



MCPB
Item No. 9
Date: 10.20.16
Rescheduled from
9.22.16

Little Falls Swim Club, Preliminary Plan Amendment No. 11991105B



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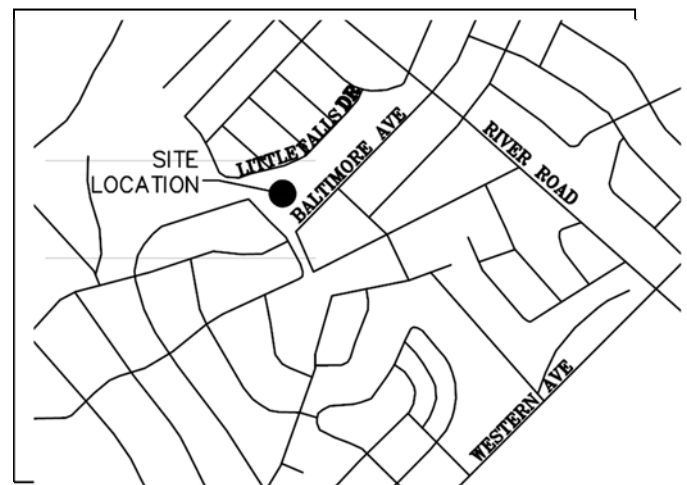


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Description

Completed: 9.12.16; REVISED 10.10.16

- Request to reconfirm a Subdivision Regulation Waiver and amend the Final Forest Conservation Plan for a pool expansion within a 100-year floodplain and stream valley buffer.
- Current use: Private swimming pool
- Located on Little Falls Drive, 100 ft. west of Greenway Drive
- 2.78 acres zoned R-60 in the *Bethesda-Chevy Chase Master Plan* area;
- Applicant: Little Falls Swim Club
- Accepted as complete on 8.5.2016.
- Basis of Review: Chapter 50, Chapter 22A



Summary

- **Staff Recommendation: Approval with conditions.**
- Staff report posted September 12, 2016, with a recommendation for denial. After the report was posted, the Applicant and staff agreed to postpone the hearing to reach agreement on approval conditions. This staff report reflects a revised design supported by both Applicant and staff.

SECTION 1: RECOMMENDATION AND CONDITIONS

Preliminary Plan No. 11991105B

Staff recommends approval of Preliminary Plan No. 11991105B, and associated Final Forest Conservation Plan, subject to the following conditions:

1. The Applicant must comply with the conditions of the approved Final Forest Conservation Plan No. 11991105B.
 - a) The Applicant must submit and obtain Staff approval of a revised Final Forest Conservation Plan as described below.
 - i. Coordinate with Staff on plan revisions to include additional onsite plantings.
 - ii. Shift Category I Conservation Easement locations to 1 foot behind pool perimeter fence, except where associated with retaining walls which require additional space for maintenance and repair.
 - iii. Provide 20 caliper inches of replacement trees at the location of the temporary bridge, to mitigate for the removal of existing trees (additional Forest Conservation landscape credit shall be applied to the plantings).
 - iv. Provide notes and details for a maintenance program to control invasive species.
 - v. Extend pathway along fence line of northernmost tennis court by pruning branches of the trees/shrubs to allow access. Provide plan notes to cease mowing and maintenance along the nearby portion of the stream.
 - vi. Make good faith efforts to coordinate with DOT for approval of plantings within a 5'-wide (minimum) no-mow strip along the concrete stream channel. The Applicant must refrain from mowing the area even if DOT does not allow the plantings. The no-mow strip and/or plantings shall be reflected on the plans as applicable.
 - b) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan (and outside of PUE). The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property.
 - c) The Applicant must provide financial surety to the M-NCPPC Planning Department for the credited plantings prior to the start of any demolition, clearing, or grading on the Property.
 - d) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property. The maintenance and management agreement is required for all forest planting areas credited toward meeting the requirements of the Forest Conservation Plan, including the forestation of environmental buffers.
 - e) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements as determined on the FFCP and/or as approved by the Planning Department Forest Conservation Inspector.
 - f) Plantings that are located outside the limits of disturbance must occur within the first planting season following the start of construction. Plantings within the areas of LOD must occur no later than the first planting season following the stabilization of the applicable disturbed areas.
 - g) The Final Sediment Control Plan must be consistent with the final limits of disturbance shown on the approved Final Forest Conservation Plan.
 - h) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.

2. Correct the type, location & size of the trees appearing on Preliminary Plan.
3. The Applicant must obtain approval from DPS for a revised floodplain delineation study based on the certified FFCP, unless DPS determines that a revised floodplain delineation is not necessary.
4. For any future expansion of the built area on the site must the Applicant must reapply to amend this approval to assess conformance with the Subdivision Regulation Waiver.

SECTION 2: SITE DESCRIPTION

Site Vicinity

The subject site (Subject Property or Property) consists on one lot located on Little Falls Drive, 100 ft. west of Greenway Drive, south of River Road. It is located in the 1990 *Bethesda-Chevy Chase Master Plan* (Master Plan).

The Subject Property is located within an established single-family neighborhood roughly bound by River Road to the north, Western Avenue, NW, in the District of Columbia to the east, Massachusetts Avenue to the south, and Little Falls Parkway to the west. The urban mixed-use center of Friendship Heights, including the metro station, is located approximately three-quarters of a mile to the east. The Westbard community is about a half-mile northwest of the site. Westbrook Park and Elementary School are directly to the west.

The site is bordered by two streams; an unnamed tributary to Little Falls Branch runs along the southwestern property line and the Little Falls Branch, a tributary of the Potomac River, runs along the northern boundary of the Property.

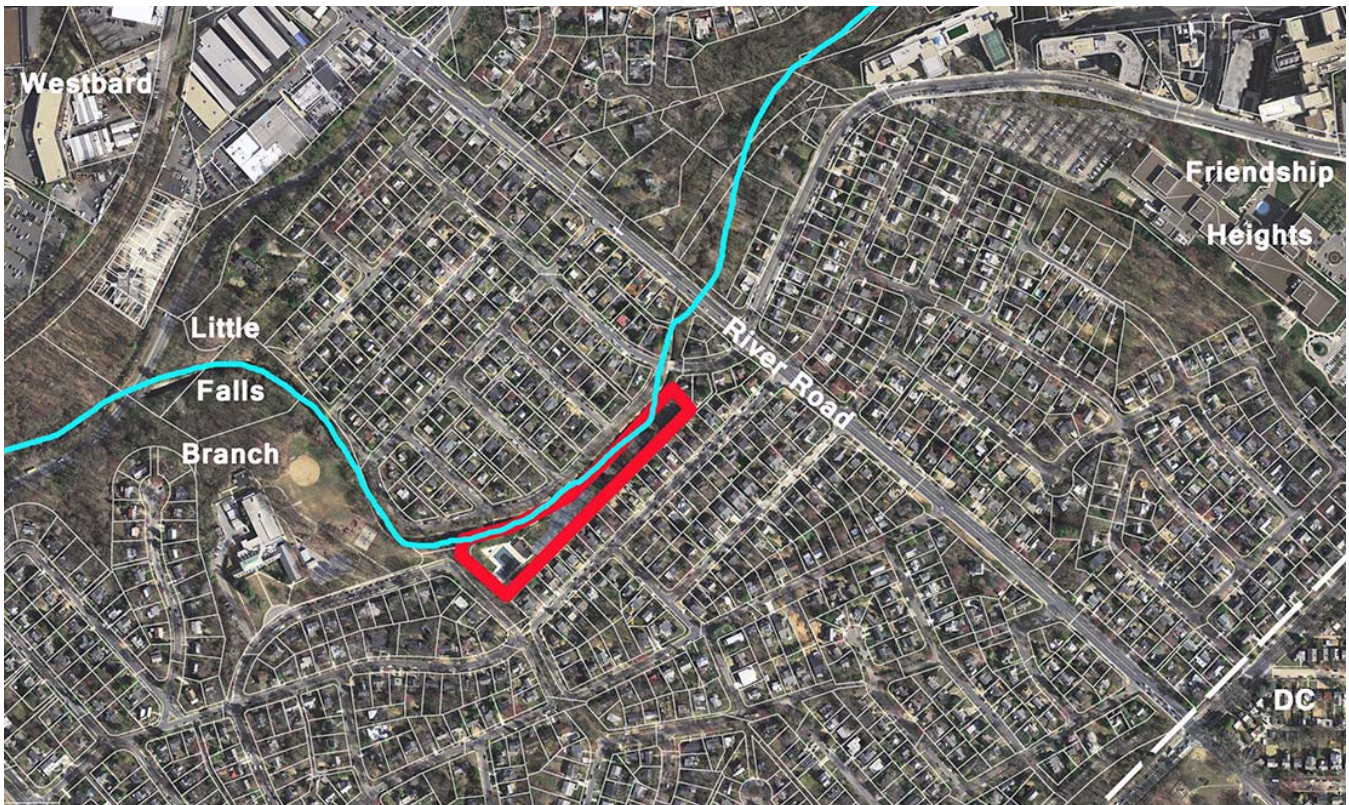


Figure 1-Vicinity Map



Figure 2-Aerial View

Site Analysis

The 2.78-acres Property is zoned R-60 and developed with the existing Little Falls Swim Club, which includes a pool facility, which features a main swimming pool, a small kiddie pool, and a bathhouse, as well as tennis courts, and surface parking. Access to the site is provided over the Little Falls Creek by bridge from Little Falls Drive.



Figure 3-Existing Condition Pool Area Detail, Aerial View

The site is almost entirely located within the 100-year floodplain and/or Stream Valley Buffer from the Little Falls Creek and the adjacent tributary, as shown below.

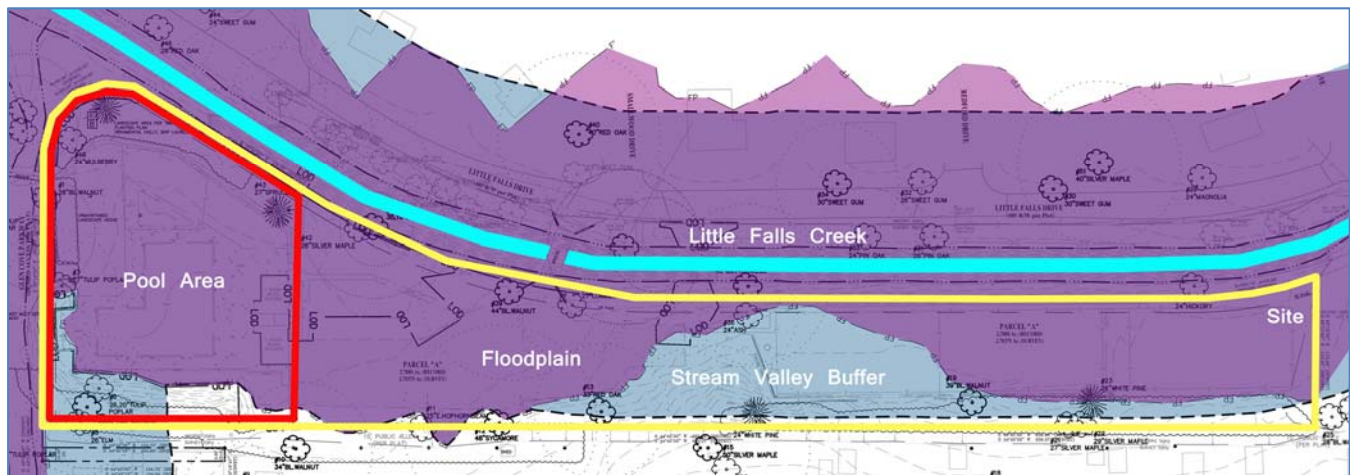


Figure 4-Floodplain and Stream Valley Buffer

There are no steep slopes or erodible soils on the property. There are a number of significant and specimen trees associated with the Property. Forest areas are located along the southern site boundary along both, the Little Falls Branch and the unnamed tributary. There are no known historic properties or features on the Property.

SECTION 2: PROJECT DESCRIPTION

Previous Approvals

Special Exception

The Swim Club is a Special Exception use approved by the Board of Appeals (BOA) in 1955 (Case 321). Since then, the Special Exception has undergone a number of amendments with various case numbers (CBA-321, CBA 2545, CBA 2546, and most recently S-289), modifying various elements including membership, lighting, and others.

In 2005, the BOA approved S-289-B (by Resolution adopted May 18, 2005) the enlargement of the pool area by moving the existing chain link fence and sidewalk out towards Little Falls Creek.

Most recently, by Resolution dated April 18, 2016, the BOA administratively approved a Special Exception amendment (S-289-B) for the changes to the pool area included in this Preliminary Plan Amendment application. (Attachment B)

Preliminary Plan

By Resolution mailed November 25, 1992, the Planning Board approved Preliminary Plan 119911050 to create 1 lot for an existing pool use. The approval included a Subdivision Regulation Waiver request under Section 50-38A to "grant a variation from Section 50-32(a) and 50-32(g) [now Section 50-32(h)] governing a general prohibition against development within a floodplain." The Planning Board Opinion continues:

Given the existing and unique nature of the use, a pool and bathhouse, proposed for continued existence within the floodplain, the Board, for reasons set forth in greater detail in staff memoranda presented to the Departments of Transportation and Environmental Protection, agreed to grant the requested variation. This grant of a variation from the prohibition of development within the floodplain is to be construed narrowly both for any further development on site and as a precedent for development anywhere else. [emphasis added]

On May 10, 2016, the Planning Department accepted an application for an Administrative Forest Conservation Plan (FCP) Amendment (Plan No. 11991105A), for the modifications to the pool area included in this Preliminary Plan Application. However, upon further review of the administrative record, Area 1 staff identified that the scope of the amendment did not address the Planning Board's direction in the original Preliminary Plan approval. Staff notified the Applicant that the project could not proceed as an administrative FCP amendment, but would have to be reviewed as a full Preliminary Plan Amendment to provide the Planning Board the opportunity to weigh the proposed modifications against the specific conditions of the 1992 approval. (Attachment A)

Forest Conservation

The original Preliminary Plan 119911050 included a document titled "Tree Save Plan" that served as a Forest Conservation Plan. The plan includes forest conservation notes and provided 1.06 acres of forest conservation credit for tree cover. There were no planting requirements at the time, because all of the onsite trees were specifically saved by the plan and associated application.

In January 2004, the Planning Department issued a Forest Conservation Exemption (42004160E) for the "Fence/Pathway Modification" included in the May 2005 Special Exception Amendment. The exemption was granted as a modification to an existing special exception use approved prior to July 1, 1991, that did not result in the cumulative clearing of more than 5000 additional square feet of forest (FC Section 22A-5(q)). However, given the property was already subject to a forest conservation plan, the exemption was granted in error and the original FFCP should have been amended instead.

Proposal

The Applicant proposes to remove the existing swimming pools and build an expanded competition-level swimming pool with diving wells, to accommodate swim and diving meets, to meet the needs of their membership, and to meet swimming pool codes. An existing fence is also proposed to be relocated. Vehicular access to the site continues to be solely from Little Falls Drive via the existing bridge (a temporary bridge is proposed for construction vehicles).

Through the proposed amendment, the Applicant seeks to expand the scope of the previously approved Subdivision Waiver to allow development with the floodplain, and to revise the Final Forest Conservation Plan accordingly.

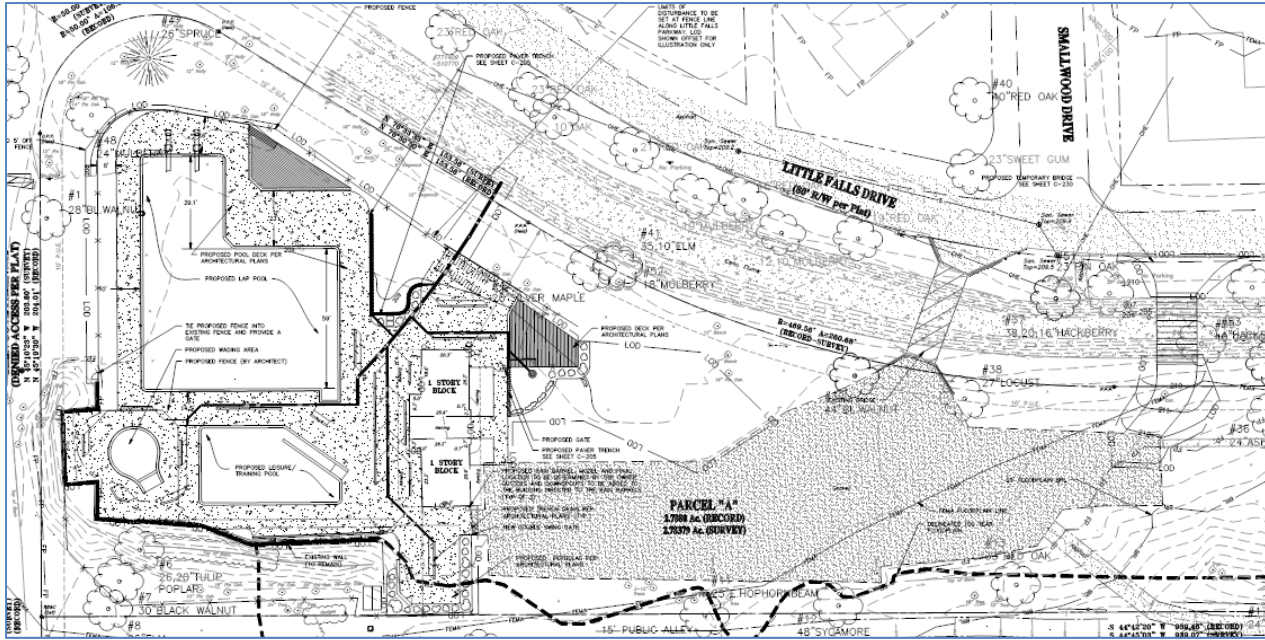


Figure 5-Proposed Plan

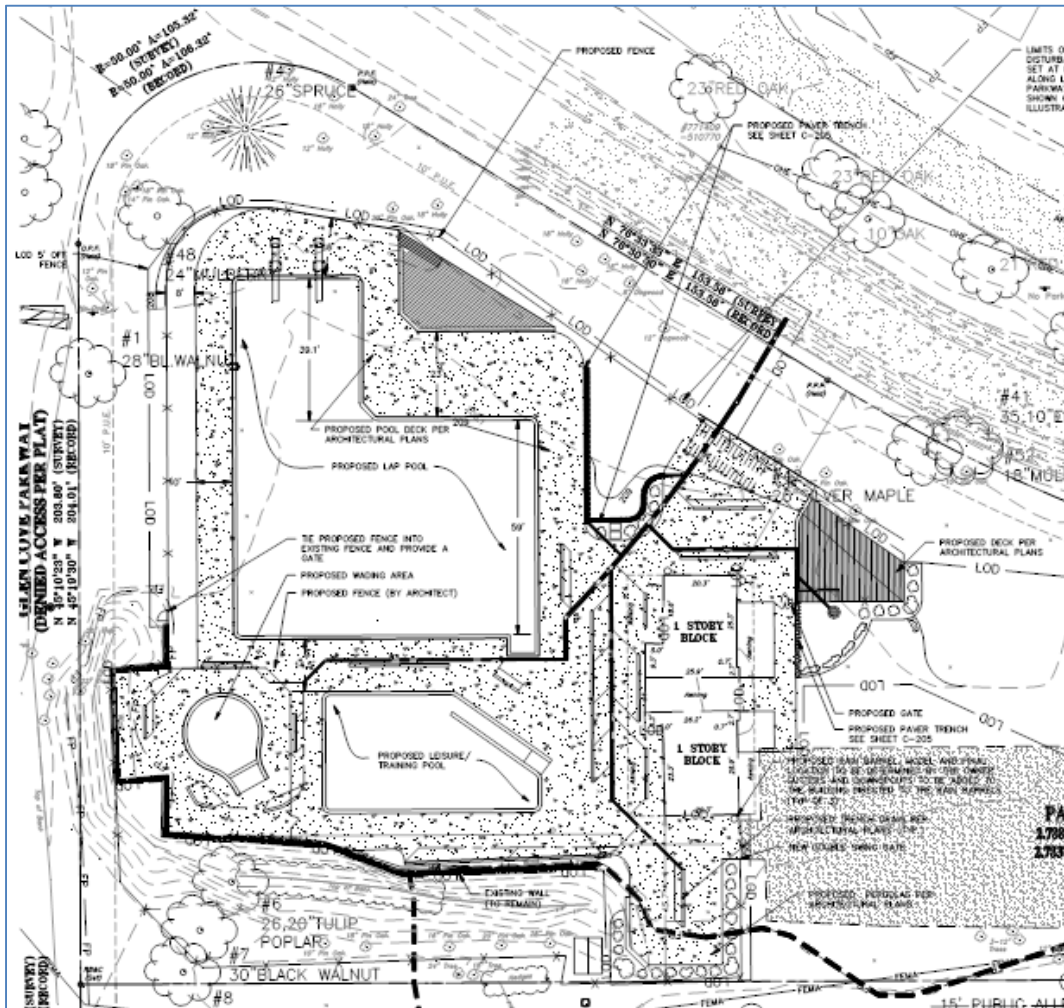


Figure 6-Proposed Plan, Pool Area Detail

SECTION 3: PRELIMINARY PLAN ANALYSIS AND FINDINGS

Conformance to the Master Plan

The 1990 *Bethesda-Chevy Chase Master Plan* does not contain recommendations specific to the site, but includes general recommendations for land use and the environment that pertain to this project.

The Plan's major goals include to (p. 2):

- perpetuate and enhance the high quality of life to which exists in the Bethesda-Chevy Planning Area;
- protect the high quality residential communities throughout the Planning Area as well as the services and environmental qualities that enhance the area;
- protect the natural resources and environmental quality of the Planning Area.

The objectives of the Plan's Environmental Resource recommendations include to protect wetlands, steep slopes, and wooded areas and to endorse corrective measures to reduce flooding and to improve stream quality, and to support the preservation of environmentally sensitive areas that are not already within parkland, including the Palisades, where this project is located. (p. 137)

In the Palisades area, "the Plan endorses protection of the environment, character, and cultural resources of the area" (p. 3) and "supports actions to correct flooding problems...[including through]...prevention of new developments within the ultimate 100-year floodplain" (P. 139)

By minimizing environmental impacts of the project, the amendment substantially conforms with these goals and recommendations adopted in the Master Plan. Given that that current version of the plan has no significant impact of forest areas, does not remove any variance trees, and includes numerous native plantings (along with protective easements) the environmental qualities and associated character of the site will be perpetuated and enhanced. The project balances a facility expansion necessary for the pool to remain a vital community recreational resource with enhanced environmental protection of forested, floodplain, and stream buffer areas.

Public Facilities

Roads and Transportation Facilities

Vehicular access to the site will continue to come primarily from Little Falls Drive, with secondary access from a public alley along the southeast property line to Greenway Drive. The amendment does not increase the previously approved membership cap, and so will not increase traffic above current approvals.

Proposed vehicle and pedestrian access for the subdivision remains safe and adequate.

Other Public Facilities and Services

Other public facilities, utilities, and services are available and will be adequate to serve the project

Environment/Environmental Guidelines

As discussed earlier, the site is bordered by two streams and the property is almost completely within a stream valley buffer and 100-year floodplain. Typically, the preference is to avoid development activity within such environmentally constrained settings. However, this case is unique in that the redevelopment activity is

necessary to maintain the existing use and meet certain other requirements associated with the facility (such as ADA compliance). The expansion of the pool facility will be offset by a number of environmental enhancements to improve the environmental setting such as the replacement of turf grass with numerous native planting installations and Category I Conservation Easements to protect the existing and expanded forest settings near the stream.

Forest Conservation

The original Preliminary Plan 119911050 included a document titled “Tree Save Plan” that served as a Forest Conservation Plan. The plan includes forest conservation notes and provided 1.06 acres of forest conservation credit for tree cover. There were no planting requirements at the time, because all of the trees were specifically saved by the plan and associated application.

In January 2004, the Planning Department issued a Forest Conservation Exemption (42004160E) for the “Fence/Pathway Modification” included in the May 2005 Special Exception Amendment. The exemption was granted as a modification to an existing special exception use approved prior to July 1, 1991, that did not result in the cumulative clearing of more than 5000 additional square feet of forest (FC Section 22A-5(q)). However, given the property was already subject to a forest conservation plan, the exemption was granted in error and the original FFCP should have been amended instead.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. The existing tree canopy credit on the previous approval has almost entire been accounted for on the current plans. Additional plantings will be added to the plans (as conditioned) that will meet or exceed the original requirements. Furthermore, portions of the credits will be formally protected in recorded Category I Conservation Easement (which were not part of the of the previous approval).

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ), requires a variance. An Applicant 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 law requires no impact to trees that measure 30 inches DBH or greater; 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 to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The proposed project includes disturbance within the CRZs of trees which are subject to a variance due to their size measuring 30 inches DBH or greater. The Applicant submitted the variance request on October 3, 2016, for the impacts to subject trees (Attachment D). The Applicants’ request is to impact (but not remove) 9 trees, that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law. However, Staff notes that one of the trees (#37) included in the request is not actually subject the variance provisions and therefore eight subject trees are affected by the proposal.

Table 1: Subject Trees to be Impacted but Retained.

Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	C.R.Z. Impacts	% C.R.Z. Impacts	Tree Condition
7	JUGLANS NIGRA	BLACK WALNUT	30	840	13%	GOOD
10	JUGLANS NIGRA	BLACK WALNUT	34	1789	22%	GOOD
12	PLATANUS OCCIDENTALIS	SYCAMORE	48	3349	21%	GOOD
13	QUERCUS RUBRA	RED OAK	33	1058	14%	GOOD
15	ACER SACCHARINUM	SILVER MAPLE	50	261	1%	GOOD
35	POPULUS DELTOIDES	COTTONWOOD	40	2239	20%	GOOD
37	CELTIS OCCIDENTALIS	HACKBERRY	38,20,16	1000	10%	GOOD
39	JUGLANS NIGRA	BLACK WALNUT	44	5369	39%	GOOD
41	ULMUS RUBRA	SLIPPERY ELM	35,10	1463	17%	GOOD

Staff notes that tree #37 is actually an elm measuring less than 30" DBH and is not subject to the variance provisions.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. In addition to the required findings outlined numerically below, Staff has determined that the Applicant has demonstrated that enforcement of the variance provision would result in an unwarranted hardship for the following reasons:

The access points to the site (from either the main entry bridge or the gravel drive within the alley) are encompassed by the critical root zones of trees measuring 30 inches DBH or greater; therefore, any significant redevelopment activity (or in-kind replacement) on the property would require impacts of subject trees.

Staff has reviewed this Application and based on the existing circumstances and conditions on the Property, Staff agrees that there is an unwarranted hardship.

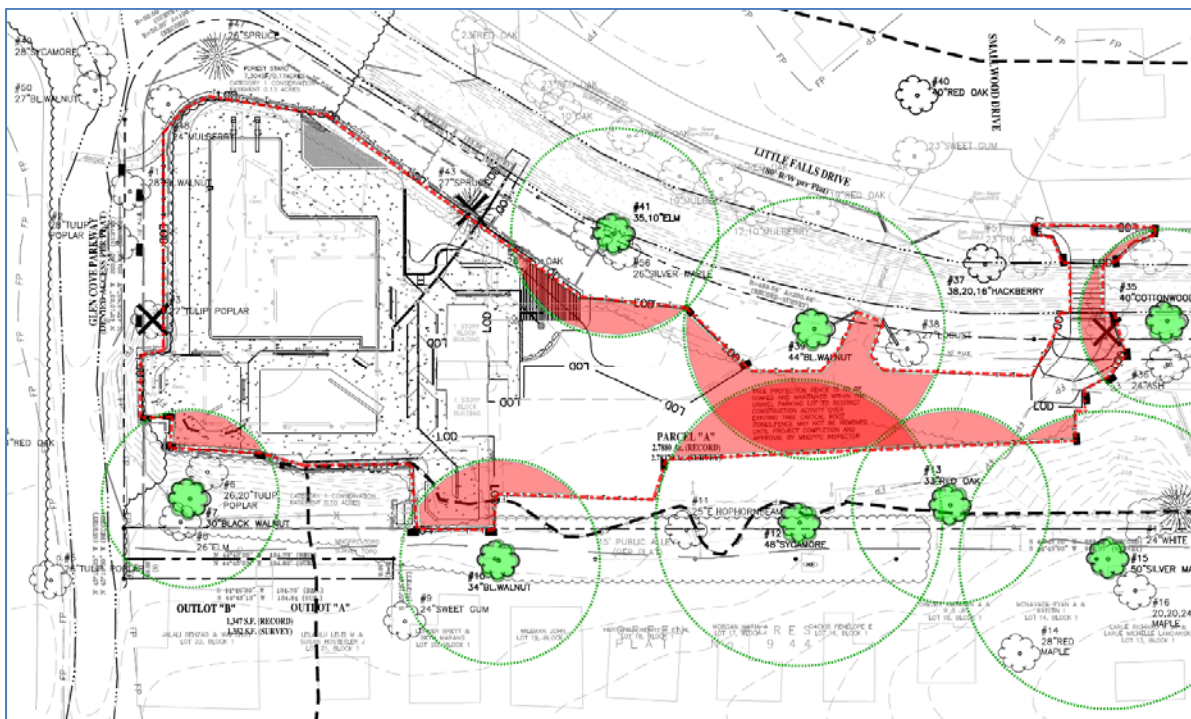


Figure 7- Variance Trees and Proposed Impacts

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. *Will not confer on the Applicant a special privilege that would be denied to other Applicants.*

As currently proposed, the impacts are avoided/minimized to the greatest extent possible and no removal of subject trees will occur. Furthermore, the impacts are mostly associated with modification of areas that are already within the footprint of existing development. Therefore, the variance request would be granted to any Applicant in a similar situation.

2. *Is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is based on proposed upgrade of an aging facility that is needed to continue the existing use. Staff finds the variance can be granted under this condition since the impacts are avoided and minimized and that any necessary mitigation is provided.

3. *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 current application on the subject property and is not related to land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Although the Department of Permitting Services (DPS) review determined a waiver of stormwater management is needed for the project (due to site constraints) the ultimate approval of the sediment and erosion control plans will help ensure that appropriate standards are met. Additionally, the Applicant is providing supplemental SWM (rain barrels) over and above the DPS requirements to help further enhance water quality. Furthermore, Staff notes that the redevelopment activity mostly overlaps areas of existing development. The expansion of impervious areas associated with new pool platforms/decking is offset by a number of environmental enhancements associated with project. The enhancements include ending the practice of maintaining manicured turf grass adjacent to portions of the stream channel, along with numerous native planting installations (focusing on areas adjacent to stream that will be planted rather than mowed). A Category I Conservation Easement will be placed to protect the existing and expanded forest settings which will provide shade and buffering for the streams thereby enhancing water quality. Therefore, as conditioned the project will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendations

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 Applicants' request (Attachment D) was forwarded to the County Arborist on October 4, 2016. The County Arborists' response to the variance request is anticipated to be available prior to the Planning Board hearing and their recommendations will be relayed during the hearing as part of the Staff presentation.

Staff Recommendation on Variance

As a result of the above findings, Staff recommends the Board approves the Applicant's request for a variance from Forest Conservation Law to impact eight subject trees associated with the site.

Stormwater Management

The MCDPS Stormwater Management Section granted approval of a Stormwater Management Concept/Site Development Stormwater Management Plan for the project on January 28, 2016 (Attachment E). Due to site constraints of high groundwater levels, there are limitations in the effectiveness of stormwater management features on the property. Therefore, DPS determined a waiver of stormwater management is needed for the project and payment of a stormwater management contribution is required as part of the waiver. Furthermore, the DPS approval requires that a Floodplain delineation study be approved by FEMA and MC DPS to prove the pool redevelopment will not have a negative effect on the Floodplain or endanger neighboring persons or property.

Compliance with the Subdivision Regulations and Zoning Ordinance

This amendment does not include any changes to the development standards approved with the original Preliminary Plan.

As noted above, the original approval of Preliminary Plan 119911050 included a subdivision regulation waiver under Section 50-38(a) for relief from restrictions on development within a floodplain under Sections 50-32(a) and 50-32(h)(1). In granting this waiver, the Planning Board limited its effect “to be construed narrowly ... for any further development on site”. Section 50-38(a)(1) allows that:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

The provisions from which the Applicant is requesting a continued waiver are Section 50-32(a), which restricts subdivisions within the 100-year floodplain or stream valley, and Section 50-32(h)(1), which prohibits issuance of building permits for development within environmentally sensitive areas covered under the Section 50-32.

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved,

Practically the entirety of the site is located within both the stream buffer and floodplain for Little Falls Creek and its adjacent tributary. When the Planning Board originally approved the subdivision waiver, it noted the “existing and unique nature of the use, a pool and bathhouse, proposed for continued existence within the floodplain”. As stated in the Applicant’s Supplemental Statement of Justification (Attachment C), the changes “are needed to make the Pool ADA-compliant and sufficient for competitive swimming standards.” Based on the Board’s 1992 stipulation that the original waiver not extend to “further development” on-site within the floodplain, the needed upgrades cannot proceed without a reconfirmation of the waiver. The Board noted the unusual circumstance with the original approval, and the practical difficulty would be the inability of the Swim Club to get a building permit in the floodplain, preventing their ability to make the necessary improvements.

and that the waiver is: 1) the minimum necessary to provide relief from the requirements;

Through its efforts to incorporate Staff's recommendations into the Project, the Applicant has ensured that the waiver is the minimum necessary to accommodate the needed changes to the Pool while minimizing potential impacts. While the initial plans submitted for this Amendment were more impactful, proposing among other things an LOD that would affect an on-site forested area located on the southernmost portion of the Property, the Project has been scaled down substantially to avoid such encroachments. The proposed fence has been pulled back from the initial proposal at various distances to now be located directly adjacent to the existing sidewalk that circumscribes the Pool. Additionally, the configuration of the main pool and the training pool has been tightened to reduce the footprint of the swimming pools and decking associated with the Project. Together, these changes have resulted in an approximate 18 percent reduction in LOD from the initial proposal. Moreover, the Applicant is proposing additional mitigation measures to address any long-term impacts that may result from the changes being implemented, including significant buffer plantings. As a result, the relief being requested has been thoroughly evaluated to confirm that it is the minimum necessary to permit the needed changes to the site.

2) not inconsistent with the purposes and objectives of the General Plan; and

As described in the Master Plan conformance section above, by minimizing environmental impacts of the project, the amendment substantially conforms with the goals and recommendations adopted in the Master Plan. Given that that current version of the plan has no significant impact of forest areas, does not remove any variance trees and includes numerous native plantings (along with protective easements) the environmental qualities and associated character of the site will be perpetuated and enhanced. The project balances a facility expansion necessary for the pool to remain a vital community recreational resource with enhanced environmental protection of forested, floodplain, and stream buffer areas.

3) not adverse to the public interest.

The Project will not be adverse to the public interest will serve to maintain this valuable amenity which contributes to the high quality of life in the area. While the Applicant proposes to increase the footprint of the Pool, the Project will also include environmental mitigation measures, resulting in an improved site with minimal impacts over existing conditions. The expanded pool area will allow Little Falls Swim Club to remain a vital community recreational resource.

Thus while the expansion of the pool area is significant enough to be considered "further development," the enhanced environmental protections included in the proposal adequately offset the increased impacts. The application continues to meet the requirements of Section 50-38(a) for waiver of Sections 50-32(a) and 50-32(h)(1). However, for any future expansion of the built area on the site the Applicant must reapply to amend this approval to assess conformance with the Board's original findings. The project continues to be in compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations.

Citizen Correspondence and Issues

The Applicant has met all notice requirements and staff has not received any citizen correspondence on this application.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the *Bethesda-Chevy Chase Master Plan*. Access and public facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

ATTACHMENTS

Attachment A: Planning Board Resolution Approving Preliminary Plan 119911050

Attachment B: Board of Appeals Opinion Approving Special Exception S-289-B

Attachment C: Statement of Justification

Attachment D: Forest Conservation Variance Request

Attachment E: MCDPS Stormwater Management Concept