



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

MCPB
Item #
9-29-10

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*

FROM: Josh Penn, Senior Planner, Environmental Planning *JP*

DATE: September 29, 2010

PLAN NAME: Horizon Hill, Lot 12 (10507 Tulip Lane)

PLAN NUMBER: SC2010013

PLAN TYPE: Forest Conservation Variance Request

REVIEW BASIS: Chapter 22A of the County Code

ZONE: RE-2

LOCATION: 10507 Tulip Lane 500 feet west of Glen Mill Road

APPLICANT: Rohit Sawhney

HEARING DATE: October 14, 2010

RECOMMENDATIONS

The Environmental Planning staff has reviewed the forest conservation variance request and Staff recommends the Planning Board approve the variance.

BACKGROUND

The applicant is requesting to construct a new house at 10507 Tulip Lane in Rockville. The previously existing house, as seen in figure 2, was demolished approximately two years ago. The site is 2.14 acres in size and is mostly forested. There are no streams, wetlands, or environmental buffers within the site.

The construction of this house requires the applicant to obtain a sediment control permit from the Montgomery County Department of Permitting Services. Under Chapter 22A of the County code any property that is required to obtain a sediment control permit and is greater than 40,000 square feet is required to comply with the forest conservation law. The property is 2.14 acres or 93,218 square feet in size and therefore subject to Chapter 22A.

The activity is required to obtain approval of a forest conservation plan because the activity does not qualify for an exemption from submitting a forest conservation plan. Under the forest conservation law, recorded single lots are eligible to be exempt from submitting a forest conservation plan if the activity removes less than 20,000 square feet of forest. The applicant is proposing to remove 59,241 square feet of forest and therefore must submit and obtain approval of a forest conservation plan before any land disturbing activities occur on the subject property.

Since the property is a single lot recorded in 1952 the forest conservation plan is reviewed and approved by the Planning Director, or designee. Section 22A-11(d) of the County Code gives the Planning Director the authority to approve forest conservation plans associated with sediment control permits.

Since October 1, 2009, Section 1607(c) of the Natural Resources Article, MD Ann. Code went into effect statewide and affects the Montgomery County Forest Conservation law. This section requires an applicant to obtain approval of a variance for the removal or impact of trees 30 inches and greater in diameter at breast height and certain vegetation prior to the forest conservation plan. Section 22A-21 of the County Code indicates that only the Planning Board has the authority to approve forest conservation variances. Therefore, the Planning Board is only asked to rule on the variance and not the forest conservation plan. Once the variance is approved by the Planning Board the Planning Director, or designee, can act on the forest conservation plan.

VARIANCE REQUIREMENTS

Section 1607(c) of the Natural Resources Article, MD Ann. Code affects the Montgomery County Forest Conservation law by identifying the following trees, shrubs, plants, and specific areas as priority for retention and protection and shall be left in an undisturbed condition unless the applicant qualifies for a variance in accordance. More specifically the vegetation to remain undisturbed includes:

- A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
 - (1) *The federal Endangered Species Act of 1973,*
 - (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
 - (3) *COMAR 08.03.08;*

- B. *Trees that:*
 - (1) *Are part of an historic site,*
 - (2) *Are associated with an historic structure, or*
 - (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*

- C. *Any tree having a diameter measured at 4.5 feet above the ground of:*
 - (1) *30 inches or more, or*
 - (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

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

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

In Montgomery County before considering the variance the Planning Board must refer a copy of each request to the County Arborist within the Montgomery County Department of Environmental Protection for a written recommendation. The County Arborist must make a recommendation on the variance request to the Planning Board within 30 days from the receipt of the request. If there is no recommendation from the County Arborist the response is presumed to be favorable.

VARIANCE REQUEST

On July 2, 2010 the applicant requested a variance for the removal of 6 trees 30-inches and greater (Attachment A). The six on-site trees proposed for removal are #17, 18, 32, 36, 43, and 44. Four of the specimen trees proposed for removal are within existing forest and two are within the driveway access area.

On-Site Specimen Trees to be Removed

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	Condition	Location
17	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	Good	Driveway
18	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	Good	Driveway
32	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	Good	Septic Area (Ex. Forest)
36	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	fair	Septic Area (Ex. Forest)
43	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	Good	Septic Area (Ex. Forest)
44	Tulip Poplar	<i>Liriodendron tulipifera</i>	32.0 In.	48.0 feet	Fair	House Footprint (Ex. Forest)

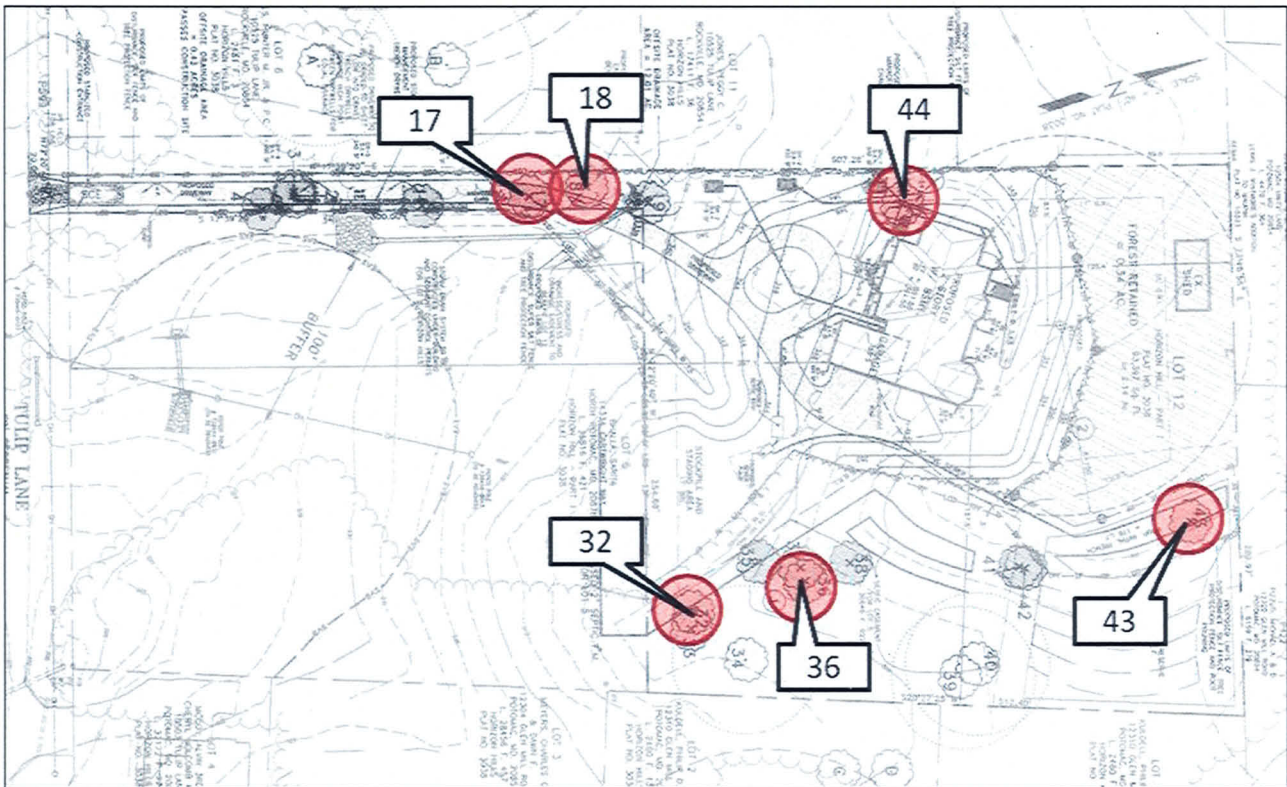


Figure 3: Trees Requiring Variance

The applicant's July 2, 2010 letter requesting approval of the variance states:

In accordance with Section 22A-21(b) of the Forest Conservation Law, the following is a description of the application requirements:

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship.*

The proposed plan design has been determined by the following circumstances:

- A. *The subject property will retain 0.34 acres of forest cover in a conservation easement. The lot also has 0.69 acres of septic reserves. The panhandle portion of the lot is 0.15 acres. This left a remainder of 0.96 acres for the house sitting. Within this developable area the house has been sited near the eastern property line just outside the side yard building restriction line.*
- B. *Two of the specimen trees lie within the driveway panhandle which cannot be relocated. Three of the trees are impacted significantly enough by the septic system construction that they need to be removed. The sixth tree is located within the house site and will be impacted by the building construction.*

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

The lot cannot be developed with a single family dwelling without the tree removals indicated.

3. *Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance.*

There are currently no stormwater quantity or quality provisions on the property. The Applicant has prepared a stormwater management plan in conjunction with the proposed sediment control plan required for this lot. The Department of Permitting Services has reviewed this plan and is satisfied that it meets the sediment control and water quality stormwater management requirements.

The Applicant confirms that the loss of these trees will cause no degradation in water quality associated with the proposed development as a result of granting the requested variance.

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

The Applicant believes that the information set forth above is adequate to justify the requested variance to remove the six protected trees on the subject property.

VARIANCE FINDINGS

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

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

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is often necessary and unavoidable in order to develop property for the use and enjoyment of its owner. The development of this lot is consistent with the development of the surrounding areas. The specimen tree removals for this lot are for access, septic systems, and the house location, all of these are reasonable and would be a privilege extended to any applicant in a similar situation.

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

The requested variance is not based on conditions or circumstances which are the result of actions of the applicant. The variance is based upon the RE-2 zoning, proposed site development, required stormwater management best management practices, and the need for a useable and enjoyable yard/lawn area.

3. Is based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Plan will be approved by Montgomery County.

On August 19, 2010 the County Arborist provided a written statement indicating that she was electing not to review the variance request for the project (Attachment B).

MITIGATION

The four specimen trees being removed within existing forest will be compensated for as part of the forest conservation plan in accordance with Chapter 22A of the County code. Specimen trees 17 and 18 are within the pipe-stem and the only access point to a public road. Environmental Planning believes the impacts to specimen trees 17 and 18 are unavoidable due to their location within the only access point for the lot and that no mitigation should be required. Staff is not requesting any additional mitigation for the removal of any specimen tree.

CONCLUSION

Staff recommends the Planning Board approve the forest conservation variance request.

**STATEMENT OF JUSTIFICATION
FOR A VARIANCE IN ACCORDANCE WITH SECTION 22A-21
OF THE MONTGOMERY COUNTY CODE**

**LOT 12, HORIZON HILL (10507 Tulip Lane)
Sediment Control Permit #237718**

I. BACKGROUND INFORMATION.

The Applicant, Rohit Sawhney, owner of the subject property requests a variance pursuant to the provisions of Section 22A-21 of the Montgomery County Code. This lot is 2.14 acres recorded as a subdivision lot in 1952 on Plat No. 3038. The property is zoned RE-2. It is currently undeveloped and the owner will be requesting a building permit for a single family dwelling (SFD) which will require an engineered sediment control plan. Since the required level of clearing exceeds 20,000 square feet of forest area the property does not qualify for an exemption from the Forest Conservation Regulations therefore a Final Forest Conservation Plan is required. Lot 12 is in a panhandle configuration that extends approximately 320 feet from its 20 feet of frontage on Tulip Lane. The 20 foot panhandle will have a 10 foot wide driveway constructed along with the new SFD. The lot is to be served by private well and septic disposal. The septic area on this lot was approved last year by DPS and includes an easement for septic disposal for the adjacent Lot 5, thus a significant portion of the property is encumbered for septic construction and future reserves.

II. APPLICANT'S PROPOSAL.

The attached Final Forest Conservation Plan reflects the proposed site plan for the construction of the SFD and associated driveway. The proposed grading and clearing has been kept to a minimum to prepare the site for construction. Beyond the rear yard of the proposed SFD there is a forest retention area of 0.34 acres to be retained in a conservation easement. The narrow panhandle at 20 feet in width will require clearing to install the 10 foot wide driveway and the necessary utilities to serve the house. There will be a septic disposal system constructed in the northwest corner of the lot to serve this house. There is also a septic easement on Lot 12 which was granted to Lot 5 which lies immediately adjacent to the south of Lot 12. Lot 5 is presently undeveloped however there is a pending plan filed with the Department of Permitting Services to construct the septic field within the easement as well as the extension of a pumped force main pipe to connect from Lot 5 to its septic field within the septic easement.

Significant and specimen trees are scattered throughout the subject property, including within the small available building envelope on the eastern side of the lot. Impact to several of the specimen trees is unavoidable in order to provide space to construct the proposed house, provide access through the panhandle driveway to the house and provide areas suitable for stormwater management and septic disposal facilities.

III. EXPLANATION FOR NEED TO REMOVE SIX TREES THAT ARE IDENTIFIED IN STATE LAW FOR PROTECTION.

Also attached to this variance application is a copy of the Final Forest Conservation Plan (FFCP) for the subject property. There are six specimen trees proposed for removal which lie within the compact development envelope described in paragraph II, above.

Specific trees to be removed:

Condition & descriptions are per NRI/FSD #420100730 approved Feb. 4, 2010

- Tree #17: Tulip Poplar, 30" DBH, Good Condition
Reason for removal: Within limit of disturbance in driveway panhandle.
- Tree #18: Tulip Polar, 30" DBH, Good Condition
Reason for removal: Within limit of disturbance in driveway panhandle.
- Tree #32: Tulip Polar, 30" DBH, Good Condition
Reason for removal: Within the area required for septic force main construction.
- Tree #36: Tulip Polar, 30" DBH, Fair Condition
Reason for removal: Impacted by septic system construction
- Tree #43: Tulip Polar, 30" DBH, Good Condition
Reason for removal: Impacted by septic system construction
- Tree #44: Tulip Poplar, 32" DBH, Fair Condition
Reason for removal: Within footprint of proposed house.

IV. SATISFACTION OF THE CRITERIA LISTED IN SECTION 22A-21(b) OF THE MONTGOMERY COUNTY CODE.

Section 22A-21(b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

“(1) describe the special conditions peculiar to the property which caused the unwarranted hardship.”

As described above, the proposed plan design has been determined by the following circumstances:

- A. The subject property will retain 0.34 acres of forest cover in a conservation easement. The lot also has 0.69 acres of septic reserves. The panhandle portion of the lot is 0.15 acres. This left a remainder of 0.96 acres for the house siting. Within this developable area the house has been sited near the eastern property line just outside the sideyard building restriction line.
- B. Two of the specimen trees lie within the driveway panhandle which cannot be relocated. Three of the trees are impacted significantly enough by the septic system construction that they need to be removed. The sixth tree is located within the house site and will be impacted by the building construction.

“(2) Describe how enforcement of these rules will deprive the owner of rights commonly enjoyed by others in similar areas.”

With the constraints described above the lot cannot be developed with a SFD without the tree removals indicated.

“(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.”

There are currently no stormwater quantity or quality provisions on the property. The Applicant has prepared a stormwater management plan in conjunction with the proposed sediment control plan required for this lot. The Department of Permitting Services has reviewed this plan and is satisfied that it meets the sediment control and water quality stormwater management requirements.

The Applicant confirms that the loss of these trees will cause no degradation in water quality associated with the proposed development as a result of granting the requested variance.

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

The Applicant believes that the information set forth above is adequate to justify the requested variance to remove the six protected trees on the subject property.

Furthermore, the Applicant’s request for a variance complies with the “minimum criteria” of Section 22A-21(d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. Existing site conditions, including the configuration of the septic reserve areas, location of forest stand to be retained, and random location of several specimen trees are naturally occurring and have guided the formulation of the proposed site plan.
3. The requested variance is not related in any way to a condition on an adjacent, neighboring property, and
4. Loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality (which are being improved by the Applicant’s overall proposal).
5. The applicant is also providing some supplemental tree planting to further mitigate for the tree loss on the property



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

August 19, 2010

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

RE: 10507 Tulip Lane, SC2010014, Sediment control permit applied for on 7/7/2009
8809 Chalon Drive, SC2010014, NRI/FSD applied for on 4/24/2009

Dear Ms. Carrier:

As stated in a letter to Dr. Hanson from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests are required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) but were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief