

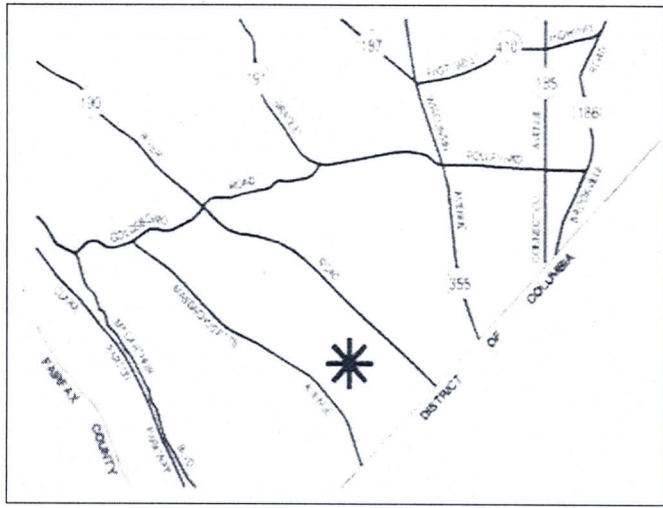
Westbrook Elementary School, Preliminary Forest Conservation Plan, MR2012006

- Marco Fuster, Senior Planner Area 1, Marco.Fuster@montgomeryplanning.org, (301.495.4521)
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-

Completed: 11/18/11

Description

- **Preliminary Forest Conservation Plan and Variance**
- 5112 Allan Terrace, Bethesda MD
- Approximately 12.13 acres
- Zoned R-60
- Located within the Palisades sub area of the 1990 Bethesda -Chevy Chase Master Plan area
- Application submitted on 9/29/11 by
- Montgomery County Public Schools (MCPS)



Summary

- Area 1 staff has reviewed the Preliminary Forest Conservation plan for **MR2012006** and **recommends APPROVAL with conditions** of the Preliminary Forest Conservation Plan and associated variance request.

The applicant has submitted a Preliminary Forest Conservation Plan (PFCP) and associated variance request for a proposed 3 story addition to the existing school building. The project includes additional onsite and offsite parking spaces, improved circulation, and renovation/new construction of sidewalks and play areas. Allan Terrace is proposed to be widened in front of the school to maintain the on street parking while resolving traffic congestion, which occurs during school pick-ups and drop-offs. Forest Conservation easements will be recorded to provide protection of onsite existing natural resources. The submitted plan identifies more than 1 acre of environmentally sensitive forest areas outside of the limits of disturbance (LOD) as cleared because it is not being placed under easement. However a condition of approval to protect the additional forest is included. A variance request related to trees ≥ 30 DBH includes removal of 14 trees and impacts to 11 trees. The Board's actions on the PFCP and the associated variance are regulatory and binding.

Conditions for Approval are listed on the following page:

Recommended Conditions for Approval:

1. Approval of a Final Forest Conservation Plan must be secured, consistent with the approved Preliminary Forest Conservation Plan and associated conditions, prior to any clearing, grading or demolition on the site.
3. Final Forest Conservation Plan must include detailed and specific tree protection measures for on and off-site trees affected by the LOD, particularly for the trees fronting Allan Terrace.
4. The tree save component of the Final Forest Conservation Plan must be appropriately signed by an International Society of Arboriculture certified arborist.
5. The sediment and erosion control plan and stormwater management plan must be submitted with the revised Final Forest Conservation Plan to ensure consistency with the Limits of Disturbances (LODs) and the associated tree/forest preservation measures.
6. Applicant must appropriately record a Category I Conservation Easement over all areas of forest and tree stands associated with onsite stream valley buffers and/or 100 year floodplains. Recordation must occur prior to any clearing, grading or demolition occurring onsite. The easement area shall exclude the concrete channel.
7. Revise the Forest Conservation Worksheet to deduct only the concrete stream channel from the net tract area.
8. Extend the LOD for the SWM retrofits (at the northwest side of the school) shown on sheets L-2.1 to connect with the remainder of the work proposed along the west side of the school.
9. Revise root pruning detail and plan graphics/notes as needed to show no trenching or other disturbance beyond the LOD.
10. Revise the invasives control note to apply to existing forest/woodlands within the Stream Valley Buffer. A copy of the maintenance and management agreement must be kept on-site and given to the Montgomery County Public Schools (MCPS) maintenance staff to ensure compliance with conditions of the Final Forest Conservation Plan.

DISCUSSION

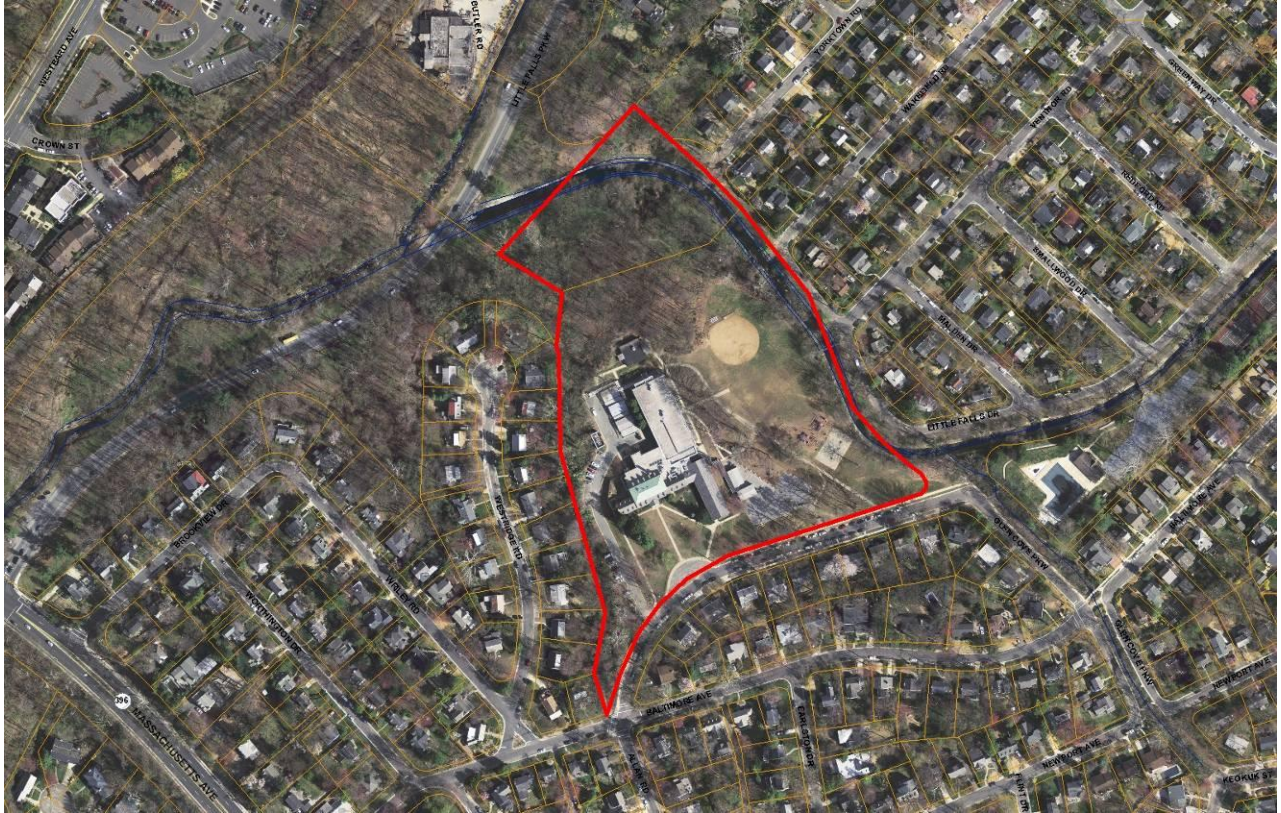
This memorandum provides staff's review and recommendations on the Preliminary Forest Conservation Plan (PFCP) and its associated variance. The Board will also be reviewing the mandatory referral for this project. Unlike the review of the Mandatory Referral, the Board's actions on Forest Conservation Plan, 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.

SITE DESCRIPTION

Westbrook Elementary School is located at 5112 Allan Terrace, within the Bethesda-Chevy Chase Master Plan (approved and adopted in 1990). The school structure is situated on a plateau which is surrounded by steep slopes toward the east, north and west. The site is bounded by stream channels on three sides, including Little Falls Branch on the north and east, and a tributary to Little Falls Branch on the west side. The tributary drains from south to north where it intercepts the Little Falls Branch which is contained in a concrete channel (generally flowing northwest along the school boundary). The 100 year floodplain occurs along the low flat areas towards the east and north sides of the property. An athletic field and forest areas are located within the lowland areas overlapping portions of the floodplain. Allan Terrace is located along the southern property boundary. Residential homes in the R-60 Zone are located on the south side of Allan Terrace.

There are 4.22 acres of high priority forest within 4 distinct forest stands on the site. All onsite forest is considered a high priority for retention due to the presence of specimen trees, quality of forest and/or association with steep slopes, floodplains and stream valley buffers.

Modular classrooms are currently needed to accommodate the student population (the school has a total of 405 students enrolled in kindergarten through 5th grades). Furthermore, the property includes a separate one story brick structure housing the Westmoreland Children's Center which is run by a private, non-profit corporation.



2011 M-NCPPC GIS image.

BACKGROUND AND PROJECT HISTORY

According to the Westbrook Elementary school website, the school first opened in 1940 with 148 students. It was built in 1939 by the Works Progress Administration, one of President Roosevelt's New Deal agencies. The school was renovated during the 1989-1990 school term. The M-NCPPC files show that a forest conservation exemption #42001059E was granted on 1/19/2001 for the renovation of the athletic field. More recently, the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420101790 was prepared to document the existing conditions and define the forest boundaries, floodplain, stream valley buffers, and other pertinent features. The NRI/FSD was approved on June 25, 2010. Among other elements, the plan identifies 3 modular classrooms which were situated in the rear central parking lot. The structures have since been relocated to the front of the school near the southern end of the property. Otherwise the current site conditions are appropriately shown on the approved NRI/FSD.

PROJECT DESCRIPTION

The 3 story school expansion project includes designs to alleviate parking shortages and improve circulation, while incorporating stormwater management and minimizing loss of existing trees and forest areas. The project includes additional onsite and offsite parking spaces,

improved circulation, and renovation/new construction of sidewalks accommodating ADA access. Allan Terrace is proposed to be widened in front of the school to maintain the on street parking while resolving the long queues of cars which occur during periods for school pick-up and drop-off. Widening of access along the west side of the school is included to create a more accessible fire lane. Some of the proposed stormwater management retrofits require minor clearing of forest areas.

The submitted plan shows 0.09 acres of active forest clearing to accommodate the work and proposes Category I Forest Conservation Easements over portions of the property. Tree save and stress reduction measures will be incorporated along the limits of disturbance (LOD). Landscape plantings as mitigation for impacts to trees subject to the forest conservation measures are also addressed. The plan proposes additional areas of clearing which are not supported by staff and discussed further below.

ENVIRONMENTAL GUIDELINES

There are perennial streams (within the Little Fall Use I watershed), forested steep slopes and Stream Valley Buffer (SVB) and 100 year floodplain occurring on the site. The proposed work is generally not within the environmental buffer areas except for relatively minor rehabilitation and adjustments to stormwater management features and the stabilization of an existing highly eroded channel. The fire lane expansion work also occurs within the stream valley buffer; however, the work is located on the far side of an existing access drive and parking area and does not intrude closer to the stream. An area of highly erodible soils occurs on the opposite side of Little Falls Parkway to the north but is located well outside of the project area and school boundary. The site is not within a Special Protection Area (SPA).

The existing athletic field is located within the 100 year floodplain and associated stream valley buffer (SVB). Based on the Environmental Guidelines the areas within the SVB/floodplain are typically placed within protected Category 1 forest conservation easements. In this case, staff is not recommending abandonment of the existing field and replanting of forest. The current location of the field is the only area in the vicinity where it can be accommodated. Although substandard in size, the field is important for the recreational requirements of the school and local community. Furthermore, the Bethesda-Chevy Chase master plan (page 151) generally recognizes the school facilities such as the ballfields as a public amenity.

The proposed plan shows that some additional areas of existing forest that are outside of the SVB will be placed in a Category 1 forest conservation easement. However the plan and associated worksheet does call for the removal of other areas (approximate 1.2 acres) of existing forest within the floodplain/SVB, even though the areas are not affected by the proposed work (see further explanation below). Staff proposes a condition to more appropriately protect the existing forest and environmentally sensitive areas which are not directly needed to accommodate the school and associated facilities. The changes proposed by staff are detailed further below.

FOREST CONSERVATION

This project is subject to the Montgomery County Forest Conservation Law Chapter 22A, and a revised Preliminary Forest Conservation Plan has been submitted for approval 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 12.13 acres in size and contains 4.22 acres of forest. A number of deductions (from the net tract area) for existing storm-drain and sewer right of ways are included on the plan but not entirely supported by staff. Additionally, the project proposes to clear approximately 1.26 acres of existing forest, most of which is outside of the LOD (0.09 acres cleared inside the LOD).

Based on environmental guidelines, master plan language and variance provisions staff is recommending a condition that additional onsite areas of existing forest (and tree stands) be placed in a protective Category I Forest Conservation Easement.

Page 139 of the Master Plan states the following:

Large areas of maturely forested land in the Planning area are mainly limited to stream valley and steeply sloping land. Preservation of such woodlands is important in retaining the character of part of the Planning Area....as well as providing such environmental benefits as:

1. Reducing land surface erosion,
2. Reducing occurrence of flooding events and minimizing the degradation of water quality,
3. Moderating temperature extremes of the micro-climate, and
4. Providing a source of food and cover for wildlife.

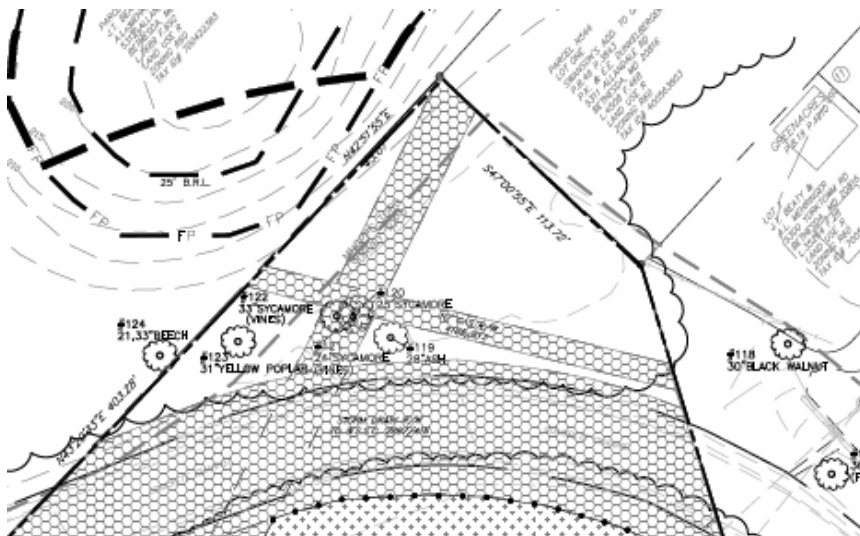


Image from submitted PFCP. The triangular shapes in the center of image are examples of existing forest areas (within the floodplain/SVB) that are defined as cleared by the plan.

The submitted plan shows several areas of high priority forest within the 100 year floodplain/SVB as being cleared (see image above for examples). The forest areas in question are not within the LOD associated with the school project, however the same forest areas are not proposed to be included within the protective easement. By definition, the forest areas outside of the proposed conservation easements are considered to be cleared. The clearing figures are reflected in the submitted forest conservation worksheet which identifies 1.26 acres of high priority forest clearing. If the plan were approved as submitted, the forest areas covered by the plan which are outside of the easement footprint could be cleared in the future with no further input from M-NCPPPC. Some of the forest areas shown as cleared also contain trees which are $\geq 30''$ and would therefore be subject to variance (since they part of the forest proposed as cleared). M-NCPPPC does not have any indication that MCPS intends on actually performing the clearing outside of the LOD. Therefore the condition to show additional areas of conservation easement is necessary to consider the application as complete, since the variance request does not mention the clearing beyond the LOD and the variance request must be consistent with the plan.

M-NCPPPC staff does not believe MCPS is opposed to the recommend change, rather the change has not yet been accommodated due to the compressed review period associated with the Mandatory Referral process.

Providing the additional Conservation Easement areas (per the recommended condition) will make the plan consistent with the requested variance and meet environmental guidelines and master plan recommendations. The recommended change includes deducting only the areas of concrete stream channel from the net tract area. The Forest Conservation Plan and associated worksheet shall be adjusted accordingly.

It should be noted that there are a number of encroaching structures such as sheds and dilapidated fences that are not associated with the school but that lie within the proposed areas of Category I easement. The applicant will need to address the removal or relocation of such structures as part of the pre-construction measures for the project. Existing natural surface trails within the proposed easement area are allowed to remain.

Control of invasive species within the existing forest SVB (not otherwise affected by the work) will be performed as forest enhancement.

TREE SAVE

There are approximately 66 trees measuring $\geq 30''$ DBH identified within the study area for the project. Numerous trees *not subject to the forest conservation variance*, such as those within the $24'' < 30''$ size class and smaller also occur within the study area. Some of these smaller trees are also affected by the work. The current plans include provisions for tree preservation measures. A condition is recommended that the plan preparer, who is an International Society of Arboriculture (ISA) certified arborist appropriately sign the plans.

Details of protection for minor trees will be addressed at time of Final Forest Conservation Plan (FFCP). The plan will specify supplemental measures for individual trees in the grove fronting

Allan Terrace and other trees affected by the proposed work (including those subject to the variance).

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 DBH or greater; are part of a historic site or designated with a historic structure; are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The applicant submitted a variance request on November 8, 2011 for the impacts to, and removal of trees as a result of the proposed layout (see Attachment B for variance request). The applicant proposes to remove 14 trees that are $\geq 30''$ DBH, and to impact, but not remove, 11 other subject trees. In total, 25 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law are proposed to be affected. Note: The request does not include subject trees in forest areas outside the LOD which are deemed to be cleared since they are not currently shown as protected by a conservation easement. This will not be an issue as long as the applicant agrees to place these areas under easement as conditioned by staff.

Table 1: Trees $\geq 30''$ DBH to be removed or potentially removed

Tree #	Species	D.B.H (INCHES)	Tree Condition	Comments	PERCENT CRITICAL ROOT ZONE IMPACTS	Status
14	BLACK CHERRY	32	GOOD			REMOVE
42	AMERICAN ELM	30	GOOD			REMOVE
43	RED OAK	47	POOR	STORM DAMAGE IN 2011		REMOVE
44	AMERICAN ELM	36	GOOD			REMOVE*
128	BLACK OAK	40	GOOD			REMOVE*
129	YELLOW POPLAR	35	GOOD			REMOVE
130	YELLOW POPLAR	37",35"	FAIR	WOODPECKER HOLES		REMOVE
132	RED MAPLE	32	GOOD			REMOVE
136	POST OAK	30	GOOD			REMOVE

138	AMERICAN ELM	32	FAIR	LEANING		REMOVE
142	YELLOW POPLAR	31	GOOD			REMOVE
147	BLACK WALNUT	39	FAIR	BROKEN SCAFFOLDS		REMOVE
148	BLACK WALNUT	33	FAIR			REMOVE
149	YELLOW POPLAR	33	FAIR	LEANING		REMOVE

* MARKED FOR REMOVAL WITH POTENTIAL FOR PRESERVATION WITH MONITORING DURING CONSTRUCTION.

** MARKED FOR PRESERVATION WITH POTENTIAL TO REMOVE IF CONSTRUCTION IMPACTS CONTRIBUTE TO THE TREE'S DECLINE.

Table 2: Trees ≥ 30" DBH to be impacted but retained

Tree #	Species	D.B.H (INCHES)	Tree Condition	Comments	PERCENT CRITICAL ROOT ZONE IMPACTS	Status
12	SYCAMORE	36	FAIR	SELF-CORRECTED LEAN	2	SAVE
13	SYCAMORE	32	FAIR	HOLE @ BASE	17	SAVE
17	NORWAY SPRUCE	30	FAIR	WOODPECKER HOLES	65	SAVE**
20	SYCAMORE	34	GOOD		7	SAVE
23	BLACK CHERRY	32	GOOD		3	SAVE
40	YELLOW POPLAR	32	GOOD		2	SAVE
90	RED OAK	32	GOOD		<1	SAVE
91	YELLOW POPLAR	33	GOOD		6	SAVE
112	AMERICAN ELM	30	GOOD		5	SAVE
153	PIN OAK	30	GOOD	OFFSITE	12	SAVE
155	RED OAK	32	GOOD	OFFSITE	<1	SAVE

* MARKED FOR REMOVAL WITH POTENTIAL FOR PRESERVATION WITH MONITORING DURING CONSTRUCTION.

** MARKED FOR PRESERVATION WITH POTENTIAL TO REMOVE IF CONSTRUCTION IMPACTS CONTRIBUTE TO THE TREE'S DECLINE.

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;

Applicants' 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 trees on site as possible because a specimen tree is a highly valuable resource.*

This site is small for an elementary school at less than 13 acres total. Site area is further taken up by steep slopes, stream buffer, floodplain and several right-of-ways for utilities. Impacts to the trees is in large part due to the proposed three story building footprint replacing the one story along with a bus loop to alleviate traffic off of the public streets.

Some of the trees were impacted, but onsite landscape planting will provide more square feet of canopy coverage than removed as part of construction. This work will require disturbance of the root zones of some trees described above but will not require their removal. However, it will require the removal of trees as listed in the status column above. It should be noted that the majority of trees that need to be removed stand alone and are not part of the existing forest on site. Few trees in the forest will be removed. This results in the impact of a total of twenty-five (25) specimen 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 updated 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. "

Staff notes that given the substantial constraints on the site the impacts are necessary to provide any significant level of upgrade to the school facilities, and therefore 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;

Applicants' 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."*

Note: During review of the plans staff identified a number of areas where it was believed impacts could be reduced or avoided. In one instance, a handicap ramp had been proposed in an area where removals and impacts of subject trees would occur. Ultimately the ramp and access path were relocated to a more central area thereby protecting additional subject trees and the associated forest area. In another instance staff suggested limiting the Allan Terrace widening to minimize impact to nearby subject trees (and other trees in the vicinity not subject

to a variance). However, the proposed redesign could not be accommodated in a manner that would also satisfy the concerns of other regulatory agencies.

Based on the review of the application, consideration of the site constraints and the further refinement of the plans which has occurred, staff agrees that enforcing the rules would deprive the landowner of rights enjoyed by others in similar areas.

(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;

Applicants' Response: "The trees to be removed have been limited to the central area of the site and away from natural drainage systems. The steep slope onsite will remain forested and placed in easements. 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.*"

Additionally, staff notes that the stabilization of severely eroded drainage channel adjacent to the stream tributary is included in the project. Stabilizing the area of active erosion will help improve water quality.

Staff has reviewed the application and based on the limited scope of work within areas of forested stream valley buffer or steep slopes, agrees that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. Furthermore the DPS review and ultimate approval of the sediment and erosion control and storm water management plans will help ensure that appropriate standards are met.

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

Applicants' Response: "The Afforestation planned for the site is meant provide a greater environmental and educational quality 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. 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.*

The school property is relatively constrained and the proposed addition and associated modifications are designed to be minimally intrusive to environmentally sensitive areas.

Furthermore, the maintenance and upgrading of regional facilities such as the school is the responsibility of public agencies in executing their duties to the community. Therefore, the variance request would be granted to any applicant in a similar situation.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is based on a balance of the proposed work and the need to provide appropriate public facilities. Alternate designs were incorporated to work within the existing constraints and mitigation is provided for the resources disturbed.

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 current application on the subject property and is not related to land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

A Stormwater Management concept plan was approved by the Department of Permitting Services (DPS) for the proposed project on August 4, 2011 (Attachment D). The concept plan proposes to meet required stormwater management goals via installation of porous pavement, micro bioretention facilities and a green roof. The final SWM Plans will be approved for this project by the Montgomery County Department of Permitting Services. The approved SWM Plan will ensure that water quality standards will be met in accordance with State and County criteria. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

COUNTY ARBORIST'S RECOMMENDATIONS

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 November 9, 2011. The County Arborist issued a response to the variance request on November 14, 2011 and recommended the variance be approved with the condition that mitigation is provided (Attachment A). Additionally the County Arborist provided general recommendations including reduction of the amount of permanent impacts to critical root zones (CRZ's) by implementing temporary protective matting.

MITIGATION for TREES SUBJECT to the VARIANCE PROVISIONS

There are 14 trees proposed for removal as a result of the proposed project. Two 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 11 subject trees but they are excellent candidates for safe retention. (Note: Tree #17 will be monitored after construction and removed if decline is observed).

Mitigation should be at a rate that approximates the form and function of the trees removed. 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 552 diameter inches of trees removed, the applicant will provide mitigation of 138" of caliper replacements. Therefore the 56 native canopy 2.5" caliper trees provided on the landscape plans will satisfy the mitigation requirements by providing a total of 140" of caliper. Initially these trees will not be as large as the trees lost, however they will provide some immediate benefits and will ultimately fill the areas where large trees will 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.

STAFF RECOMMENDATION ON VARIANCE

As a result of the above findings, staff recommends the Board approve the applicant's request for a variance from Forest Conservation Law to remove 14 subject trees and impact 11 subject trees associated with the site. The variance approval is assumed into the Planning Board's approval of the Forest Conservation Plan.

NOTIFICATION AND OUTREACH

Adjoining and confronting property owners and other parties of interest will be notified of the upcoming public hearing on the proposed project. As of the date of this report, planning staff has one written inquiry. The letter expresses concerns for existing trees which would be affected by the widening of Allan Terrace (see attachment E).

CONCLUSION

Staff is recommending **approval** of Preliminary Forest Conservation Plan **with conditions** listed at the front of this report. The variance approval is assumed into the Planning Board's approval of the Preliminary Forest Conservation Plan.

ATTACHMENTS:

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

Attachment B: Variance request letter

Attachment C: Preliminary Forest Conservation Plan (PFCP)

Attachment D: Stormwater Management Concept approval letter

Attachment E: E-Mail from Allan Terrace Resident

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



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

November 14, 2011

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

RE: Westbrook Elementary School, MR 2012006, NRL/FSD application accepted on
4/22/2010

Dear Ms. Carrier:

The County Attorney's Office has advised me that Section 5-1607 of the Natural Resources Article, Maryland Code, applies to any application required under 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, I make the following findings as the result of my review:

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.

2. Based on a discussion on March 19, 2010 between representatives of the County and 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. 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. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Tree protection techniques, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, that are implemented according to industry standards are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. Until other guidelines are developed, I recommend requiring mitigation based on the number of square feet 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

Attachment B: Variance request letter



November 8, 2011

Mr. Mark Pfefferle

Environmental Planning Division
 Maryland National Capital Park and Planning Commission (M-NCPPC)
 8787 Georgia Avenue
 Silver Spring, Maryland 20910

Re: Westbrook Elementary School
 Request for Specimen Tree Removal Variance

Dear Mr. Pfefferle:

On behalf of the Montgomery County Public Schools and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow impacts or removal of the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named County construction project:

SpecimenTree Summary

Tree #	Species	D.B.H (INCHES)	Tree Condition	Comments	PERCENT CRITICAL ROOT ZONE IMPACTS	Status
12	SYCAMORE	36	FAIR	SELF-CORRECTED LEAN	2	SAVE
13	SYCAMORE	32	FAIR	HOLE @ BASE	17	SAVE
14	BLACK CHERRY	32	GOOD			REMOVE
17	NORWAY SPRUCE	30	FAIR	WOODPECKER HOLES	65	SAVE**
20	SYCAMORE	34	GOOD		7	SAVE
23	BLACK CHERRY	32	GOOD		3	SAVE
40	YELLOW POPLAR	32	GOOD		2	SAVE
42	AMERICAN ELM	30	GOOD			REMOVE
43	RED OAK	47	POOR	STORM DAMAGE IN 2011		REMOVE
44	AMERICAN ELM	36	GOOD			REMOVE*
90	RED OAK	32	GOOD		<1	SAVE
91	YELLOW POPLAR	33	GOOD		6	SAVE
112	AMERICAN ELM	30	GOOD		5	SAVE
128	BLACK OAK	40	GOOD			REMOVE*
129	YELLOW POPLAR	35	GOOD			REMOVE
130	YELLOW POPLAR	37",35"	FAIR	WOODPECKER HOLES		REMOVE
132	RED MAPLE	32	GOOD			REMOVE
136	POST OAK	30	GOOD			REMOVE
138	AMERICAN ELM	32	FAIR	LEANING		REMOVE
142	YELLOW POPLAR	31	GOOD			REMOVE
147	BLACK WALNUT	39	FAIR	BROKEN SCAFFOLDS		REMOVE
148	BLACK WALNUT	33	FAIR			REMOVE
149	YELLOW POPLAR	33	FAIR	LEANING		REMOVE
153	PIN OAK	30	GOOD	OFFSITE	12	SAVE
155	RED OAK	32	GOOD	OFFSITE	<1	SAVE

* MARKED FOR REMOVAL WITH POTENTIAL FOR PRESERVATION WITH MONITORING DURING CONSTRUCTION.
 ** MARKED FOR PRESERVATION WITH POTENTIAL TO REMOVE IF CONSTRUCTION IMPACTS CONTRIBUTE TO THE TREE'S DECLINE.

Project Description:

The Westbrook Elementary School is an existing facility located on a 12.31-acre property including two parcels and significant right-of-way acreage totaling 1.70 acres. The property is located on Allan Terrace and consists of existing buildings, parking lot, basketball courts, and ball field. The surrounding neighborhood includes single-family homes. The property is bordered on the North side by a perennial stream encased in concrete and WSSC right-of-way. This property has extensive stream buffers and floodplains limiting the buildable area of the property.

Proposed construction consists of building addition, which will expand the size of the existing facility. A new vehicular access system is included along with reorganization of pedestrian and bus circulation. An existing parking lot to the southwest on the site will remain with limited improvements. The bus loop is being redesigned along with the play areas.

Tree #12 – The 36” Sycamore is located on the opposite side of the access drive from where the access widening will take place. The access drive requires widening to provide improved traffic and fire access. The minor impacts will not require the removal of the tree.

Tree #13 – The 32” Sycamore is located on the opposite side of the access drive from where the access widening will take place. The access drive requires widening to provide improved traffic and fire access. The minor impacts will not require the removal of the tree.

Tree #14 – The 32” Black Cherry lies adjacent to the LOD where the expansion of the bus loop is proposed. The bus loop expansion is essential to increase safety and ease of loading/unloading students in the morning and afternoon. The expansion of the bus loop will alleviate traffic from Allan Terrace while improving fire access as well. The encroachment of construction so close to the trunk of tree #14 requires the removal of the tree for the safety of the school personnel as well as community pedestrians and vehicles.

Tree #17 – The 30” Norway Spruce located in front of the existing school building will be impacted by construction on 3 sides for the installment of additional parking, replacing a sidewalk and the installation of a bio-retention facility. The tree is in fair condition with a significant amount of woodpecker holes present. The tree is marked for preservation. However, permission is requested to remove the tree in the future if construction impacts lead to the decline of the tree.

Tree #20 – The 34” Sycamore is located on the opposite side of the access drive from where the access widening will take place. The access drive requires widening to provide improved traffic and fire access. The minor impacts will not require the removal of the tree.

Tree #23 – The 32” Black Cherry is located on the opposite side of the access drive from where the access widening will take place. The access drive requires widening to provide improved traffic and fire access. The minor impacts will not require the removal of the tree.

Tree #40 – The 32” Yellow Poplar will be impacted by the necessary improvement of the parking lot. Improvements include the addition of ADA accessibility as well as the retrofit of the oil/grit separator to improve water quality of the parking lot runoff. The minor impacts will not require the tree to be removed.

Tree #42 – The 30” American Elm is proposed for removal due the impacts to the critical root zone surrounding the tree for the necessary improvement of the parking lot. Improvements include the addition of ADA accessibility as well as the retrofit of the oil/grit separator to improve water quality of the parking lot runoff. The proposed construction around the entire tree will not allow the tree to survive.

Tree #43 – The 47" Red Oak lies adjacent to the LOD to improve the outfall for the runoff of the parking lot. The tree suffered extensive storm damage in 2011 and is proposed for removal based on the poor condition of the tree and the hazardous potential posed by the remnants of the tree.

Tree #44 – The 36" American Elm lies adjacent to the LOD to improve the outfall for the runoff of the parking lot. The tree is proposed to be removed with the potential for preservation based on the extent of the construction required to take place in this area. The extent of construction required to improve the outfall will be determined during construction and dependent on the condition of the existing pipe. The increasing length of pipe to be replaced and amount of excavation in the area will determine the disposition of the tree. Measures to save and protect the tree will be discussed prior to and during construction.

Tree #90 – The 32" Red Oak may be impacted for the rerouting of the electric line to the Children's Center. The existing electric line will be impacted by the construction of the new addition and will be required to be rerouted.

Tree #91 – The 33" Yellow Poplar will be impacted for the rerouting of the electric line to the Children's Center. The existing electric line will be impacted by the construction of the new addition and will be required to be rerouted.

Tree #112 – The 30" American Elm is located adjacent to an area where there will be impacts for utility and play area improvements. A temporary path will be located in this area to provide for students to the play area/ball fields. Potential minor impacts to the critical root zone will not require the removal of the tree.

Tree #128 – The 40" Black Oak is proposed for removal with the potential to be saved by protection measures against construction impacts. The concrete stairway will be removed and relocated to improve safety along with ADA accessibility. The stairway will be removed carefully by hand to ensure minimal impacts to the root system. The proposed school expansion will create impacts to the root system as well. The proposed three-story expansion brings in the LOD significantly to avoid floodplain impacts and minimize the area of disturbance on the site. The tree is marked for removal due to the large amount of heavy construction required around the root zone of the tree. Measures to save and protect the tree will be discussed prior to construction.

Tree #129 – The 35" Yellow Poplar is proposed for removal due to the amount of construction disturbance for the of the school addition. Measures were taken to minimize the area of disturbance for the building construction. However, the proximity to the tree and the intensity of construction within the critical root zones will impact the tree beyond preservation.

Tree #130 – The 37", 35" Yellow Poplar is proposed for removal due to the amount of construction disturbance for the of the school addition. Measures were taken to minimize the area of disturbance for the building construction. However, the proximity to the tree and the intensity of construction within the critical root zones will impact the tree beyond preservation.

Tree #132 – The 32" Red Maple is situated within the footprint of the proposed school addition. The three stories of the proposed addition allowed for the reduction of the building footprint to reduce the area of disturbance on the site. Even the reduced footprint of the expansion will require the removal of the tree to accomplish the project goal of providing a modern and expanded education center for students.

Tree #136 – The 30" Post Oak is situated within the footprint of the proposed school addition. The three stories of the proposed addition allowed for the reduction of the building footprint to reduce the area of disturbance on the site. Even the reduced footprint of the expansion will require the removal of the tree to accomplish the project goal of providing a modern and expanded education center for students.

Tree #138 – The 32" American Elm is situated within the footprint of the proposed school addition play area. The three stories of the proposed addition allowed for the reduction of the building footprint to reduce the area of disturbance on the site. Even the reduced footprint of the expansion will require the removal of the tree to accomplish the project goal of providing a modern and expanded education center for students.

Tree #142 – The 31" Yellow Poplar is adjacent to the LOD for the expansion of Allan Terrace. The expansion of Allan Terrace is paramount to relieving traffic congestion for the school and community as well as providing proper fire access for the school and the residences of Allan Terrace. The tree will be further impacted by the construction of the sewer and storm pipes required to be located for the building addition of the school.

Tree #147 – The 39" Black Walnut is adjacent to the LOD required for the expansion of Allan Terrace. The expansion of Allan Terrace is paramount to relieving traffic congestion for the school and community as well as providing proper fire access for the school and the residences of Allan Terrace. The tree will be further impacted by the construction of the stormwater facility and the wall required for the stormwater facility. A further impact will be the inlet and swale required to capture and treat the runoff from the street. The location of the stormwater facility is selected to keep it out of the floodplain while maintaining the community character of the recreational area further down slope. The swale to divert the water into the stormwater facility is essential to prevent water washing over the sidewalk creating a hazardous condition, especially in freezing conditions.

Tree #148 – The 33" Black Walnut is adjacent to the LOD required for the expansion of Allan Terrace. The expansion of Allan Terrace is paramount to relieving traffic congestion for the school and community as well as providing proper fire access for the school and the residences of Allan Terrace. The tree will be further impacted by the construction of the stormwater facility and the wall required for the stormwater facility. A further impact will be the inlet and swale required to capture and treat the runoff from the street. The location of the stormwater facility is selected to keep it out of the floodplain while maintaining the community character of the recreational area further down slope. The swale to divert the water into the stormwater facility is essential to prevent water washing over the sidewalk creating a hazardous condition, especially in freezing conditions.

Tree #149 – The 33" Yellow Poplar is adjacent to the LOD required for the expansion of Allan Terrace. The expansion of Allan Terrace is paramount to relieving traffic congestion for the school and community as well as providing proper fire access for the school and the residences of Allan Terrace. The tree will be further impacted by the construction of the stormwater facility and the wall required for the stormwater facility. A further impact will be the inlet and swale required to capture and treat the runoff from the street. The location of the stormwater facility is selected to keep it out of the floodplain while maintaining the community character of the recreational area further down slope. The swale to divert the water into the stormwater facility is essential to prevent water washing over the sidewalk creating a hazardous condition, especially in freezing conditions.

Tree #153 – The 30" Pin Oak is located across the street from where the expansion of Allan Terrace will take place. The minor impacts to the critical root zone will not require the removal of the tree.

Tree #155 – The 32" Red Oak is located across the street from where the bus loop and access drive improvements will be taking place. The potential minor impacts to the critical root zone will not require the removal of the tree.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states that the applicant must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (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; and
- (4) Provide any other information appropriate to support the request.

Justification of Variance

- (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 trees on site as possible because a specimen tree is a highly valuable resource.

This site is small for an elementary school at less than 13 acres total. Site area is further taken up by steep slopes, stream buffer, floodplain and several right-of-ways for utilities. Impacts to the trees is in large part due to the proposed three story building footprint replacing the one story along with a bus loop to alleviate traffic off of the public streets.

Some of the trees were impacted, but onsite landscape planting will provide more square feet of canopy coverage than removed as part of construction. This work will require disturbance of the root zones of some trees described above but will not require their removal. However, it will require the removal of trees as listed in the status column above. It should be noted that the majority of trees that need to be removed stand alone and are not part of the existing forest on site. Few trees in the forest will be removed. This results in the impact of a total of twenty-five (25) specimen 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 updated 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.

- (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.

- (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. The steep slope onsite will remain forested and placed in easements. 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*.

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

Response: The Afforestation planned for the site is meant provide a greater environmental and educational quality to the school after its modernization.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which 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

- (1) **Will confer on the applicant a special privilege that would be denied to other applicants;**

Response: The Westbrook Elementary School is in conformance with the County's General plan. As such, this is not a *special privilege* to be conferred on the applicant.

- (2) **Is based on conditions or circumstances which are the result of the actions by the applicant;**

Montgomery County has taken no **actions leading to the conditions or circumstances** that are the subject of this variance request.

- (3) **Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or**

The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

(4) Will 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.

For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to remove the specimen trees in order to allow the construction of this vital project.

Sincerely,
NORTON LAND DESIGN LLC.

A handwritten signature in black ink, appearing to read 'Michael Norton', written in a cursive style.

Michael Norton, ASLA, ISA, LTE

Attachment

cc: Joseph Derosa, MCPS
Matt Willems, A. Morton Thomas & Assoc.

Item No.	Description	Quantity	Unit	Material	Notes
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3
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Item No.	Description	Quantity	Unit	Material	Notes
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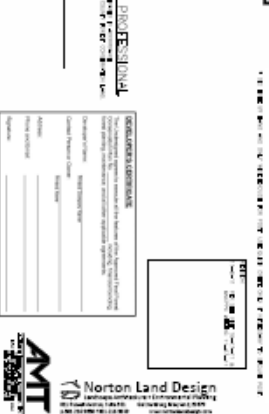
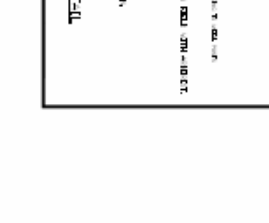
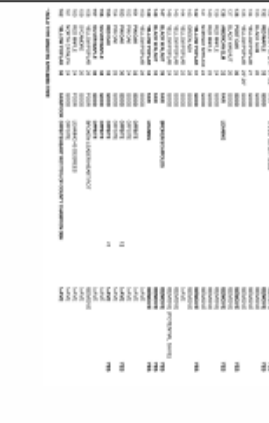
Item No.	Description	Quantity	Unit	Material	Notes
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Item No.	Description	Quantity	Unit	Material	Notes
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Item No.	Description	Quantity	Unit	Material	Notes
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Item No.	Description	Quantity	Unit	Material	Notes
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PRELIMINARY FOREST CONSERVATION PLAN

L-2.3

AMT

Norton Land Design
 10100 15th Avenue, Suite 100, Boulder, CO 80501
 303.440.1000
 www.nortonlanddesign.com

Attachment D: Stormwater Management Concept approval letter

08/16/2011 10:52 2407776339

DPS LAND DEVELOPMENT

PAGE 02/03



DEPARTMENT OF PERMITTING SERVICES

Montgomery County
RECEIVED

SEP 29 2011

★
★
Planning Department

Isiah Leggett
County Executive

Carla Reid
Director

August 4, 2011

Mr. Matt Willems
A. Morton Thomas & Associates, Inc.
12750 Twinbrook Parkway
Rockville, MD 20852

Re: Stormwater Management **CONCEPT** Request
for Westbrook Elementary School
Preliminary Plan #: NA
SM File #: 240405
Tract Size/Zone: 9.70 acres / R-60
Total Concept Area: 3 acres
Lots/Block: NA
Parcel(s): P753
Watershed: Little Falls Branch

Dear Mr. Willems:

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 proposes to meet required stormwater management goals via installation of porous pavement, micro bioretention facilities, and a green roof.

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. Please note that for redevelopment projects such as this, calculation of R_v should be based on the Project Area, not on the total area used to compute the average P_e .
5. All stormwater practices must be as-built. In addition, dimensional as-builts must be submitted for the two existing oil/grit separators and the level spreader on the property.
6. The detailed construction plans must include design for stabilization of the eroding outfall noted on the stormwater conceptual plan in the northwest portion of the site.
7. Please include a north arrow on all plans.
8. All trench drains must have removable tops for maintenance. Do not use "Duraslot" drains as shown on the conceptual plans.

255 Rockville Pike, 2nd Floor • Rockville, Maryland 20850 • 240-777-6300 • 240-777-6256 TTY
www.montgomerycountymd.gov

montgomerycountymd.gov/311



240-773-3556 TTY

9. Porous paving must be concrete and must meet design requirements shown in the MDE stormwater manual.

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

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is **not required**.

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 Mark Etheridge at 240-777-6338.

Sincerely,



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

RRB: flm mce

cc: C. Conlon
SM File # 240405

ESD Acres:	3
STRUCTURAL Acres:	NA
WAIVED Acres:	NA

Attachment E: E-Mail from Allan Terrace Resident

-----Original Message-----

From: Maureen Greiger [mailto:mgreiger@msn.com]

Sent: Wednesday, October 26, 2011 5:40 PM

To: Joseph_Derosa@mcpsmd.org

Cc: Rifkin, Margaret

Subject: Westbrook ES Meeting

Mr. Derosa,

Unfortunately I will be unable to attend tonight's meeting, as I am presently laid up due to a health condition.

I have spoken with Ms. Rifkin about possible tree compromise/ removal as a result of widening our street, and she is aware that removing any of the very healthy trees across from our home would not be a very popular option.

We would be interested in hearing about any alternative means of reducing the relatively small increase in "congestion" that we as residents directly impacted have observed thus far.

I have no doubt that our neighbors, and particularly those on our street, are of the same mind, and would find the loss of any of those trees quite disturbing, as most are very ecology-minded.

Please keep us apprised of the evolution/resolution of these issues!

Thank you,

The Greigers

5117 Allan Terrace