



MCPB
ITEM #
April 8, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief
Environmental Planning Division *mp*

FROM: Candy Bunnag, ^{*S*}Planner Coordinator
Environmental Planning Division

DATE: March 23, 2010

REVIEW: Amendment to Preliminary Forest Conservation Plan No. MR1994002
TYPE Glenmont Station Parking Structure (Mandatory Referral No. MR2009737)

LOCATION: West side of Georgia Avenue, north of Urbana Drive,
Wheaton, MD

APPLICANT: WMATA

APPLICANT'S
ENGINEER: Macris, Hendricks, and Glascock, P.A.

The Preliminary Forest Conservation Plan Amendment has been reviewed by Environmental Planning staff to determine if it meets the requirements of Chapter 22A of the Montgomery County Code (Forest Conservation Law). The following determination has been made:

RECOMMENDATION: Approval subject to the following conditions:

1. Compliance with the conditions of approval of the Preliminary Forest Conservation Plan Amendment. The applicant must meet all conditions prior to issuance of sediment and erosion control permit(s). Conditions include the following:
 - a. Category I conservation easements must be placed over all areas of forest retention and wetlands and wetland buffers.
 - b. Conservation easements must be recorded in the land records prior

- to the start of clearing and grading.
- c. Preliminary Forest Conservation Plan Amendment must be revised as follows:
 - i. Remove the forest conservation worksheet.
 - ii. Provide a note in the Forest Conservation Table that identifies that the approved forest conservation plan MR1994002 shows 4.62 acres of existing forest and that the current NRI/FSD (# 420092340) shows 2.3 acres of existing forest.
 - d. Final Forest Conservation Plan must include the following elements:
 - i. Specific tree protection measures to be shown.
 - ii. Supplemental planting within the forest must be determined in the field and must include native trees and shrubs.
 - iii. Permanent signs to be placed along the boundary of the conservation easement.
 - iv. Proposed location of forest bank to be submitted for review and approval by M-NCPPC Environmental Planning staff prior to start of clearing and grading.

DISCUSSION

Background

The 10.27-acre site currently is owned by WMATA and includes the Glenmont Metro Station Park N Ride lot. The applicant proposes to construct a parking garage structure on the southeastern portion of the site where the parking lot is currently located. The northwestern portion of the site is proposed for a County use, labeled as the future Glenmont Fire Station on the Preliminary Forest Conservation Plan Amendment.

The Board's action on the Preliminary Forest Conservation Plan Amendment is regulatory and binding. The Planning Board must act on the Forest Conservation Plan Amendment before it finalizes its recommendations on the mandatory referral.



Environmental Guidelines

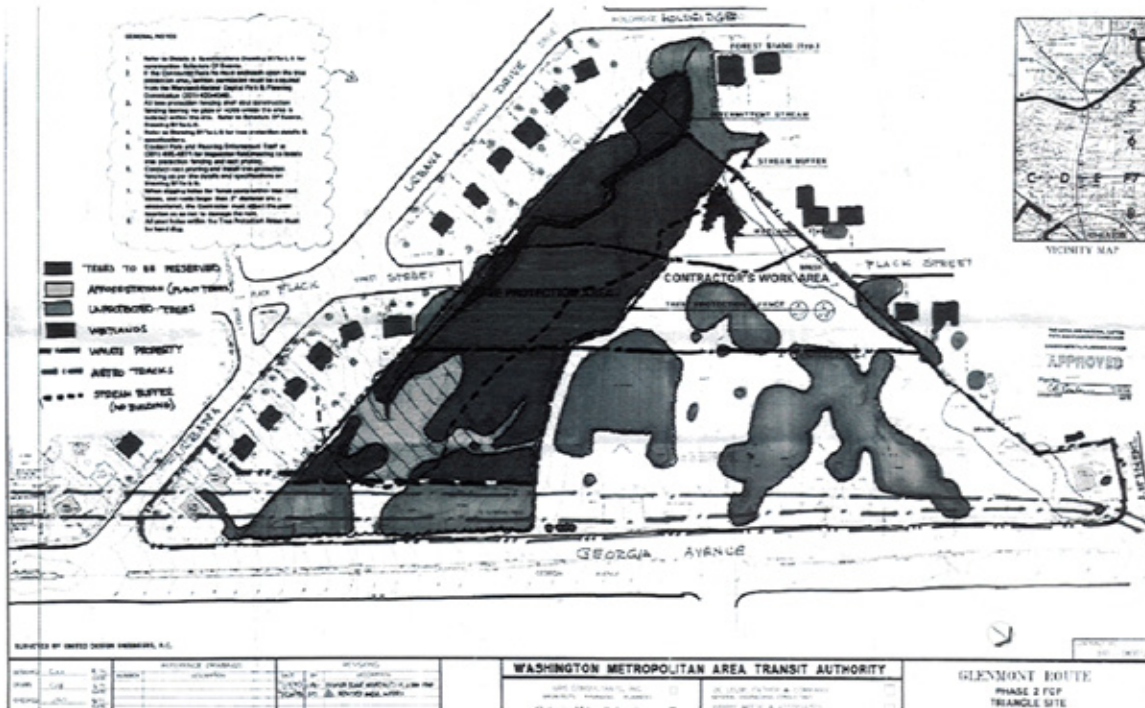
The applicant submitted and received approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) number 420092340 on August 25, 2009.

The property has gently rolling topography. In addition to a Park N Ride lot, the site has a stormwater management pond and an underground Metro entrance. A paved path connects the northwestern portion of Flack Street to the parking lot. The northern portion of the site is in grass cover. A 2.3-acre stand of forest is located along the southern portion of the site.

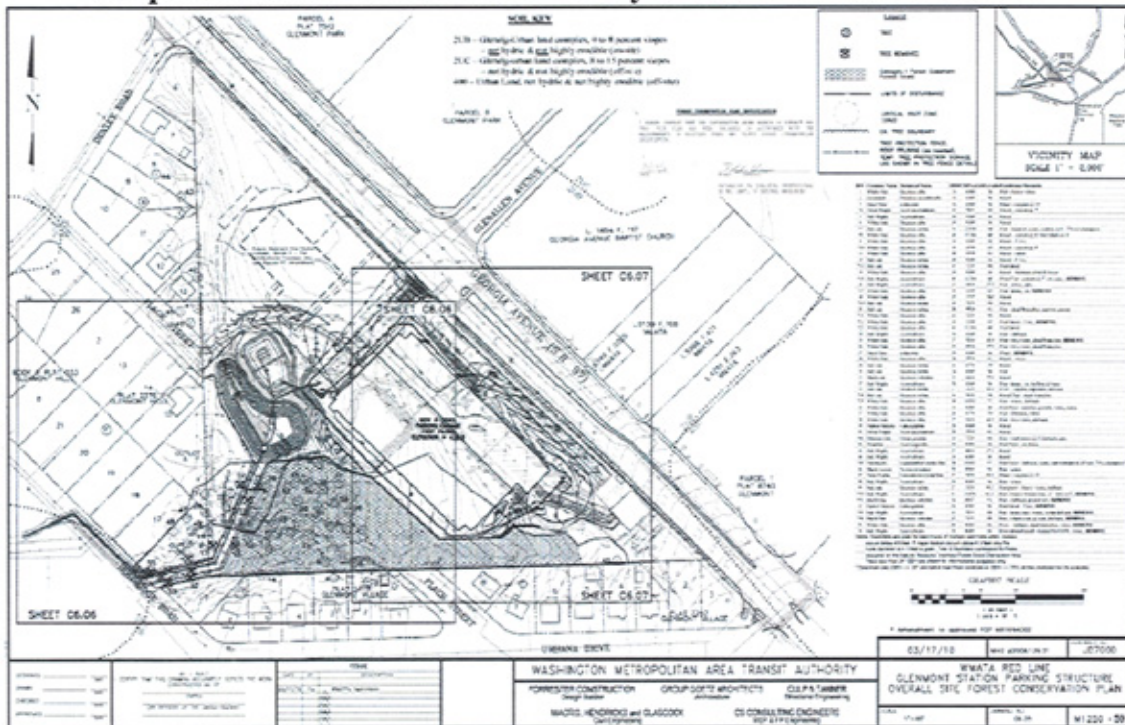
The site lies within the Lower Rock Creek watershed. The 2003 update of the "Countywide Stream Protection Strategy" (MCDEP) identifies the subwatershed where the site is located as Josephs Branch. The subwatershed is classified as having poor stream quality. There are some remnant wetlands within and near the forest in the southwestern portion of the site.

Forest Conservation

1993 Approved Preliminary Forest Conservation Plan



Proposed Amendment to Preliminary Forest Conservation Plan



Forest Conservation Area Per Approved 1993 FCP



Proposed Forest Conservation Area Per Proposed FCP Amendment



This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). The site was the subject of a Forest Conservation Plan (FCP) when it was part of six sites used by WMATA for the construction of the tunnel section of the Glenmont Metro line. A Forest Conservation Plan approved on July 16, 1993 shows that originally, 4.62 acres of forest cover existed on the site. About 2.14 acres of forest was required to be retained and 0.49 acre of reforestation was supposed to have occurred. A total of 2.63 acres of retained and planted forest should have been protected on the site. A Category I conservation easement should have been created over the retained and planted forest, but staff cannot find any records that an easement was created.

The project for the Kiss N Ride lot and associated structures, which was constructed by State Highway Administration (SHA) should have included an amendment to the 1993 Forest Conservation Plan. However, there are no records that WMATA submitted an amendment to the previously approved plan before the Kiss N Ride project was constructed. Staff has also contacted the Maryland Department of Natural Resources to see if they have any records of a FCP for the site. But DNR could not find any files for the project.

The current submission is an Amendment to the 1993 FCP. It proposes to preserve 1.54 acres of existing forest. Staff had originally recommended that the FCP be revised to save more of the existing forest particularly near the existing homes near the south segment of Flack Street. Staff had recommended that the garage be shifted northwestward away from the existing homes and forest. However, WMATA and the Montgomery County Department of Transportation (DOT) have indicated that the northwestern portion of the site is reserved for the future Glenmont Fire Station.

Earlier submissions of the FCP Amendment did not show a layout for the fire station. After staff's repeated comments beginning in October 2009 to minimize forest loss, the applicant only recently submitted a FCP Amendment that showed a very conceptual layout for a fire station on the northwestern portion of the property. It should be noted that the fire station layout is so conceptual that a part of the proposed parking lot and entrance road from Georgia Avenue for the fire station lie outside the limits of disturbance line shown for that part of the site.

The latest submission of the FCP amendment also shows that a minimum 50-foot wide forest retention area can be protected along the southern property line. Staff believes this retention area provides a minimally acceptable buffer for the existing residences on Urbana Drive east of Flack Street from the proposed garage.

Since the FCP amendment proposes to clear forest that was shown on the original FCP to be protected, staff recommends that the amount of compensation be set at 2 acres of forest planting for each acre of protected forest removed. The original FCP required 2.63 acres of forest retention and planting on the subject site. The proposed amendment would retain 1.54 acres of existing forest. The amendment would protect 1.09 acres less forest onsite than the original FCP. Therefore, staff recommends that 2.18 acres of forest be planted offsite. The applicant proposes to use one of the County DOT's planted forest bank, one of which is in the Patuxent River watershed and the other is in the Great

Seneca Creek watershed.

In order to develop the site as proposed, the applicant is required to obtain approval of a variance for the removal of seven specimen trees.

Forest Conservation Variance

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove the trees. The variance must be submitted prior to approval of the forest conservation plan. In general, the variance provision of SB Bill 666 applies to all trees 30" diameter at breast height (DBH) and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since the 1993 approved Preliminary Forest Conservation Plan showed that the current forest on the site is protected and the applicant is proposing to remove some of the protected forest and trees shown to remain that includes seven trees greater than 30 inches DBH, a variance is required. The applicant has requested a variance to remove two 30" white oaks, a 41" red maple, a 40" red maple, a 34" black oak, a 32" red maple, and a 32" black oak (Attachments A and B).

Section 22A-21(c) of the County code requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The County Arborist has 30 days to comment. The variance request was referred to the County Arborist on December 24, 2009. Staff has not received a response from the County Arborist. Per the County code, since the Arborist has not responded within the 30-day time period, the Arborist's recommendation is presumed to be favorable.

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. Section 22A-21(d) of the County code 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.

Findings

1. *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. The clearing of the specific 30-inch and greater DBH trees are due to a proposed storm drain pipe that will convey stormwater from the proposed SWM facility into the existing storm drain system in the public right-of-way. The applicant has indicated that the proposed location cannot change without impacting a wetland or wetland buffer. Some of the large trees are within the public right-of-way and their loss is unavoidable. The new storm drain pipe is required to convey stormwater runoff safely offsite. Therefore, staff does not believe that the clearing of the specific trees in question is 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.*

If the garage were to have been located on the east side of Georgia Avenue, as previously recommended by the Planning Board, the loss of 30-inch and greater trees due to the project could have been avoided. However, this application is for another site. The requested variance is based on the proposed site layout and design to achieve required conveyance of stormwater runoff from the site into the existing public storm drain system. The project utilizes an existing storm drain right of way to funnel the stormwater off the subject site, making avoidance of some trees impossible.

3. *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed site design and layout on the subject property and not as 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. Under section 22A-16(d) of the County code "*The Board or Director may treat any forest clearing in a stream buffer, wetland or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.*" The specimen trees proposed to be removed are not within an environmental buffer. In addition, the proposed project has an approved stormwater management concept plan from the Maryland Department of the Environment. Stormwater from the project will be controlled in a manner acceptable to MDE. In addition, MDE will require an approved sediment control permit for the construction phase of the project.

As a result of the above findings Environmental Planning staff recommends the approval of the applicant's request for a variance from individual tree retention requirements of the Forest Conservation Law to remove and impact the seven trees that are 30 inches or greater DBH. The variance approval is assumed into the Planning Board's approval of the Amendment to the Preliminary Forest Conservation Plan.

SUMMARY

Environmental Planning recommends approval of the Amendment to the Preliminary Forest Conservation Plan with the conditions stated above.

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November 23, 2009

Maryland National Capital Park & Planning Commission
Environmental Planning Division
Attn: Candy Bunnag
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Glenmont Station Parking Structure
Final Forest Conservation Plan
MNCPPC No. MR1994002
MHG Project No. 08.129

Dear Ms. Bunnag:

On behalf of Washington Metropolitan Area Transit Authority (WMATA), the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for the removal of seven specimen trees, required by the revisions to the Maryland Forest Conservation Act, effective October 1, 2009, outlined in Senate Bill 666. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed removal of seven trees over thirty inches in diameter would satisfy the variance requirements.

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property consists of one parcel with a total tract area of 8.91 acres along Georgia Avenue. The property currently is developed with a small parking area along with a metro passenger drop off area and entrance to the metro station. There are 2.30 acres of existing forest onsite and a small wetland with associated wetland buffer. Three of the seven specimen trees to be removed, a 30" White Oak in fair/good condition, a 40" Red Maple in poor/fair condition, and a 30" White Oak in fair condition are located on-site and within the forested area. A fourth tree, a 41" Red Maple in Fair condition, is located off-site. The other three trees, a 34" Black Oak in fair condition, a 32" Red Maple in fair condition, and a 32" Black Oak in Fair condition are located in a public right of way. All seven trees must be removed for the installation of a storm drain. In order to meet stormwater requirements, a storm drain must be constructed to convey stormwater off-site. The storm drain is located where it is in order to utilize the existing topography of the site to flow water into the existing storm drain system. An existing public right of way where three of the trees to be removed are located is at the back of the site. The storm drain cannot be constructed in the public right of way without removal of these

trees as well as one tree located just off-site. In order to get the storm drain from the stormwater facility to the public right of way the three on-site trees mentioned will have to be removed as well. This is a forested area and there are many trees in this area. The alignment of the storm drain was chosen in order to save as many trees as possible in this area and stay out of the wetland buffer.

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

The subject property is apart of the regional transportation system. The proposed work is to expand parking and increase ridership for public transportation. The inability to remove the subject trees would limit the development of the property. This property like any property going through review is required to handle its stormwater runoff; without the storm drain as shown, the property would not be able to make use of its developable area as do the surrounding properties. Therefore without being able to remove the seven trees, creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.

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;*

A Stormwater Management Plan was submitted for the property and is currently under review by the Maryland Department of the Environment Sediment and Stormwater Plan Review Division. The plan is currently under its third and what should be the final review. Please find attached the stormwater review comments. The comments are minor and do not have any bearing on the plans ability to meet water quality requirements. This confirms that the goals and objectives of the current state water quality standards will be met for the proposed improvements to the site pending the approval of the plan. If there are any questions regarding the review of the plan and its ability to meet state water quality standards, please feel free to contact the reviewer, James Tracy, at 410-537-3563.

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

A copy of the Final Forest Conservation Plan has been provided as part of this variance request. The proposed removal of the seven specimen trees are indicated on the plan. Please let us know if any other information is necessary to support this request.

Please contact me via email, at fjohnson@mhgpa.com, or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson

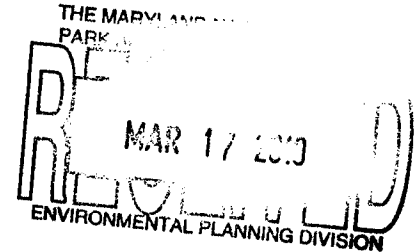
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March 17, 2010

Maryland National Capital Park & Planning Commission
Environmental Planning Division
Attn: Candy Bunnag
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Glenmont Station Parking Structure
Forest Conservation Plan
MNCPPC No. MR2009737
MHG Project No. 08.129.21

Dear Ms. Bunnag:

We have revised the enclosed Forest Conservation Plan to address the remaining comments as discussed at our meeting on March 16, 2010 as follows:

1. Show conceptual layout of future Glenmont Fire Department.

Concept has been added with note to forest conservation plan. Exhibit showing a secondary concept layout is included.

2. Label public right of way where storm drain outfalls.

Right of way has been labeled.

3. Provide owner information for neighboring property owner of outlot B.

An exhibit showing property owner information has been included.

4. Increase forest saved along southern property line near Flack St. to a minimum width of 50' and label as such.

Storm drain has been adjusted to allow for greater amount of forest saved. Area of forest easement has been increased to 50' wide and this width has been labeled.

5. Include updated sediment control and stormwater features per approved plan.

SWM and sediment control features are shown per approved plan.

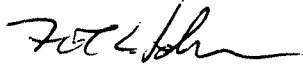
6. Provide explanation why the seven 30" trees must be removed.

The seven specimen trees to be removed are a result of the storm drain outfall which crosses the forested area and exits off-site at an existing public right of way. As discussed the storm drain cannot be outfalled at grade because the bottom of the stormwater facility is 5-6' below existing grade. To get it at grade the stormwater facility would be substantially bigger and would result in greater forest removal as well as create a dam breach safety issue for the properties below. The storm drain was located as it is to avoid the wetland and wetland buffer areas as well as to result

in the fewest trees removed. Four of the specimen trees being removed are within the public right of way and cannot be avoided. The remaining three specimen trees to be removed cannot be avoided without impacting a wetland or wetland buffer. In addition, if the storm drain was shifted to the west (impacting the wetland buffer) you would have 1-3 additional specimen trees to be removed. And if the storm drain is shifted to the east (impacting the wetland buffer) a 30" White Oak in fair/good condition would have fewer impacts and may be savable. However, this would result in the loss of 4 significant trees – a 28" White Oak in good condition, a 25" White Oak in fair condition, a 23" White Oak in Good condition, and a 25" Red Maple in fair condition. The additional wetland buffer impacts and the loss of 4 trees in order to save one 30" is not seen as an equitable environmental trade-off. Therefore, we believe that the alignment as currently shown is the most environmentally friendly route.

Please contact me via email, at fjohnson@mhgpa.com, or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson