



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

July 13, 2017

Mr. Douglas Millar
Eneractive Solutions
7926 Jones Branch Drive, Suite 530
McLean, VA 22102

SUBJECT: Final Forest Conservation Plan
Shady Grove Adventist Hospital Critical Power Upgrade
Plan Number: SC2017026
Net Tract Area: 0.65 acres
Zone/Land use Category: LSC Zone

Dear Mr. Millar:

The Montgomery County Planning Department has reviewed Final Forest Conservation Plan No. SC2017026 for the Shady Grove Adventist Hospital Critical Power Upgrade, as submitted on May 26, 2017. This Forest Conservation Plan covers disturbance associated with the installation of power generators and the associated electric conduit connection to provide backup power to the Shady Grove Adventist Hospital.

Based on staff review, Final Forest Conservation Plan Amendment No. SC2017026 and the associated Variance is approved.

Proposal

The proposed project provides a critical backup power supply to the Shady Grove Adventist Hospital. The project involves installation of backup power generators and the associated electrical connections needed to deliver the power to the hospital complex. The generators are being installed behind a building on Parcel Z2 (L.3862 F.776) of the Shady Grove Life Sciences Center. This platted parcel is owned by Montgomery County, and it lies across Broschart Road west of the Shady Grove Adventist Hospital property. The conduit carrying power from the generators will cross Broschart Road and extend through the hospital property to a connection near the Emergency Room. There is an existing Preliminary Forest Conservation Plan (No. 120110160) on the Shady Grove Adventist Hospital property. This project will disturb 0.31 acres of the land on PFCP 120110160. Because the mitigation for this 0.31 acres is occurring as part of this Sediment Control FCP, the 0.31 acres should be subtracted from the net tract area of the Final Forest Conservation Plan for the hospital property when the FFCP is filed.

The total disturbance associated with this project includes 0.31 acres on Parcel Z2, 0.03 acres of the Broschart Road right-of-way, and 0.31 acres on the Shady Grove Adventist Hospital property, for a net tract area of 0.65 acres. The resulting mitigation of 0.10 acres may be met by securing the requisite amount of credit in an approved forest conservation bank or payment of a fee-in-lieu.

Forest Conservation Variance

Section 22A-12(b)(3) of County code identifies 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 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 code. The code requires no impact to trees that: measure 30 inches or greater, dbh; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request – The applicant submitted a variance request on June 26, 2017 because the revised plan would create an impact to the CRZ of one tree that is considered high priority for retention under Section 22A-12(b) of the County code. This tree will be removed. A copy of the variance request letter, specifying the amount of critical root zone impact, is appended to this letter (Attachment 1).

The applicant has offered the following justification of the variance request:

The hospital has a critical need for reliable power delivery. The applicant has worked to minimize specimen tree loss. Denying the variance request would prevent the hospital from completing the power upgrade improvements required.

Staff believes that denial of the variance would constitute a hardship to the applicant. This finding must be met when determining whether or not to consider a variance for the project. Based on this finding, Staff finds that a variance can be considered.

Section 22A-21 of the County code 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. Staff has made the following determinations, as the Director's designee, that granting the requested variance:

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

The impacts to the tree subject to the variance requirement cannot be avoided. Therefore, Staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not 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, but on environmental, engineering, site and permitting conditions that determine the necessary location of the security fence.

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 not a result of land or building use on a neighboring property.

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

The tree being removed is a 32-inch dbh pin oak (*Quercus palustris*). Removal of this tree is being mitigated through the planting of 3 pin oak trees of 3 inches caliper, each. These trees are shown on the Forest Conservation Plan. Growth of these trees will very soon replace the lost water quality functions that were being provided by the tree being removed. Therefore, Staff finds that approval of the variance will not violate State water quality standards or cause measurable degradation in water quality.

County Arborist's Recommendation on the Variance - In accordance with County Code Section 22A-21(c), the Planning Department sent 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. Staff forwarded the request to the County Arborist on June 26, 2017. The County Arborist issued a letter on July 6, 2017, with the determination that a variance can be granted (see Attachment 2).

The variance is hereby granted.

Conditions of Approval

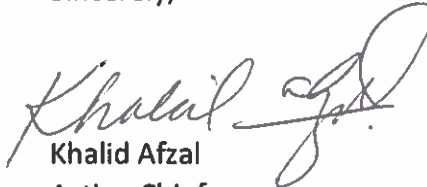
The Final Forest Conservation Plan is approved subject to the following conditions:

1. Prior to the start of any clearing or grading on the property, the applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance for an off-site forest mitigation bank for an equivalent of 0.10 acres, or payment of the fee-in-lieu.

2. The applicant must comply with all tree protection and tree save measures shown on the approved Preliminary/Final Forest Conservation Plan. Tree save measures not specified on the approved Preliminary/Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
3. The limits of disturbance (LOD) on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Preliminary/Final Forest Conservation Plan.

If you have any questions or concerns about these actions, please contact Steve Findley of our Area 2 Planning Division at 301-495-4727 or by email at steve.findley@montgomeryplanning.org.

Sincerely,



Khalid Afzal
Acting Chief
Area 2 Division

cc: Amy Zou, Soltesz

Attachments:

1. Applicant's Variance Request Letter
2. County Arborist Recommendation Letter

ATTACHMENT 1



STRATEGIES FOR TODAY. INSIGHT FOR TOMORROW.

June 26, 2017

Steve Findley
Planner Coordinator, Area 2 Planning Division
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Shady Grove Adventist Hospital Power Upgrade
Final Forest Conservation Plan - Variance Request
Soltesz Project #3648-00-00

Dear Mr. Findley,

On behalf of Eneractive Solutions, Soltesz, Inc. is requesting a variance for the removal of one (1) trees 30 inches or greater in DBH, as required under Section 22A-21 of Montgomery County's Forest Conservation Law and 2010 revisions to the State Forest Conservation Law enacted by State Bill 666, where it notes the variance pertains to "Trees having a diameter measured at 4.5 feet above the ground of 30 inches diameter or 75% of the diameter of the current state champion tree of that species as designated by the department". The removal or impact of these trees is for the Shady Grove Adventist Hospital Critical Power Upgrade & combined Heat and Power Project (Tax Map FR53, Parcel N003) in Rockville, Montgomery County, Maryland.

Project Information

The subject property (Shady Grove Adventist Hospital) consists of one parcel total approximately 38.49 acres located in Rockville, Maryland, on Medical Center Drive, approximately 0 feet from the intersection of Broschart Road. The property is zoned LSC (Life Science Center) Zone (LSC-1.5 H-150 T). The total disturbed area for the utility upgrade is 0.65 acres, with 0.31 acres on the hospital site and 0.34 acres offsite. The property has an approved Preliminary Forest Conservation Plan (#120110160). The submitted Natural Resources Inventory for the offsite property shows one (1) specimen tree.

The trees identified in this variance request for removal are shown on the Final Forest Conservation Plan. The trees to be removed are located within the limits of disturbance or the LOD impacts to their critical root zone are too large to expect tree survival.

Trees for Removal

Listed below are the trees identified for impact on the Final Forest Conservation Plan:

CODE	Existing /Significan/Specimen Tree	DBH	CRZ	CRZ IMPACT	% of Impact	Proposed Status	Specimen
Specimen Trees on subject property:							
101	Pin Oak – Quercus palustris	32"	7238	7238	100%	REMOVE	Yes

The trunk of Tree 101 is located in the proposed Limit of Disturbance area for the proposed emergency generator installation. The placement of the emergency generators allows room for the future CHP generators as well as allow the existing generators in function while the proposed ones are installed. The spacing between the generators must be maintained to allow for future repair/replacement of the generator engines. The technical and procedural requirements for the generator installation makes the preservation of this tree unachievable.

Application Requirements

Per Montgomery County's Forest Conservation Law Section 22A-21(b) of the *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
- (4) Provided any other information appropriate to support the request.

Pursuant to: Item "(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship; and" Item "(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas":

The proposed development is for hospital's Central Utility Plant upgrading with additional utility connection between the existing Central Utility facility and the main hospital building. The hospital site is fully developed with no forest on site. Most of the proposed work will occur in an existing utility easement on site. The proposed utility will not cut down any trees in forest. It will not increase the developed area and the existing development is retained. The placement of the proposed emergency generators is closely related to the locations of existing and future generators, which are critical components for hospital operation.

The unwarranted hardship to the property owner is that without the Central Utility Plant upgrade, the hospital can't provide up to date critical services to the community. Considering the configuration of the property, the design constraints and the location of the specimen tree to be removed, it would cause unwarranted hardship to the applicant if the variance were to be denied.

Pursuant to "(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" Item "(4) Provided any other information appropriate to support the request."

The trees proposed for removal are not directly connected to any streams, or part of a riparian buffer system. The total disturbed area is small enough not to violate the state water quality standards, nor will it cause a measurable degradation in water quality. The installation of the generators and related utility connection works are separated into two phases, each will be less than 20,000 square feet, thus qualify as small land disturbance for Montgomery County Department of Permitting Services (DPS). DPS approved the Sediment Control Plan for the project on April 6, 2017.

Minimum criteria for Variance

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 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*

Pursuant to "(1) *Will confer on the applicant a special privilege that would be denied to other applicants.*" The use of this site for utility work for the hospital is an existing use and will operate in a manner consistent with that of surrounding properties in the area and in Montgomery County. As such, this is not a special privilege to be conferred on the applicant.

Pursuant to "(2) *Is based on conditions or circumstances which are the result of actions by the applicant; and (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*" Due to the existing site constraints, the proposed development that is in accordance with Master Plan designation is not possible to be built without removing the specimen trees. Furthermore, the surrounding land uses on neighboring properties do not have any inherent characteristics that have created this particular need for a variance.

Pursuant to "(4) *Will violate State water quality standards or cause measurable degradation in water quality*" the applicant cites the reasoning in the previous response to requirement 22A-21 (b)(3), and restates its belief that granting this variance request will not violate State water quality standards or cause measurable degradation in State water quality standards.

For these reasons listed above, we believe it is appropriate to grant this request for a variance. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,
SOLTESZ, INC.



Amy Zou, RLA, ASLA
Technical Director

cc:

ATTACHMENT 2



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

July 6, 2017

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

RE: Shady Grove Adventist Hospital Power Upgrade, DAIC SC2017026, NRI/FSD application
accepted on 5/31/2017

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, 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, I make the following findings as the result of my review:

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 criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

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www.montgomerycountymd.gov/dep

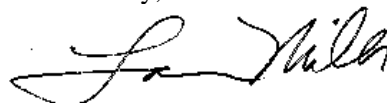
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon meeting 'conditions of approval' pertaining to variance trees recommended by Planning staff, as well as the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet 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.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Steve Findley, Planner Coordinator