

CITY OF CHARLOTTESVILLE
DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES
STAFF REPORT



**REQUEST FOR A WAIVER:
CRITICAL SLOPES**

PLANNING COMMISSION REGULAR MEETING
DATE OF PLANNING COMMISSION MEETING: OCTOBER 13, 2009

Project Planner: Nick Rogers
Date of Staff Report: September 28, 2009

Applicant: Piedmont Family YMCA
Applicant's Representative: Eugene Ryang – Water Street Studio
Current Property Owner: City of Charlottesville

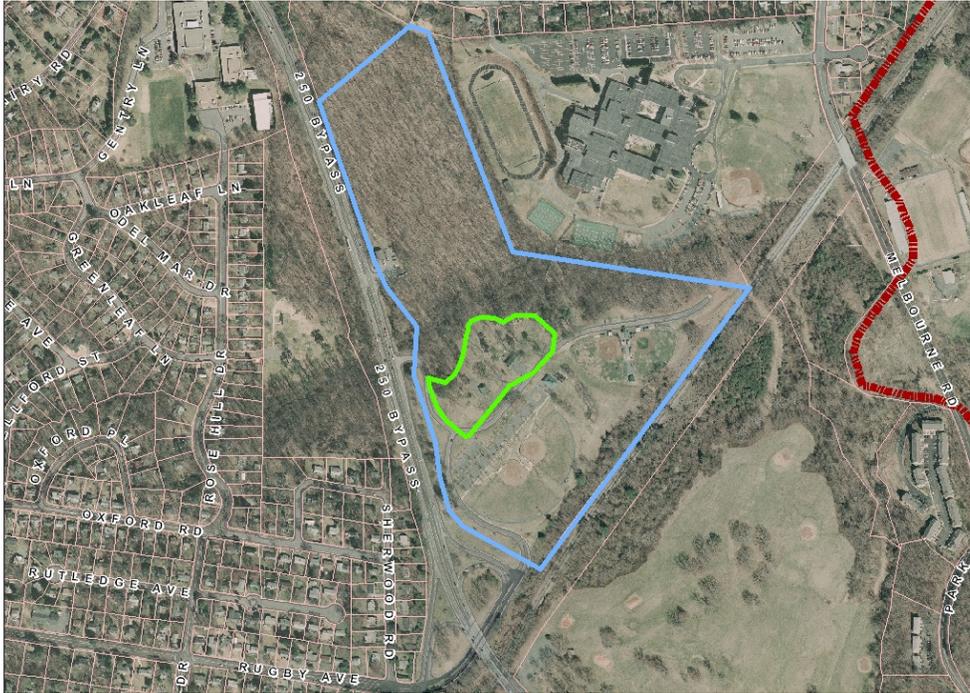
Application Information

Property Street Address: 245-365 U.S. 250 Bypass
Tax Map/Parcel #: Tax Map 45, Parcel 1
Total Square Footage/Acreage Site: 196,456 square feet (4.51 acres)
Comprehensive Plan (Land Use Plan) Designation: Parks & Open Space
Current Zoning Classification: R-1 - Residential
Tax Status: N/A

Applicant's Request

The Piedmont Family YMCA is requesting a waiver from the requirements of §34-1120(b) of the City Code relating to the protection of critical slopes to allow for construction of an indoor recreational facility. The proposed YMCA building would impact the critical slopes within the ground lease area agreed upon by the City and the YMCA. Critical slopes make up approximately 0.48 acres of the site, or 20,909 square feet of the 4.51 acre lease area. A waiver would facilitate the YMCA's construction of a 77,000 square foot facility with 158 parking spaces. The proposed site is in the western portion of McIntire Park across the access road from the softball fields.

Vicinity Map



Standard of Review

Section 34-1120(b)(1) states the purposes and intent of the ordinance in the following critical slopes provisions:

- 1. To protect and conserve steep hillsides and flood plain areas; and,**
- 2. To recognize the increased potential for soil erosion, sedimentation, water pollution and septic disposal problems associated with the development of critical slope areas.**

The code mandates that no building, structure or improvement, nor any earth disturbing activity to establish such structure or improvement shall be located on slopes of twenty-five (25) percent or greater, except as may be permitted by a waiver. Any person may request the Planning Commission to modify or waive the requirements of these critical slopes provisions. The Commission may grant a modification or waiver upon making one or more of the following findings:

1. That a strict application or requirements would not forward the purposes and intent of these critical slopes provisions;
2. That the alternative proposed by the developer would satisfy the purposes and intent of these critical slopes provisions to at least an equivalent degree;
3. That, due to unusual size, topography, shape, location, or other unusual physical conditions of a property, one or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use of such property or would result in significant degradation of the site, or adjacent properties; or,

4. That granting the proposed modification or waiver would serve a public purpose of greater import than would be served by a strict application of the requirements of these critical slopes provisions.

No modification or waiver granted by the planning commission shall be detrimental to the public health, safety or welfare, detrimental to the orderly development of the area or adjacent properties, or contrary to sound engineering practices.

In granting a modification or waiver, the planning commission may impose such conditions as it deems necessary to protect the public health, safety or welfare and to insure that a development will be consistent with the purpose and intent of these critical slopes provisions.

Project Review / Analysis

The applicant has provided information in the attached steep slopes waiver application for each item discussed below. :

- 1. A strict application of requirements would not forward the purposes and intent of these critical slopes provisions**

The applicant's project would have an impact on steep hillsides and flood plain areas. In addition, the YMCA's construction does increase the potential for soil erosion, sedimentation, water pollution due to the development of the critical slopes. By strictly applying the ordinance's requirements, the critical slope provisions would be maintained. Staff would only recommend the usage of this finding when the affected critical slopes would not be susceptible to erosion, degradation, or cause water pollution. This finding is only appropriate in a very small percentage of waiver requests.

- 2. The alternative proposed by the developer would satisfy the purposes and intent of these critical slopes provisions to at least an equivalent degree**

The applicant's narrative speaks to the alternative proposed, describing the features of the site plan and the methods for meeting the critical slopes provisions. The proposed YMCA would serve as a retaining wall against the existing hillside. The slopes to the north of the building would be fashioned into a bioretention basin, while the slopes to the south of the building would be partially preserved with existing trees and a series of biofilters connected by shallow dams. Two stormwater drainage outfalls lined with river stones are proposed to go to Meadowbrook Creek.

The site design effectively reduces the rate of water flowing into the creek below, but has not properly addressed the projected increase in volume of water. Increased volumes of water would increase the potential for soil erosion and sedimentation, which do not meet the purpose and intent of the critical slopes provisions. If the applicant was to commit to using rain tanks, cisterns, or another volume mitigation tool, as alluded to in the narrative, the increased volume would be handled in a sensitive manner that meets the provisions for a waiver.

A preliminary erosion and sediment control (E&S) concept plan was submitted to give staff an idea on how the applicant would handle the critical slopes provisions during construction. Many staff concerns about erosion and sedimentation during construction will be allayed through the E&S review process. The applicant will be required to submit and bond an erosion and sediment control plan that conforms to state laws prior to final site plan approval.

3. Due to unusual size, topography, shape, location or other unusual physical conditions of a property one or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use of such property or would result in significant degradation of the site, or adjacent properties

If the Commission wishes to use this finding, it should focus on whether the shape of the ground lease area would create a situation where the critical slopes provisions result in degradation of the site. It is staff's opinion that the size, topography, and location do not apply in this case because of the ample acreage within the ground lease area of over four acres gives the YMCA enough space to construct a facility. The applicant's desired building footprint may not be used as a criteria in using this finding; thus, the provisions would not prohibit or restrict the use of the property.

The shape of the ground lease area could force measures needed to meet the ordinance's provisions, such as retention basins and biofilters, to negatively impact the forested area behind the proposed building that is to be set aside as a managed conservation area in the park's master plan. However, the applicant's narrative does not address this, nor was there an alternative site design mentioned or proposed that shows how this would occur without the waiver. In general, staff is uncomfortable with the Commission using this finding because no compelling evidence exists to show that the critical slopes provisions would result in significant degradation of the site due to the lease area's shape.

4. Granting the proposed modification or waiver would serve a public purpose of greater import than would be served by a strict application of the requirements of these critical slopes provisions.

Commissioners should focus their discussion on two options if they choose to use this finding.

- a. The applicant has proposed a site design that impacts the critical slopes, but it is conceivable to come up with a design that would only build upon the approximately four acres outside of those slopes. No rationale was given in the applicant's narrative as to how the proposed site design would serve a greater public purpose than an alternative design.
- b. The Commission should use this finding if it feels that the option submitted by the applicant would serve a public purpose of greater import than an alternative site design that does not impact the critical slopes.

Commissioners should **not** focus discussion on whether the existing conditions of the site would serve a public purpose of greater import than the YMCA's building and programming. The ordinance is not written in a manner for the Commission to use such criteria to determine whether to use this finding. Instead, the discussion should center on whether the proposed design would serve a greater public purpose than a design that conformed to the steep slope ordinance by not impacting critical slopes.

Staff Recommendation

The applicant needs to meet at least one the four above findings for a waiver to be granted:

On Finding 1: Staff recommends that the Planning Commission **not** use this finding for a waiver.

On Finding 2: Staff recommends that the Planning Commission use this finding for a waiver.

On Finding 3: Staff recommends that the Planning Commission **not** use this finding for a waiver.

On Finding 4: Staff has no recommendation for the Planning Commission on the use of this finding for a waiver.

If the Commission chooses to use at least one of the four findings to grant a waiver, staff recommends that the waiver be conditioned on the following:

1. The applicant must use tree protection measures during construction at a distance of one-and-a-half (1.5) feet away from the tree's trunk for every one (1) inch of diameter, or submit a tree protection plan developed by an ISA certified arborist and follow the plan's recommendations.
2. The applicant must conduct a final geotechnical engineering study of the ground lease area and follow the study's recommendations prior to final site plan approval as it relates to the building and stormwater management.
3. The applicant must have a structural engineer design all retaining walls higher than four (4) feet and include the designs in the site plan.
4. The applicant must incorporate a rainwater harvesting system to reduce the post-development stormwater runoff volume to the pre-development volume.
5. The applicant must use wire-reinforced silt fence along the limits of disturbance that border the forest and use sediment basins in the project's erosion and sediment control plan.

Suggested Motions

1. "I move to approve the request for waiver of the requirements of the critical slopes provisions listed in §34-1120(b) of the Charlottesville City Code for the proposed YMCA project located at Tax Map 45, Parcel 1, 245-365 U.S 250 Bypass on finding that [*use at least one of the following four findings*]:
 - A strict application of requirements would not forward the purposes and intent of these critical slopes provisions;

- The alternatives proposed by the developer would satisfy the purposes and intent of these critical slopes provisions to at least an equivalent degree;
 - Due to the unusual size, topography, shape, location or other unusual physical conditions of a property one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use of such property or would result in significant degradation of the site, or adjacent properties;
 - Granting the proposed waiver would serve a public purpose of greater import than would be served by a strict application of the requirements of these critical slopes provisions.”
2. “I move to approve the request for waiver of the requirements of the critical slopes provisions listed in §34-1120b of the Charlottesville City Code for the proposed YMCA project located at Tax Map 45, Parcel 1, 245-365 U.S 250 Bypass on finding that *[use at least one of the following four findings]*:
- A strict application of requirements would not forward the purposes and intent of these critical slopes provisions;
 - The alternatives proposed by the developer would satisfy the purposes and intent of these critical slopes provisions to at least an equivalent degree;
 - Due to the unusual size, topography, shape, location or other unusual physical conditions of a property one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use of such property or would result in significant degradation of the site, or adjacent properties;
 - Granting the proposed waiver would serve a public purpose of greater import than would be served by a strict application of the requirements of these critical slopes provisions.”
- with the following conditions.....*
3. “I move to deny the request for waiver of the requirements of the critical slopes provisions listed in §34-1120(b) of the Charlottesville City Code for the proposed YMCA project located at Tax Map 45, Parcel 1, 245-365 U.S 250 Bypass because we do not find that the granting of such a waiver would satisfy the purpose and intent of the ordinance, nor has the applicant met any of the four (4) criteria necessary for the granting of such a waiver.”

Enclosures

Waiver request form

Applicant’s narrative

Letters of support provided by the applicant

Overhead aerial view of the proposed design

Site plan

Pre- and post-development drainage maps