



MCPB
ITEM #
April 22, 2010

MEMORANDUM

TO: Montgomery County Planning Board

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

FROM: Candy Bunnag, *CB* Planner Coordinator
Environmental Planning Division

DATE: March 23, 2010

REVIEW: Preliminary Forest Conservation Plan No. G-885
TYPE Bowie Mill Property Rezoning

LOCATION: 18241 Bowie Mill Road, West of Darnell Drive
Olney, MD

APPLICANT: Bowie Mill Road, LLC

APPLICANT'S
ENGINEER: Loiderman-Soltesz Associates, Inc

The Preliminary Forest Conservation Plan has been reviewed by Environmental Planning staff to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law). The following determination has been made:

RECOMMENDATION: Approval subject to the following conditions:

1. Compliance with the conditions of approval of the Preliminary Forest Conservation Plan. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permit(s). Conditions include, but are not limited to, the following:
 - a. Category I conservation easements must be placed over all areas of forest retention, forest planting, and environmental buffers that lie outside a public road right-of-way.
 - b. Preliminary Forest Conservation Plan to be revised at the preliminary plan stage as follows:

- i. Tree and shrub plantings to be added within the currently unforested portions of the environmental buffer along the western property boundary.
 - ii. If limits of disturbance lie outside the property boundaries, these offsite areas must be included in the net tract area.
 - iii. Any forest clearing associated with the installation of sewer lines in the environmental buffer must be included in the Forest Conservation Plan worksheet. The final sewer alignments to be determined at the preliminary plan stage.
 - c. Final Forest Conservation Plan must include the following elements:
 - i. Specific amount of any forest planting that exceeds the planting requirement as determined in the Forest Conservation Plan Worksheet may be used for forest banking.
 - ii. Any approved forest banking area must be planted at the same time as the required planting areas.
 - iii. Final locations of required planting areas and forest bank planting areas.
 - iv. Permanent forest conservation signs must be placed along the boundaries of the conservation easement area.
 - v. Tree save plan that identifies trees that are to be retained and provides appropriate tree protection measures along the edges of the forest retention area and for existing individual trees within proposed lots.
2. Final trail location within the environmental buffer to be determined at site plan.
3. Trails within the conservation easement area must be designed and constructed with mulch or other appropriate natural surface materials.

DISCUSSION

Background

The 32.74-acre site lies on the south side of Bowie Mill Road in the Olney Planning Area. The PEPCO power transmission right-of-way lies along the west side of the property. The site is currently vacant. The applicant proposes to rezone the property from R-200 to PD-3 and to construct 117 residential dwelling units and associated infrastructure.

The Board's action on the Preliminary Forest Conservation Plan is regulatory and binding. The Planning Board must act on the Forest Conservation Plan before it finalizes its recommendations on the zoning case.

Environmental Guidelines

The applicant submitted and received approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) number 420100430 on November 17, 2009. There is a

first-order stream that flows roughly northeast to southwest through the property. There are wetlands associated with the stream. About 6.79 acres of forest exist within the



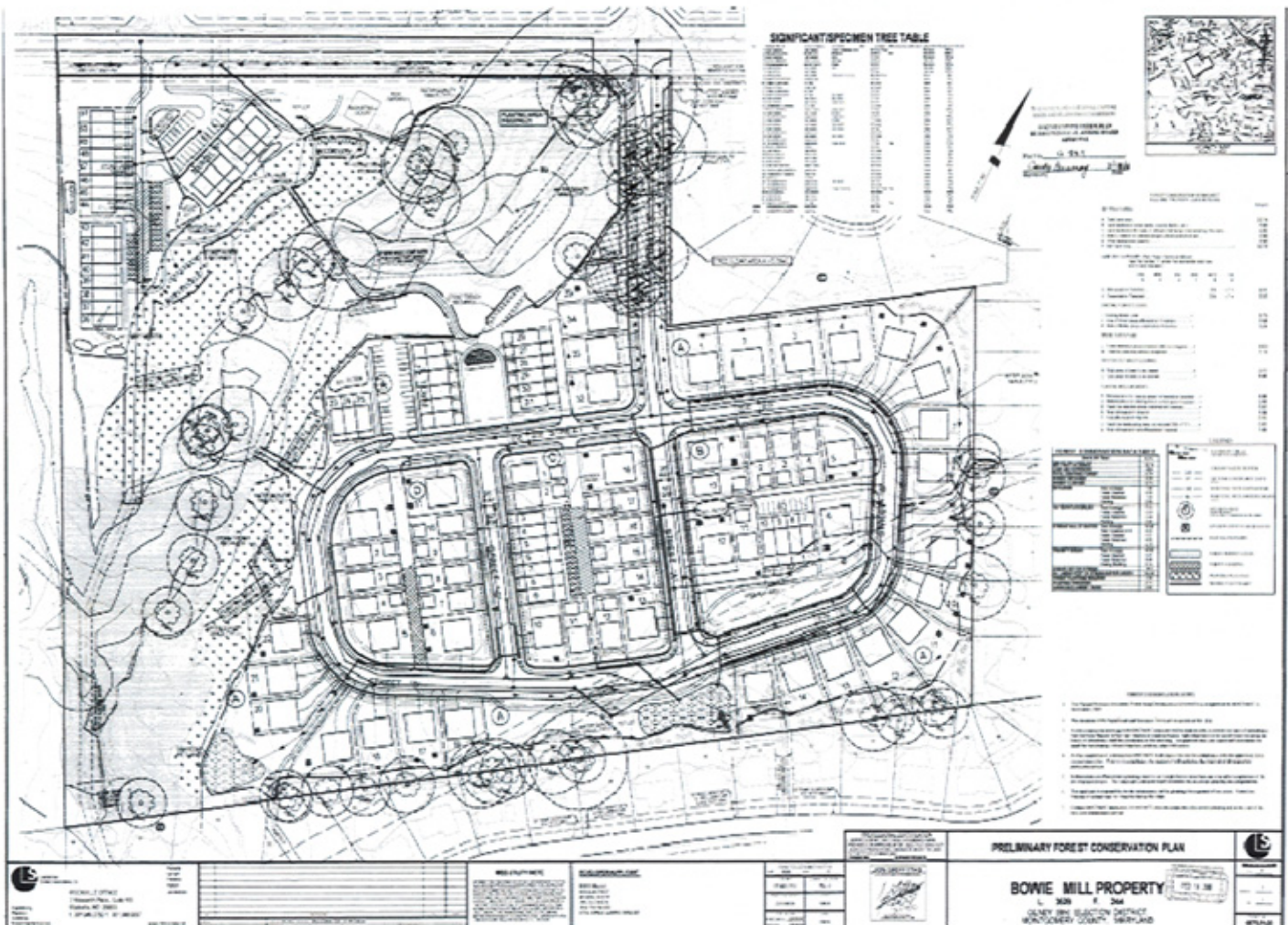
environmental buffer. A WSSC sewer right-of-way also runs through the environmental buffer. The environmental buffer covers about 10.96 acres, or roughly one-third of the site.

The property has gently rolling topography. Most of the site outside the environmental buffer is in field cover. Part of the buffer is also in field cover. Individual trees lie along most of the property's perimeter. Many of these trees are 24 inches and greater in diameter at breast height. There are four trees that are at least 75 percent of the County champion tree. Three of these trees (two 39-inch DBH basswoods and a 31-inch DBH pin oak) lie within the environmental buffer. The fourth tree, a 51-inch basswood, lies along the southern property boundary.

The subject property is located in North Branch of Rock Creek watershed, a Use Class III watershed. The 2003 update of the *Countywide Stream Protection Strategy* (Montgomery County Department of Environmental Protection) identifies the property as being in the Williamsburg Run subwatershed; this subwatershed has fair water quality.

Forest Conservation

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and a Preliminary Forest Conservation Plan has been submitted. The applicant proposes to retain 6.06 acres of the 6.79 acres of existing forest and plant about 3.15 acres of forest within the environmental buffer area. The proposed planting amount exceeds the required planting amount of 1.04 acres. The applicant proposes to use the “excess” forest planting as a forest mitigation bank. Staff supports the creation of a forest mitigation bank.





Section 22A-12(f)(2)(B) of the Forest Conservation Law applies to the project since the proposed rezoning is for PD-3. The law requires minimum on-site forest retention for a planned development:

“In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a)...”

However, Section 22A-12(f)(3) allows for the combination of onsite forest retention and forest planting to be maximized if the Planning Board finds that the required onsite forest retention cannot be provided: “If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the

applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.”

The applicable forest conservation threshold for this project is 6.55 acres. There is 6.79 acres of existing forest. The applicant proposes to retain 6.06 acres of forest and plant the required 1.04 acres of reforestation onsite. The applicant is not able to retain the conservation threshold amount of forest because of the proposed road to access the site. The only available public access point into the site must originate on Bowie Mill Road on the north side of the property. Because of the location of the existing forest relative to the available public access for the property, any public road that is constructed to serve the property must involve some forest clearing. Although the proposed location of the public road does not necessarily minimize forest loss on the site, staff believes it does minimize the overall environmental impact on the stream. The proposed road location is at the edge of the environmental buffer and minimizes disturbance within the environmental buffer itself and forest loss within the environmental buffer. The road will be near but not cross the stream channel since the stream flows from an existing culvert under Bowie Mill Road at that location.

Therefore, staff believes forest retention to meet the conservation threshold is not possible or desirable and recommends that the applicant be allowed to provide the maximum combined forest retention and forest planting onsite.

There may be some forest lost associated with sewer line connections depending on the locations of the proposed connections. New sewer lines for the subdivision will be connected to the existing line in the environmental buffer area. Although the preliminary FCP shows proposed locations which would result in roughly 0.03 acre of forest lost, staff believes the applicant should avoid clearing forest for the installation of the new sewer lines if possible. The specific sewer line alignment should be determined at the preliminary plan stage, and the Preliminary FCP should be revised to include forest clearing, if any, associated with the proposed sewer lines.

The applicant proposes to plant forest within the currently unforested portion of the environmental buffer that is not within the proposed road ROW, except for a small and narrow part of an environmental buffer along the western property boundary associated with a wetland that lies offsite on the adjoining electric power transmission line right-of-way. Staff recommends that native trees and shrubs are planted within this narrow strip of buffer to clearly delineate the buffer. In addition, a small area of environmental buffer at the southwestern corner of the site is also not forested. The understory of this corner of the site has been removed. Staff recommends that this area also be planted with a mix of trees and shrubs.

As noted above, any forest planting that exceeds the required amount determined by the Forest Conservation Worksheet is proposed to be set up as a forest mitigation bank.

In order to develop the site as proposed, the applicant is required to obtain approval of a variance for the removal of two specimen trees.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria 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 individuals, the applicant is required to submit a variance to remove the trees. The variance must be submitted prior to approval of the forest conservation plan. In general, the variance provision of SB Bill 666 applies to all trees 30" diameter at breast height (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 four trees greater than 30 inches DBH a variance is required. The applicant has requested a variance to remove a 38" red maple, a 39" basswood, a 31" red maple, and a 30" black cherry (Attachment A).

Section 22A-21(c) of the County code 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. The variance request was referred to the County Arborist on November 19, 2009. Staff has not received a response from the County Arborist. Per the County code, since the Arborist has not responded within the 30-day time period, the Arborist's recommendation is presumed to be favorable.

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. Section 22A-21(d) of the County code 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. The clearing of the specific 30-inch and greater DBH trees are due to a proposed public access road that will serve the property. The proposed road location minimizes impacts on the onsite stream and environmental buffer. Since a public access road is required for the subdivision,

and the proposed road location minimizes adverse impacts on the environmental buffer, no special privilege have been conveyed on the applicant. Therefore, staff does not believe that the clearing of the specific trees in question is 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 the proposed site layout and design to achieve safe vehicle access for the subdivision.

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

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. The specimen trees proposed to be removed are within a stream buffer. However, the trees are located on the edge of the buffer where there have been past encroachments into the buffer due to Bowie Mill Road and surrounding residential development. In addition, the proposed subdivision will be required to have an approved stormwater management concept plan before the preliminary and site plans can proceed forward.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant's request for a variance from individual tree retention requirements of the Forest Conservation Law to remove the four trees that are 30 inches or greater DBH. The variance approval is assumed into the Planning Board's approval of the forest conservation plan.

SUMMARY

Environmental Planning recommends approval of the Preliminary Forest Conservation Plan with the conditions stated above.

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Loiederman
Soltesz Associates, Inc.

November 4, 2009

Mark Pfefferle
M-NCPPC
Environmental Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Bowie Mill Property
Request for a Variance to remove four (4) specimen trees

Dear Mark,

As part of zoning application (G-885), Bowie Mill Road LLC submitted a Preliminary Forest Conservation Plan (PFCP) identifying the removal of four specimen trees greater than 30" dbh. On behalf of Bowie Mill LLC, Loiederman Soltesz Associates, Inc. is requesting a variance for the removal of these four specimen trees under Section 22A-21 of Montgomery County's Forest Conservation Law.

Background Information

The Bowie Mill Road, LLC is a joint venture of Elm Street Development and Montgomery Housing Partnership (MHP), a non-profit organization. The subject property is currently owned by Montgomery County and the applicant has signed a Development Agreement and Agreement of Sale and Purchase, which commits the applicant to providing 40% (47) market-rate units, 30% (35) MPDUs, and 30% (35) Workforce Housing (WFH) Units. A total of 117 single-family units consisting of detached, townhouse, and 2 over 2 condominium units are proposed.

The property currently consists of approximately 25.95 acres of fallow agricultural fields and 6.79 acres forest (Figure 1). The property is bounded by existing single-family lots to the east and south, a PEPCO power transmission right of way to the west, and Bowie Mill Road to the north. The only road access to the property is from Bowie Mill Road. A first order perennial tributary to the North branch of Rock Creek flows north to south bisecting the property. The Natural Resource Inventory (NRI) plan for the site identified 17 specimen trees greater than 30" diameter at breast height (dbh), along with 42 trees greater than 24" dbh. These trees are located both in the forested portion of the site and outside the forest along the property boundaries



Figure 1. Bowie Mill Property (not to scale)

In order to minimize the impact to the existing stream and associated wetlands, access from Bowie Mill Road to the eastern portion of the property is limited to a narrow strip of land between the rear yards of the existing homes on Daly Manor Place and the existing perennial stream and associated wetlands. Locating the entrance road any further to the west would require the road to cross the stream valley and would result in significant environmental impacts.

Four specimen trees (> 30" dbh) are located within this narrow strip of land. In order to access the eastern portion of the site, without impacting the stream and associated wetlands, these four specimen trees will need to be removed.

The four specimen trees, as identified on the NRI plan, are described in Table 1.

Table 1. Specimen Trees to be removed on Bowie Mill Property

Tag #	Common Name	Scientific Name	Size (dbh)	Condition	Comments
1	red maple	Acer rubrum	38"	Very Poor	Top missing, cavity
2	basswood	Tilia Americana	39"	Poor	Crown dieback
3	red maple	Acer rubrum	31"	Fair	Twin trunk
5	black cherry	Prunus serotina	30"	Fair	Triple trunk

Preservation of these four trees would result in a significant hardship to the applicant in terms of costs and time delays, as moving the entrance road to the west would require the road to cross the stream resulting in a significant impact to the stream and associated wetlands. The construction of a road crossing the stream would require authorization from the Maryland Department of the Environment and the US Army Corps of Engineers. These agencies require that any impact to streams and wetlands be avoided to the most practicable extent and that there be no feasible alternatives to the impact. The currently proposed location of the entrance road would be considered a practical, feasible alternative by these agencies. The applicant would ultimately be required by these agencies to construct the entrance road in its currently proposed location. The costs and time delays in applying for authorization from these agencies, which would not be granted, would represent a significant hardship on the applicant and would ultimately result in the need to remove these four trees.

Trees in this condition are generally not considered candidates for preservation in the context of a forest conservation plan. Preservation of specimen trees currently in poor or fair condition would deprive the landowner of rights commonly enjoyed by others, as it would require extraordinary measures not typically required of a forest conservation plan applicant.

In addition, requiring the preservation of these four trees and the relocation the entrance road into a more environmentally sensitive area would deprive the landowner of rights commonly enjoyed by others, as it would require the applicant to move the entrance road to a more environmentally sensitive area. This would needlessly subject them to a costly and lengthy State/Federal permit process that would ultimately require the road to be constructed in the currently proposed location.

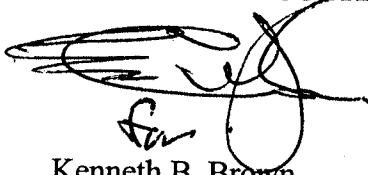
Preserving these four trees would require locating the entrance further west into the environmental buffer and require the road to cross the stream at a location resulting in measurable water quality impacts. The currently proposed location would result in greater avoidance and minimization of impact to stream and wetland areas, thus meeting the State water quality standards.

Removal of these four trees and locating the entrance road in the currently proposed location would not avoid State water quality standards and would prevent direct impacts to the stream and any potential degradation of water quality associated with a stream crossing. The entrance road, in the currently proposed location, represents the best alternative for avoiding potential water quality degradation.

Should you have any questions or require further clarification, please do not hesitate to contact me. Thank you.

Sincerely,

LOIEDERMAN SOLTESZ ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read 'Ken B. Brown', written over a horizontal line.

Kenneth B. Brown
Project Manager, Environmental Services