



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

MCPB
 Item #
 7-21-11

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Khalid Afzal, Team Leader, East County Team, Area 2 Division *KA*
 Glenn Kreger, Acting Chief, Area 2 Division *GK*
FROM: Amy Lindsey, Senior Planner, Area 2 Division *ALL*
DATE: July 7, 2011
PLAN NAME: Viers Mill Elementary School
PLAN NUMBER: MR 2011209
PLAN TYPE: Preliminary Forest Conservation Plan pursuant to a Mandatory Referral Review
REVIEW BASIS: Chapter 22A of the County Code
ZONE: R-60
LOCATION: 11711 Joseph Mill Road at Dahill Road
MASTER PLAN: Kensington/Wheaton
APPLICANT: Montgomery County Public Schools (MCPS)
HEARING DATE: July 21, 2011

RECOMMENDATIONS

Approval of the Preliminary Forest Conservation Plan subject to the following conditions:

1. The proposed development shall comply with the conditions of the Preliminary Forest Conservation Plan. The applicant shall satisfy all conditions prior to Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits:
2. Approval of Final Forest Conservation Plan must be secured, consistent with the approved Preliminary Forest Conservation Plan, prior to any clearing, grading or demolition on the site.
3. Final Forest Conservation Plan must include:
 - a. Detailed and specific tree protection measure for on and off-site trees affected by development.
 - b. 37 native canopy trees with a minimum size of 3" diameter at breast height (DBH) (or native canopy trees with a 111" cumulative DBH, individual trees with a minimum size of 3" DBH) as mitigation for loss of specimen trees.
4. Applicant must record a Category I Conservation Easement over all areas of forest retention prior to any clearing or grading occurring onsite.
5. Required site inspections by M-NCPPC monitoring staff must occur as specified in "Trees Technical Manual".
6. A copy of the maintenance and management agreement must be kept at Viers Mill Elementary School and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the Forest Conservation Plan.

DISCUSSION

There are two items for the Planning Board to review for this Mandatory Referral application:

- 1) Mandatory Referral No. MR2011209
- 2) A Preliminary Forest Conservation Plan (MR2011209)

This memorandum covers staff's review and recommendations on the Preliminary Forest Conservation Plan (PFCP). Unlike the review of the Mandatory Referral, the Board's actions on Forest Conservation Plans, pursuant to Chapter 22A of the County Code, are regulatory and binding. The Planning Board must act on the Forest Conservation Plan before it can act on the mandatory referral.

Project Description - The Montgomery County Public Schools (MCPS) is proposing an addition to Viers Mill Elementary School, located at 11711 Joseph Mill Road. The elementary school is surrounded by single-family detached houses. The project will include the construction of a two-story addition, major circulation improvements, play areas, and ball fields. In order to facilitate the transportation improvements, MCPS has acquired a lot on Fernhill Road, currently improved with a single-family detached house. The inclusion of this lot in the development plan allows for the reconfiguration of the intersection of Fernhill Road and Dahill Road.

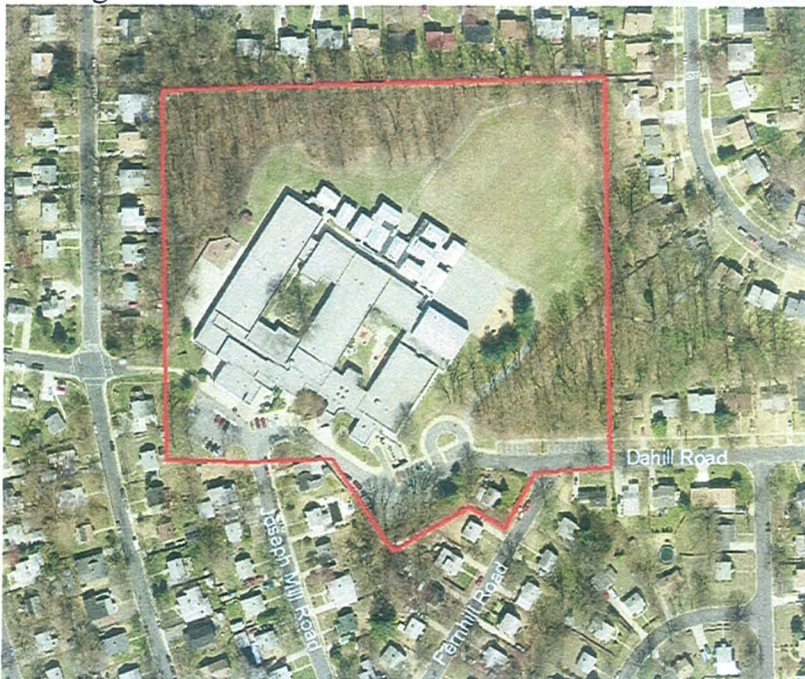


Figure 1: 2010 Aerial Photograph

ANALYSIS

Environmental Guidelines - A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420110410) was approved by staff on November 24, 2010. The 10.53-acre site sits on a ridge, sloping down to the north, east, and west. There are 2.62 acres of forest in two separate stands of 0.74 acres and 1.88 acres. Both stands are upland hardwood forests, dominated by black oaks, and are a high priority for retention due to the presence of specimen trees and steep slopes. There are no

streams, wetlands, or environmental buffers on the property. The property is within the Lower Rock Creek watershed – a Use I watershed. The proposed project does not have any proposed activities within any streams, wetlands, or environmental buffers and is in compliance with the *Environmental Guidelines*.



Figure 2: 2008 Aerial Photograph

Forest Conservation - This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the Code) under section 22A-4(d) which applies to “a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger...” The site is 10.53 acres in size, and contains 2.62 acres of forest. The proposed development plan will require the clearing of 0.73 acres of forest, and generates a reforestation requirement of 0.77 acres. MCPS has submitted a PFCP that proposes to satisfy this reforestation requirement with 0.15 acres of landscape credit and using an off-site planting bank to meet the remaining 0.62 acres. (Figure 4)

While staff believes that this PFCP satisfies the requirements of Forest Conservation Law, staff has proposed a revision to the plan that meets Forest Conservation Law and increases the local tree canopy. Staff has proposed that MCPS consider planting forest on County-owned property in the immediate area. Potential locations include MCPS’s own Rocking Horse Lane Center (Figure 3), Holiday Park Senior Center, and unplanted road ROWs. Planting areas must be permanently protected and maintained. This issue is still outstanding but will be resolved at time of Final Forest Conservation Plan.



Figure 3: Rocking Horse Lane Center

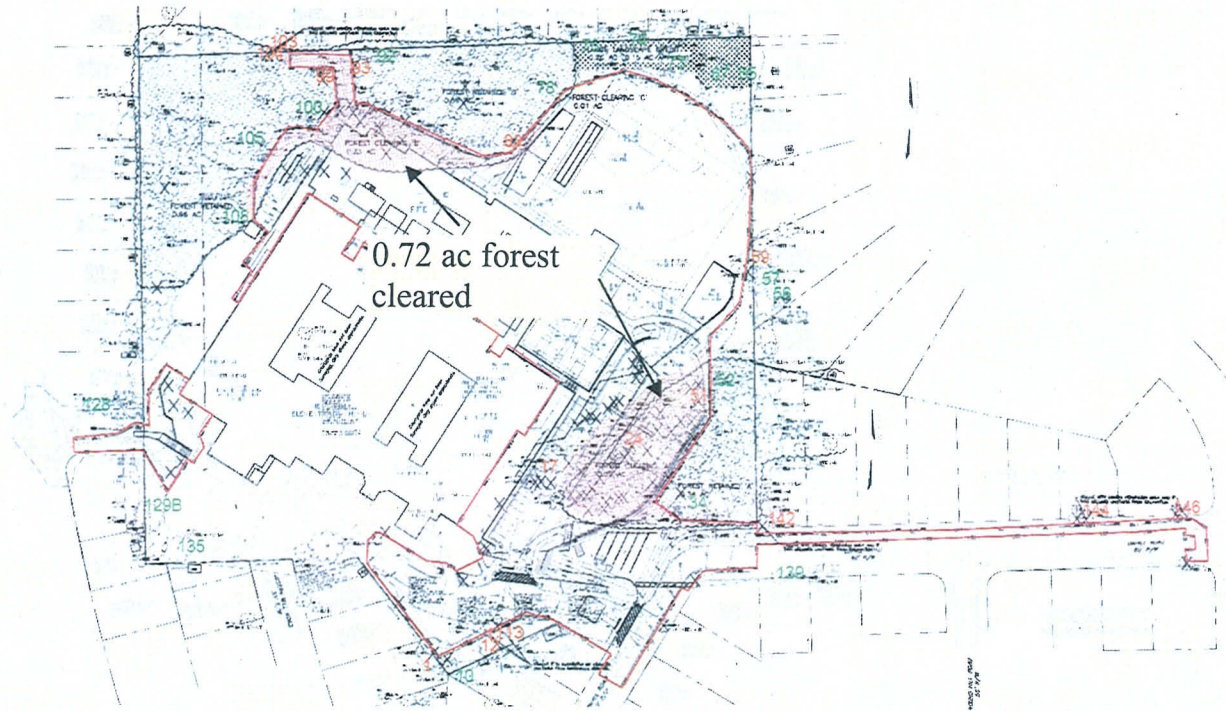


Figure 4: Proposed Preliminary Forest Conservation Plan

Forest Conservation Variance - Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify 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 (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 County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, DBH; are part of a historic site or designated with a 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.

The applicant initially submitted a variance request on June 13, 2011 and revised the variance request on June 26, 2011 for the impacts/removal to trees with the proposed layout (Attachment A). The applicant proposes to potentially remove 16 trees that are 30 inches and greater DBH, and to impact, but not remove, 19 others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Tree Number	Species	DBH	Status
1	White Oak	35"	Within 2' of LOD, parking area removal
11	Yellow Poplar	37"	Within 5' of LOD, parking area removal, <i>potential removal</i>
12	Yellow Poplar	37"	Within 10' of LOD, parking area removal
13	Yellow Poplar	32"	Within 10' of LOD, parking area removal, <i>potential removal</i>
17	Black Oak	36"	Within LOD of proposed parking
24	Black Oak	37"	Within LOD of proposed parking
51	Black Oak	34"	Within LOD of proposed parking
59	Red Oak	34"	Off-site, LOD from ball field grading and play area
83	Red Oak	34"	LOD from ball field grading and associated structures
93	Yellow Poplar	36"	LOD from fill erosion area and storm drain
99	Yellow Poplar	33"	LOD from fill erosion area and storm drain
103	Black Oak	40"	Off-site, LOD from fill erosion area and storm drain, <i>potential removal</i>
104	Black Oak	40"	LOD from fill erosion area and storm drain, <i>potential removal</i>
142	White Oak	33"	Off-site, LOD from storm drain replacement, <i>potential removal</i>
144	Yellow Poplar	30"	Off-site, LOD from storm drain replacement, <i>potential removal</i>
146	Black Cherry	30"	Off-site, LOD from storm drain replacement, <i>potential removal</i>

Table 1: Trees to be removed or potentially removed

Off-site trees may only be removed with owner's permission. MCPS has sent a letter, in English and Spanish, to property owners whose trees could potentially be negatively impacted by construction.

Tree Number	Species	D.B.H	CRZ Impact	Status
10	Black Oak	30"	<1%	LOD from parking area removal
34	Black Oak	30"	37%	LOD from retaining wall and parking
52	White Oak	32"	23%	LOD from retaining wall
56	Black Oak	30"	3%	Off-site, LOD from ball field grading and play area
57	Black Oak	34"	26%	Off-site, LOD from ball field grading and play area
65	White Oak	36"	<1%	LOD from ball field grading
67	White Oak	31"	5%	LOD from ball field grading
73	White Oak	31", 17"	15%	LOD from ball field grading
74	White Oak	33"	11%	LOD from ball field grading

Tree Number	Species	D.B.H	CRZ Impact	Status
76	Yellow Poplar	34"	<1%	LOD from ball field grading
78	Black Oak	37"	21%	LOD from ball field grading
92	Black Oak	34"	5%	Off-site, LOD from fill erosion area and new SWM pipe
100	Red Oak	32"	25%	LOD from fill erosion area and new SWM pipe
105	Black Oak	32"	4%	LOD from SWM area
108	Black Oak	33"	10%	LOD from grading
128	Silver Maple	36"	10%	Off-site, LOD from stormdrain pipe
129B	Red Oak	38"	8%	LOD from parking and stair construction
135	Yellow Poplar	36"	2%	LOD from parking and driveway
139	Green Ash	30"	2%	LOD from stormdrain replacement

Table 2: Trees to be affected but retained

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

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

Response: “As part of the program, the task was to provide the community with an updated elementary school facility that can accommodate a growing number of students as well as a modernized, safe and healthy environment for young students to learn. Efforts have been made to impact as little of the forest on site as possible because forest is a highly valuable resource. This work will require disturbance of the root zones of nineteen (19) specimen trees but will not require their removal. There are seven (7) trees that are proposed to be saved but will need to be removed if they become unstable from excavation in the critical root zones. The proposed plans will require the removal of nine (9) specimen trees. It should be noted that the trees that need to be removed are primarily part of the existing forest onsite. This results in an impact of a total of 35 live trees. If we are not allowed to remove these trees, there would not be adequate room for the development program.

If we are not allowed to impact the trees, the school will not be able to be update due to the close proximity of specimen trees to the school building. As such, this would cause an *unwarranted hardship* to the community that it serves.”

The site is constrained by the existing school, forest, and infrastructure. Most of the trees proposed for removal are interior to the site or at the forest edge. For example, tree #17 is at the edge of the current drop-off loop and will be completely within the new drop-off loop. Several other trees are on-site but adjacent to a storm drain connection; the need for their removal will be re-evaluated both at time of Final Forest Conservation Plan and construction. This includes trees #93, #99, and #104.

There are several off-site trees that will be affected by construction of storm drain connections. Trees #92 and #103 are on adjacent properties to the north of Viers Mill Elementary. While MCPS has requested a variance to remove tree #103, every effort will be made to minimize damage to the tree's roots. Trees #142, #144, and #146 are located on private properties on Dahill Road and will be impacted by the construction of another storm drain connection. This storm drain construction will occur in the ROW of Dahill Road, but will affect the trees in the front yards of the adjacent properties. The storm drain has been located in the grassed area of the ROW instead of the road in order to reduce potential conflicts with the existing utilities and disruption of traffic. Off-site trees may only be removed with the property owner's permission.

Staff has reviewed the variance application and agrees that denial of the variance would cause an unwarranted hardship.

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

Response: "If the County were required to keep all improvements outside the root zones of the specimen trees, the building would fail to be updated due to the close proximity of specimen trees."

MCPS has located the addition primarily in the existing developed area. The location of transportation and storm drain improvements are determined by existing infrastructure, so there is little flexibility of site design. In order to minimize the site disturbance, retaining walls are being used to limit the amount of grading needed. A vegetated roof is being used on the addition to reduce stormwater management structures required on the site.

Staff has reviewed the application and agrees that enforcing the rules would deprive the landowner of rights.

(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;

Response: "The trees to be removed have been limited to the central area of the site and away from natural drainage systems. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes limiting the impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality.*"

Staff has reviewed the application and agrees that State water quality standards will not be violated or that a measurable degradation in water quality will not occur.

(4) Provide any other information appropriate to support the request.

Response: "The forest and specimen tree preservation for the site is meant to enhance the quality of the property and provide greater environmental and educational depth to the school after its modernization."

Section 22A-21 of the County Forest Conservation Law 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.

Variance Findings - Staff has made the following determination based on the review of the variance request and the proposed forest conservation plan. Granting the variance request requires the following findings:

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

Granting the variance will not confer a special privilege on the applicant as disturbance and removal of the specified trees are due to the development of the site. The trees and/or their critical root zones lie within the developable area of the site. Granting a variance request to allow land disturbance within the developable portion of a site is not unique to this applicant. This variance is necessary to achieve the County goals of enlarging this public school facility to operate adequately and safely. Therefore, staff believes that 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. The requested variance is based on the proposed site layout and design to achieve adequate level of service and safety for the school.

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 a result of the proposed site design and layout on the subject property and 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.*

MCDPS has approved a stormwater management concept, dated January 18, 2011 (Attachment B) for the proposed project. The approved concept will incorporate Environmental Site Design in accordance with the latest revisions to the MDE Stormwater Design Manual. In addition, there are no impacts to trees or forest within environmental buffers. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions - There are 16 trees proposed for removal as a result of the proposed development. Seven of the trees may be retained but permission for removal has been requested because the exact locations of roots and full extent of effects will not be known until construction. There will also be some disturbance within the CRZ of another 19 trees but they are excellent candidates for safe retention.

Mitigation should be at a rate that approximates the form and function of the trees removed. Trees #17, #24, #51 are within forest and will be compensated for as part of the forest clearing. No further mitigation is being requested for those trees. Trees #1, #11, #12, #13, #59, #83, #93, #99, #103, #104, #142, #144, and #146 are either not within forest or within forest that is not shown as being cleared. Therefore, staff is recommending that replacement occur at a ratio of approximately

1" DBH for every 4" DBH removed, using trees that are a minimum of 3" DBH. This means that for the 444 caliper inches of trees removed, they could be mitigated by the applicant with 37 native canopy trees with a minimum size of 3" DBH on the site. Given the site constraints, staff believes it is appropriate to allow MCPS to plant a mix of trees, with a minimum size of 3" DBH that have a cumulative total DBH of 111". While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage and eventually fill in open areas of the forest where the large trees have been removed.

The trees subject to this variance (to be impacted but retained) are excellent candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer 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. The request was forwarded to the County Arborist on June 20, 2011. On July 5, 2011 the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Attachment C).

Variance Recommendation - Staff recommends that the variance be granted.

CONCLUSION

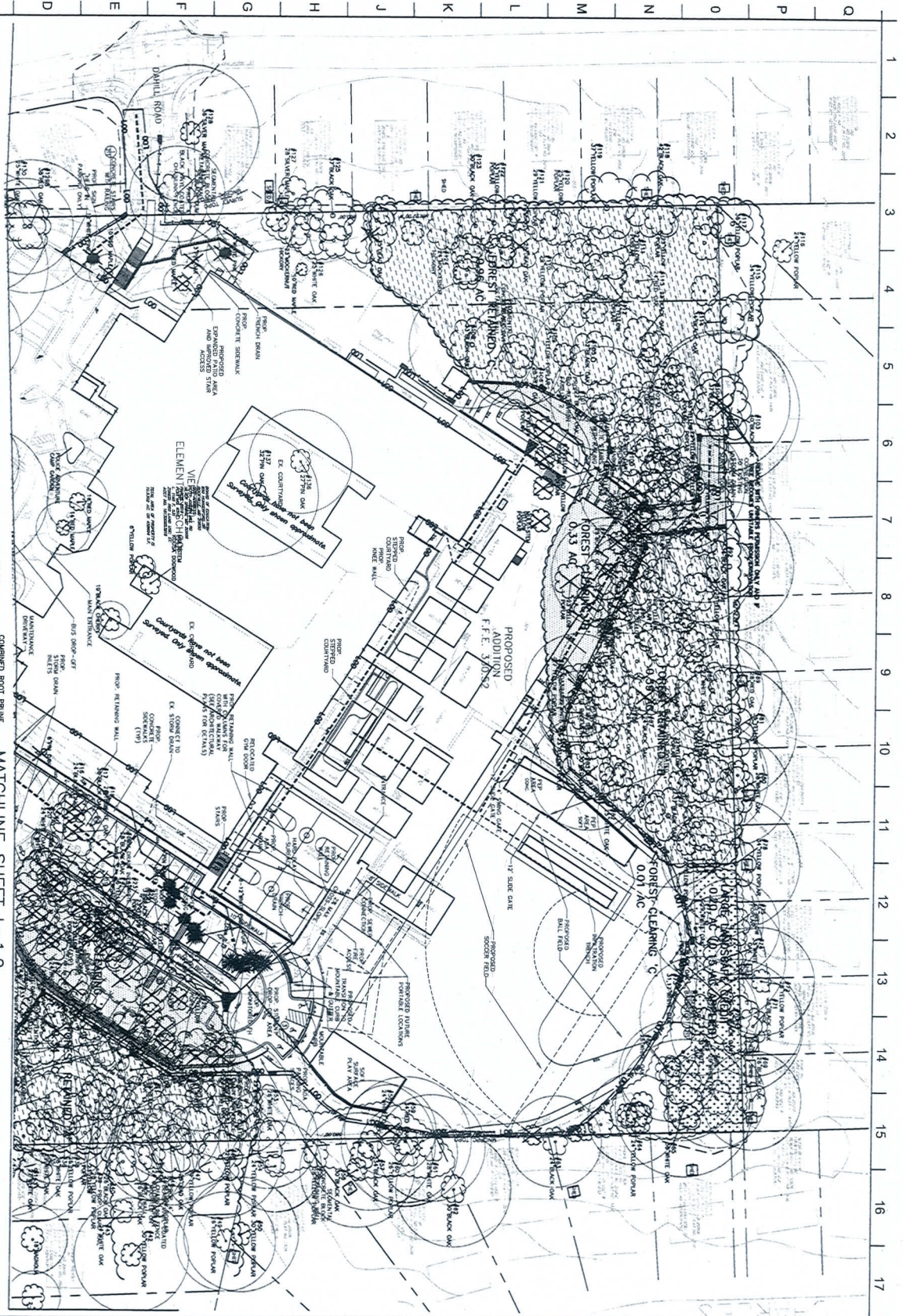
Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this staff report. The variance approval is assumed into the Planning Board's approval of the Preliminary Forest Conservation Plan

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Attachments:

- A. Forest Conservation Plan submitted for PB approval
- B. Letter from Department of Permitting Services
- C. Letter from County Arborist

ATTACHMENT A



LEGEND

- EXISTING TREE
- EXISTING TREE TO BE REMOVED
- EXISTING SIGNIFICANT TREE W/0.2
- EXISTING SIGNIFICANT TREE W/0.2 TO BE REMOVED
- EXISTING FOREST BOUNDARY
- EXISTING HERSE/SCUBA AREA
- LIMITS OF DISTURBANCE
- COMBINED ROOT PROTECTANT FENCE (TEMPORARY)
- TRENCH/TREE PROTECTION
- TEMPORARY TREE PROTECTION SIGNAGE (APPROX. 50' O.C.)
- FOREST CLEARING AREA
- FOREST SAVE AREA
- LANDSCAPE CREDIT AREA
- CONSERVATION EASEMENT SIGNAGE AT 50' O.C.

CERTIFICATION OF QUALIFIED PROFESSIONAL

DATE: _____

GRAPHIC SCALE: 1" = 20' 0"

MATCHLINE SHEET L-1.2



Norton Land Design
 Landscape Architecture + Environmental Planning
 20115 Woodloch Lane, Suite 200
 P.O. Box 218500, Fairfax, VA 22031
 Phone: 703.261.8844

HURON CONSULTING
 3015 GARDNER ROAD
 GAITHERSBURG, MD 20878
 Phone: (301) 928-9129
 Fax: (301) 928-9128
 www.huronconsulting.com

NO.	REVISION/DESCRIPTION	DATE
1	DESIGN DEVELOPMENT	03/11/2023
2	REVISED SUBMISSION	03/11/2023

VIERS MILL ELEMENTARY SCHOOL ADDITION
 11717 Joseph Mill Road
 Silver Spring, MD 20906

BEERRYRIO

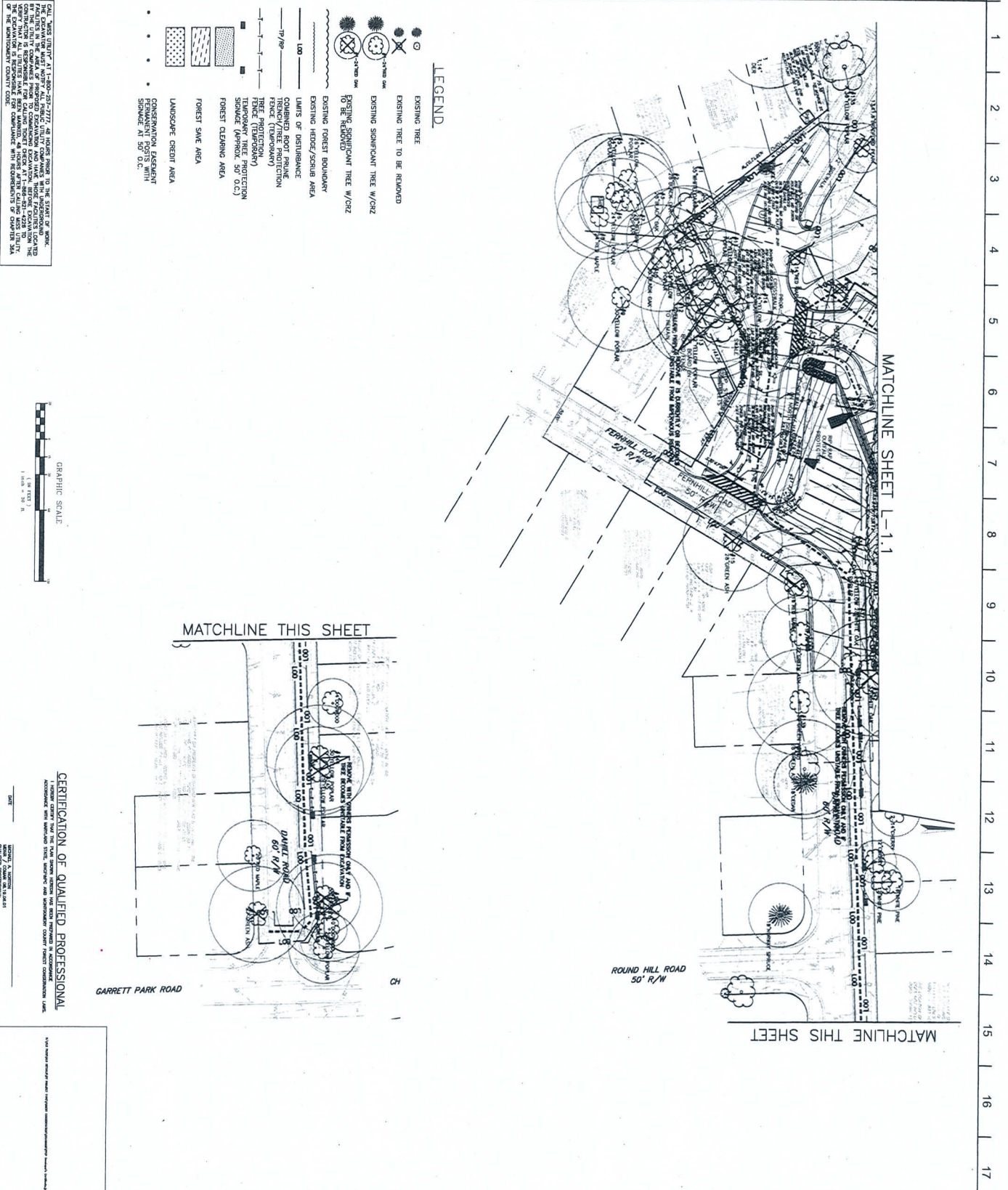
PRELIMINARY FOREST CONSERVATION PLAN

DATE: 05/10/23

SCALE: AS SHOWN

L-1.1

A B C D E F G H J K L M N O P Q



LEGEND

- EXISTING TREE
- EXISTING TREE TO BE REMOVED
- EXISTING SIGNIFICANT TREE W/CRZ
- EXISTING SIGNIFICANT TREE W/CRZ TO BE REMOVED
- EXISTING FOREST BOUNDARY
- EXISTING MIDS/SCSIB AREA
- LUMPS OF DISTURBANCE
- COMBINED ROOT RELIEF FENCE (TEMPORARY)
- TREE PROTECTION
- TEMPORARY TREE PROTECTION SPACING (APPROX. 50' O.C.)
- FOREST CLEANSING AREA
- FOREST SAVE AREA
- LANDSCAPE CREDIT AREA
- CONSERVATION EASEMENT
- CONSERVATION EASEMENT SPACING WITH SPACING IN 50' O.C.

CERTIFICATION OF QUALIFIED PROFESSIONAL

I HEREBY CERTIFY THAT THE DATE SHOWN BEHIND MY SIGNATURE IS ACCURATE AND CORRECT AND THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF MARYLAND.

DATE: _____

NAME: _____

TITLE: _____

BEERYRIO

8001 BRADDOCK ROAD, 4TH FLOOR, SUITE 200
 BEERYRIO, SILVER SPRING, MD 20910
 WWW.BEERYRIO.COM

PRELIMINARY FOREST CONSERVATION PLAN

NO. 1	DESIGN DEVELOPMENT	2011/02/27
NO. 2	PERMITTING	2011/02/27

VIERS MILL ELEMENTARY SCHOOL ADDITION

11711 Joseph Mill Road
 Silver Spring, MD 20906

Norton Land Design

Professional Architecture + Environmental Planning
 811 Rowan Street
 Silver Spring, MD 20910
 P: 301.216.8500 F: 301.216.8548
 www.nortonlanddesign.com

HURON CONSULTING

2010 CENTURY BLVD
 GAITHERSBURG, MD 20878
 P: 301.216.8500 F: 301.216.8548
 www.huronconsulting.com

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

Table with columns A through Q and rows 1 through 20, containing project details and site information.

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Table with columns A through Q and rows 1 through 20, containing project details and site information.

Project title block for 'VIERS MILL ELEMENTARY SCHOOL ADDITION' with contact information for Norton Land Design and Beeryrio.

ATTACHMENT B



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

January 18, 2011

Timothy Hoffman
Huron Consulting
20410 Century Boulevard, Suite 230
Germantown, Maryland 20874

Re: Stormwater Management **CONCEPT** Request
for Veirs Mill Elementary School
SM File #: 239288
Tract Size/Zone: 10.53 Ac. / R-60
Total Concept Area: 10.53 Ac.
Parcel: P519
Watershed: Lower Rock Creek

Dear Mr. Hoffman:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of providing the Environmental Site Design (ESD) volume to the maximum extent practicable (MEP) via various nonstructural and micro scale practices, an infiltration trench and a green roof for the proposed addition.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:


1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Infiltration testing results must be provided with initial submittal of the detailed plans to verify the feasibility of providing an infiltration trench.

This list may not be all-inclusive and may change based on available information at the time.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mike Geier at 240-777-6342.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:tla CN239288 Viers Mill Elem.mjg.doc

cc: C. Conlon
M. Pfefferle
SM File # 239288

QN -onsite; Acres: 5
QL - onsite; Acres: 5
Recharge is provided

ATTACHMENT C



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

July 5, 2011

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

RE: Viers Mill ES, MR 2011209, NRI/FSD application accepted on 9/13/2010

Dear Ms. Carrier:

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 application for the above referenced request is required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) and was submitted after this date, 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 results in the following findings:

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 condition.

Françoise Carrier
July 5, 2011
Page 2

2. Based on a discussion on March 19, 2010 with representatives of the Maryland Department of Natural Resources Forest Service and the 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 applicant 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 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 condition.
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 condition.

Therefore, I recommend that this applicant 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,



Laura Miller
County Arborist

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