



THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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MCPB  
ITEM # 2  
01/05/06

**MEMORANDUM**

**DATE:** December 22, 2005

**TO:** Montgomery County Planning Board

**VIA:** Jeffrey Zyontz, Acting Co – Chief  
Development Review Division  
Stephen Federline, Master Planner/Supervisor  
Environmental Planning Section, Countywide Planning Division

**FROM:** Marion Clark, Planner Coordinator (301) 495-1328  
Environmental Planning Section, Countywide Planning Division

**REVIEW TYPE:** Forest Conservation Plan Review

**APPLYING FOR:** Amendment to Final Forest Conservation Plan (FCP) -- Proposal to remove additional 0.36 acres forest, including forest relating to off-site sanitary sewer connection, and grading associated with final stormwater management plan.

**FOREST CONSERVATION PLAN NAME:** Sunrise Senior Living, Inc.

**FOREST CONSERVATION PLAN #:** S-2504/1-02065

**REVIEW BASIS:** Section 22A-11(a)(2) of the Montgomery County Forest Conservation Law

**SITE:** R-200

**LOCATION:** Located on the north west corner of River Road and Burdette Road

**MASTER PLAN:** Bethesda-Chevy Chase

**APPLICANT:** Mr. Harley Cook, Sunrise Senior Living, Inc.

**ENGINEER:** Rodgers and Associates, Inc.

**ATTORNEY:** Shulman, Rogers, Gandal, Porfy and Ecker, P.A.

**HEARING DATE:** January 5, 2006

**STAFF RECOMMENDATION:** Staff believes the requested changes are needed to implement stormwater management and WSSC requirements. Staff recommends

approval of the proposed Final FCP Amendment, dated 9/14/05, pursuant to Section 22A-11(a)(2) of the Montgomery County Forest Conservation Law, subject to the following conditions:

1. The Planning Board shall approve a Plat of Correction for forest conservation easements showing revised Category I and II conservation easements prior to issuance of the building permit.
2. A Certificate of Compliance for meeting off-site reforestation requirements through a forest mitigation bank shall be finalized prior to issuance of the building permit.
3. Applicant must comply with the Forest Conservation Regulations Section 110 - Inspections.
4. Maintenance agreement to be approved by M-NCPPC Environmental Planning staff prior to first inspection of planted areas.

#### **BACKGROUND AND SITE DESCRIPTION**

An approved Final FCP covers a single-lot located on the northwest corner of River Road and Burdette Road (Attachment A). It covers 16.80 acres of land in the R-200 zone. The Planning Board approved a special exception and Preliminary FCP with conditions on April 18, 2002 (Special Exception S-2504 and Preliminary FCP S-2504). The Planning Board approved the Preliminary Plan on July 18, 2002 (Preliminary Plan no. 1-02065). A copy of the Planning Board opinion is included as Attachment B. The Final FCP, approved by staff on December 18, 2002, is included as Attachment C.

The site is covered with a single mature Tulip Poplar association forest stand. The forest stand is a highest priority forest because of its maturity, health, and diversity. There are approximately 190 trees with a diameter breast high (dbh) over 24" on site and within 50' of the property boundary. The approved Final FCP shows 5.65 acres of forest retention and 10.16 acres cleared. Forest retention stands are located in areas on the periphery of the site and are covered by Category I conservation easements. This plan also indicates several areas of tree save, one with a Category II easement.

#### **PROJECT DESCRIPTION**

This is an application to amend the Final FCP. The applicant proposes to remove an additional 10,890 square feet (0.25 acres) of forest in order to grade for the proposed roadbed and stormwater management requirements. Furthermore the applicant proposes to remove 4,792 square feet (0.11 acres) of forest to accommodate an off-site sanitary sewer connection. Finally, the applicant proposes to adjust the boundaries of two category I conservation easements and eliminate one category II easement over a tree save area covered by the Final FCP. The proposed FCP Amendment is included as Attachment E.

## **PLANNING BOARD REVIEW AUTHORITY**

The Montgomery County Forest Conservation Law (Chapter 22A of the Montgomery County Code) requires Planning Board action for certain types of modifications to an approved FCP. Section 22A-11(2) of the Forest Conservation Law states:

*“(2) Modification to an approved plan. The Planning Director may approve modifications to an approved forest conservation plan that are consistent with this Chapter if:*

- (A) field inspections or other evaluation reveals minor inadequacies of the plan; or,*
- (B) each modification is minor and does not impact any forest in a priority area (such as substituting an on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or*
- (C) action is otherwise required in an emergency situation.*

*Any other modification must be approved by the agency that approved the forest conservation plan.”*

A minor modification is defined in the Forest Conservation Regulations No. 1-01AM (COMCOR 18-01AM) Sec.113 A. (1) as follows:

*“Minor amendments which do not result in more that a total of 5000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and substituting one area of forest, for retention with another of equal or greater size and value.”*

This amendment proposes removal of an additional 15,682 square feet (0.36 acres) of forest and therefore constitutes a major amendment requiring Planning Board approval.

## **DISCUSSION OF PROCESS**

The applicant first submitted the proposed additional forest clearing as a minor amendment to an approved Final FCP in June 2005. Staff worked with the applicant on and off between June and December to bring the new plan into compliance with the Forest Conservation Law. On December 5, 2005 staff signed off on the Final FCP thinking that the change was a minor amendment. On December 6, 2005 the applicant received approval from the Department of Permitting Services (DPS) for rough grading on the Sediment and Erosion Control Plan and had in hand a rough grading permit dated October 19, 2005.

On December 8, 2005, a pre-construction meeting was held on site with the M-NCPPC inspector. During this meeting, the limit of disturbance (LOD) and installation of tree save measures, such as root pruning and super silt fencing were authorized. On December 15, after learning that over 5,000 square feet of additional forest clearing constitutes a major amendment requiring Planning Board approval, staff notified the applicant to cease construction activity. The applicant notified staff on

Monday December 19 that root pruning had already been performed and super silt fencing installed on the edges of development, but not in the area of the proposed sewer line. On December 20 the applicant's attorney agreed to stand down from clearing and grading and submitted a letter to that effect (Attachment D). Before clearing can begin, the Forest Conservation Law requires Planning Board approval of the amended Final FCP and a final inspection of installed tree save measures.

The DPS has not yet approved the Final Stormwater Management Plan. This plan must be approved prior to issuance of the building permit. The Board of Appeals approved a special exception modification, conditioned on Planning Board approval of the amended Final FCP, on December 21, 2005. However the Board of Appeals final written notice will not be issued until January 21, 2006.

### **PROPOSED FOREST CONSERVATION PLAN CHANGES**

The proposed Final FCP indicates an additional 0.36 acres of forest clearing located in four areas. The largest area of clearing is on the southern edge of the development where the applicant proposes removal of an additional 0.21 acres (9,300 s.f.) of highest priority forest. This clearing is proposed because the road grade is raised approximately four feet to accommodate underground stormwater management vaults. One 39" Tulip Poplar indicated as saved on the current plan, will sustain impact to greater than 30% of the critical root zone under the proposed plan. In the absence of extraordinary tree save measures, the tree would have to be removed. The M-NCPPC inspector is working with the arborist on tree save measures.

The second area of additional clearing is proposed on the west side of the development where 4,100 square feet is needed for a new stormwater management outfall and an additional 1,600 square feet is needed for an enlarged generator pad to power sewerage pumps.

These pumps carry sewage uphill through forest on-site and off-site along the edge of the golf course on the adjoining property. An additional 0.11 acres (approximately 4792 square feet) of forest on the adjacent property must be cleared for connection of the conduit to an existing 18" sewer line. Where the new sewer line traverses the forest on Sunrise Development property, M-NCPPC inspection staff noted an approximately 50" dbh (diameter breast high) Tulip Poplar, incorrectly sized and located on the Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). This tree was counted as saved on the approved Final FCP, but will withstand impact greater than 30% to the critical root zone. Staff believes extraordinary measures to preserve this tree should be investigated and installed, if advised by the M-NCPPC inspector.

The stormwater management design for the north perimeter of the property was refined to convey water through a conduit from the north side of the entry to the west side of the site. The conduit runs along the outside edge of the northern road. Yard inlets along the road edge collect and drain surface water run-off into the new conduit. A yard inlet for water quality purposes was added to the northeast corner requiring 500 square feet of forest removal.

The last amendment is in an area of Tree Save with a Category II easement. This area will be reduced to accommodate handicapped access. Two additional significant trees will be removed as a result.

The proposed additional forest clearing results in an adjusted reforestation requirement of 1.10 acres. The applicant proposes to fulfill this requirement by reducing forest cleared in two areas of the site (0.05 s.f.); reforesting the sewer easement and forest edge (0.48 acres); and reforesting off-site in a forest bank (0.48 acres).

### **STAFF FINDING**

Staff finds that the additional forest removal proposed on the Final FCP is justified to provide infrastructure necessary for a development of this magnitude. The proposed forest conservation plan amendment with the conditions herein, complies with the requirements of the Forest Conservation Ordinance. The impact to forest retention areas has been minimized. Significant individual trees are being retained. The adjusted reforestation requirements met the standards in the forest conservation ordinance.

### **ATTACHMENTS**

Attachment A -- Vicinity Map

Attachment B -- Planning Board Opinion for Preliminary Plan No. 1-02065

Attachment C -- Approved Final Forest Conservation Plan No. S-2504

Attachment D -- December 20, 2005 letter from Timothy Dugan to Jeff Zyontz

Attachment E -- Proposed Amendment to Final FCP