



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

MCPB  
Item #  
7/1/2010

**MEMORANDUM**

**Date:** June 18, 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) – Sidewalk Proposal for better pedestrian access and safety improvements along Brookville Road

**PLAN NAME:** Brookville Road Sidewalk Improvements

**PLAN NUMBER:** MR2010801

**REVIEW BASIS:** Montgomery County Forest Conservation Law: Chapter 22A

**LOCATION:** Brookville Road, between Quincy and Irving Streets.

**APPLICANT:** Chevy Chase Village

**ENGINEER:** RK&K

**HEARING DATE:** July 1, 2010

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

1. Applicant to obtain services of a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the save trees.
2. Applicant to provide Fee-in-Lieu payment to satisfy forest conservation planting requirements, prior to any clearing, grading or land disturbing activities.



## SITE DESCRIPTION

Brookville Road Sidewalk Improvements is a Chevy Chase Village project which affects approximately 2,600 linear feet of right of way (ROW) shown below. The work does not affect any forest area, stream, wetlands or associated buffers. The project is closely bordered by residential homes and proposes improvements for pedestrian access and safety along Brookville Road.



Project location and vicinity.

## BACKGROUND

The plan area contains a number of significant and specimen trees. Due to the historic setting of Brookville Road, the smaller trees associated with the project are also subject to variance requirements and a historic area work permit (HAWP). The property is within the Lower Rock Creek watershed, a Use I designation (the Natural Resource Inventory / Forest Stand Delineation for the project inadvertently states use III). The current pedestrian access is very narrow and hazardous. The proposed walkway will be constructed of a pervious gravel system which will also provide storm water management benefits.



The project is supported by numerous regulatory agencies and local jurisdictions. The HAWP was issued by the M-NCPPC Historic Preservation Commission on April 28, 2010. The Maryland Historic Trust has reported “No adverse Effects on the Chevy Chase Village Historic District”. The Village of Martin’s Additions and Section 3 Village of Chevy Chase have also provided letters of support (refer to Attachments C & D).



North facing view of narrow shoulder/pedestrian access.

RK&K image



South facing view of narrow ROW.

RK&K image

## **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. The Applicant, Chevy Chase Village, has independently coordinated with residents and has reported overwhelming support for the project (refer to Attachment B).

## **ENVIRONMENTAL GUIDELINES**

The project area does not contain environmental buffers, 100-year floodplain or other sensitive features including forested areas. There are a few minor areas of steep slopes adjacent to the roadway. The site is not within a Special Protection Area or Primary Management Area.

## **FOREST CONSERVATION**

The property is subject to the Chapter 22A Montgomery County Forest Conservation Law because the highway construction activity exemption under the provisions of Section 22A-5(e) only applies to “a state or county highway project” (rather than a municipality such as Chevy Chase Village). Furthermore, the net tract area exceeds 40,000 square feet (as defined under linear projects). A Natural Resource Inventory/ Forest Stand Delineation (NRI/FSD) number 420100980 was submitted by the applicant and approved on February 22, 2010. The NRI/FSD identified approximately 43 significant and specimen trees with the study area.

The applicant has submitted a Forest Conservation Plan (FCP) which was conditionally approved by Staff on June 1, 2010. The project has an afforestation requirement of 0.10 acres, which will be met by a fee-in-lieu payment (the limited ROW cannot accommodate plantings). Additionally, Chevy Chase Village has provided 19 2-3” caliper tree plantings to serve as mitigation for impacts to trees which are subject to the variance requirements. The trees have been located within the village borders outside of the work area due to the project site limitations.

The work is in close proximity to numerous trees which are to be preserved. The plan provides for various tree preservation strategies and requires a Maryland Licensed Tree Expert (LTE) to supervise and direct all activity occurring near the save trees. 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. A variance is required since this project did not obtain approval of a



Preliminary Forest Conservation Plan prior to October 1, 2009 and the FCP proposes to impact subject trees ( $\geq 30''$  DBH and trees within a historic site).

The variance request includes the removal of 3 significant trees and removal of 44 other trees ranging from 1'' to 21'' DBH (47 trees in total). Impacts are proposed for 122 trees ranging from 2'' to 50'' DBH. A majority of the proposed impacts to critical root zones of save trees affect less than 1/3 of the subject CRZ. The trees are not proposed to be removed but will have some level of impact by the construction activities. In all cases where CRZ impacts are proposed, appropriate trees preservation and/or stress reduction measures will be performed under the supervision and direction of a licensed 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 11, 2010. The County Arborist responded on May 27, 2010 with a favorable recommendation (see Attachment A).

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:

- 1) *Will not confer on the applicant a special privilege that would be denied to other applicants.* Responsibility for the safety, maintenance, and rehabilitation of public pedestrian routes and infrastructure belongs to government agencies in executing their duties to the public. Therefore this is not a special privilege to be conferred on the applicant.
- 2) *Is not based on conditions or circumstances which are the result of the action by the applicant.* The work stems from a public need for improved pedestrian access and safety. Measures have been taken to minimize impacts as much as possible. The County Arborist has recommended that the variance can be granted under this condition as long as appropriate mitigation is provided for the resources disturbed. The applicant has provided 19 2-3'' caliper tree plantings for this purpose. The proposed plantings are acceptable to staff.
- 3) *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 sidewalk improvements on the subject project and not as 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.* Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The gravel pavement system for the new sidewalk inherently provides storm water quality treatment and storage. Furthermore, the work will be phased to allow only minor areas of disturbance at any given time. The work is not located in or near a stream, wetland, 100 year floodplain or any associated buffers.

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 remove 47 subject trees and remove and/or impact 122 other subject trees associated with the site. The variance approval is assumed into the Planning Board's approval of the final forest conservation plan.

**Attachments:**

Attachment A: Variance response letter from Laura Miller (County Arborist).

Attachment B: Letter from Michael Younes (Applicant).

Attachment C: Letter from Martin's Additions

Attachment D: Letter from Section 3 Village of Chevy Chase

**Attachment A: Variance response letter from Laura Miller (Country Arborist).**



**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Isiah Leggett**  
*County Executive*

**Robert G. Hoyt**  
*Director*

May 27, 2010

Royce Hanson, Chairman  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**RE: Brookville Road, MR 2010801, NRI/FSD applied for on 12/14/2009**  
**Sts. Constantine and Helen, DAIC 120100240, NRI/FSD applied for on 10/21/2010**

**Dear Dr. Hanson:**

The County Attorney's Office has advised me that the provisions contained in Section 5-1607 of Title 5 (Natural Resources) of the Maryland Code apply to any application required by Chapter 22A of the Montgomery County Code submitted after October 1, 2009. Since the applications for the above referenced requests are required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and were submitted after this date, I am providing the following recommendation pertaining to these requests for variances.

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 plans submitted by the applicants results in the following findings:

Attachment A: Page 2

Royce Hanson  
May 27, 2010  
Page 2

1. The granting of a variance in this case would not confer a special privilege on these applicants 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 condition.
2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and MNCPPC, the disturbance of trees, or other vegetation, is not interpreted as a condition or circumstance that is the direct result of the actions by the applicants and, therefore, the variance can be granted under this condition, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicants do 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 condition.
4. The disturbance of trees, or other vegetation, by the applicants 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 condition.

Therefore, I recommend that the applicants qualify for a variance conditioned upon mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law. Until other guidelines are developed, I recommend requiring mitigation based on the area 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.

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

Sincerely,



Fok  
Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Acting Chief



**Attachment B: Letter from Michael Younes (Applicant).**



June 8, 2010

Montgomery County Planning Board  
Maryland-National Capital Park and Planning Commission  
c/o Mark Pfefferle, Acting Chief, Environmental Planning  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Commissioners:

The Brookville Road Sidewalk project involves pedestrian access and safety improvements along Brookville Road (MD 186) from East Irving Street to Quincy Street, within the limits of Chevy Chase Village. The Village has been coordinating with Village residents, the Maryland State Highway Administration, the Maryland Historic Trust, which has stated that the project will have "No Adverse Effects on the Chevy Chase Village Historic District" and the Maryland-National Park and Planning Commission's Historic Preservation Commission (HPC) and Environmental Planning Division. As of April 28, 2010, the Village received final approval for the issuance of our Historic Area Work Permit for the sidewalk and associated improvements as proposed.

The overall project has received overwhelming support from the residents of Chevy Chase Village, the surrounding jurisdictions and from State elected officials. Over 200 letters of support have been received from residents of the Village and surrounding communities. Enclosed please find letters of support from the Village of Martin's Additions and Section 3 of the Village of Chevy Chase. Should the Commission like to view any or all of the letters of support, please do not hesitate to contact me directly.

We look forward to seeing the Commission on July 1. Please let me know if materials in addition to those provided here may be needed.

Sincerely,



Michael Younes  
Director of Municipal Operations  
Chevy Chase Village

Enclosures

cc: Larry Cole, Highway Coordinator  
Marco Fuster, Senior Planner

**CHEVY CHASE VILLAGE**  
5906 Connecticut Avenue  
Chevy Chase, Maryland 20815  
Phone (301) 654-7300  
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SHANA B. DAVIS-COOK  
Village Manager  
DAVID B. PODOLSKY  
Legal Counsel

**BOARD OF MANAGERS**  
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Attachment C: Letter from Martin's Additions



VILLAGE OF MARTIN'S ADDITIONS  
7013B Brookville Road ♦ Chevy Chase, Maryland 20815 ♦ 301/656-4112

April 20, 2010

Historic Preservation Commission  
Case No.35/13-10F  
Montgomery County Planning Department  
Maryland-National Capital Park and Planning  
8787 Georgia Avenue  
Silver Spring, MD 20910

Dear Commissioners:

The Village of Martin's Additions, Chevy Chase, Maryland, is aware that you are reviewing a proposal from Chevy Chase Village for the installation of sidewalks along Brookville Road from East Irving Street to Quincy Street in Chevy Chase. Please accept this letter as record of the Village of Martin's Additions full support of the pending proposal. We urge you to approve this project, which has been much discussed for several decades and now after five years of careful work, research and design is before you. The installation of these sidewalks not only would be a tremendous and much needed safety improvement, but we believe the careful design is in keeping with the historic character of this important road and indeed would be an attractive enhancement.

As the local municipality immediately to the northeast of Chevy Chase Village along Brookville Road, we have long maintained sidewalks on Brookville Road for the convenience and safety of our residents, and we are aware that many of our residents walk south on Brookville Road to access local places of worship and businesses. The safety of pedestrians walking on Brookville Road beyond "Where the Sidewalk Ends" is a continuing concern. We would be delighted to have our sidewalks link into a continuous, safe passageway for pedestrians along Brookville Road in Chevy Chase. Please approve this proposal!

Sincerely yours,

Handwritten signature of Noel A. Sottile in cursive.

Noel Sottile, Vice-Chair,  
Martin's Additions Village Council

## SECTION 3 OF THE VILLAGE OF CHEVY CHASE

P.O. BOX 15070 Chevy Chase Maryland 20815 301/656-9117  
[www.chevychasesection3.com](http://www.chevychasesection3.com)

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Historic Preservation Commission  
Georgia Ave.  
Silver Spring, MD.  
Via email: [mcp-historic@mcppc-mc.org](mailto:mcp-historic@mcppc-mc.org)

Dear Sirs,

On behalf of the Section 3 of the Village of Chevy Chase, we are writing in support of the continuation of the sidewalk on Brookville Road in Chevy Chase Village. A number of years ago we completed the sidewalk in Section 3 which runs from our northernmost boundary all the way to Bradley Lane.

The sidewalk has made an appreciable difference in our community in many ways:

1. Our children are safer, as they are not walking in the street.
2. Neighbors have more contact with one another as the sidewalk links them together.
3. Pedestrian traffic is encouraged---our residents can now walk to the market on Brookville Road without taking a car and polluting the air.
4. Drainage on the roadway has been improved because the water is guided to storm drains instead of being caught in mud and flooding some lots.

We have a number of residents whose children attend Blessed Sacrament School, a neighborhood anchor for many. Even more attend Blessed Sacrament Church. To further knit our Chevy Chase communities together, it would be wonderful if all those families could walk to the neighborhood Church instead of having to drive. Similarly, those who take a bus to Chevy Chase Circle from downtown and live in Chevy Chase Village, Martins Additions and Section 3 would all be able to walk from the circle, up Brookville Road to their homes. We cannot emphasize enough the importance of this sidewalk to all our communities. It will become an important thread linking all the Chevy Chase communities together as Brookville Road did historically. We urge your support of this effort.

Sincerely,

William H. Brownlee, Council Chair