L.L.C. DATED 1/11/02.
- PARCEL 602 = 3.49 AC.
- PARCEL 607 = 2.87 AC.
- PARCEL 533 = 1.66 AC.
- WATERSHED ON SITE AND WITHIN OFF-SITE DISTURBED AREA: 2.30 AC.
- ZONING: R-40
- NO WETLANDS OR FLOOD PLAIN ON SITE.
- NO CULTURAL RESOURCES OR HISTORIC FEATURES IDENTIFIED ON SITE.
- NO SOILS FROM SHEET 27 OF THE U.C. SOIL SURVEY.
- 200 GENSLER URBAN LAND COMPLEX
- 100 BRANSON-BLOCKTOWN CHANNELRY S&L LOAN PLAN # 4-02284 DATED 5-31-02.
- THIS PROJECT HAS AN APPROVED NR/FSD PLAN.
- MANDATORY RETENTION # 02207-MCP5-1
- SEMIOTIC CONTROL # 208171.

THIS PROJECT HAS AN APPROVED NR/FSD PLAN.
MANDATORY RETENTION # 02207-MCP5-1
SEMIOTIC CONTROL # 208171.

APPROVAL

Plan No. 0201-1087-1
Date: 8/30/03

FOREST CONSERVATION WORKSHEET
Church of the Little Flower School

NET TRACT AREA

A. Total tract area: 11.35
B. Area of forest: 0.00
C. Land dedication for forest: 0.00
D. Area to remain in commercial/industrial/agricultural production: 0.00
E. Other deductions (specify): 0.00
F. Net Tract Area: 11.35

LAND USE CATEGORY (from Forest Technical Manual)
Input the number "1" under the appropriate land use.
1 = only one entry.

AGA	MGR	IDA	MOR	MFD	CA
0	0	0	1	0	0

AGA = 0, MGR = 0, IDA = 0, MOR = 1, MFD = 0, CA = 0

19% x 11.35 = 2.16
20% x 11.35 = 2.27

EXISTING FOREST COVER

Category	Area (Acres)
1. Existing forest cover	1.91
2. Area of forest above afforestation threshold	0.21
3. Area of forest above conservation threshold	0.00

BREAK-EVEN POINT

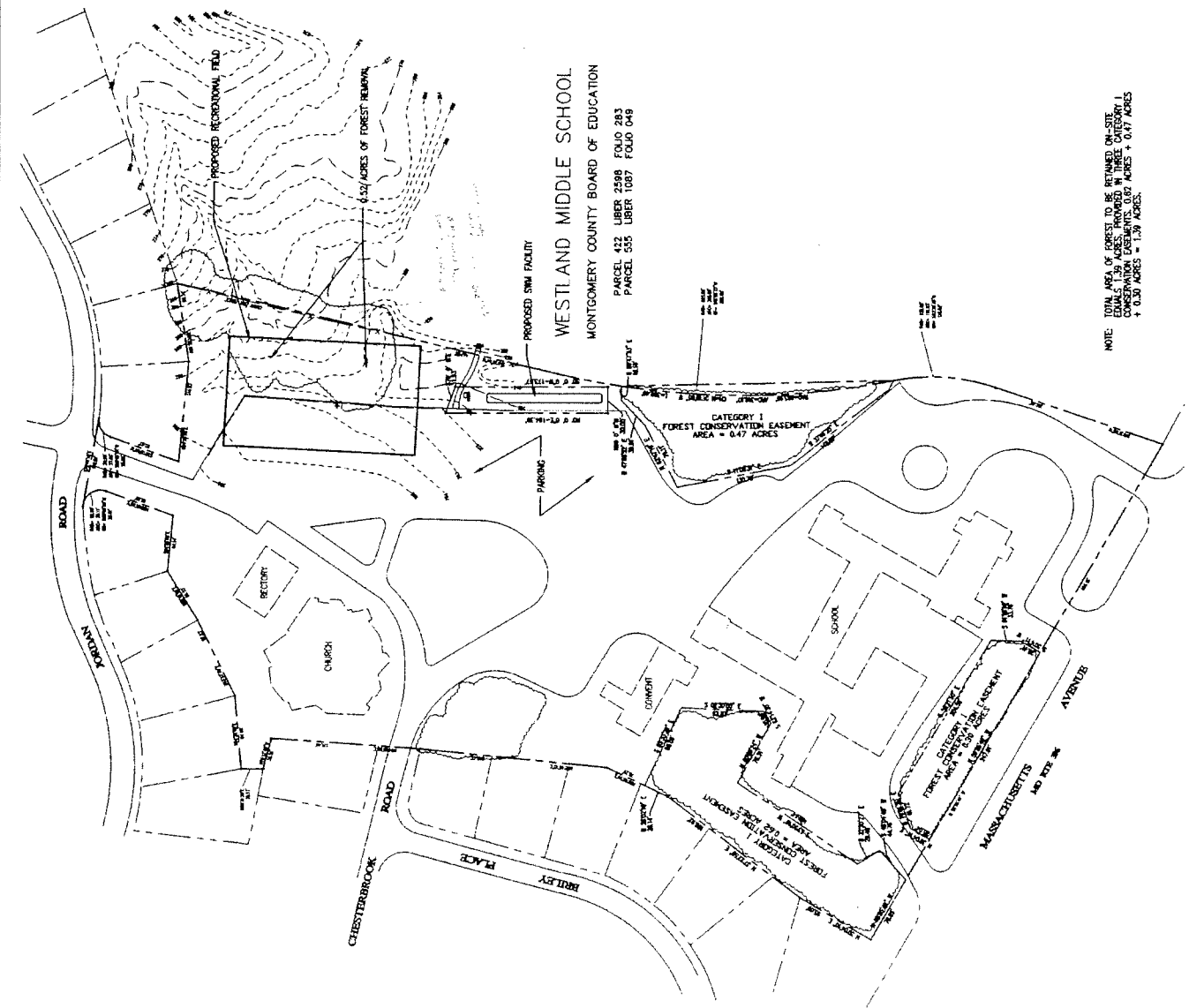
Category	Area (Acres)
1. Forest dedication above threshold with no mitigation	0.00
2. Clearing prohibited without mitigation	0.00

PROPOSED FOREST CLEARING

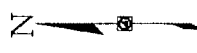
Category	Area (Acres)
1. Total area of forest to be cleared	0.62
2. Total area of forest to be retained	1.39

PLANTING REQUIREMENTS

Category	Area (Acres)
1. Mitigation for clearing above conservation threshold	0.00
2. Mitigation for clearing below conservation threshold	1.04
3. Clearing for retention above conservation threshold	0.00
4. Total afforestation required	0.00
5. Offset for land clearing (may not exceed 20% of "4")	0.00
6. Total afforestation and offset required	1.04



NOTE: TOTAL AREA OF FOREST TO BE RETAINED ON SITE EQUALS 1.39 ACRES PROVIDED IN THREE CATEGORIES: 1. FOREST CONSERVATION EASEMENTS: 0.62 ACRES + 0.17 ACRES + 0.30 ACRES = 1.39 ACRES.

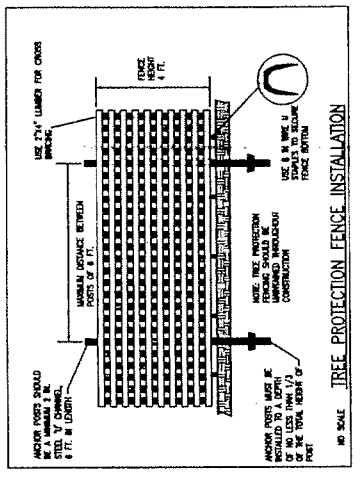
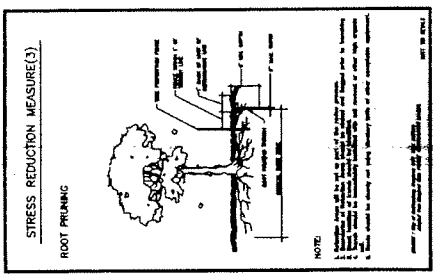
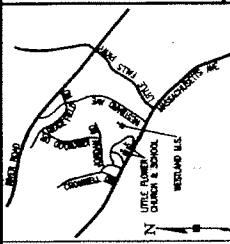


CHURCH OF THE LITTLE FLOWER
6601 MASSACHUSETTS AVE.
BETHESDA, MARYLAND

FOREST CONSERVATION PLAN

DATE: 9/20/03
PROJECT: 0301.1000
SHEET: 2 OF 2

NO.	DATE	DESCRIPTION	ISSUE
1	9/20/03	ISSUE	
2	03/06/04	MODED FOR COMMENTS AND SWM CHECK	



GENERAL NOTES:

1. PERCENTAGE OF CRITICAL ROOT ZONE DISTURBED:
34' DIA (A) = 5%
34' DIA (B) = 14%
45' DIA (C) = 30%
2. WITHIN CRITICAL ROOT ZONE, TREE PROTECTION FENCING AND ROOT PRUNING SHOULD BE ALIGNED WITH THE TREE PROTECTION FENCING TO AVOID ON-TRUNK STRESS REDUCTION MEASURE.

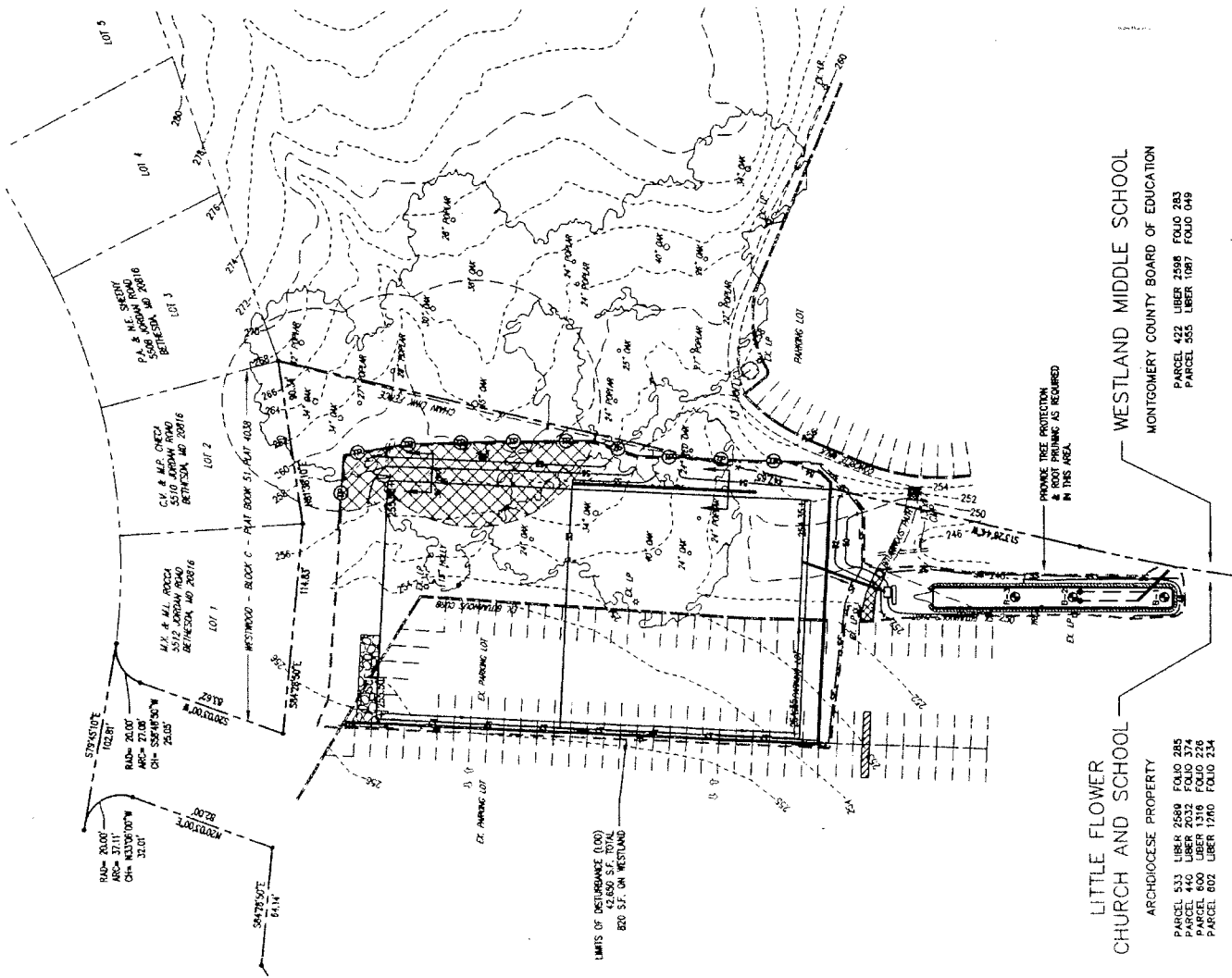
TREE PRESERVATION MEASURES:

- ROOT AND CROWN PRUNING:**
1. CROWN CLEAN PRUNING SHALL REMOVE ALL DEAD, DYING, AND DECLINING LIMBS AS WELL AS SOME SELECTIVE THINNING FOR OVERALL TREE HEALTH. SPECIAL CARE SHALL BE GIVEN TO THE SIDE OF THE TREE FACING THE ADJACENT PROPERTY. ALL WORK SHALL BE PERFORMED TO ANSI A-300 AGRICULTURAL STANDARDS.
 2. ROOT PRUNING SHALL BE PERFORMED PRIOR TO FENCING ONE FOOT INSIDE LOCATION OF TREE PROTECTION FENCING.
 3. ALL ROOTS TO A DEPTH OF TWO FEET SHALL BE PRUNED. DO NOT TEAR OR RIP THE ROOTS. THE USE OF SUPERSONIC AIR TOOLS (SSAT) TO EXPOSE AND HAND PRUNE SHALL BE THE PREFERRED METHOD AROUND THE 45' DIA TREE.
 4. AND HYDRORAZAL MIX SPECIFIED BELOW TO BACKFILL WOUNDS. DO NOT BACKFILL ROOT PRUNING TRENCH UNTIL INSPECTED BY MNRPPS INSPECTOR.
 5. DEEP ROOT AERATION SHALL BE PERFORMED BY DRILLING HOLES INTO THE SOIL INSIDE THE CRITICAL ROOT ZONE. THIS SHALL BE DONE ON A 3' X 3' SPACING WITH A HYDRORAZAL MIX PLACED IN THE HOLES. THE HOLES SHALL BE 2" IN DIAMETER AND DRILLED TO A DEPTH OF 18" INCHES.
 6. THE HYDRORAZAL MIX SHALL INCLUDE: MICROGREEN, INNOVACOL, BENTONITE, NATURAL VITAMIN SOIL CONDITIONER AND SLOW RELEASE FERTILIZATION CUSTOM BLENDED FOR THE MID-ATLANTIC REGION. HIGH IMPACT TREES SUCH AS THE 45' DIA SHALL RECEIVE AN ANNUAL SOIL INJECTION.
 7. CRITICAL ROOT ZONES SHALL BE MULCHED TO A DEPTH OF THREE INCHES WITH AED WOOD CHIPS OR SPREADED BARK MULCH PRIOR TO CONSTRUCTION.
 8. CRITICAL ROOT ZONES SHALL BE DEEP ROOT WATERED DURING TIMES OF DROUGHT WHEN LESS THAN ONE INCH OF RAIN FALLS EVERY TWO WEEKS.

TREE PRESERVATION INSPECTION SCHEDULE:

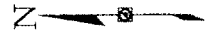
- THESE SHALL BE TWO INSPECTIONS FOR TREE SAVE.
1. THE FIRST INSPECTION SHALL OCCUR AFTER FLAGGING/STAKING OF THE LIMITS OF DISTURBANCE OR STREAM BUFFERS, AND PRIOR TO ANY CLEARING, GRADING OR SEWAGE CONTROL MEASURES. THIS INSPECTION IS TO VERIFY THE PROPOSED LIMITS OF DISTURBANCE AND TO VERIFY THE LOCATION OF ALL PROPOSED LIMITS OF DISTURBANCE AND DETOURING THE FINAL LOCATIONS OF SEWAGE CONTROL AND TREE SAVE DEVICES.
 2. THE SECOND INSPECTION SHALL OCCUR AFTER PLACEMENT OF SEWAGE CONTROL DEVICES AND TREE SAVE DEVICES AND PRIOR TO ANY CLEARING AND GRADING. THIS INSPECTION IS TO DETERMINE THE COMPLETION AND ADEQUACY OF PROTECTIVE MEASURES.

THE MARYLAND NATIONAL CAPITAL FREEDOM PLANNING COMMISSION
APPROVED
DATE: 10/20/03



LITTLE FLOWER CHURCH AND SCHOOL
ARCHDIOCESE PROPERTY
PARCEL 533 LIBER 2680 FOLIO 285
PARCEL 440 LIBER 2032 FOLIO 374
PARCEL 800 LIBER 1316 FOLIO 256
PARCEL 602 LIBER 1270 FOLIO 234

WESTLAW MIDDLE SCHOOL
MONTGOMERY COUNTY BOARD OF EDUCATION
PARCEL 422 LIBER 2556 FOLIO 049
PARCEL 555 LIBER 1087 FOLIO 049



Fuster, Marco

From: Clark, Marion
Sent: Tuesday, March 30, 2004 11:54 AM
To: Fuster, Marco
Subject: FW: Church of the Little Flower

-----Original Message-----

From: Hannon, Brian [mailto:Bhannon@sughrue.com]
Sent: Wednesday, March 10, 2004 4:07 PM
To: Clark, Marion
Cc: Kenneth Ellis [Kellis@Adtekengineers.Com] (Kenneth Ellis [kellis@adtekengineers.com]); Robert Brewer (Brewer, Robert G. [RGBREWER@lercheary.com])
Subject: RE: Church of the Little Flower

Marion,

Thanks very much. As to the recording of the easement, does that mean that we need to submit the easement that i gave you today to the Montgomery County Lands Record?? What is the procedure, I you know.

Brian

-----Original Message-----

From: Clark, Marion [mailto:Marion.Clark@mncppc-mc.org]
Sent: Wednesday, March 10, 2004 3:32 PM
To: Keellis (E-mail); Brian Hannon (E-mail)
Cc: Nadine Piontka (E-mail)
Subject: Church of the Little Flower

Ken and Brian,

I have signed off on the Final Forest Conservation Plan and Tree Save Plan for Church of the Little Flower. A metes and bounds descriptions of the Category I easements remains to be recorded in Montgomery County Land Records. The easements shall be recorded and the receipts, along with copies of the surveys and descriptions, returned to me. I will then send the agreement to our Legal Department for the final set of signatures.

Our Forest Conservation Administrator tells me that I can agree to the release of the sediment and erosion permits today March 10, 2004. However, the easements shall be recorded within a 45 day time frame. After 45 days, penalties of up to \$1000 per day can be imposed until the agreement is fully executed.

Please call or write if you have further questions.

Thanks for your cooperation,

Marion Clark

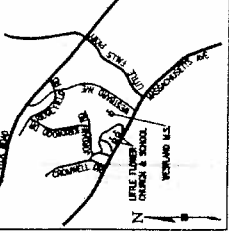
Marion F. Clark
Senior Environmental Planner

CHURCH OF THE LITTLE FLOWER
5607 MASSACHUSETTS AVE.
BETHESDA, MARYLAND

AMENDED FINAL FOREST CONSERVATION PLAN
DATE: 11/22/10
SCALE: 1" = 60'
SHEET 1 OF 2
PROJECT: 02011.080
DRAWN: L-101



NO.	DATE	DESCRIPTION	ISSUE
1	8/25/09	REVISED PER COMMENTS	
2	8/25/09	REVISED PER COMMENTS	
3	8/25/09	REVISED PER COMMENTS	



- LEGEND**
- EXISTING SPECIMEN TREE TO BE REMOVED
 - FOREST BOUNDARY
 - PERMANENT 8'x6' POST WITH SURVIVAL
 - LIMITS OF SURVEY
 - STREAM
 - STREAM BUFFER

FOREST CONSERVATION WORKSHEET
CHURCH OF THE LITTLE FLOWER

NET TRACT AREA	APR	MOR	IDA	MFD	OA
A. Total tract area	11.49				
B. Land dedication series (parks, county facility, etc.)	0.00				
C. Land dedication for roads or utilities (not being constructed by the client)	0.00				
D. Area to remain in commercial agricultural production/uses	0.00				
E. Other deductions (specify)	0.00				
F. Net Tract Area	11.49				

LAND USE CATEGORY (from those Touchlined Areas)
Total the number "1" under the appropriate land use, limit to only one entry.

Category	19%	20%
G. Alteration Threshold	1.72	2.30
H. Conservation Threshold	1.91	0.18
I. Existing forest cover	0.00	0.00
J. Area of forest above alteration threshold	0.00	0.00
K. Area of forest above conservation threshold	0.00	0.00
L. Forest retention above threshold with no mitigation	0.00	0.00
M. Clearing permitted without mitigation	0.00	0.00
N. Total area of forest to be cleared	0.00	0.00
O. Total area of forest to be retained	0.00	0.00
P. Reformation for clearing above conservation threshold	0.00	0.00
Q. Reformation for clearing below conservation threshold	0.00	0.00
R. Credit for retention above conservation threshold	0.00	0.00
S. Total reformation required	0.00	0.00
T. Total reformation (may not exceed 20% of "N")	0.00	0.00
U. Total reformation and alteration required	0.00	0.00
V. Total reformation and alteration required	0.00	0.00

**** 11.49 ACRES OF PROPERTY AREA**

1.12 ACRES OF OFFSITE FOREST BANK PREVIOUSLY PROVIDED AT THE BATCHELORS PURCHASE OFFSITE FOREST MITIGATION SITE (1.04 WAS REQUIRED)

0.08 ACRES OF ADDITIONAL FOREST BANK WAS PROVIDED OFFSITE

THIS WILL COMPENSATE FOR THE 0.04 ACRES OF EASEMENT REMOVED FOR THE PLAYGROUND (2:1 RATIO)

0.08 ACRES OF OFFSITE FOREST BANK IS REQUIRED TO MITIGATE FOR 0.04AC OF CAT. 1 FOREST REMOVAL ALONG MASSACHUSETTS AVE FOR POWER LINES

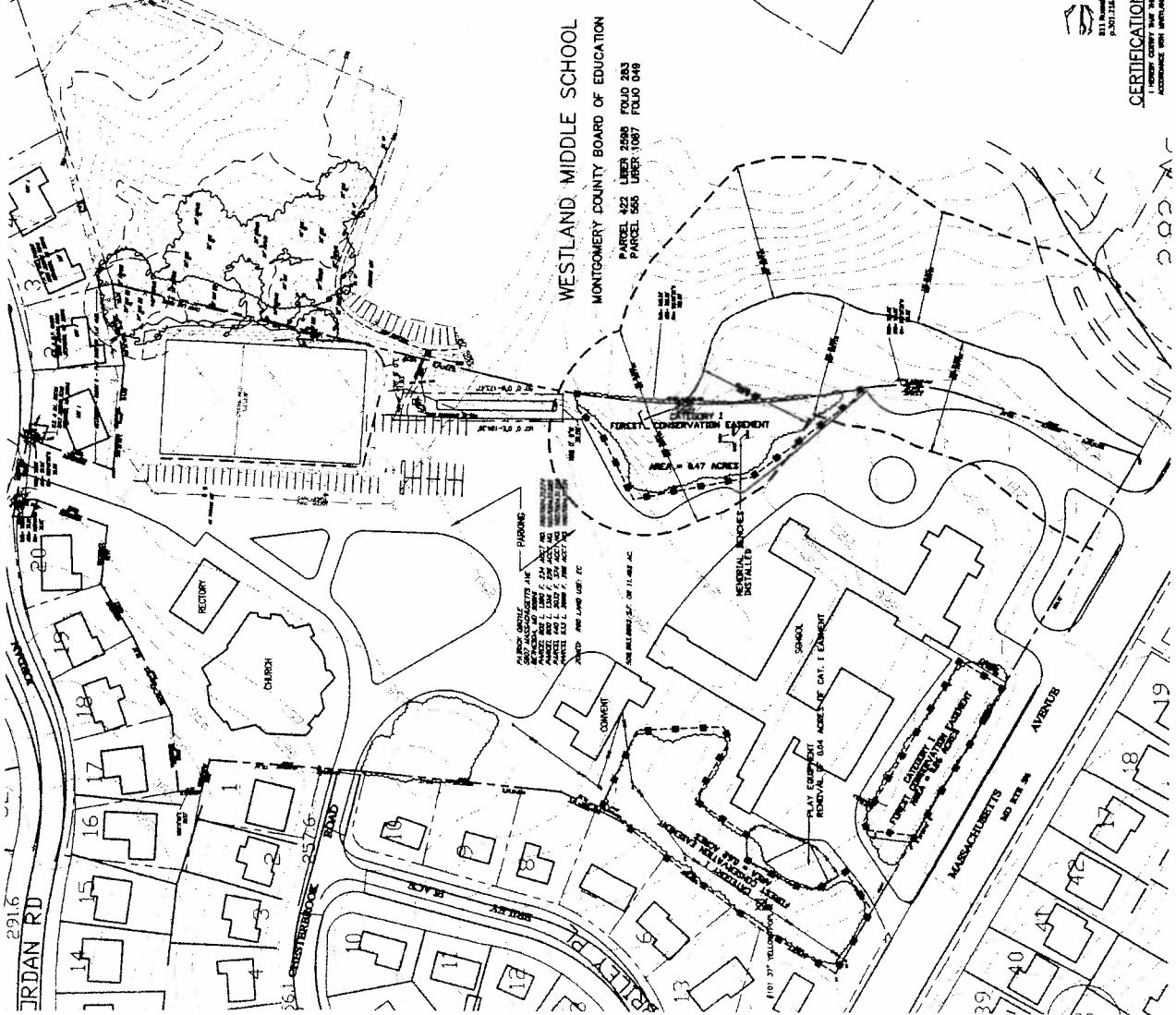
DEVELOPER'S CERTIFICATE
The undersigned agrees to include all the features of the Approved Final Forest Conservation Plan in the final construction of the project. The undersigned certifies that the project will be constructed in accordance with the approved plan and that the project will be maintained in accordance with the approved plan.

Developer's Name: **CHURCH OF THE LITTLE FLOWER**
 Contact Person or Owner: **CHURCH OF THE LITTLE FLOWER**
 Address: **5607 MASSACHUSETTS AVENUE**
 Phone and E-mail: **301.424.1111**
 Signature: *[Signature]*
 Title: **CHURCH PROFESSIONAL**

Norton Land Design
Landscape Architecture + Environmental Planning
1300 JEFFERSON PIKE, SUITE 200
GAITHERSBURG, MARYLAND 20878
301.281.6600 FAX: 301.281.6604
www.nortonlanddesign.com

CERTIFICATION OF QUALIFIED PROFESSIONAL
I HEREBY CERTIFY THAT THE PLAN SHOWS CORRECTLY THE BEST PRACTICE IN ACCORDANCE WITH MONTGOMERY COUNTY ORDINANCES GOVERNING FOREST CONSERVATION LINES.

4/11/11
 Signature: *[Signature]*
 Title: **CHURCH PROFESSIONAL**



NOTE: THE PROPOSED AMENDMENT IS TO SHOW CONDITIONS AS THEY EXIST ON THE SITE AS OF 2011 AND TO SHOW REVISIONS TO CONSERVATION EASEMENT AREAS.



June 2, 2011

Mr. Mark Pfefferte

Environmental Planning Division
Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Church of Little Flower
Request for Specimen Tree Removal and Impacts Variance
NORTON #10-059

Dear Mr. Pfefferte:

On behalf of the Church of Little Flower and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow removal of the following tree identified on the amended Final Forest Conservation Plan for the above-named project:

Specimen Tree Impacts Summary 30" +								
Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	CRZ (sq.ft.)	Tree Condition	Comments	Specimen CRZ Impacts	Status
101	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	37	9677	GOOD	TOUCHING POWERLINES	0%	TO BE REMOVED

Project Description and Purpose:

The Church of Little Flower is an approximately 11-acre parcel of land located along Massachusetts Avenue. There are no proposed construction activities on the property. The design team has been working with MNCPPC to formally record the category I easements established by the previous project along with removal of easement areas for built structures.

Pepco recently reviewed the above ground powerlines and notified the Church of the need to remove tree #101 because it is rubbing against the powerlines.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states that the applicant 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 violated 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.

Justification of Variance

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

Response: The tree must be removed due to conflicts with existing above ground utilities.

- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

Response: If required to keep the tree, a hazard condition will continue with this tree rubbing the powerlines.

- (3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;

Response: The specimen tree to be removed is within an existing forest setting. The tree will be removed with care toward the forest and powerlines. This results in maximum preservation of local habitat. The proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality*.

- (4) Provide any other information appropriate to support the request.

Response: Pepco has notified the Owner of the need to remove the tree.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which 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

- (1) Will confer on the applicant a special privilege that would be denied to other applicants;

Response: The Church Property is in conformance with the County's General plan and zoning requirements. As such, this is not a *special privilege* to be conferred on the applicant.

- (2) Is based on conditions or circumstances which are the result of the actions by the applicant;

The Church has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

- (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

- (4) Will violate State water quality standards or cause measurable degradation in water quality.

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

For the above reasons, the applicant respectfully requests that the MNCPPC Staff APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact/remove the specimen trees in order to allow the construction of this project.

Sincerely,

NORTON LAND DESIGN LLC.

A handwritten signature in black ink, appearing to read 'M Norton', written over the printed name below.

Michael Norton, ASLA, ISA, LTE

cc: Mr. Gerry Melbaum, Church of the Little Flower
Mr. Robert Brewer, Esq. Lerch, Early & Brewer

Bunnag, Candy

From: Michael Norton [michael_norton@nortonlanddesign.com]
Sent: Monday, June 13, 2011 10:22 AM
To: Bunnag, Candy
Cc: Pfefferle, Mark
Subject: FW: Church of Little Flower

Good morning Candy,

Per your most recent comment #3, below is all of the correspondence between the Church and Pepco. This should serve as further justification for removal of the specimen tree. I will print this for the next submittal.

Thanks,
mike

MICHAEL NORTON, ASLA, ISA, LTE
NORTON LAND DESIGN
LANDSCAPE ARCHITECTURE + ENVIRONMENTAL PLANNING

From: Gerry Mehlbaum [mailto:mehlbaum@lfchurch.org]
Sent: Monday, June 13, 2011 8:46 AM
To: 'Michael Norton'
Subject: FW: Church of Little Flower

Let's try this.

From: Gerry Mehlbaum [mailto:mehlbaum@lfchurch.org]
Sent: Friday, June 10, 2011 5:32 PM
To: 'michael_norton@nortonlandscapedesign.com'
Cc: 'Brewer, Robert G.'
Subject: FW: Church of Little Flower

Mike,

Please see the emails below which were also sent to Peck and Pfefferle from Dan Landry of Pepco. This should give you the info to answer Question #3 on the June 8, 2011 MNCPPC letter from Candy Bunnag.

The powerline is the only source of electricity to the convent which is a residential building housing 7 religious sisters 365 days a year.

I do not know when the line and the poles were installed but I think everyone believes that it was when the convent was built which was about 1953. I have no idea about how the line location was determined except that when the convent was built, the electric lines along Massachusetts Avenue were in place and were the closest source of electricity. The neighborhood behind and to the north of the Little Flower property was not built as far as I know.

Gerry

From: dplandry@pepco.com [mailto:dplandry@pepco.com]
Sent: Wednesday, April 20, 2011 4:40 PM
To: Gerry Mehlbaum
Cc: JRLucas@pepco.com; Peck, Stephen; Pfefferle, Mark; pjbyrne@pepco.com
Subject: RE: Church of Little Flower

Gerry,

Of course, I can and will cancel the tree removal.

I am concerned about the safety of the conditions of the site.

The tree is in contact with the power lines and I don't think there is much room to move the lines. I recognize that Pepco likely built the lines that way, but now that I am aware of the hazard, I can not ignore it.

There is a play ground close by and the tree poses a threat to the children if they were to touch it under the right circumstances, because it could become energized. The tree could also start a fire in the woods, which could have significant impacts.

It is a serious situation that we must find a solution for soon. I understand the value of the tree ecologically, but in its current situation, it is hazardous.

I have copied Japheth Lucas on this email as well. He is a supervisor in our Overhead Lines department. Perhaps he can find a temporary solution while this process plays itself out.

Japheth,

We will not be able to remove the tree at the Church of the Little Flower on Mass ave, as was scheduled on April 26. Since it is in contact with the primary, would you please re-visit the site and see if there is anything we can do temporarily to move the primary away from the tree so it is not in direct contact with the power lines to reduce the immediate hazard of the situation.

Thank You,

Daniel Landry
Senior Staff Forester
Maryland Licensed Forester
ISA Certified Arborist/Utility Specialist

Pepco, A PHI Company
301-670-8741.....(Office)
240-508-3591.....(Cell)
164*21*28754.....(Nextel)

From: "Gerry Mehilbaum" <mehilbaum@lfchurch.org>
To: <dplandry@pepco.com>
Date: 04/20/2011 03:45 PM
Subject: RE: Church of Little Flower

Dan,

Thanks and sorry for the inconvenience. Are you able to stop the tree from being taken down next week?

Gerry Mehilbaum

From: dplandry@pepco.com [mailto:dplandry@pepco.com]
Sent: Wednesday, April 20, 2011 3:35 PM
To: Peck, Stephen
Cc: Bunnag, Candy; Pfefferle, Mark; mehlbaum@lfchurch.org; michael_norton@nortonlanddesign.com
Subject: Re: Church of Little Flower

I have asked our Right of Way department to research the possibility of an easement as well.

Thank You,

Daniel Landry
Senior Staff Forester
Maryland Licensed Forester
ISA Certified Arborist/Utility Specialist

Pepco, A PHI Company
301-670-8741.....(Office)
240-508-3591.....(Cell)
164*21*28754.....(Nextel)

From: "Peck, Stephen" <Stephen.Peck@mncppc-mc.org>
To: <mehlbaum@lfchurch.org>
Cc: "Bunnag, Candy" <Candy.Bunnag@mncppc-mc.org>, <dplandry@pepco.com>, "Pfefferle, Mark" <Mark.Pfefferle@mncppc-mc.org>, <michael_norton@nortonlanddesign.com>
Date: 04/20/2011 09:46 AM
Subject: Re: Church of Little Flower

Gerry,

I have done some research. I did not find any granted utility easement; an easement the church granted to pepco. The tree in question is and has been within a conservation easement area as shown on the approved final forest conservation plan #mr2002202 for the church of the little flower.

I measured the tulip poplar tree that is touching one of the power lines. It is 37 inches in diameter at breast height. This tree can not be cut until MNCPPC agrees in writing to a mitigation plan for removal of this large tulip poplar tree.

An approved variance may also be required as part of the written mitigation plan.

This mitigation plan can be part of you forest conservation amendment approval.

Sincerely,

Stephen Peck
Forest conservation inspector

-----Original Message-----

From: Gerry Mehlbaum <mehlbaum@lfchurch.org>
To: Peck, Stephen <Stephen.Peck@mncppc-mc.org>
Sent: Wed Apr 20 09:08:58 2011
Subject: FW: Church of Little Flower

Good morning, Stephen!

Any word from MNCPPC on whether Pepco can take down the tree? If still unsure let me know so I can call Pepco to postpone the removal scheduled for April 26/27.

Gerry

From: Gerry Mehlbaum [<mailto:mehlbaum@lfchurch.org>]
Sent: Tuesday, April 19, 2011 4:44 PM
To: 'Peck, Stephen'
Subject: RE: Church of Little Flower

Stephen,

Were you able to discuss the tree removal issue with your supervisor and/or legal staff? We are still checking to see if there are any easements for Pepco.

Gerry

From: Peck, Stephen [<mailto:Stephen.Peck@mncppc-mc.org>]
Sent: Wednesday, April 13, 2011 4:07 PM
To: Gerry Mehlbaum
Subject: RE: Church of Little Flower

I can be there at 10:30 am tomorrow morning. If that is convenient, where shall I meet you?

From: Gerry Mehlbaum [<mailto:mehlbaum@lfchurch.org>]
Sent: Wednesday, April 13, 2011 3:33 PM
To: Peck, Stephen

Subject: RE: Church of Little Flower

ATTACHMENT 8
(5 of 7)

Stephen,

If you call in advance, I will try to meet you at the site.

Thanks.

Gerry

From: Peck, Stephen [<mailto:Stephen.Peck@mncppc-mc.org>]
Sent: Wednesday, April 13, 2011 3:25 PM
To: mehlbaum@lfchurch.org
Cc: Michael Norton; Pfefferle, Mark
Subject: RE: Church of Little Flower

Mr. Mehlbaum,

I will be out in the Bethesda area tomorrow and will inspect the tree in question. If you like I can call before I get to the property.

I understand the tree has been marked. I will sent you a follow email after my inspection.

Sincerely,

Stephen

Stephen D. Peck

Forest Conservation Inspector

Certified Arborist

Development Activity and Regulator Coordination

Montgomery County Planning Department

Maryland National Capital Park and Planning Commission

ATTACHMENT B
(6 of 7)

Office: 301-495-4564

Cell: 240-638-6681

Fax: 301-495-1303

From: Michael Norton [mailto:michael_norton@nortonlanddesign.com]
Sent: Monday, April 11, 2011 8:10 PM
To: Peck, Stephen
Cc: Gerry Mehlbaum (mehlbaum@lfchurch.org); Benjaminson, Shawn; Brewer, Robert G.; Pfefferle, Mark
Subject: Church of Little Flower

Good evening Stephen,

I wanted to let you know, Pepco has marked one tree behind the playground to be removed next week. It is rubbing against the powerlines and is posing a hazard at told to the Church. Gerry has indicated the tree is marked in the field.

Thanks,

Mike

Michael Norton, ASLA, ISA, LTE
Norton Land Design LLC
811 Russell Avenue, Suite 301
Gaithersburg, MD 20879
p.301.216.9650 f.301.216.9649
michael_norton@nortonlanddesign.com
<http://www.nortonlanddesign.com/>

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

June 29, 2011

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Church of the Little Flower, MR 2002202, FCP amendment applied for in 3/2/2011

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law 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.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

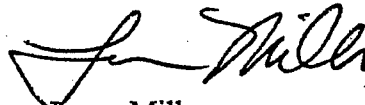
Françoise Carrier
June 29, 2011
Page 2

2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

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