



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

MCPB
Item #
November 4, 2010

MEMORANDUM

TO: Montgomery County Planning Board

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

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

DATE: October 22, 2010

PLAN NAME: Allcock Property

PLAN NUMBER: SC2011001

PLAN TYPE: Forest Conservation Variance Request

REVIEW BASIS: Chapter 22A of the County Code

ZONE: R-200

LOCATION: 6812 Olney-Laytonsville Road (MD Route 108) 550 feet southeast of Maple Knoll Lane

APPLICANT: Shannon Allcock

HEARING DATE: November 4, 2010

RECOMMENDATION

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

BACKGROUND

The applicant is requesting to construct a new house on Parcels 466 and 467 on Olney-Laytonsville Road (MD Route 108) in Laytonsville. The site is 1.11 acres in size and is mostly open with a couple of hedgerows and some scattered trees. 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 1.11 acres or 48,444

square feet in size and therefore subject to Chapter 22A.

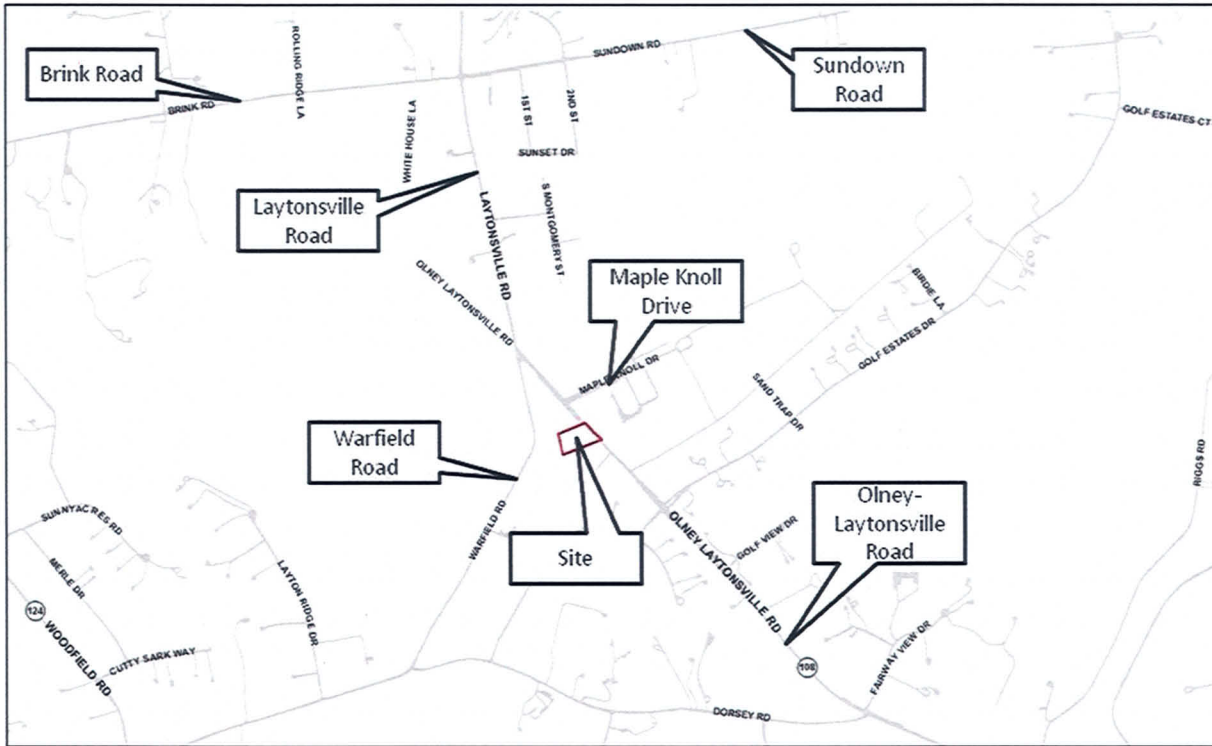


Figure 1: Vicinity Map



Figure 2: 2008 Aerial View

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 and does not remove any forest in a Stream Valley Buffer (SVB). The applicant is proposing construction on two parcels of land not a single lot. Furthermore, the total acreage is over 1 acre and the site contains specimen trees and is not eligible for the small property exemption. Therefore the applicant must submit and obtain approval of a forest conservation plan before any land disturbing activities occur on the subject property.

Since the site consists of two parcels which are exempt from the platting requirements of subdivision and do not need to be converted into lots to be built upon, 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 August 11, 2010 the applicant requested a variance for the removal of two trees and the impact to two additional trees 30-inches and greater (Attachment A). The two trees proposed for removal are # 4, and 16. Tree 16 is within existing forest.

Figure 3. Specimen Trees to be Removed

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	Condition	Location
4	White Oak	<i>Quercus alba</i>	54.9 In.	82.35 feet	Poor/Hazard	Septic Field
5	Silver Maple	<i>Acer saccharinum</i>	41.7 In.	62.55 feet	Poor/Hazard	Driveway/Roadway

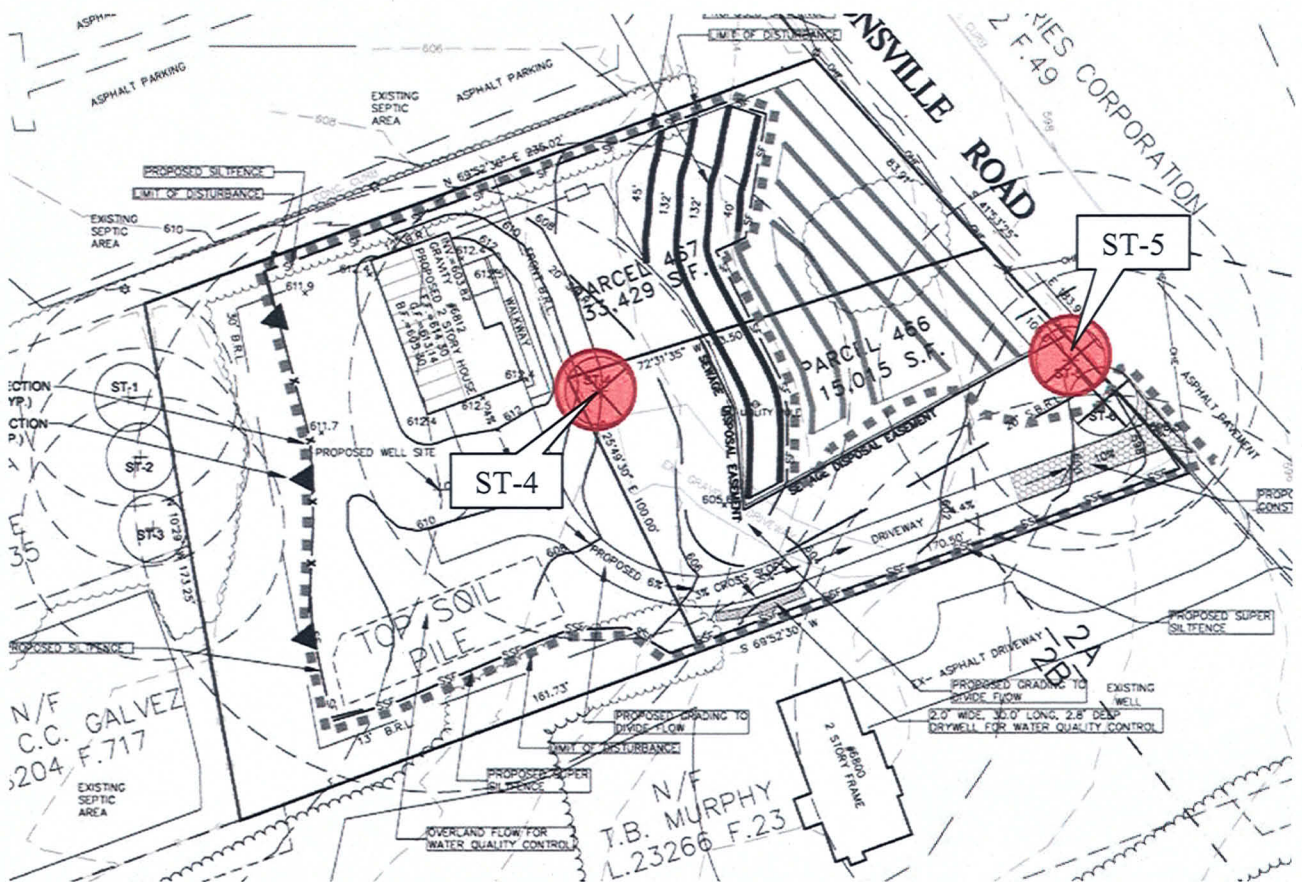


Figure 3: Trees Requiring Variance

The applicant’s August 25, 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 subject application is a proposal to construct one single family home on two small vacant parcels, P466 & P467. The applicant for this project, Shannon Allcock is the owner of the property and he will also reside in the proposed house. The large White Oak, ST-4 is located in the middle of the property. Percolation testing has already occurred and a septic field is approved for the front of the property leaving very little room to construct a new house without severely impacting the already hazardous White Oak. The Silver Maple would be in the road right-of-way but since this parcel is grandfathered, this property is not required to go through the subdivision process so there will not be any land dedication for a right-of-way.

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

If the White Oak is not allowed to be removed, the applicant will always be at risk to the tree failing and causing damage to property and/or life. If the Silver Maple were to fail, the

applicant could be held responsible to any harm it may cause to someone driving down Olney-Laytonsville Road.

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.*

Approval of this variance will not result in a violation of any State water quality standards nor will it cause any degradation in water quality. There are no streams located on the subject property and therefore removal of the two trees will not cause an increase in sediments or pollutants entering the water systems.

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

The trees proposed to be removed are shown on the pending Final Forest Conservation Plan (FFCP) for the subject project and are identified as ST-4 & ST-5. Both of these trees are hazard trees and are proposed for removal to prevent any damage to property and/or life. A couple of small landscape trailers are currently being parked under the large White Oak providing a target and the Silver Maple's target is Olney-Laytonsville Road.

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 tree removals are based upon required septic easement area, site access, required stormwater management, and the hazardous condition of the trees. The proposed impacts 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 required septic easement area, site access, required stormwater management, and the condition of the trees. Trees #4 and #5 are listed as poor/hazard trees and are recommended, by an arborist, to be removed with or without new development. Even if a smaller house footprint was used these trees would remain hazardous and would pose a threat to both the existing site and/or any new development on the property.

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. A Stormwater Management Plan will be approved by Montgomery County.

County Arborist's Recommendation

On October 7, 2010 the County Arborist provided a written statement indicating that she was electing to review the variance request for this project (Attachment B).

The County Arborist recommended the variance be approved conditioned on mitigating for the loss of resources due to the removal. She recommends mitigation based on the critical root zone lost or disturbed, until other guidelines are developed.

MITIGATION

Environmental Planning staff disagrees with the County Arborist's recommendation that the applicant provide mitigation for the removal of the two specimen trees. Specimen trees #4 and #5 are both listed in poor/hazardous condition and even without development of the property these trees are recommended for removal. At the time of the NRI/FSD an ISA certified arborist made the recommendation these trees should be removed as soon as possible. Hazardous trees may fall and cause injury to people or damage to property. Requiring mitigation for the removal of hazardous trees which are recommended by an ISA certified arborist for removal even if no development should occur is unwarranted. Based on the poor condition and the fact the trees propose a hazardous situation Environmental Planning feels no mitigation is warranted for the removal of these trees.

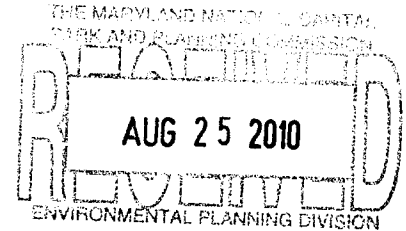
CONCLUSION

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

Attachment A:

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
Fax: 301-948-0241
E-mail: benninglandplan@aol.com



To: Josh Penn— Environmental Planning Division of MNCPPC

From: Patrick Perry

Date: August 17, 2010

Re: Request for Variance for Allcock Property (#SC2011001)

Josh,

In accordance with the requirements of Section 22A-21 of the County Code and on behalf of the applicant for this project, I am writing to request a variance from provisions of Chapter 22 as it applies to this project. A variance is required in order to remove two trees which are 30 inches or greater at diameter-at-breast-height.

The trees proposed to be removed are shown on the pending Final Forest Conservation Plan (FFCP) for the subject project and are identified as ST-4 & ST-5. Both of these trees are hazard trees and are proposed for removal to prevent any damage to property and/or life. A couple of small landscape trailers are currently being parked under the large White Oak providing a target and the Silver Maple's target is Olney-Laytonsville Road.

In support of this request for a variance, please note the following:

There are special conditions peculiar to the property which would cause unwarranted hardship should the variance not be approved. The subject application is a proposal to construct one single family homily home on two small vacant parcels, P466 & P467. The applicant for this project, Shannon Allcock is the owner of the property and he will also reside in the proposed house. The large White Oak, ST-4 is located in the middle of the property. Percolation testing has already occurred and a septic field is approved for the front of the property leaving very little room to construct a new house without severely impacting the already hazardous White Oak. The Silver Maple would be in the road right- of-way but since this parcel is grandfathered, this property is not required to go through the subdivision process so there will not be any land dedication for a right-of-way.

Should the variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. If the White Oak is not allowed to be

removed, the applicant will always be at risk to the tree failing and causing damage to property and/or life. If the Silver Maple were to fail, the applicant could be held responsible to any harm it may cause to someone driving down Olney-Laytonsville Road.

- The granting of a variance to remove these two trees will not result in a violation of State water quality standards or in any measurable degradation in water quality in general. Approval of this variance will not result in a violation of any State water quality standards nor will it cause any degradation in water quality. There are no streams located on the subject property and therefore removal of the two trees will not cause an increase in sediments or pollutants entering the water systems.

For all of the reasons stated above, we respectfully request approval of a variance to allow the removal of these two trees which have a diameter-at-breast-height of 30 inches or greater. If any further information is needed for this request, please let me know at your earliest convenience.

Sincerely,



Patrick Perry



Attachment B:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

October 7, 2010

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

RE: Allcock Property, SC2011001, NRI/FSD applied for on 4/30/2010

Dear Ms. Carrier:

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law 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.

Applying the above conditions to the plan submitted by the applicant results in the following findings:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.


Françoise Carrier
October 7, 2010
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2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicant and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this condition.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this condition.

Therefore, I recommend that this applicant qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

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