



MCPB
Item #
November 18, 2010

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*
FROM: Josh Penn, Senior Planner, Environmental Planning *JW*
DATE: November 5, 2010
PLAN NAME: North Potomac Recreation Center
PLAN NUMBER: MR 2010731
PLAN TYPE: Preliminary Forest Conservation Plan
REVIEW BASIS: Chapter 22A of the County Code
ZONE: R-200/TDR
LOCATION: The northeast quadrant of the intersection of Travilah Road and Patrick Avenue
APPLICANT: Montgomery County Department of General Services
HEARING DATE: November 18, 2010

RECOMMENDATIONS

The Environmental Planning staff has reviewed the preliminary forest conservation plan and recommends:

APPROVAL of the Preliminary Forest Conservation Plan subject to the following conditions:

1. Submission and approval of a final forest conservation plan prior to any land disturbing activities.
2. Applicant must record a category I conservation easement over all forest plantings, retained forests, and environmental buffers prior to any land disturbing activities.

BACKGROUND

Montgomery County Department of General Services (DGS) is proposing to construct a new recreation center on 17.14 acres of land on the north side of Travilah Road at Patrick Avenue. The property is comprised of several parcels and currently consists of several existing, partially demolished, and abandoned residential buildings. One of the parcels contains an occupied existing home and a small landscaping business operation. The property is currently zoned R-200. The surrounding neighborhood includes single-family homes, townhouses and a public park.

DGS proposes to construct a new 48,600 square foot recreation building, two small paved multi-purpose courts, and a multi-purpose/ballfield. The project will also include the necessary infrastructure such as stormwater management facilities and parking spaces. The total disturbed area will be approximately 9.29-acres or about 54% of the site.

Natural resource inventory/forest stand delineation (NRI/FSD #420101280) was approved by Environmental Planning staff on March 18, 2010. The site contains 10.37 acres of forest, several streams, 0.37 acres of wetlands, 8.15 acres of stream buffer, and 1.58 acres of wetland buffer. The property is located within the Watts Branch watershed, which is a Use I designation. The Countywide Stream Protection Strategy (CSPS) rates this watershed as fair. The proposed project does not have any proposed activities within any streams, wetlands, or environmental buffers, other than the removal of existing features, and is in compliance with the Environmental Guidelines.



Figure 1: 2010 Aerial Photograph with Parcel Boundaries

DISCUSSION

There are two items for Planning Board review for the North Potomac Recreation Center: the mandatory referral and the preliminary forest conservation plan. This memorandum covers staff's review and recommendations on the preliminary forest conservation plan.

The Board's action on the forest conservation plan is regulatory and binding. The Planning Board must act on the forest conservation plan before it can act on the mandatory referral.

FOREST CONSERVATION

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County code) under section 22A-4(d) "a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger..." The site is 17.14 acres in size with an additional .30 acres of offsite work and contains 10.37 acres of forest.

The submitted preliminary forest conservation plan (PFCP) shows 4.10 acres of forest removal and 6.27 acres of retention of forest. The project does not generate a planting requirement. Even though the forest conservation plan does not generate any forest planting requirements the applicant is proposing to replant 0.56 acres of the stream valley buffer (SVB) to mitigate for temporary disturbances within the SVB. The temporary disturbances within the SVB include the removal of existing features, such as houses and walkways and are proposed to be replanted as forest after demolition is completed.

The applicant must submit a final forest conservation plan for staff approval after the Planning Board hearing and before any clearing and grading occurs on site. Since the forest conservation plan shows the retention of existing forest and planting of unforested stream valley buffers, staff requests a condition of approval that requires the applicant to record a category I conservation easement over all retained forests, planted forests, and environmental buffers. This is to ensure the long-term protection of the resource.

VARIANCE REQUIREMENTS

Section 5-1607(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 18, 2010 the applicant requested a variance for the removal of seventeen trees and the impact to nine additional trees 30 inches and greater Diameter at Breast Height (DBH) (Attachment A).

Specimen Trees to be Removed

Tree No.	Common Name	Botanical Name	D.B.H. (inches)	C.R.Z. Radius (feet)	Condition	Location
7	Red Oak	<i>Quercus rubra</i>	30	45	Fair	Within Ex. Forest
8	White Oak	<i>Quercus alba</i>	32	48	Good	Within Ex. Forest
19A	Red Oak	<i>Quercus rubra</i>	30	45	Good	Not Within Ex. Forest
41	Red Oak	<i>Quercus rubra</i>	31	46.5	Good	Within Ex. Forest
44	Yellow Poplar	<i>Liriodendron tulipifera</i>	30	45	Good	Within Ex. Forest
48	White Oak	<i>Quercus alba</i>	33	49.5	Good	Within Ex. Forest
56	Red Oak	<i>Quercus rubra</i>	32	48	Good	Within Ex. Forest
57	Yellow Poplar	<i>Liriodendron tulipifera</i>	30	45	Good	Within Ex. Forest
59	Red Oak	<i>Quercus rubra</i>	33	49.5	Good	Within Ex. Forest
150	White Oak	<i>Quercus alba</i>	30	45	Good	Not Within Ex. Forest
151	White Oak	<i>Quercus alba</i>	32	48	Good	Not Within Ex. Forest
152	White Oak	<i>Quercus alba</i>	48	72	Fair	Not Within Ex. Forest
153	White Oak	<i>Quercus alba</i>	35	52.5	Fair	Not Within Ex. Forest
154	White Oak	<i>Quercus alba</i>	30	45	Good	Not Within Ex. Forest
155	White Oak	<i>Quercus alba</i>	31	46.5	Good	Not Within Ex. Forest
158	White Oak	<i>Quercus alba</i>	30	45	Good	Not Within Ex. Forest
160	White Oak	<i>Quercus alba</i>	33	49.5	Good	Within Ex. Forest

Specimen Trees to be Impacted

Tree No.	Common Name	Botanical Name	D.B.H. (inches)	C.R.Z. Impacted	Condition	Location
2	White Oak	<i>Quercus alba</i>	35	26%	Good	Within Ex. Forest
10	Red Oak	<i>Quercus rubra</i>	31	38%	Good	Within Ex. Forest
14	Green Ash	<i>Fraxinus pennsylvanica</i>	32	1%	Good	Not Within Ex. Forest
15	Silver Maple	<i>Acer saccharinum</i>	47	20%	Good	Not Within Ex. Forest
16	White Oak	<i>Quercus alba</i>	32	17%	Good	Not Within Ex. Forest
42	Red Oak	<i>Quercus rubra</i>	33, 12	1%	Good	Within Ex. Forest
70	Red Oak	<i>Quercus rubra</i>	39	19%	Good	Within Ex. Forest
76	Yellow Poplar	<i>Liriodendron tulipifera</i>	31	11%	Good	Within Ex. Forest
163	Persimmon	<i>Diospyros virginiana</i>	17	1%	Good	Within Ex. Forest

The applicant's August 18, 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.*

As part of the effort, DGS was tasked with completing the intended property use as a public recreational facility with adequate space provided for the new building, recreational facilities, parking and access. Efforts have been made to only impact a narrow central area of the site in order to avoid trees, stream buffers and wetlands. This work will require work in the root zone of trees numbered 2, 10, 14, 15, 16, 42, 70, 76, and 163, but will not require their removal. However, it will require the removal of trees 8, 19A, 39, 41, 44, 48, 56, 57, 59, 69, 149, 150, 151, 152, 153, 154, 155, and 158. Attempts will be made to save trees 7 and 160, but they also may need to be removed. It should be noted that trees 39, 69, and 149 are dead. This results in an impact of a total of twenty-six (26) live trees. If we were not allowed to impact the root zone or remove these trees, there would not be adequate room for the development program.

Additionally, there are a number of existing vacant and dilapidated homes on the site, which will need to be demolished for safety reasons. It should be noted that this work would need to be completed even if the proposed development project was not moving forward. The area involved has been included in the disturbed area of the site and causes the impact to six trees (149, 151, 153, 154, 155 and 158).

If we were not allowed to impact the trees it would make the site virtually unusable for a badly needed park facility and its associated amenities. As such, this would cause an unwarranted hardship to the community that it serves.

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

If the County were required to keep all improvements outside of the root zones, the site would be virtually unusable for upgrade without impacting the necessary services to be offered by the site.

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.*

The trees to be removed have been limited to the central area of the site and away from natural drainage systems. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes limiting the impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in measurable degradation in water quality.

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

There is currently an existing home, and buildings on the site associated with an existing landscape business. Apparently, earth fill has been placed in some areas of the site and violations issued for this illegal use and for impacts to environmentally sensitive areas of the site. Currently remedial actions are underway to improve these conditions. As a part of the overall development plan, these impacts will be eliminated. Although this may not specifically affect the impact to existing trees, the overall environmental improvements to this site should be noted.

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 this property for the intended public use and benefit. The size and scope of this facility has been drastically reduced from the original designs to conform with the environmental constraints of the site.

The development of this lot is consistent with the County's General plan and Potomac Sub-region Master Plan.

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

The Potomac Subregion Master Plan recommends "Acquire property on the 13800 Block of Travilah Road for the North Potomac Community Recreation Center, the precise acreage to be determined by the Department of Recreation's facility planning study. The site must be adequate for a 24,000 net square foot facility and necessary parking." The applicant was following the recommendations of the master plan in both selection of the site and in the amount of proposed development. Therefore, the conditions or circumstances are not a direct result of the actions of the applicant.

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. As a part of the stormwater management plan the applicant proposes to use approximately 22,000 square feet of green roof and fourteen bio-retention facilities to meet Environmental Site Design (ESD) criteria.

On October 12, 2010 the County Arborist provided a written statement (Attachment B) indicating that she was recommending approval of the variance request for the project with mitigation for the loss resources. She further recommends that the mitigation be based upon the area of critical root zone lost or disturbed.

MITIGATION

Trees 39, 69, and 149 are dead trees and should not require any mitigation.

Trees 2, 7, 8, 10, 41, 42, 44, 48, 56, 57, 59, 70, 76, 160, and 163 are being removed/impacted from within existing forest will be compensated for as part of the forest conservation plan in accordance with Chapter 22A of the County code. Staff is not requesting any mitigation, other than what is already required by the forest conservation plan, for the removal specimen these trees that are within existing forests.

Specimen trees 14, 15, 16, 19A, 150, 151, 152, 153, 154, 155, and 158 are not within existing forest and should require some mitigation. Additionally, there are nine trees, 14, 15, 16, 149, 151, 153, 154, 155, and 158 that are being impacted by the demolition of existing dilapidated structures on the property which would be required even if the development were not to proceed. Trees 14, 15, and 16 only have impacts from the demolition process while the remaining six trees have impacts from both development and demolition. These impacts were taken into account as part of determining

suitable mitigation.

However, the applicant is already providing 0.56 acres of on-site planting as mitigation for required work within the SVB and in this particular case staff believes the 0.56 acres of SVB planting as proposed by the applicant should also be used to mitigate for the impact to the specimen trees outside of existing forest. Additionally, the applicant is planting 181 canopy trees, thirteen different species, as part of the landscaping plan for the project.

The proposed plantings both within the SVB and as shown on the landscaping plan are more than adequate to mitigate for the proposed specimen tree impacts and losses

CONCLUSION

Staff recommends the Planning Board approve the preliminary forest conservation plan with conditions.



Attachment A:

DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

August 18, 2010

David E. Dise
Director

Mr. Mark Pfefferle
Environmental Planning Division
Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: North Potomac Recreation Center
Request for Tree Disturbance Variance

Dear Mr. Pfefferle:

On behalf of the Montgomery County Department of General Services and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow removal of the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named County construction project:

Project Description:

The North Potomac Recreation Center is a new facility located on several parcels totaling approximately 17.14-acres. The property is located on the north side of Travilah Road and consists of several existing, partially demolished, and abandoned residential buildings. One of the parcels contains an occupied existing home and a small landscaping business operation. The property is currently zoned R-200. The surrounding neighborhood includes single-family homes, townhouses and a public park.

Proposed construction consists of a new 48,600 square foot building, which will be located in the southeast area of the site. A new vehicular access system is included with a cul-de-sac type turnaround and parking lot will be constructed. Two small paved multi-purpose courts in the central site area and a multi-purpose/ball-field area at the northern portion of the site are also proposed. The total disturbed area will be approximately 9.29-acres or about 54% of the site.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states that the applicant 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 violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and

Division of Building Design and Construction

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

Justification of Variance

- (1) **Describe the special conditions peculiar to the property which would cause the unwarranted hardship;**

As part of the effort, DGS was tasked with completing the intended property use as a public recreational facility with adequate space provided for the new building, recreational facilities, parking and access. Efforts have been made to only impact a narrow central area of the site in order to avoid trees, stream buffers and wetlands. This work will require work in the root zone of trees numbered 2, 10, 14, 15, 16, 42, 70, 76, and 163, but will not require their removal. However, it will require the removal of trees 8, 19A, 39, 41, 44, 48, 56, 57, 59, 69, 149, 150, 151, 152, 153, 154, 155, and 158. Attempts will be made to save trees 7 and 160, but they also may need to be removed. It should be noted that trees 39, 69, and 149 are dead. This results in an impact of a total of twenty-six (26) live trees. If we were not allowed to impact the root zone or remove these trees, there would not be adequate room for the development program.

As a part of the project, the building has been placed in a part of the property, which will minimize tree impacts (only trees 149, 150 and 151), while providing reasonable visibility and accessibility.

Additionally, there are a number of existing vacant and dilapidated homes on the site, which will need to be demolished for safety reasons. It should be noted that this work would need to be completed even if the proposed development project was not moving forward. The area involved has been included in the disturbed area of the site and causes the impact to six trees (149, 151, 153, 154, 155 and 158).

If we were not allowed to impact the trees it would make the site virtually unusable for a badly needed park facility and its associated amenities. As such, this would cause an *unwarranted hardship* to the community that it serves.

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

If the County were required to keep all improvements outside of the root zones, the site would be virtually unusable for upgrade without impacting the necessary services to be offered by the site.

- (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 trees to be removed have been limited to the central area of the site and away from natural drainage systems. In addition, this property will be developed in accordance with the latest

Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes limiting the impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality*.

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

There is currently an existing home, and buildings on the site associated with an existing landscape business. Apparently, earth fill has been placed in some areas of the site and violations issued for this illegal use and for impacts to environmentally sensitive areas of the site. Currently remedial actions are underway to improve these conditions. As a part of the overall development plan, these impacts will be eliminated. Although this may not specifically affect the impact to existing trees, the overall environmental improvements to this site should be noted.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which 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

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

The North Potomac Recreation Center use is in conformance with the County's General plan and does not violate any conditions in the local Potomac Sub-region Master Plan. As such, this is not a *special privilege* to be conferred on the applicant.

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

Montgomery County has taken no *actions leading to the conditions or circumstances* that are the subject of this variance request.

(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

The surrounding land uses (residences and parkland) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

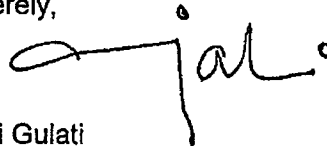
TABULATION OF SPECIMEN TREES IMPACTED

Tree #	Species	D.B.H (in.)	CRZ (Sq. Ft.)	CRZ Impacts (Sq. Ft.)	CRZ Impacts (%)	Tree Condition	Status
2	WHITE OAK	35	8659	2233	26%	GOOD	SAVE
7	RED OAK	30	6362	3331	52%	FAIR	POTENTIAL REMOVAL
8	WHITE OAK	32	7238	7238	100%	GOOD	TO BE REMOVED
10	RED OAK	31	6793	2561	38%	GOOD	SAVE
14	GREEN ASH	32	7238	46	1%	GOOD	SAVE
15	SILVER MAPLE	47	15615	3074	20%	GOOD	SAVE
16	WHITE OAK	32	7238	1262	17%	GOOD	SAVE
19A	RED OAK	30	6362	6362	100%	GOOD	TO BE REMOVED
39	DEAD	30	0	0	0	DEAD	TO BE REMOVED
41	RED OAK	31	6793	3206	47%	GOOD	TO BE REMOVED
42	RED OAK	33,12	7698	90	1%	GOOD	SAVE
44	YELLOW POPLAR	30	6362	6362	100%	GOOD	TO BE REMOVED
48	WHITE OAK	33	7698	5863	76%	GOOD	TO BE REMOVED
56	RED OAK	32	7238	7238	100%	GOOD	TO BE REMOVED
57	YELLOW POPLAR	30	6362	5953	94%	GOOD	TO BE REMOVED
59	RED OAK	33	7698	7698	100%	GOOD	TO BE REMOVED
69	DEAD	40	0	0	0	DEAD	TO BE REMOVED
70	RED OAK	39	10751	1996	19%	GOOD	SAVE
76	YELLOW POPLAR	31	6793	749	11%	GOOD	SAVE
149	DEAD	34	0	0	0	DEAD	TO BE REMOVED
150	WHITE OAK	30	6362	6362	100%	GOOD	TO BE REMOVED
151	WHITE OAK	32	7238	7238	100%	GOOD	TO BE REMOVED
152	WHITE OAK	48	16286	9151	56%	FAIR	TO BE REMOVED
153	WHITE OAK	35	8659	6435	74%	FAIR	TO BE REMOVED
154	WHITE OAK	30	6362	6362	100%	GOOD	TO BE REMOVED
155	WHITE OAK	31	6793	6793	100%	GOOD	TO BE REMOVED
158	WHITE OAK	30	6362	6334	100%	GOOD	TO BE REMOVED
160	WHITE OAK	33	7698	3290	43%	GOOD	POTENTIAL REMOVAL
163	PERSIMMON	17	2043	23	1%	GOOD	SAVE

Mr. Mark Pfefferle
August 18, 2010
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For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to remove the specimen trees in order to allow the construction of this vital project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anjali Gulati', with a stylized flourish at the end.

Anjali Gulati
Senior Architect
Division of Building Design and Construction, DGS

AG/II

CC: Milan Mehta, Grimm & Parker Architects
Raymond Norris, ADTEK Engineers
Michael Norton, Norton Land Design
Michael Kay



Attachment B:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

October 12, 2010

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

RE: North Potomac Recreation Center, MR2010731, NRI/FSD applied for on 1/28/2010

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:

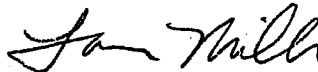
1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

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