

Preliminary Plan Amendment: 11999001A, Montgomery Chinese Christian Church; Staff Report Date: October 28, 2011

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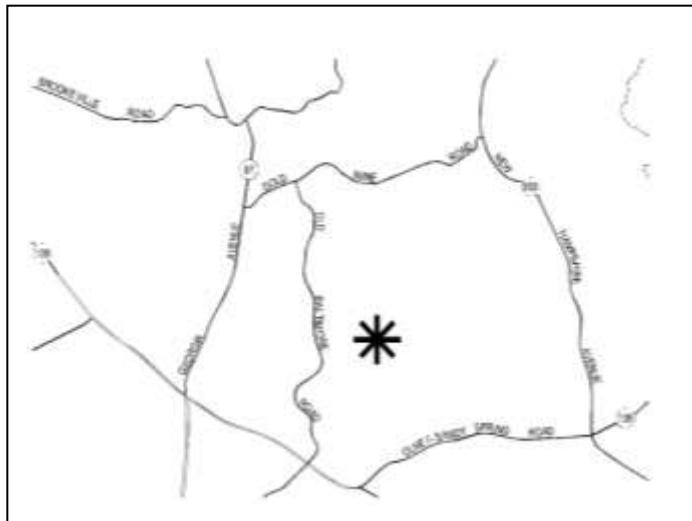


Description

Preliminary Plan Amendment No. 11999001A:

Montgomery Chinese Christian Church – One lot previously approved for religious institution and related uses, request to amend Adequate Public Facilities and preliminary forest conservation plan; located in the southeast corner of the intersection of McKnew Road and Sandy Spring Road (MD198); R-200 zone; 4.95 acres, Fairland Master Plan area.

Staff Recommendation: *Approval with conditions.*



Summary

Preliminary Plan No. 119990010 was approved by the Planning Board on December 10, 1998 and was limited by an Adequate Public Facilities (APF) agreement with the Planning Board to a house of worship with a weekday child daycare center for up to 40 children and a private pre-school and elementary school for up to 25 children. The Opinion for the Planning Board was mailed on December 14, 1998, which established the preliminary plan validity date of January 16, 2001 and extended to January 16, 2002 by action of the Planning Board in a Revised Opinion mailed November 9, 2000. The property was recorded by plat in a timely manner, however; the applicant did not secure building permits for any of the approved uses prior to the expiration of the Adequate Public Facilities review period which was January 16, 2003.

At this time, the Church does not wish to proceed with the daycare, pre-school or elementary school uses and wishes to only build a 240 seat church building and to revise the forest conservation easements. As a house of worship with no weekday uses it is exempt from APF review requirements under Section 50-35(k) of the Subdivision Regulations. While the applicant may currently proceed to apply for building permits on this recorded lot they are requesting this amendment to the forest conservation easements to better implement their scaled-back development of the Property. In staff's opinion, the revised easements are superior to those previously approved since they allow for protection of a larger, contiguous forested area that also provides a wider and denser vegetated buffer for residential properties to the south.

RECOMMENDATION: Approval, subject to the following conditions:

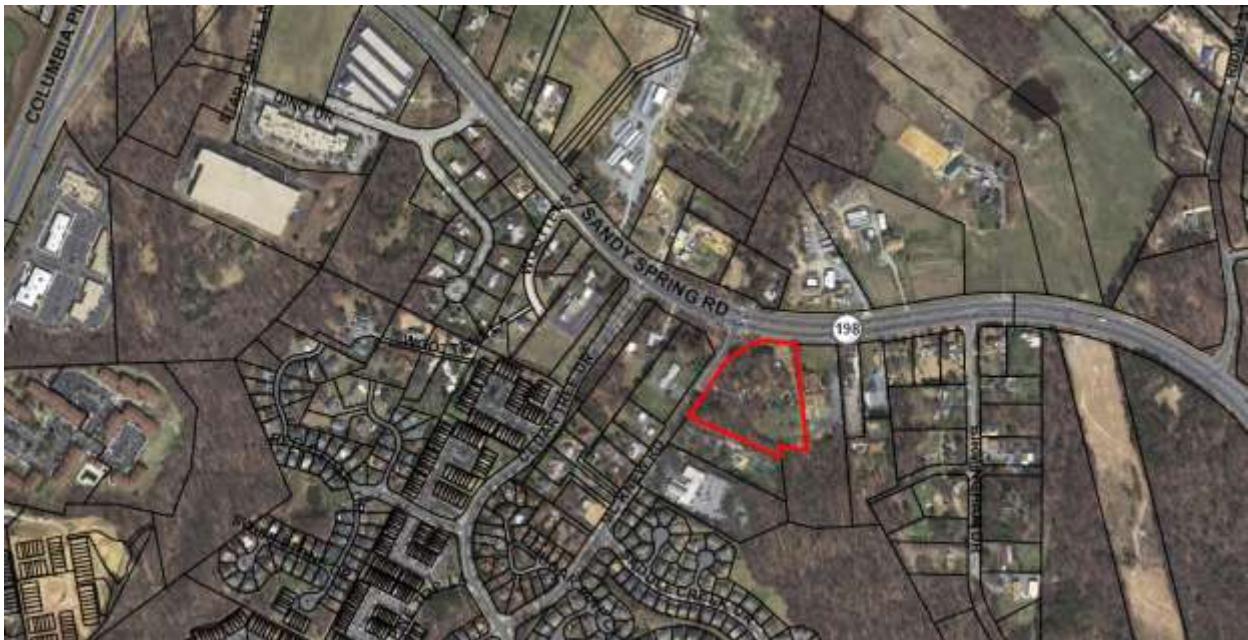
1. Under this approval, the uses on the subject property are limited to a house of worship with no weekday child daycare or weekday private educational classes. This approval supersedes the existing Adequate Public Facilities agreements with the Planning Board.
2. The applicant must comply with the conditions of approval for the Final Forest Conservation Plan. The applicant must satisfy all conditions prior to the recordation of the record plat or MCDPS issuance of sediment and erosion control permits, as applicable.
 - a. The record plat must reflect a Category I conservation easement over all areas of forest conservation as shown on the Final Forest Conservation Plan.
 - b. Final Sediment Control Plan must be consistent with the final limit of disturbance as approved by the M-NCPPC staff.
 - c. Permanent Category I Forest Conservation Easement signs must be placed along the perimeter of the conservation easement area.
 - d. Install permanent barriers to block entry into Category I conservation easement area at existing driveway entrance in southwestern corner of the property.
 - e. Provide an Invasive Species Removal and Management Program for the area within the proposed Category I conservation easement.
3. Other necessary easements must be shown on the record plat.
4. Prior to recordation of plat, applicant must revise Landscape and Lighting Plan to incorporate additional shade trees around proposed parking lot.

SITE DESCRIPTION

The subject property, ("Subject Property") or ("Property"), is located in the southeast corner of the intersection of McKnew Road and Sandy Spring Road (MD 198) in the Fairland Master Plan area. It is zoned R-200 and is 4.95 acres in size. It is a recorded lot identified as Parcel "B", Wooten Acres on plat No. 22476. A house, garage, pool house and pool are currently occupying the Property.

The Property is located along the ridgeline between the Patuxent River watershed (Use IV-P) and the Little Paint Branch watershed (Use I-P). There are no streams, wetlands or stream valley buffers that extend on to the Property. The site contains 1.14 acres of forest concentrated in the southern portion of the Property.

Adjacent land uses include a mixture of residential, institutional and special exception operations. To the south of the Property, R-200 zoned properties with one family residence line McKnew Road. Abutting the Property to the east is the Covenant Orthodox Presbyterian Church with residential properties operating with apparent non-residential uses beyond fronting on to Sandy Spring Road. Confronting the Property on McKnew Road to the west is an Elk Lodge with residential properties further to the west. Confronting the Property across the 4-lane divided Sandy Spring Road is a residential parcel in the Rural Cluster zone and a Landscape Contractor, currently under review by staff as a special exception cited for non-conformance by the Department of Permitting Services. Other agricultural uses and special exception operations are fairly common along the northern side of Sandy Spring Road.



Vicinity Map



Site Aerial View

PROJECT DESCRIPTION

This Property was approved by the Planning Board in 1998 for a house of worship with a weekday child daycare and a private pre-school and elementary school for up to 25 children. Since that approval included weekday uses and, therefore; generated peak hour trips, it was reviewed for traffic implications under the APF procedures. The weekday uses were capped "for up to 25 children" by the Planning Board to control the maximum number of trips affecting the peak hour. At the time of this approval in 1998, the applicant was required to enter into an Adequate Public Facilities agreement with the Planning Board. In accordance with the approval of the plan and forest conservation plan, a record plat for the Property was recorded which showed the required forest conservation easements.

As with all APF findings, there is a validity period in which time building permits must be obtained. If permits are not obtained within the APF validity period and no extension is approved by the Planning Board, the APF approval expires. The Applicant for this request did not secure permits in a timely manner and did not request an extension; the APF has expired.

This application does not seek to re-establish an APF approval for any weekday uses, rather, the Applicant wishes to proceed with a 240 seat, house of worship only on the Property. A house of worship is specifically exempted from the requirements of Adequate Public Facilities review under Section 50-35(k)(6), assuming that it does not propose weekday uses that generate peak hour trips. This application includes a request to revise the forest conservation easements to better suit the development that is now envisioned by the church.

This Property was subject to the Montgomery County Forest Conservation law when it was approved in 1998. The forest conservation easements that were established and shown on the current record plat were devised to accommodate the uses approved at that time. As part of that approval, a new access point to McKnew Road was proposed to be constructed through a forested portion of the Property. This access drive fragmented the forest in the southern portion of the Property and as a result, the easements to protect what remained of this forest appear on the plats as non-contiguous. Also, to meet the requirements of the forest conservation law, other easements were established on the Property and designated as "afforestation" areas which were to be planted. With the revised easements proposed under this amendment, all 1.14 acres of existing forest will be retained in easement and there will be no planting requirements. This is discussed in detail in the environmental section of this report.

ANALYSIS AND FINDINGS

Conformance to the Master Plan

The 1998 - Fairland Master Plan makes no specific recommendations for the Property other than to continue the R-200 zoning in the general area south of Sandy Spring Road and east of the Burtonsville Industrial area located adjacent to the intersection of Rt. 29 and Sandy Spring Road. The master plan is silent on private institutional uses. As a permitted use in the R-200 zone, a private institutional use is in substantial conformance with the Fairland Master Plan.

Adequate Public Facilities

Roads and Transportation Facilities

This house of worship is exempt from the requirements of Adequate Public Facilities review under Section 50-35(k)(6), it does not generate peak hour trips. MCDOT will address any frontage

improvements with the issuance of access permits. No additional dedications are required for McKnew Road or Sandy Spring Road.

Other Public Facilities and Services

While generally exempt from APF review, staff finds that all local utilities, including water, sewer telecommunications and electrical service are adequate and can serve the proposed use. Construction of local utility extensions may be required to serve the building. Montgomery County Fire and Rescue Services has review authority at the time of building permit to address access for emergency vehicles.

Environment

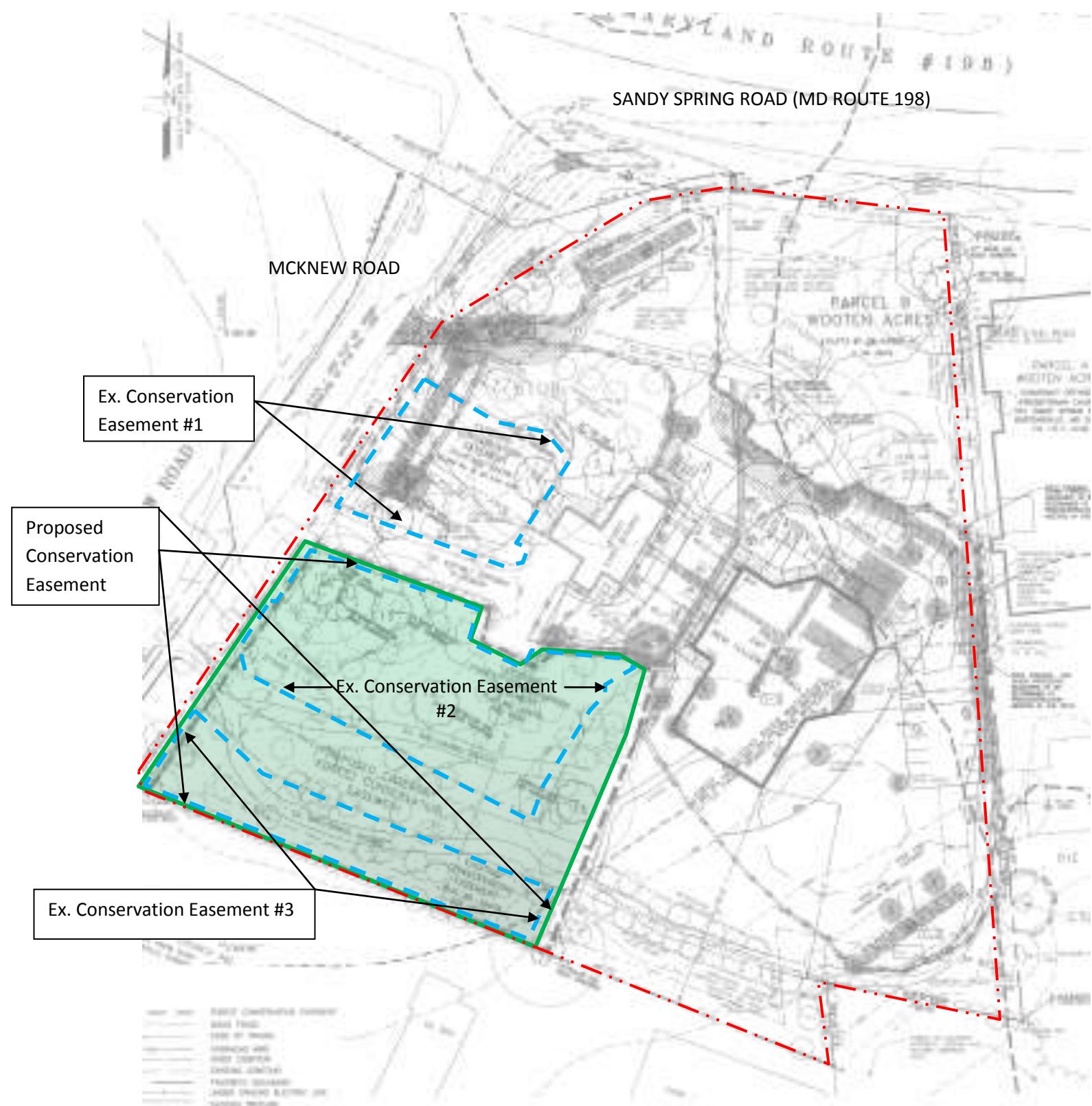
Environmental Guidelines

The majority of the property lies within the Lower Patuxent River watershed, which is classified by the State of Maryland as Use IV-P waters, and the southwest corner of the site drains to the Little Paint Branch watershed, classified as Use I-P waters. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes on the property. There is approximately 1.14 acres of existing forest, comprising one contiguous forest stand, located in the southwestern corner of the property. There are seventeen trees greater than or equal to 24 inches in diameter at breast height (DBH), four of which are 30 inches DBH or greater. A portion of the Property is located within the Patuxent River Watershed where properties submitted as regulatory applications are reviewed for the applicability of the Patuxent River - Primary Management Area (PMA) guidelines. The PMA guidelines are applied to properties, or portions thereof, that are located within specified distances of tributary streams flowing to the Patuxent River. Staff has determined that the Subject Property is not within 660 feet of a tributary stream and, therefore; is not subject to the PMA guidelines. Natural Resource Inventory/Forest Stand Delineation #419980920 was approved for the property on December 16, 1997.

Forest Conservation

A Final Forest Conservation Plan (FCP) was approved on October 27, 1999. This plan allowed for 0.49 acres of forest clearing and 0.76 acres of forest retention and protection in two separate Category I conservation easements. The approved plan also included a 0.46 acre planting requirement that was proposed to be satisfied on site and protected in a third Category I conservation easement. The proposed clearing was for the construction of an entrance driveway that resulted in a fragmented forest. This plan resulted in three separate areas of conservation easements on the site that were separated by driveways. The conservation easements were established and are shown on the current record plat.

The proposed amendment to the Final FCP allows for the retention of the entire 1.14 acres of existing forest. The plan provides for access to the site through the existing entrance driveway, retention of all of the onsite forest, and no forest planting requirement. Staff finds that the proposed amendment, including the revisions to the conservation easements, results in a more desirable plan. The entire 1.14 acres of contiguous, existing forest will be protected in a Category I conservation easement.



Proposed Final Forest Conservation Plan

Three existing conservation easements in blue are replaced with one contiguous forest conservation easement in green.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County 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 an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; 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. This variance provision was not in affect at the time of the originally approved Final FCP.

Variance Request - The applicant submitted a variance request on April 13, 2011. The applicant proposes to retain all, and impact the critical root zones of three(3)trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Trees to be affected but retained

Tree Number	Species	DBH Inches	CRZ Impact	Status
3	Willow Oak	32	20%	Fair condition; grading parking lot, near limits of existing driveway
5	White Oak	32	30%	Good condition; improvements to existing driveway and proposed swm
7	Pin Oak	32	10%	Fair condition; grading for parking lot

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

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

Response (Landmark Engineering) - "As described above, the proposed plan design has been determined by the following circumstances:

The subject property will retain 1.14 acres of existing forest cover in a conservation easement. This onsite conservation meets the full FCP requirements of Chapter 22A. The building envelope and associated parking have been centrally located on the site and grade changes have been minimized to limit as much tree impact as possible."

Development on the property is constrained by existing site conditions including the existing development onsite. The applicant proposes to construct a new fellowship hall, associated parking, and required stormwater management features. The construction of the building will not impact any of the trees subject to the variance provision. The impacted trees are located in close proximity to the existing driveway, parking, and building, which are dictating the location of the proposed development, resulting in less overall disturbance on the site. Staff has reviewed this application and based on the existing conditions on the property, staff agrees that there is an unwarranted hardship.

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

Response (Landmark Engineering) - "With the constraints described above the lot cannot be properly developed for the use intended without the minor impacts to these trees. Adjustment of the site plan and proposed building location would not eliminate all tree impacts and would possibly create more tree removals and impacts to other trees."

The proposed impacts to the subject trees are due to construction associated with the required access driveway, parking lot, and stormwater management facility needed to accommodate the proposed church. The proposed parking lot is the minimum required for the size of the proposed church. Staff has reviewed the application and agrees that enforcing the rules of the variance provision would deprive the landowner of rights commonly enjoyed by others.

(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 (Landmark Engineering) - "There are currently no stormwater quantity or quality provisions on the property. The Applicant has prepared a stormwater management plan in conjunction with the proposed sediment control plan required for this lot. The Department of Permitting Services has reviewed this plan and is satisfied that it meets the sediment control and water quality stormwater management requirements. The Applicant confirms that the impacts to these trees will cause no degradation in water quality associated with the proposed development as a result of granting the requested variance."

The applicant has an approved stormwater management concept plan from DPS that incorporates ESD?. No stormwater management measures currently exist on the already developed site. The property does not contain any streams, wetlands, 100-year floodplain, or environmental buffers so the proposed impacts to the subject trees will not affect these environmentally sensitive areas. 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 (Landmark Engineering) - "The Applicant believes that the information set forth above is adequate to justify the requested variance to impact the three protected trees on the subject property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21(d) for the following reasons:

1. *This Application will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.*
2. *Existing site conditions, including the configuration of the site improvements, location of the forest stand to be retained, and random location of several specimen trees are naturally occurring and have guided the formulation of the proposed site plan.*
3. *The requested variance is not related in any way to a condition on an adjacent, neighboring property, and*

4. *Impacts to the requested trees will not violate State water quality standards or cause measurable degradation in water quality (which is being improved by the Applicant's overall proposal).*
5. *The applicant is also providing landscape tree planting to further mitigate for the tree loss on the property."*

The applicant proposes to retain all trees subject to the variance provision, but to impact the critical root zones of three trees. The impacts have been minimized.

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. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

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 the impacts to the three trees is due to the development of the site. The property is currently developed and these trees are located within this developable area of the site. Granting a variance to allow land disturbance within the developable portion of the site is not unique to this applicant. The proposed development activities that result in the impacts to the trees subject to the variance requirement are within the existing developed area of the site, and outside of the existing forest. Staff has determined that the impacts to the trees subject to the variance requirement cannot be avoided. Therefore, staff believes that the granting of this variance 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 upon existing site conditions.

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 existing and 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 not violate State water quality standards or cause measurable degradation in water quality.*

DPS has found the approved stormwater management concept for the proposed project to be acceptable. In addition, the granting of this variance request will not result in the impact or removal of any trees located within environmental buffers. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

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 April 13, 2011. The County Arborist issued a letter on April 18, 2011 with the determination that she would not be providing a recommendation on this variance request .

Variance Recommendation - Staff recommends that the variance be granted. The plan meets all applicable requirements of the county Forest Conservation Law. As a result of the above findings, staff recommends approval of the Final Forest Conservation Plan with the conditions cited in this staff report. The variance approval is included in the Planning Board's approval of the Final Forest Conservation Plan.

Compliance with the Subdivision Regulations and Zoning Ordinance

The lot continues to comply with Chapter 50, the Subdivision Regulations. The size, shape, width and orientation of the lot was found to be appropriate in this location given the use that is proposed to be located on the Property. The lot and the use continue to comply with the protection of environmentally sensitive resources. The amendment proposed by the current application will provides superior protection of the forest resource as compared to the previous plan.

The proposed lot complies with the Zoning Ordinance requirements for the R-200 zone. The lot meets all area and dimensional requirements area, frontage, width, and setbacks in that zone as specified n Section 59-C-1.32.

CITIZEN CORRESPONDENCE AND ISSUES

Staff was in contact with the owner of the property immediately to the south of the Subject Property. That owner revealed an issue with the plan that incorrectly referenced the ownership of her property. She also indicated that she had not received a copy of the plan submission. Staff conveyed this concern to the Applicant's engineer who made the necessary correction to the plan and provided the submittal information to the adjacent property owner. No other correspondence has been received.

CONCLUSION

The lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conforms to the recommendations of the Fairland Master Plan. The lot and use will comply with Chapter 22A of the Montgomgy County Code. Therefore, approval of the application with the conditions specified above is recommended.