



Preliminary Forest Conservation Plan No. S-2819, Olney Assisted Living Staff Report Date: November 4, 2011

-  Mary Jo Kishter, Senior Planner, Area 3 maryjo.kishter@montgomeryplanning.org, 301.495.4701
-  Richard A. Weaver, Acting Supervisor, Area 3, richard.weaver@montgomeryplanning.org, 301.495.4544
-  John Carter, Chief, Area 3, john.carter@montgomeryplanning.org, 301.495.4575
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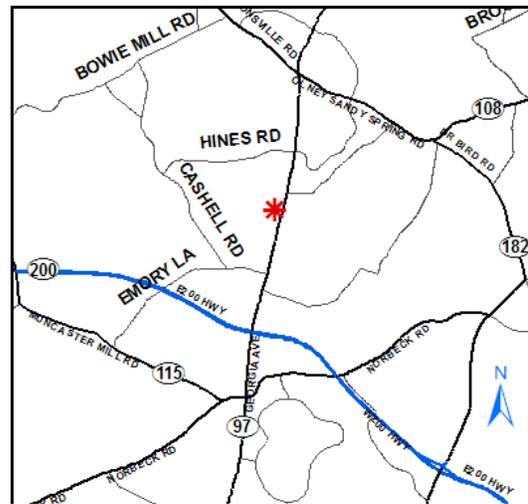
Description

Board of Appeals No. S-2819: Olney Assisted Living

A. Preliminary Forest Conservation Plan No. S-2819: Olney Assisted Living -

Request for approval of a Preliminary Forest Conservation Plan as part of a Special Exception application for a 64-bed domiciliary care home; located on Parcel P707, in the 17000 Block of Georgia Avenue (MD 97), approximately 640 feet south of its intersection with Old Baltimore Road in Olney; R-200 Zone; 3.59 acres, Olney Master Plan area

Staff Recommendation: Approval with conditions



Summary

The applicant requests approval of a preliminary forest conservation plan as part of an application for a special exception to construct a 64-bed domiciliary care home. The application proposes to clear 2.31 acres of forest. A portion of the reforestation requirement will be met on site and the remainder will be satisfied through an offsite forest bank. A request for a variance to remove twelve (12) specimen trees, and impact the critical root zones of four (4) specimen trees is included in this application. Staff finds that with the conditions recommended in this staff report, the application for Special Exception No. S-2819 complies with Chapter 22A of the Montgomery County Code.

PRELIMINARY FOREST CONSERVATION PLAN RECOMMENDATION AND CONDITIONS:

Approval of Preliminary Forest Conservation Plan, subject to the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated October 20, 2011. The applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate, including:
 - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
 - b. The Final Forest Conservation Plan must include a planting plan for the onsite forest planting area.
 - c. The Final Forest Conservation Plan must include eleven (11) native canopy trees with a minimum size of 3 inches in diameter at breast height (DBH) (or native canopy trees with a 129-inch cumulative DBH, individual trees with a minimum size of 3 inches DBH) as mitigation for the loss of specimen trees.
 - d. The Sediment Control Plan must be consistent with final limits of disturbance as approved by the M-NCPPC staff.
 - e. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of all forest conservation easements.
2. The record plat must show a Category I conservation easement over all retained and planted forest as specified on the approved Forest Conservation Plan prior to clearing and grading occurring onsite.

SITE DESCRIPTION

The subject property, ("Subject Property") or ("Property"), is identified as Parcel P707 on Tax Map HT 51 and is located in the 17000 Block of Georgia Avenue (MD 97), approximately 640 feet south of its intersection with Old Baltimore Road in the Olney Master Plan area. It is zoned R-200 and is 3.59 acres in size. A small asphalt parking area, gravel driveway, portable trailer, and a shed are currently occupying the Property.

The property is located within the Upper Rock Creek Watershed, which is classified by the State of Maryland as Use III waters. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. The site contains 2.47 acres of forest. There are forty-four (44) large or specimen trees located on or adjacent to the property.

Adjacent land uses include single family residences to the west, the Olney Church of Christ to the north, and a day-care facility to the south. Confronting the Property across divided Georgia Avenue is a 38-acre undeveloped parcel in the RNC Zone and the Sandy Spring Volunteer Fire Department.



Vicinity Map



Site Aerial View

PROJECT DESCRIPTION

The Preliminary Forest Conservation Plan was prepared as part of a Special Exception application for a 64-bed domiciliary care home (Attachment A). The proposed development will provide housing for residents suffering from Alzheimer's Disease and other forms of dementia. The project includes 2.47 acres of forest clearing, the removal of twelve (12) specimen trees, and impacts to the critical root zones of four (4) specimen trees for the proposed building and associated parking. The applicant has made an attempt to save some forest along the northern boundary of the property and to preserve specimen trees along the frontage with Georgia Avenue. Much of the remaining forest will be removed to accommodate the development.

ANALYSIS AND FINDINGS

Environmental Guidelines

The application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 3.59-acre site on June 21, 2011. The NRI/FSD identified all of the required environmental features on, and adjacent to the property, as further described in the Environmental Guidelines for Environmental Management of Development in Montgomery County. The topography on the property is gently sloping to the west. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. The site is located within the Upper Rock Creek watershed, which is classified by the State of Maryland as Use III waters. The property is not located within the Upper Rock Creek Special Protection Area (SPA), nor is it located within the Patuxent River Primary Management Area (PMA). The subject property is located east of the boundaries of the Upper Rock Creek SPA.

Forest Conservation

The application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan has been submitted for review. There is approximately 2.47 acres of existing forest on the property. The forest is dominated by tulip tree (*Liriodendron tulipifera*), and oak species (*Quercus* sp.). There are forty-four (44) large or specimen trees located on or adjacent to the property.

The project proposes to clear 2.31 acres of forest, resulting in a forest planting requirement of 1.61 acres. The applicant proposes to retain 0.16 acres of forest and plant an additional 0.07 acres of forest adjacent to the existing forest. The planting will satisfy a portion of the forest planting requirement. This combined 0.23 acres of forest will be protected in a Category I conservation easement. The easement will be located along the northern property line, contiguous with forest on the adjacent property. The easement will protect the on-site forest as well as the critical root zones of healthy specimen trees located on the adjacent property to the north. The proposed development will include a fence around the perimeter of the building and outdoor areas for the safety of the residents. The fence will also offer additional protection to the forest in the proposed conservation easement. The remaining 1.54 acres of forest planting requirement will be satisfied at an approved off-site forest mitigation bank.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery 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 trees that: measure 30 inches or greater, DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The applicant submitted a variance request on October 3, 2011 and provided additional justification in a letter dated October 13, 2011 (Attachments B and C). The applicant proposes to remove twelve (12) trees that are 30 inches and greater, DBH, and to impact, but not remove, four (4) others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Trees to be removed

Tree Number	Species	DBH Inches	Status
3	Black Oak	49	Poor condition; grading parking lot
6	White Oak	39	Good condition; within parking lot
7	White Oak	43	Poor/Hazard condition; grading for parking lot
8	White Oak	55	Poor/Hazard condition; within parking area
10	White Ash	31	Fair/Poor condition; within parking area
11	White Ash	34	Poor condition; within parking area
23	White Oak	46	Fair condition; within building footprint
34	Red Oak	32	Fair condition; stormwater management features, building
39	White Oak	35	Fair/Poor condition; stormwater management feature, building
40	White Oak	31	Fair condition; stormwater management feature, building
41	White Oak	31	Good condition; within building footprint, stormwater management
43	Black Oak	35	Fair condition; stormwater management, building, parking lot, storm drain

Trees to be affected but retained

Tree Number	Species	DBH Inches	CRZ Impact	Status
2	White Oak	31	16%	Good condition;
4	White Oak	38	13%	Good condition; grading for parking lot; shared use path construction
5	White Oak	31	21%	Good condition; grading for parking lot; shared use path construction
35	Black Oak	34	19%	Good condition; storm drain construction

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

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

- *Response (Linowes and Blocher, October 3, 2011) - "The property is currently undeveloped, with site improvements limited to a residential driveway apron onto Georgia Avenue, a gravel drive, the remnants of a small asphalt parking lot, and a portable trailer and shed. The Property currently contains 2.47 acres of mixed deciduous forest, and a number of large trees scattered throughout the site. Of the twelve Subject Trees, four are in poor condition and two are in fair/poor condition. Of these, two have been identified as hazards, and one has a projected survival of only one to two years. Another four of the Subject Trees are in fair condition, two of which are in declining health. Only two of the Subject Trees are rated to be in good condition, and both are located interior to the site*

The Property is zoned R-200 and is located adjacent to Georgia Avenue. Single-family residential structures adjoin the Property to the west, a church adjoins to the north, and a day-care facility exists to the south.

The Olney Master Plan, approved and adopted in April, 2005 ("Master Plan") "[s]upport(s) elderly housing projects of appropriate densities at appropriate locations," and, more specifically, recommends this special exception use on some of the vacant and redevelopable sites in the planning area. Master Plan, p. 62. The Master Plan further recommends a minimum 100-foot setback from the Georgia Avenue right-of-way for all structures and emphasizes compatibility with existing residential neighborhoods. Master Plan, pp. 41-42. These objectives serve to limit placement of potential structures on the Property and, in this instance, dictated placement of the proposed structure in the center of the site, with parking towards the east, away from single-family residences."

Development on the property is constrained by existing site conditions including the existing forest and numerous specimen trees located throughout the 3.75-acre site. The applicant proposes to construct an assisted living facility to specifically serve that portion of the elderly population with Alzheimer's Disease and other forms of dementia. This facility requires a building, associated parking, and required stormwater management features. Additionally, the Applicant is required to construct a shared use path along Georgia Avenue. The existing conditions, including existing forest, the number and locations of the specimen trees, and the requirements for development on the property have limited the ability to avoid removal and impact to specimen trees. The majority of the trees proposed for removal are in "fair" or "poor" condition. Staff has reviewed this application and based on the existing conditions on the property, staff finds that there is an unwarranted hardship.

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

- *Response (Linowes and Blocher, October 3, 2011) - "Preservation of the Subject Trees would render the Property un-developable because of the dispersal of the trees throughout the site. The potential inability to remove the Subject Trees would therefore deprive the Applicant of the opportunities enjoyed by neighboring and similar properties that do not have protected trees located in the most developable area of their properties."*

The proposed removal and impacts to the subject trees are due not only to the construction of the building, but to the construction associated with the required access driveway, parking lot, and stormwater management facility needed to accommodate the proposed facility. Additionally, other agency requirements for construction of a shared use path have resulted in additional impacts. The applicant has demonstrated avoidance and minimization by designing a retaining wall to save some specimen trees and using the existing driveway on the adjacent property to the north to access their site. Staff has reviewed the application and finds that enforcing the rules of the variance provision would deprive the landowner of rights commonly enjoyed by others.

(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 (Linowes and Blocher, October 3, 2011) - "As part of the Application, the Applicant has prepared a Preliminary Forest Conservation Plan ("PFCP") and a Stormwater Management Concept Plan. The Property currently contains no stormwater management on-site and runoff onto residential properties to the west is a significant problem. Therefore, the provision of stormwater facilities as part of the development of the Property in conformance with the 2009 Maryland Department of the Environment Stormwater Regulations will significantly improve the stormwater quality on the Property and in the adjacent area. Additionally, the Forest Conservation Worksheet demonstrates that the goals and objectives of Chapter 22A of the Code, including State water quality standards, are satisfied with the removal of the subject Trees."*

Staff has reviewed the application and agrees that the variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. Approval of a Stormwater Management Concept Plan will be required by the Montgomery County Department of Permitting Services at the time of preliminary plan review.

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

- *Response (Linowes and Blocher, October 3, 2011) - "Efforts have been made to save significant trees on the Property wherever possible. These efforts have resulted in the anticipated preservation of Significant Trees 33 (fair condition) and 36 (good condition) and Specimen Trees 4, 5, and 35 (all in good condition), as well as the preservation of a forest stand in the northwest corner of the Property. While the proposed project will impact the critical root zone for four of these trees, it is expected that the tree save measures shown on the attached plan and on the PFCP will result in their preservation. Additionally, as part of the Application, the Applicant is proposing the introduction of an approximately 10,000 square-foot Category I Forest Conservation Easement along the northern edge of the Property.... While preserving additional trees on the site was explored by the Applicant, given the failing health of a number of the Subject Trees and the location of the two healthier trees towards the center of the Property, further tree save was not feasible..".*

"Finally, in conformance with Section 22A-21(d) of the Code, Variances will not confer a special privilege on the Applicant that would be denied to others, but rather, as discussed above, will prevent the deprivation of the Applicant's rights. The need for the Variances do not arise out of actions by the Applicant, but rather existing site conditions, and do not arise from conditions on neighboring properties."

- *Additional Response (Linowes and Blocher, October 14, 2011) – The Applicant provided justification regarding the single-story design of the building as it relates to the variance request. "With regard to the one-story nature of the proposed use, it should be noted first and foremost that the project is being developed to house residents suffering from Alzheimer's Disease and other forms of dementia. As more fully explained in the attached explanation from the Applicant, free ambulation is critical to these residents' sense of well-being and ability to socialize. Having all services on one floor allows for this free ambulation and allows residents access to all portions of the resident living areas. A multi-story building would be particularly problematic for the free movement of residents on upper floors because they could not access the community spaces and exterior courtyards on the first floor without being supervised in using the elevator or stairwell. Areas to which residents do not have direct access include only the main kitchen, reception area, director's office and storage, work and conference rooms at the front of the building, which comprise a total of only approximately 3000 square feet and cannot be relocated to a second story. In fact, the addition of another floor would serve to increase the building footprint by adding a stairwell and elevator areas.*

Additionally, the interior design of the project is such that it gives visual cues to residents regarding their “neighborhood” within the building, with distinctive doors, front porches and décor. Separating neighborhoods onto two levels would make the identification of a neighborhood through use of these cues much more difficult for residents

Finally, the design of the building as one story is important to ensure compatibility with adjacent and surrounding uses. The church located to the north of the Property is one story in height, as is the daycare facility to the south. To the west are single family residences of one or two stories. The Olney Master Plan, approved and adopted in April 2005 (“Master Plan”) emphasizes the low-density residential character of this section of Georgia Avenue. The Master Plan recommends maintaining this residential character by, in part, minimizing views of structures along Georgia Avenue through extensive setbacks and landscaping. Increasing the vertical profile of the proposed building would only serve to make it more visible to the street and would be contrary to the Master Plan objectives. Additionally, the grade of the Property is such that it is significantly higher than adjacent land uses to the west, making a lower profile even more important for purposes of compatibility with the single-family residences adjoining the Property to the west.”

Section 22A-21 of the County Forest Conservation Law sets forth the 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 forest conservation plan:

Variance Findings - Staff has made the following determination 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.*

Granting the variance will not confer a special privilege on the applicant as the removal of the twelve trees and the impacts to the four trees is due to the development of the site. The 3.75-acre property contains 2.47 acres of forest. The specimen trees are located throughout the property, both within and outside of the forest. These trees are located within the developable area of the site. Granting a variance to allow land disturbance within the developable portion of the site is not unique to this applicant. Staff has determined that the impacts and removal of the trees subject to the variance requirement cannot be avoided. Therefore, staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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. The requested variance is based upon existing site conditions.

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 existing conditions and the proposed site design and layout on the subject property, and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan approval will be required by the Montgomery County Department of Permitting Services.

Mitigation for Trees Subject to the Variance Provision - There are twelve (12) trees proposed for removal in this variance request. Eight (8) of these trees are located within the existing forest and their loss is accounted for in the forest conservation worksheet. Mitigation for their loss is included in the reforestation requirement as determined by the worksheet. Additional mitigation for the removal of the four (4) trees (#34, #39, #40, and #41) that are located outside of the existing forest is recommended. Mitigation should be at a rate that approximates the form and function of the trees removed. Therefore, staff is recommending that replacement occur at a ratio of approximately 1" Diameter at Breast Height (DBH) for every 4" DBH removed, using trees that are a minimum of 3" DBH. For example, this means that for the 129 caliper inches of trees removed, they will be mitigated by the applicant with eleven (11) native, canopy trees with a minimum size of 3" DBH on the site. While these trees will not be as large as the trees lost, they will provide some immediate canopy and ultimately replace the canopy lost by the removal of these trees. There is some disturbance within the critical root zones of four (4) trees, but they are candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - 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 October 5, 2011. On October 19, 2011, the County Arborist issued recommendations on the variance request and recommended the variance be approved with mitigation (Attachment D).

Variance Recommendation - Staff recommends that the variance be granted.

CONCLUSION

The Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code. Therefore, staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this staff report. The variance approval is included in the Planning Board's approval of the Preliminary Forest Conservation Plan.

Attachments

Attachment A – Proposed Preliminary Forest Conservation Plan
Attachment B – Applicant's Variance Request dated October 3, 2011
Attachment C – Applicant's Additional Justification for Variance Request dated October 13, 2011
Attachment D - County Arborist Letter dated October 19, 2011

October 3, 2011

C. Robert Dalrymple
bdalrymple@linowes-law.com
301.961.5208

Erin E. Girard
egirard@linowes-law.com
301.961.5153

Ms. Mary Jo Kishter
Senior Planner, Area 3, Environmental Planning
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Olney Assisted Living Forest Conservation Variance; Special Exception
Case No. S-2819

Dear Ms. Kishter:

On behalf of our client, Olney Assisted Living Partners, LLC (the "Applicant"), contract purchaser of the approximately 3.59 acre parcel of land located on the west side of the 17000 block of Georgia Avenue, south of Old Baltimore Road, more particularly known as all of Parcel 707 (the "Property"), and the applicant for the above-referenced Special Exception Application (the "Application"), and pursuant to Section 22A-21(b) of the Montgomery County Code (the "Code"), we hereby request a variance from the provisions of the Maryland Code, Natural Resources § 5-1607(c)(2)(ii) and § 5-1607(c)(2)(iii) to allow for the removal of 12 trees on the Property currently having a diameter of 30 inches or more and disturbances to three on-site and one off-site trees having diameters of 30 inches or more (the "Variances"). As explained more fully below, retention of the trees proposed to be removed, identified on the plan attached hereto as Exhibit "A" (the "Subject Trees"), would result in undue hardship to the Applicant, and the peculiar conditions of the Property and the nature of the proposed improvements justify the granting of the Variances pursuant to Section 22A-21(b) of the Code.

In accordance with Section 22A-21(b) of the Code, removal of the Subject Trees would satisfy the variance requirements as follows:

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

The Property is currently undeveloped, with site improvements limited to a residential driveway apron onto Georgia Avenue, a gravel drive, the remnants of a small asphalt parking lot, and a portable trailer and shed. The Property currently contains 2.47 acres of mixed deciduous forest, and a number of large trees scattered throughout the site. Of the twelve Subject Trees, four are in poor condition and two are in fair/poor condition. Of these, two have been identified as hazards, and one has a projected survival of only one to two years. Another four of the Subject Trees are in fair condition, two of which are in declining health. Only two of the Subject Trees are rated to be in good condition, and both are located interior to the site.

The Property is zoned R-200 and is located adjacent to Georgia Avenue. Single-family residential structures adjoin the Property to the west, a church adjoins to the north, and a day-care facility exists to the south.

The Olney Master Plan, approved and adopted in April, 2005 ("Master Plan") "[s]upport(s) elderly housing projects of appropriate densities at appropriate locations," and, more specifically, recommends this special exception use on some of the vacant and redevelopable sites in the planning area. Master Plan, p. 62. The Master Plan further recommends a minimum 100-foot setback from the Georgia Avenue right-of-way for all structures and emphasizes compatibility with existing residential neighborhoods. Master Plan, pp. 41-42. These objectives serve to limit placement of potential structures on the Property and, in this instance, dictated placement of the proposed structure in the center of the site, with parking towards the east, away from single-family residences. *See*

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

Preservation of the Subject Trees would render the Property un-developable because of the dispersal of the trees throughout the site. The potential inability to remove the Subject Trees would therefore deprive the Applicant of the opportunities enjoyed by neighboring and similar properties that do not have protected trees located in the most developable areas of their properties.

- (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;*

As part of the Application, the Applicant has prepared a Preliminary Forest Conservation Plan ("PFCP") and a Stormwater Management Concept Plan. The Property currently contains no stormwater management on-site and runoff onto residential properties to the west is a significant

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problem. Therefore, the provision of stormwater facilities as part of the development of the Property in conformance with the 2009 Maryland Department of the Environment Stormwater Regulations will significantly improve the stormwater quality on the Property and in the adjacent area. Additionally, the Forest Conservation Worksheet demonstrates that the goals and objectives of Chapter 22A of the Code, including State water quality standards, are satisfied with the removal of the Subject Trees.

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

Efforts have been made to save significant trees on the Property wherever possible. These efforts have resulted in the anticipated preservation of Significant Trees 33 (fair condition) and 36 (good condition) and Specimen Trees 4, 5 and 35 (all in good condition), as well as the preservation of a forest stand in the northwest corner of the Property. While the proposed project will impact the critical root zone for four of these trees, it is expected that the tree save measures shown on the attached plan and on the PFCP will result in their preservation. Additionally, as part of the Application, the Applicant is proposing the introduction of an approximately 10,000 square-foot Category I Forest Conservation Easement along the northern edge of the Property and approximately 11,000 square feet in Category II Forest Conservation Easements along the northern and eastern portions of the Property, as shown on the PFCP. While preserving additional trees on the site was explored by the Applicant, given the failing health of a number of the Subject Trees and the location of the two healthier trees towards the center of the Property, further tree save was not feasible.

To mitigate the loss of the Subject Trees, the Applicant is proposing the implementation of the conservation easements noted above, as well as substantial on-site plantings and off-site mitigation. The on-site plantings will provide extensive environmental benefits and tree canopy, more than compensating for the loss of the Subject Trees. A total of 36 trees are proposed to be planted, with a projected 20-year canopy of 0.74 acres. Additionally, the Applicant is proposing 1.29 acres of forest mitigation, with .07 acres planted on-site and 1.22 acres of off-site forest mitigation banking at 2:1, for a total of 2.44 acres of existing forest being protected.

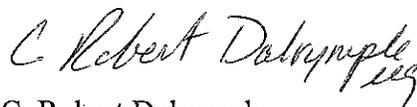
Finally, in conformance with Section 22A-21(d) of the Code, the Variances will not confer a special privilege on the Applicant that would be denied to others, but rather, as discussed above, will prevent the deprivation of Applicant's rights. The need for the Variances do not arise out of actions by the Applicant, but rather existing site conditions, and do not arise from conditions on neighboring properties.

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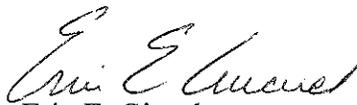
We believe the foregoing, as well as the information contained in the PFCP and Application materials, clearly demonstrate that the grant of the Variances pursuant to Section 22A-21(b) of the Code is appropriate in this case. If, however, you have any questions or concerns, or require any additional information for your review of this request, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple


Erin E. Girard

cc: Elsabet Tefaye
John Carter
Donald Feltman
Ed Kubis
Jason Erb

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

Appendix C

October 13, 2011

C. Robert Dalrymple
bdalrymple@linowes-law.com
301.961.5208
Erin E. Girard
egirard@linowes-law.com
301.961.5153

Ms. Mary Jo Kishter
Senior Planner, Area 3, Environmental Planning
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Olney Assisted Living; Special Exception Case No. S-2819

Dear Ms. Kishter:

On behalf of our client, Olney Assisted Living Partners, LLC (the "Applicant"), and as a follow-up to our October 3, 2011 letter to you requesting tree variances for the property that is the subject of the above-referenced special exception (the "Property"), the purpose of this letter is to provide you with the information you requested regarding efforts taken by the Applicant to minimize imperviousness on the Property, and justification regarding why the domiciliary care structure proposed for the Property is one story in height.

With regard to imperviousness on the Property, the proposed domiciliary care use requires a contiguous footprint of approximately 31,000 square feet, which, as discussed more fully below, cannot be accommodated on separate levels. This results in a certain amount of unavoidable impervious area on the Property that represents the minimum reasonably necessary for the proposed use. Outside of this set area, however, efforts were made throughout the design of the project to minimize and reduce impervious surfaces. For example, the access drive for the proposed use was combined with an existing driveway on the property to the north, eliminating the need for a separate impervious drive aisle and apron. Parking has been reduced to 30 spaces, which the Applicant considers the bare minimum for a project of this type. Pervious courtyards are proposed within the building footprint, and recreational areas in the courtyards and around the proposed building do not include large patio surfaces, but rather 5 foot wide sidewalks, minimizing site imperviousness.

With regard to the one-story nature of the proposed use, it should be noted first and foremost that the project is being developed to house residents suffering from Alzheimer's Disease and other forms of dementia. As more fully explained in the attached explanation from the Applicant, free ambulation is critical to these residents' sense of well-being and ability to socialize. Having all services on one floor allows for this free ambulation and allows residents access to all portions of

Ms. Mary Jo Kishter

October 13, 2011

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the resident living areas. A multi-story building would be particularly problematic for the free movement of residents on upper floors because they could not access the community spaces and exterior courtyards on the first floor without being supervised in using the elevator or stairwell. Areas to which residents do not have direct access include only the main kitchen, reception area, director's office and storage, work and conference rooms at the front of the building, which comprise a total of only approximately 3000 square feet and cannot be relocated to a second story. In fact, the addition of another floor would serve to increase the building footprint by adding stairwell and elevator areas.

Additionally, the interior design of the project is such that it gives visual cues to residents regarding their "neighborhood" within the building, with distinctive doors, front porches and décor. Separating neighborhoods onto two levels would make the identification of a neighborhood through use of these cues much more difficult for residents.

Finally, the design of the building as one story is important to ensure compatibility with adjacent and surrounding uses. The church located to the north of the Property is one story in height, as is the daycare facility to the south. To the west are single family residences of one or two stories. The Olney Master Plan, approved and adopted in April 2005 ("Master Plan") emphasizes the low-density residential character of this section of Georgia Avenue. The Master Plan recommends maintaining this residential character by, in part, minimizing views of structures along Georgia Avenue through extensive setbacks and landscaping. Increasing the vertical profile of the proposed building would only serve to make it more visible to the street and would be contrary to the Master Plan objectives. Additionally, the grade of the Property is such that it is significantly higher than adjacent uses to the west, making a lower profile even more important for purposes of compatibility with the single-family residences adjoining the Property to the west.

We hope the foregoing information is helpful and responsive to your inquiry. If you have any questions or concerns, or require any additional information, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



Erin E. Girard

Ms. Mary Jo Kishter

October 13, 2011

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cc: Elsabett Tesfaye
John Carter
Donald Feltman
Ed Kubis
Jason Erb

OLNEY ASSISTED LIVING

Alzheimer's is a cruel disease that typically destroys short-term memory long before Seniors face physical impairment. As a result, Seniors with Alzheimer's and related dementia benefit greatly from freedom of movement, and need exercise to maximize their quality of life and sense of dignity.

Historically, Seniors with memory loss were sedated and restrained in nursing homes because nursing homes provided no secured areas for them to exercise. Even today, many Assisted Living Residences have their memory care units on the third floor, which severely limits the mobility of their memory care residents. This inhibits the resident's quality of life.

Olney Assisted Living is designed from the inside out to maximize the freedom and independence of our future residents. Secured freedom defines how $\frac{3}{4}$ of the outside of the building is fenced. In good weather, residents ambulate freely along the paved trails as well as enjoying the extensive internal walkways. This therapeutic focus on freedom of movement often results in decreased medication utilization and increased mobility for our residents. The partners of Olney Assisted Living recently opened a similar Memory Care Assisted Living Residence (Great Falls Assisted Living) in the Reston / Great Falls area of Fairfax County. Numerous residents of Great Falls Assisted Living have thrived in the therapeutic environment provided by our one-story building. Families are extremely grateful for the building design and grounds as well as for the quality care.

A two-story building would severely limit the freedom of movement for any residents living above the 1st floor. Memory Care residents living above the ground floor would require additional staffing to accompany residents up and down required elevators. Instead of enjoying the dignity provided by easy access to all of the building and the outdoors, residents above the ground floor would face limited access, which would exacerbate their frustrations and diminish their quality of life.

From a physical plant perspective, a two-story building design would require duplicative support areas, numerous stairwells, and elevators. The total building square footage would be increased significantly and combined with the increased staffing, the costs to residents and their families would be increased while delivering a compromised therapeutic environment.

The partners that propose to develop Olney Assisted Living have been designing and developing Memory Care Assisted Living Residences since 1993. Our extensive research and experience have consistently reinforced our desire to maximize the quality of life, dignity, and respect for those that have contributed so much for us and our society. As a result, we have only developed one-story Memory Care Assisted Living residences.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

October 19, 2011

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

RE: Olney Assisted Living Complex, S 2819, NRI/FSD application accepted on 4/15/2011

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.

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