



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

MCPB  
Item #  
5/20/2010

**MEMORANDUM**

**Date:** May 7, 2010

**TO:** Montgomery County Planning Board

**VIA:** Mark Pfefferle, Acting Chief, Environmental Planning *MP*

**FROM:** Marco Fuster, Senior Planner, Environmental Planning *[Signature]*

**REVIEW TYPE:** Forest Conservation Plan Review

**APPLYING FOR:** Final Forest Conservation Plan (FFCP) – Proposal for stream restoration project along lower Booze Creek

**PLAN NAME:** Lower Booze Creek Stabilization

**PLAN NUMBER:** MR2008901

**REVIEW BASIS:** This property is subject to the Chapter 22A Montgomery County Forest Conservation Law

**LOCATION:** Located within Booze Creek Stream Valley Park, between River Road and the Cabin John Parkway.

**APPLICANT:** Montgomery County Department of Environmental Protection (DEP)  
**ENGINEER:** Greenman-Pedersen, Inc. and Coastal Resources, Inc.

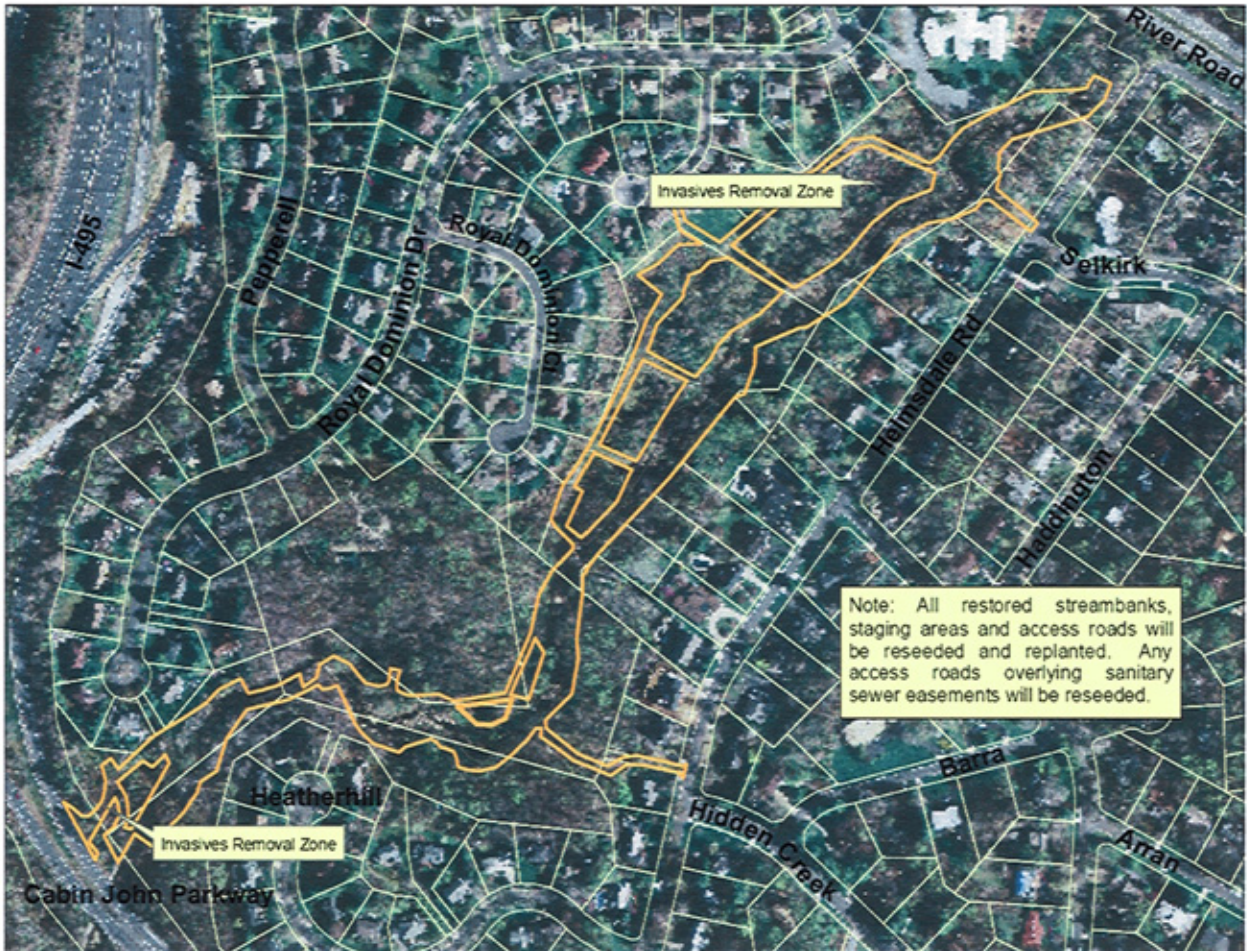
**HEARING DATE:** May 20, 2010

**RECOMMENDATION: Approval subject to the following conditions:**

1. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the Save Trees.
2. The final sediment and erosion control plan must match the limit of disturbance as shown on the Final Forest Conservation Plan and be consistent with its recommendations for tree protection.
3. Prior to any clearing and/or grading on parkland, DEP must obtain a Park Permit from M-NCPPC. All proposed construction activity must be consistent with the approved final forest conservation plan.

## SITE DESCRIPTION

The subject property, Booze Creek Stream Valley Park shown below, is a 23-acre property located between River Road and the Cabin John Parkway. The project is bordered by residential homes to the east and west, and is adjacent to a private school to the northeast. The entire property is within the Cabin John Creek watershed, Use I-P waters. There are no wetlands or associated wetland buffers within the subject boundary, however the property almost entirely within the stream buffer. A number of WSSC sewer lines and easements traverse the project site.



## BACKGROUND AND REVIEW HISTORY

The Montgomery County Department of Environmental Protection (DEP) is proposing a stream restoration project along lower Booze Creek. The proposed project, originally identified as a priority stream restoration project in the Cabin John Watershed Study (DEP 2004), is designed to stabilize the highly degraded stream channel located on private and M-NCPPC property. Active WSSC sewer lines are exposed by the stream erosion in a number of locations. Project design and construction is coordinated with WSSC so that the aging and exposed sewer lines can be maintained and protected.



Sewer line and manhole structure exposed by erosion.



Eroding stream bank.

On October 23, 2008, a Preliminary Forest Conservation Plan was presented to the Planning Board for the very same project (MR 2006902 / MR2008901). The Board voted unanimously in favor of the plan approval; however a resolution was not prepared for the action. Prior to the issuance of a Resolution, an error was detected in the clearing amounts which had been presented to the Board. The discrepancy involved forest clearing amounts greater than 5,000 square feet which require Planning Board approval. The actions occurring at the May 20, 2010 hearing shall supersede the prior action. Although the limits of disturbance (LOD) which was graphically shown at the original hearing have not increased, the declared clearing amounts have increased since the discovery of the measuring error. The applicant, applicant's consultant, and staff have re-checked the latest plans and have confirmed the figures included in the plan and presentation.

## **NOTIFICATION AND COMMUNITY COMMENT**

All adjoining and confronting property owners and interested parties were notified of the public hearing on the proposed amendment in accordance with Planning Board policy. Any comments received will be forwarded to the Board. Residents who had either provided testimony at October 23, 2008 hearing date or who previously expressed concerns to Planning Department staff are also included in the notification. During the October 23, 2008 an adjacent resident at Lot 38, Mrs. Cantwell, had expressed concerns for proposed construction access adjacent to her property. The previously proposed access has been removed from the plan which is believed to satisfy the residents' concerns.

## **ENVIRONMENTAL GUIDELINES**

The applicant submitted a Natural Resources Inventory/ Forest Stand Delineation (NRI/FSD) number 420062340 and subsequently received approval of the NRI/FSD on November 8, 2007. There is a perennial stream with a mostly forested buffer occurring on the property. There are some areas of steep slopes and highly erodible soils. These slopes are generally forested and are a high priority for retention. The site is not within a Special Protection Area or Primary Management Area.

## **FOREST CONSERVATION**

This property is subject to the Chapter 22A Montgomery County Forest Conservation Law and a Forest Conservation Plan has been submitted for approval. The net tract area for the project is 10.79 acres and contains 5.42 acres of forest to be cleared. There is no forest conservation planting requirement for this project, although approximately 3.61 acres of reforestation is proposed for environmental enhancement and restoration of forested stream buffer. The plantings also serve as mitigation for removal and impacts to trees which are subject to the variance requirements.

Forest loss has been minimized by routing access through existing open areas and areas dominated by invasive species. Both agencies (DEP and WSSC) will use the same access corridors to reduce environmental impacts. Control of invasive species will occur throughout the area, and new plantings will occur along the entire disturbed and regarded stream banks; most access routes will be replanted with the exception of those directly overlying WSSC sanitary sewer easements. In order to complete the project as proposed, the applicant is required to obtain approval of a variance for the impacts to specimen trees as described below.

## Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a 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 Montgomery County Code. The law requires no impact to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009\* and the FCP proposes to impact 33 trees  $\geq 30$  inches DBH (two of which are possible to be removed), a variance is required.

The Applicant has requested a variance to remove the following two trees: Tree #149, a 37" Sycamore which is located within five feet of a sanitary sewer manhole. The tree may require removal to protect and maintain the sewer infrastructure. If the tree is not removed, the CRZ will be protected with matting and access alignment may be shifted to reduce impacts to the CRZ. Ultimately the tree could be removed under routine maintenance of the WSSC easement not associated with stream restoration work.

Tree #227, a 30" twin black walnut may also be removed, depending on the actual conditions during the time of construction. The tree is located near the top of an eroded stream bank where extensive grading is proposed to stabilize the area. Possibly the grading can be adjusted to accommodate retention of this tree.

There are 31 trees that will have impacts to their critical root zones. The trees are not proposed to be removed but they will be impacted by the construction activities. In many cases, the proposed work will benefit the trees by stabilizing the stream bank reducing bank erosion and undercutting of the trees. In all cases where impacts are proposed, appropriate trees preservation/stress reduction measures will be performed under the supervision an appropriate tree care professional.

In accordance with Montgomery County Code, Section 22A-21(c) the Planning Board referred a copy of the variance 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. In this case, the variance request was referred to the Montgomery County Arborist on May 3, 2010. The County Arborist responded on May 4, 2010 and will not provide a recommendation since they believe the tree variance provision does not apply to development applications submitted before October 1, 2009.

*\* Although the project originally went to the Planning Board prior to October 1, 2009, the FCP was not technically approved since the Resolution was not issued.*

In accordance with Section 22A-21(e), Environmental Planning staff recommends a finding by the Planning Board that the Applicant has met all criteria required to grant the variance:

- a) *Will not confer on the applicant a special privilege that would be denied to other applicants.* The maintenance and rehabilitation of public water resources, as well as public sewer infrastructure, is the responsibility of public agencies in executing their duties to the public. Therefore this is not a special privilege to be conferred on the applicant.
- b) *Is not based on conditions or circumstances which are the result of the action by the applicant.* Extensive measures have been taken to minimize impacts as much as possible and, in some cases redesigned access routes at great expense and unanticipated regulatory process, to shift impacts to highly degraded areas (e.g. obtaining federal and state highway permits to shift access from Royal Dominion Drive to the Cabin John Parkway).
- c) *Does not arise 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 restoration work and infrastructure repair and maintenance on the subject property and not as a result of land or building use on a neighboring property.
- d) *Will not 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. Rather the project is designed to improve water quality by reducing bank erosion and rehabilitating exposed and aging sanitary sewer mains within the floodplain and stream channel (preventing potential failure of the systems which would result in severe water quality degradation). All stream channel work will be carried out using a stream flow pump-around to minimize erosion and maximize sediment control by working in dry stream channels. All disturbed areas will be stabilized with permanent seeding and matting. All activities in these areas will be conducted in accordance with appropriate permits, processes, and guidelines:
  - 1. Army Corps of Engineers – Nationwide General Permit
  - 2. Maryland Department of the Environment - Joint Permit process and Maryland State Waterway Construction Guidelines,
  - 3. Maryland State Highway Administration – Right-of-Way Access Permit from Cabin John Parkway (in consultation with and on behalf of the Federal Highway Administration).
  - 4. Montgomery County Department of Permitting Services – Sediment Control Permit, Floodplain District Permit, Right-of-Way Permit
  - 5. Maryland National Capitol Park & Planning Commission - Montgomery County – Forest Conservation Plan, and Park Construction Permit.

As a result of the above findings, Environmental Planning staff recommends the Board approve the applicant's request for a variance from Forest Conservation Law to impact 31 specimen trees and remove or impact 2 specimen trees associated with the site. The variance approval is assumed into the Planning Board's approval of the final forest conservation plan.