



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

MCPB
Item #
February 18, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*
Stephen D. Federline, Master Planner, Environmental Planning *SD*

FROM: Lori Shirley, Planner Coordinator, Environmental Planning *LS*

DATE: January 26, 2010

REVIEW: Preliminary Forest Conservation Plan for
TYPE: Special Exception Amendment #S-1424-A- University Gardens

LOCATION: 440 East University Boulevard, Silver Spring

APPLICANT: Korean Community Senior Housing, Inc.

RECOMMENDATION

Staff recommends **approval** of the preliminary Forest Conservation Plan (PFCP) for the above referenced special exception subject to the following condition:

1. The proposed development shall comply with the conditions of the preliminary Forest Conservation Plan (PFCP) as stated in the Environmental Planning approval letter dated February 2, 2010 (attached). The Applicant must satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits.

Background/Proposal

A full background description is included in the Special Exception #S-1424-A staff report dated January 22, 2010. This special exception site contains no environmental buffers, wetlands, floodplains or sensitive resources, aside from a small area of significant and specimen/large trees as described below. The special exception major amendment proposal is for a 2.08 acre site, known as University Gardens, which currently is developed with a four-story, 65-unit residential building for senior housing and off-street parking. The proposal is a new four-story, 27-unit building behind the existing building for additional senior housing.

Regulatory Considerations

Special Exception #S-1424-A includes a preliminary Forest Conservation Plan (PFCP) as a regulatory item requiring action by the Planning Board. A PFCP was received on October 28, 2009 in the Environmental Planning Division. A revised plan was received on December 16, 2009 by the Environmental Planning Division. The Planning Board's action on the PFCP is

Preliminary Forest Conservation Plan for Special Exception #S-1424-A University Gardens, Silver Spring

regulatory and binding. The Board must act on the PFCP before it finalizes a recommendation on the special exception amendment proposal.

Forest Conservation

The site is subject to Chapter 22A Montgomery County Forest Conservation Law. Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420100240 was approved on September 3, 2009. There is no forest on-site; however, there are 3 specimen and 2 significant trees on and off-site shown on NRI/FSD #420100240. Of these trees, only one specimen tree is on-site (#3, a 42-inch tulip poplar). The other trees are off-site on adjacent properties at common property lines.

The site has an afforestation requirement of 0.31 acres. The worksheet shows the requirement proposed to be met on-site in retention of 0.19 acres of existing critical root zone (CRZ) and 0.14 acres of proposed tree planting canopy credit. Proposed tree planting includes 16 deciduous trees and 4 evergreens (the latter all American hollies). Existing trees are predominantly along the site's east property line as a landscape buffer to three existing single-family detached units. Twelve of the 20 trees in afforestation planting will be along the site's east property line to bolster the landscape buffer. At final Forest Conservation Plan (FFCP) review, all trees proposed for afforestation must be shown as planted so no tree canopies overlap. The FFCP should include substitution of the sawtooth oak species with a native tree species (Piedmont Region) from the approved Technical Tree Manual.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria to be incorporated into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individual trees, the applicant is required to submit a variance to remove trees. In general, the variance provision of Bill 666 applies to: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove three trees greater than 30 inches DBH, a variance is required. The applicant has requested a variance to remove the two following trees: a 42" tulip poplar tree in fair condition, and a 40" oak tree in fair/poor condition. The latter tree is on the adjacent property to the south several feet from the common property line.

Montgomery County Code 22A - the County Forest Conservation Law (FCL) - Section 22A-21(c) requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. If the County Arborist does not provide a recommendation within 30 days the recommendation is presumed to be favorable. In this case, the variance request was referred to the Montgomery County Arborist within the Montgomery County Department of Environmental Protection (DEP) on November 3, 2009. The County Arborist has not sent reply/recommendation comments for the variance request. By law, the County Arborist's response for the variance request is therefore presumed to be favorable.

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FCL, Section 22A-21(e) states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. FCL Sect. 22A-21(d) 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.

Findings

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

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. Both two trees requested to be removed are located nearby the proposed limits of disturbance (LOD). In relation to both trees, the proposed LOD impacts approximately half (50%) of each trees' critical root zone (CRZ). Supplemental information in support of the variance includes a 'Tree Analysis Report' and 'Tree Removal Exhibit' prepared by a Maryland Certified Arborist. In the Report, tree #3 is described as having as much as 50% of the tree's CRZ impacted by construction impacts including grading. The tree is noted as in fair condition and the new grade at post development will be raised in the tree's CRZ and will likely kill the roots or cause root rot, eventually making the tree a hazardous one. Tree #1 is described as having a large vine that if the vine is removed and the tree is saved, the former action would likely do more harm than good. In the Arborist's opinion this tree will not survive construction impacts. The circumstances related to this variance are not unique nor avoidable, except by denying development. Therefore, staff believes that is not 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.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant. The requested variance is based on site layout and design for a 27-unit residential building for senior housing in the R-60 zone. An alternate site layout would not alter the need for the removal of these four trees.

3. *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

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The requested variance is a result of 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 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. Under section 22A-16(d) of the County Code "*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*" In this case, the specimen trees proposed to be removed are not within a stream buffer, wetland or a special protection area, nor are these trees part of a larger contiguous forest stand. As such it is presumed that the removal of these individual trees would not cause measurable degradation to water quality.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant's request for a variance from Forest Conservation Law to remove the two specimen trees with the caveat the applicant must obtain written permission from the adjacent property owner before tree #1 is removed. This written documentation must be on file in the Environmental Planning Division. The variance approval is assumed into the Planning Board's approval of the preliminary forest conservation plan.

attachment

MP & SDF:LS



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

February 2, 2010

Mr. Dwight J. Mayes
Korean Community Senior Housing Corporation of MD., Inc.
c/o NCBA Housing Managing Corporation
1220 L Street, N.W.
Washington, D.C. 20005

SUBJECT: Preliminary Forest Conservation Plan No.: S-1424-A
Project Name: University Gardens
Date Received: December 16, 2009

Dear Mr. Mayes:

Based on the review by Environmental Planning Division staff of the Montgomery County Planning Department, a recommendation of approval of the Preliminary Forest Conservation Plan (PFCP) has been forwarded to the Planning Board for the plan referenced above with the following conditions:


1. The proposed development must comply with conditions of the preliminary Forest Conservation Plan and as specified below:
 - a. Approval of Final Forest Conservation Plan (FFCP) consistent with the approved PFCP and all final FCP regulatory requirements of Section 109B – Forest Conservation Regulations (COMCOR 18-01 AM) prior to any clearing, grading or demolition on the site.
 - b. The FFCP must include detailed and specific information for the on-site afforestation tree planting canopy credit for 0.19 acres. All trees for tree planting canopy credit shall also be shown so there is no canopy overlap. Replace the sawtooth oak tree species with a non-invasive, native tree species (suitable for the Piedmont Region) from the Trees Technical Manual.
 - c. Submission of the FFCP must include written permission from the adjacent property owners of specimen tree #1 and significant tree #4 (on two separate properties) for the removal of these trees as shown.
 - d. The FFCP must include a detailed Tree Save Report prepared by a Maryland-certified Arborist with an evaluation and recommended tree protection measures for specimen tree #5 (on adjacent property).
 - e. Add the Developer's Certificate (see attached) to the FFCP and include this person's signature and the signature date in non-black ink.
 - f. After these revisions have been addressed, have the qualified professional who prepared the FFCP sign it in non-black ink and include the date of signature.

Letter to Mr. Dwight J. Mayes, S-1424-A- University Gardens-Preliminary Forest Conservation Plan

2. Prior to signature approval of the FFCP submit an approved copy of the sediment and erosion control plan with the proposed limits of disturbance (LOD).

If you have any questions regarding these actions, please contact me at 301-495-4551 or electronically at: lori.shirley@mncppc-mc.org.

Sincerely,



Lori Shirley
Planner Coordinator
Environmental Planning Division

Cc: John Sekerak, Greenhorne and O'Mara (with attachment)
FFCP No. S-1424-A – University Gardens file

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. _____ including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
Printed Company Name

Contact Person or Owner: _____
Printed Name

Address: _____

Phone and Email: _____

Signature: _____