



Preliminary Forest Conservation Plan for MHP Forest Glen, Local Map Amendment No. H-129



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Completed: 3/1/2019

Description

Preliminary Forest Conservation Plan associated with Local Map Amendment H-129, a request to rezone the property from R-10 to CRTF 1.75, C-0.25, R-1.5, H-70.

Location: 9920 Georgia Avenue/2106 Belvedere Boulevard.
Zone: R-10.

Sector Plan: 1996 Forest Glen Sector Plan.

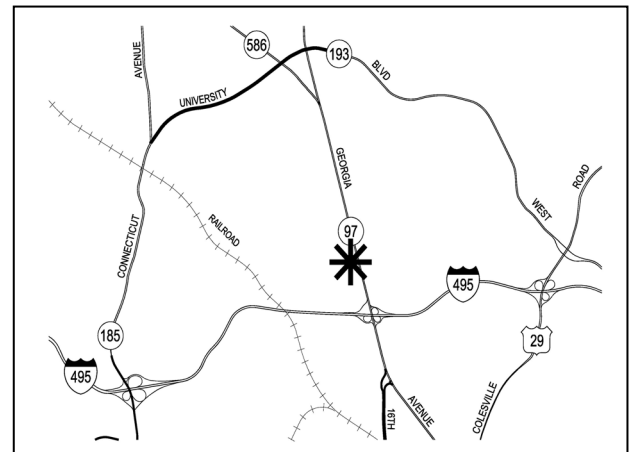
Property Size: 2.63 acres (3.59 gross tract area).

Acceptance Date: February 21, 2019.

Applicant: MHP Forest Glen, LLC.

Review Basis: Chapter 22A, Forest Conservation Law.

Public Hearing by the Hearing Examiner: Friday, March 1, 2019.



Summary

- Staff recommends approval with conditions.
- The Applicant proposes to:
 - Remove eight (8) trees that require a variance, per Section 22A-12(b)(3).
 - Meet the 0.45-acre afforestation requirement in an off-site forest mitigation bank.
- Pursuant to Chapter 22A of the County Code, the Planning Board's actions on Forest Conservation Plans are regulatory and binding.
- A Preliminary Forest Conservation Plan was submitted in connection with Local Map Amendment H-129, which was recommended for approval by the Planning Board on February 7, 2019.
- The Hearing Examiner is holding the record open for the Planning Board's decision on this Preliminary Forest Conservation Plan.

RECOMMENDATION AND CONDITIONS

Pursuant to Chapter 22A of the County Code, the Planning Board's actions on Forest Conservation Plans are regulatory and binding. Staff recommends approval of the Preliminary Forest Conservation Plan, subject to the following conditions:

1. The Applicant must submit a Final Forest Conservation Plan with the subsequent Preliminary Plan and Site Plan submittals.
2. Prior to the start of any clearing, grading, or demolition occurring on the Property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance to use an off-site forest mitigation bank for 0.45 acres of mitigation credit.
3. The Applicant must plant twenty-two (22) three (3)-inch caliper native canopy trees within one year of construction completion as mitigation for tree loss.

PROJECT DESCRIPTION AND BACKGROUND

Project Description

The Applicant proposes to rezone the 2.63-acre (3.59 gross tract area) property (Subject Property or Property) from R-10 to CRTF 1.75, C-0.25, R-1.5, H-70. A floating zone plan was submitted in support of the application. The floating zone plan shows demolition of the existing buildings and development of a 231,000 square foot residential building with associated underground parking and stormwater management facilities.



Figure 1 Vicinity Map

Site Description

The 2.63-acre Subject Property – outlined in red in Figure 1 - is located at 9920 Georgia Avenue/2106 Belvedere Boulevard. The Property is bounded to the north by similar garden-style apartments known as the “Belvedere Apartments,” to the south by the Americana Finnmark condominium community, to the west by single-family detached and townhome units, and to the east by Georgia Avenue. Single-family detached structures and General Getty Neighborhood Park are on the east side of Georgia Avenue across from the subject property. Properties fronting the Georgia Avenue corridor between the I-495 Beltway and Wheaton’s commercial district include an eclectic mix of single-family detached dwellings, multifamily structures, churches, office buildings, medical office buildings, storage space, and large-format retailers.

ANALYSIS

Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD No. 420191310) for the Property on February 26, 2019. While there are no forests, wetlands, or other environmental features on the Property, there are many mature trees. The Property is in the Lower Rock Creek watershed but is outside any Special Protection Area. The proposed project complies with the Environmental Guidelines.

Forest Conservation

The Property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan (PFCP) in conjunction

with the Local Map Amendment (Attachment 1). There is no forest on-site and the Applicant proposes to meet the 0.45-acre afforestation requirement in an off-site forest mitigation bank.

Forest Conservation Variance

Section 22A-12(b)(3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as 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. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ), requires a variance. An application 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 Applicant submitted a variance request to remove eight (8) trees that are considered high priority for retention under Section 22A-12 (b)(3) of the County Forest Conservation Law (Attachment 2). The Applicant will plant twenty-two (22) three (3)-inch caliper native shade trees to replace the form and function of the variance trees proposed for removal.

Unwarranted Hardship for Variance Tree Impacts

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The requested variance is necessary due to demolition of the existing apartment building and construction of the proposed apartment building.

Leaving the requested trees in an undisturbed state would result in an unwarranted hardship because the Applicant would not be able to demolish the existing development and construct any type of development consistent with what is likely to be recommended by the pending Forest Glen/Montgomery Hills Sector Plan update, which encompasses the Subject Property.

Variance Tree Tables

Removals

ID	Species	Size	Condition	Notes
2	Tulip Poplar	31"	Fair	Impacts due to demolition and construction.
6	Sycamore	31"	Fair/Poor	Impacts due to demolition and construction.
10	Sycamore	33"	Fair	Impacts due to demolition, construction, and stormwater facilities.
12	Sycamore	30"	Poor	Impacts due to demolition, construction, and stormwater facilities.
20	Sycamore	32"	Poor	Impacts due to demolition and construction.
24	Sycamore	32"	Poor	Impacts due to demolition and construction.
26	Sycamore	33"	Fair	Impacts due to construction.
30	Sycamore	37"	Poor	Impacts due to demolition and construction.

Variance Findings - Based on the review of the variance request and the proposed Preliminary Forest Conservation Plan, Staff makes the following findings:

1. *Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is a result of demolishing the existing development, regardless of new development proposed. Any applicant would be allowed to demolish their existing development; therefore, this is not a special privilege.

2. *The need for the variance 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 that are the result of actions by the Applicant. The variance is necessary due to the demolition of the existing development.

3. *The need for the variance 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 location of trees located adjacent to the existing development, not a condition related to either a land or building use on a neighboring property.

4. *Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The Applicant will plant twenty-two (22) three (3)-inch caliper native shade trees to replace the form and function of the variance tree proposed for removal. In addition, the Property will be developed in accordance with the Maryland Department of the Environment criteria for stormwater management, including the provision of Environmental Site Design to protect natural resources to the maximum extent practicable.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove eight (8) trees. The eight (8) trees (listed in the removal table above) are outside of a forest and will be mitigated at a rate of one (1)-inch caliper per four (4)-inches DBH removed, using a minimum three (3)-inch caliper native shade tree. Thus, the Applicant is required to plant twenty-two (22) three (3)-inch caliper native shade trees, as shown on the PFCP.

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 variance request was referred to the County Arborist on February 26, 2019.

Variance Recommendation - Staff recommends that the variance be granted.

CONCLUSION

Staff concludes that the proposed Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan and associated variance, with the above conditions.

Attachments:

1. Preliminary Forest Conservation Plan
2. Variance request

ATTACHMENT 2

Macris, Hendricks & Glascock, P.A.
Engineers • Planners • Surveyors • Landscape Architects

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279



Phone 301.670.0840
Fax 301.948.0693

February 20, 2019

Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Forest Glen Apartments PFCP
MHG Project No. 18.197.11

To Whom It May Concern:

On behalf of MHP Forest Glen, LLC, the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for the removal of eight specimen trees, as required by the Maryland Natural Resources Article, Title 5, Subtitle 16, Forest Conservation, Section 5-1611, and in accordance with Chapter 22A-21(b) of the Montgomery County Code. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed removal of eight trees over thirty inches in diameter would satisfy the variance requirements.

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

The subject property is 2.63 acres and has a triangular and linear shape. The property is currently developed with a multi-family residential building complex which is proposed to be removed and replaced with a new multi-family residential complex. The existing buildings, sidewalks, and parking areas stretch across the entire property and a number of mature trees exist around the buildings and parking area. Eight of these trees are specimen trees and are all in fair to poor condition with several in major decline. The property is being completely redeveloped with seven of the trees to be removed located within the developable area of the property. The eighth tree is located in the right of way just outside the property boundary, however, a large portion of its critical root zone extends into the property and into the developable areas. The narrow linear shape of the lot influences the building and site layout. Due to the proximity of these trees to both the existing and proposed development, redevelopment of the property cannot be accomplished without impacting these trees. In addition, no formal stormwater management facilities or storm drain system is currently provided on-site. The redevelopment of the property will include the installation of environmental site design practices and other stormwater management facilities to provide treatment of stormwater runoff in accordance with State and County requirements. Furthermore, a storm drain system will be incorporated into the site design to provide adequate conveyance of stormwater runoff downstream. Addressing stormwater treatment and conveyance will require additional impacts to trees. Given the amount of impact to the trees and the declining condition of the trees, the trees should be removed.

Given the needs of the proposed development, not allowing the impacts would be a hardship that is not warranted in light of the special conditions particular to the property.

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

The proposed tree removals are due to reasonable improvements for the betterment of the property. Improvements to the parking lot and stormwater management are both necessary for the redevelopment of the property and meet current design standards. The inability to remove the subject trees would limit the development of the property. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.

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;*

The redevelopment of the property will include the installation of environmental site design practices and other stormwater management facilities to provide treatment of stormwater runoff in accordance with State and County requirements. A Stormwater Management Concept will be required to be submitted for the property. It is anticipated that SWM requirements will be met with several micro-bioretenement facilities as well as underground facilities. Approval of the Stormwater Management Concept will confirm that the goals and objectives of the current state water quality standards are being met.

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

Pursuant to Section 22A 21(d) Minimum Criteria for Approval.

- (1) The Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available by any other applicants.

The variance will not confer a special privilege because the impacts are due to the development of the site. As explained above the property has several constraints that result in the needed removal of the trees and do not leave a reasonable alternative to meet the needs of the property per design requirements and county code.

- (2) The variance request is not based on conditions or circumstances which result from the actions of the applicant.

The variance is based upon site conditions and development constraints that developed and existed before the enactment of the specimen tree legislation and are not based on conditions or circumstances which are a result of actions of the Applicant. The variance is based on the existing topography and other existing conditions of the site layout, and the design is utilizing the available property for the proposed improvements that meet the design needs of the property.

- (3) The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.

The location of the trees, shape of the property, existing buildings, and current topography are dictating the need for the variance. The requested variance is a result of the existing on-site conditions and necessary proposed improvements for the property as detailed above and not a result of land or building on a neighboring property.

(4) Will not violate State water standards or cause measurable degradation in water quality. Full ESD stormwater management will be provided as part of the proposed development.

The Montgomery County Department of Permitting Services approval of the Concept will demonstrate that the variance will not violate State water quality standards or cause measurable degradation in water quality and will actually improve water quality by the introduction of stormwater management treatment to the property as summarized, where it currently does not exist. The specimen trees being removed are not within a special protection area.

A copy of the Forest Conservation Plan and variance tree table has been provided as part of this variance request. Please let us know if any other information is necessary to support this request.

Please contact me via email, at fjohnson@mhgpa.com, or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,

Frank Johnson

Frank Johnson

TREE TABLE						
TREE ID#	COMMON NAME	BOTANICAL NAME	SIZE (DIAMETER)	CONDITION	DISPOSITION	VARIANCE MITIGATION
1	TULIP POPLAR	LIRIODENDRON TULIPIFERA	28	Fair/Good - DW	REMOVE	NA
2	TULIP POPLAR	LIRIODENDRON TULIPIFERA	31	Fair - DW, canopy damage, vines	REMOVE	31"
3	WHITE MULBERRY	MORUS ALBA	24	Poor - trunk damage, vines, DW	SAVE	NA
4	BLACK WALNUT	JUGLANS NIGRA	24	Fair/Good - DW, vines	SAVE	NA
5	WHITE MULBERRY	MORUS ALBA	24	Poor - DW, damage	SAVE	NA
6	SYCAMORE	PLATANUS OCCIDENTALIS	31	Fair/Poor - Damage trunk, would closure, root damage, epicormic growth	REMOVE	31"
7	SYCAMORE	PLATANUS OCCIDENTALIS	25	Fair/Good - root damage, wound closure	SAVE	NA
8	SYCAMORE	PLATANUS OCCIDENTALIS	28	Fair - DW, leans	REMOVE	NA
9	SYCAMORE	PLATANUS OCCIDENTALIS	29.5	Fair/Good - DW, canopy damage	REMOVE	NA
10	SYCAMORE	PLATANUS OCCIDENTALIS	33	Fair - vines, DW	REMOVE	33"
11	RED MAPLE	ACER RUBRUM	27	Fair/Good - DW, vines	REMOVE	NA
12	SYCAMORE	PLATANUS OCCIDENTALIS	30	Poor - dieback, DW, vines, rot, main leader gone	REMOVE	30"
13	SYCAMORE	PLATANUS OCCIDENTALIS	28	Fair - wound closure, DW, sapsucker holes, lean	REMOVE	NA
14	SYCAMORE	PLATANUS OCCIDENTALIS	25	Fair/Good - DW, wound closure	SAVE	NA
15	SYCAMORE	PLATANUS OCCIDENTALIS	28	Fair - canopy damage, DW	REMOVE	NA
16	RED MAPLE	ACER RUBRUM	29	Poor - cavity, DW	SAVE	NA
17	RED MAPLE	ACER RUBRUM	27	Fair - DW, root flare swollen, root damage	SAVE	NA
18	SYCAMORE	PLATANUS OCCIDENTALIS	37	Fair/Poor - DW, canopy damage, epicormic growth	SAVE	NA
19	EASTERN HEMLOCK	TSUGA CANADENSIS	25	Fair - DW, leans	SAVE	NA
20	SYCAMORE	PLATANUS OCCIDENTALIS	32	Poor - topped, vines, DW, rot	REMOVE	32"
21	SYCAMORE	PLATANUS OCCIDENTALIS	24	Good - DW	SAVE	NA
22	SYCAMORE	PLATANUS OCCIDENTALIS	26	Fair - DW, canopy damage	REMOVE	NA
23	SYCAMORE	PLATANUS OCCIDENTALIS	26	Fair/Good - DW	REMOVE	NA
24	SYCAMORE	PLATANUS OCCIDENTALIS	32	Poor - Bark loss, major DW	REMOVE	32"
25	SYCAMORE	PLATANUS OCCIDENTALIS	24	Fair - DW, heavy vines	REMOVE	NA
26	SYCAMORE	PLATANUS OCCIDENTALIS	33	Fair - root flare issues, DW, poorly pruned	REMOVE	33"
27	SYCAMORE	PLATANUS OCCIDENTALIS	26	Fair - partly topped	SAVE	NA
28	AMERICAN BEECH	FAGUS GRANDIFOLIA	42	Fair - significant DW, cavity	SAVE	NA
29	SYCAMORE	PLATANUS OCCIDENTALIS	29.5	Fair - root damage, epicormic growth, DW, vines	REMOVE	NA
30	SYCAMORE	PLATANUS OCCIDENTALIS	37	Poor - DW, heavily pruned, all 3 main leaders topped	REMOVE	37"
					TOTAL:	259"
259 / 4 = 64.75" Planted with 3" DBH trees = 22 trees to be planted for variance mitigation						

259 / 4 = 64.75"	Planted with 3" DBH trees = 22 trees to be planted for variance mitigation
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