



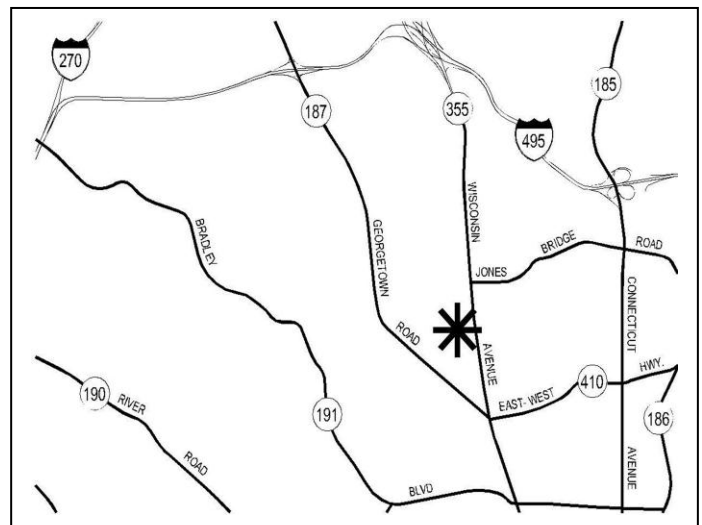
**Glen Aldon Preliminary Forest Conservation Plan and Variance 420102090 for Local Map Amendment G-909**

- Tina Schneider, Senior Planner, Area 1, [Tina.schneider@montgomeryplanning.org](mailto:Tina.schneider@montgomeryplanning.org), 301.495.2101
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- Rose Krasnow, Chief, Area 1, [Rose.Krasnow@montgomeryplanning.org](mailto:Rose.Krasnow@montgomeryplanning.org), 301 495-4591

**Date of Staff Report: 4/23/12**

**Description**

- Located at 4857, 4858, 4890 and 4900 Battery Lane, west of the intersection with Woodmont Avenue
- Existing zoning is R-10 & R-10/TDR, 1994 Bethesda CBD and 2006 Woodmont Triangle Amendment, 5.29 acres
- Approval of the Preliminary Forest Conservation Plan and Tree Variance
- Applicant: Glenwood Glen Aldon, LLC
- Submitted date: October 25, 2011
- Hearing Examiner date: April 27, 2012



Preliminary Forest Conservation Plan (PFCP): Staff Recommends **APPROVAL with conditions**  
Tree Variance: Staff Recommends **APPROVAL**

- The applicant has submitted a PFCP with the removal of 4 specimen trees greater than 30 inches in diameter. There will be impacts to the critical root zones of 2 significant trees on the adjacent property owned by the National Institute of Health.
- The Planning Board conducted a public hearing for Local Map Amendment G-909 on April 19, 2012 regarding the rezoning of the site from R-10 and R-10/TDR to PD-100 Zone, and alternatively the PD-88 Zone. Staff evaluated preliminary forest conservation plan and tree variance but inadvertently did not notice the PFCP and tree variance with the associated zoning case.

**CONDITIONS:**

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.
2. Final Forest Conservation Plan must include detailed and specific tree protection measures for off-site trees affected by the LOD, particularly for the trees adjacent to the property owned by the National Institute of Health.
3. A Tree Save Plan is required and must be a component of the Final Forest Conservation Plan. The tree save plan must be signed by an International Society of Arboriculture certified arborist.
4. Applicant to obtain services of an ISA certified arborist, or a Maryland Licensed Tree Expert, to perform the required tree preservation measures and appropriately protect the Save Trees.
5. The final sediment and erosion control plan must match the limit of disturbance as shown on the Final Forest Conservation Plan and be consistent with its recommendations for tree protection.
6. The fee-in-lieu or certificate of compliance for the off-site forest mitigation must be submitted by applicant, then approved by M-NCPPC staff prior to land disturbing activities occurring onsite.

*DISCUSSION*

The Preliminary Forest Conservation Plan (PFCP) meets all applicable requirements of Chapter 22A of the County Code. The Forest Conservation worksheet demonstrated 0.77 acres of afforestation is required. The PFCP proposes to meet those requirements by planting 0.59 acres in landscape credit. Another 0.18 acres will be met by a fee-in-lieu payment. Staff recommends the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in the staff report. The variance approval is included in the Planning Board’s approval of the Preliminary Forest Conservation Plan.

*SITE DESCRIPTION*

The site is comprised of approximately 5.29 acres of land within the Bethesda CBD and Woodmont Triangle of the Bethesda CBD, located along the north and south sides of Battery Lane, directly west of the intersection with Woodmont Avenue. The land, which is now zoned R-10 and R-10/TDR, currently contains 260 units in 4-story garden apartment buildings.

The property is located within the Lower Rock Creek watershed, which is classified by the State of Maryland as a Use I waters. There are no streams, wetlands, floodplains, stream buffers, highly erodible soils, or steep slopes located on the property. The site contains 4 specimen trees and 2 significant trees.

Offsite, there are 4 specimen trees and 3 significant trees within 100 feet of the property line.



#### ANALYSIS AND FINDINGS Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD)(420102090) was approved for the site on July 12, 2010. The NRI/FSD identified all of the required environmental features on, and adjacent to the property, as further described in the Environmental Guidelines for Environmental Management of Development in Montgomery County. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property.

#### FOREST CONSERVATION

The application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan has been submitted for review (Attachment A). There is no on-site forest but contains 4 specimen trees greater than 30 inches in diameter. The applicant proposes to remove the specimen trees for the proposed new development.

The proposed development will impact offsite trees. A Tree Save Plan will be required to show protection measures to be used during construction to minimize impacts for increased tree survival. The PFCP proposes to meet those requirements by planting 0.59 acres in landscape credit. Another 0.18 acres will be met by a fee-in-lieu payment.

#### 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 in diameter at breast height (DBH); are part of an historic site or designated with an 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.

Variance Request

The applicant submitted a variance request and justification on November 8, 2011 (Attachment B). The applicant proposes to remove four (4) trees that are 30 inches and greater in DBH, and to impact but not remove the critical root zones of two (2) offsite significant trees.

Trees to be removed

| Tree Number | Species        | DBH | Status         |
|-------------|----------------|-----|----------------|
| 1           | White Mulberry | 38" | Poor condition |
| 2           | Red Maple      | 33" | Fair condition |
| 3           | Red Maple      | 38" | Good condition |
| 4           | Red Maple      | 34" | Good condition |

As per Section 22A-21, 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:** The site is currently in use as garden-style apartment, located along Battery Lane, just west of Woodmont Avenue in Bethesda. The site is within a Priority Funding area, within walking distance of two Metro stations, and is directly adjacent to the Bethesda CBC. These designations are characteristics signify high priority for redevelopment per State and County land use agencies. The redevelopment proposal displays the tenets of Smart Growth by providing needed residential units within walking distance of transit and employment centers.

The site is managed by the Aldon Management Corp, whose mission is: To provide well maintained rental units with reasonable amenities, consistent with retaining moderate rent levels in an urban community.

The goal of the redevelopment proposal is to update existing affordable housing on the site and to provide a substantial number of additional affordable units. In Montgomery County, reasonably priced- affordable and 'workforce' housing-is an undeserved market and is encouraged by the Council due to lack of supply in the free market. Creating an obstacle to affordable housing for a private entity, by not allowing the subject trees to be removed, would be an unwarranted hardship, and runs counter to Montgomery County Council long-established housing goals and objectives.

**Staff Analysis:** The Subject Property has a development footprint that is constrained by size. Three (3) of the four (4) specimen trees are located along Battery Lane on the inside of the sidewalk. The existing trees are right on the edge of where the proposed building will be. Removal of these trees will provide room for enlarged building footprint, an expanded sidewalk, and multiple additional landscape trees. Staff has reviewed the variance and agrees that the denial 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;*

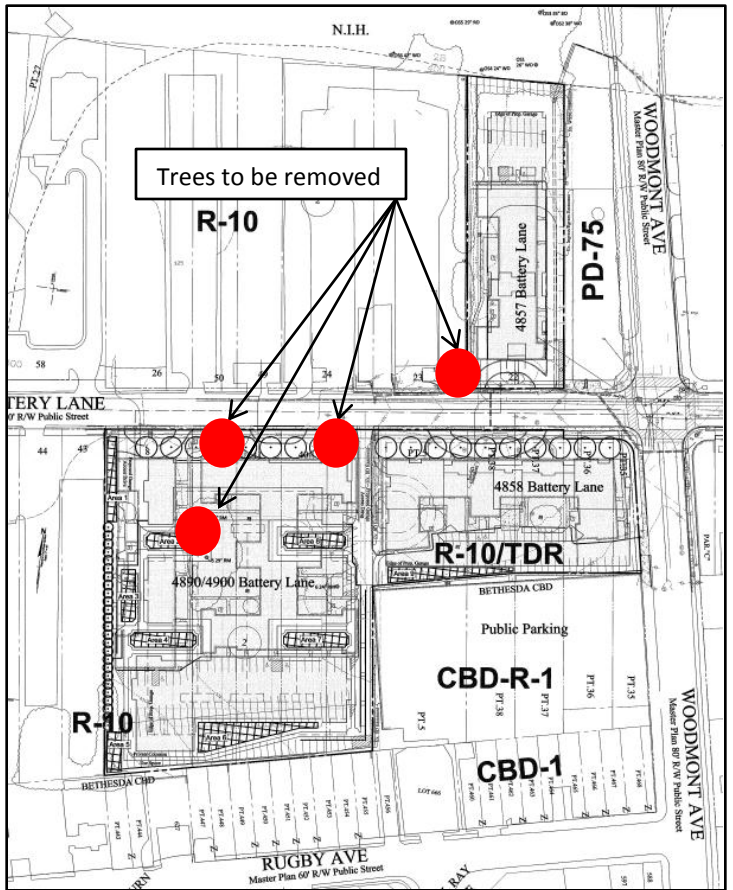
**Response:** As referenced in the response to (1), urban properties with transit access and existing infrastructure, (and other above-listed characteristics) have been determined as high priority for redevelopment by State and County land use agencies.

Sites with these characteristics are expected to be developed at a high density and high intensity land use, as reinforced by the County Council in their provisions of the appropriate zoning designation and accompanying density. Prohibiting a site with these characteristics from developing due to the presence of subject trees would deprive the landowner of rights commonly enjoyed by others in similar areas, as projects in similar areas have been granted variances.

**Staff Analysis:** 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 site currently has no stormwater (SWM) quantity or quality management facilities. Under the proposed redevelopment scenario, the site will comply with current SWM laws and practices, which will represent a substantial improvement in the quality of water discharged from the site. Construction on the site will be governed by an approved Erosion and Sediment Control Plan, which will only be approved by the Department of Permitting Services upon their satisfaction that water quality and sediment control standards will be met. The granting of the variance will allow the



project to proceed- including the implementation of SWM controls- and will not result in measurable degradation in water quality.

**Staff Analysis:** Staff agrees that improved water quality management will result from the construction of this project. However, none of the trees proposed for removal are within the proposed treatment areas and therefore tree removal is not related to stormwater.

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

**Response:** The Glen Aldon site represents a rare opportunity to provide increased access to reasonably priced housing within the central Bethesda area, and within walking distance of two Metro stations (Medical Center and Bethesda) and the world-class research center of the National Institute of Health (NIH). The applicant seeks to provide the most housing units in the most efficient manner possible, while balancing myriad planning and policy objectives of the County Council, Master and Sector plans, Maryland Department of the Environment, and the MNCPPC. Impacts to four subject trees are necessary and unavoidable in order to implement the proposed redevelopment of the site, and to provide an enhanced urban fabric in the dynamic infill area.

**Variance Findings- Based on the review of the variance request and the proposed PFCP, staff makes the following findings:**

*(1) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. The loss of the trees is common in the CBD area due to increased density. Staff believes granting this variance is not a special privilege that would be denied to other applicants.

*(2) The need for the variance 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 locations of the trees and the configuration of the Subject Property.

*(3) The need for variance is not based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposal which promotes an efficient site design and layout for the subject property and not as a result of land or building use on a neighboring property.

*(4) Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed site plan should improve water quality by providing stormwater management in an area where there is presently no treatment measures.

**Mitigation for Trees Subject to the Variance Provisions** – The proposed variance for the removal of four trees is mitigated by additional plantings. The Applicant has proposed to plant 0.59 acres of landscaping onsite which will improve tree canopy cover from its present state.

**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 County Arborist reviewed the variance request and recommended approval on April 4<sup>th</sup>, 2012). (Attachment C)

**Variance Recommendation** - Staff recommends that the variance be granted.

## **CONCLUSION**

The Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code. Therefore, staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in the staff report. The variance approval is included in the Planning Board’s approval of the Preliminary Forest Conservation Plan.

## **ATTACHMENTS**

Attachment A- Proposed Preliminary Forest Conservation Plan

Attachment B- Applicants Variance Request

Attachment C- Letter from County Arborist





Attachment B- Applicants Variance Request



November 8, 2011  
Via Email and Hard Copy

MNCPPC  
Area 1 Staff  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Glen Aldon  
Request for Tree Variance  
RCI Job No. 466F

To Whom It May Concern:

On behalf of the applicant, Glenwood Glen Aldon, LLC, Glenmont Apartments, LLC, and Glenbrook, LLC, Rodgers Consulting is requesting a variance from the requirement to retain all 30"+ DBH trees (subject trees) on a site per Section 22A-21 of the Montgomery County Code. This site is the subject of approved NRI/FSD #420102090, approved July 12, 2010. This variance request is for the proposed removal of four subject trees as shown on the NRI/FSD:

- 1 – 38" White Mulberry** (*Morus alba*) in poor condition, removed due to roadway improvements to Battery Lane.
- 2 – 33" Red Maple** (*Acer rubrum*) in fair condition, removed due to roadway improvements to Battery Lane
- 3 – 38" Red Maple** (*Acer rubrum*) in good condition, removed due to roadway improvements to Battery Lane
- 4 – 34" Red Maple** (*Acer rubrum*) in good condition, removed as part of the proposed project redevelopment.

Below please find the variance criteria followed by justification.

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

The site is currently in use as garden-style apartments, located along Battery Lane, just west of Woodmont Avenue in Bethesda. The site is zoned R-10 and R-10/TDR, and is proposed to be zoned PD-100. The site is within a Priority Funding area, within walking distance of two Metro stations, and is directly adjacent to the Bethesda CBD. These designations and characteristics signify high priority for redevelopment per State and County land use agencies. The redevelopment proposal displays the tenets of Smart Growth by providing needed residential units within walking distance of transit and employment centers.

The site is managed by the Aldon Management Corp, whose mission is: *To provide well maintained rental units with reasonable amenities, consistent with retaining moderate rent levels in an urban community.*

The goal of the redevelopment proposal is to update existing affordable housing on the site and to provide a substantial number of additional affordable units. In Montgomery

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19647 Century Blvd., Suite 200, Germantown, MD 20874 — 301.948-4700 — 301.948-6256 (fax) — www.rodgers.com



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County, reasonably priced - affordable and 'workforce' housing - is an underserved market and is encouraged by the Council due to lack of supply in the free market. Creating an obstacle to affordable housing for a private entity, by not allowing the subject trees to be removed, would be an unwarranted hardship, and runs counter to Montgomery County Council long-established housing goals and objectives.

#### Alternatives Analysis in support of Unwarranted Hardship

Tree 1 – 38" White Mulberry. It would be an unwarranted hardship to require a design to retain this tree – an invasive species currently in Poor condition. The state law is remiss in the absence of quality criteria as part of the requirement for a variance. This tree is likely to die in a few years under any development scenario based on the proposed zoning and its proximity to Battery Lane, therefore designing to retain it is unjustified and would be an undue hardship.

Tree 2 – 33" Red Maple. Montgomery County Department of Public Works (DPW) will require the sidewalk along Battery Lane to be upgraded under any development scenario for this site. The impacts for sidewalk installation and grading alone exceed 33% of the root zone, which is MNCPPC's guideline threshold for when a tree should be removed versus when arboricultural measures have a reasonable chance of success.

Tree 3 – 38" Red Maple. Montgomery County Department of Public Works (DPW) will require the sidewalk along Battery Lane to be upgraded under any development scenario for this site. The impacts for sidewalk installation and grading alone exceed 33% of the root zone, which is MNCPPC's guideline threshold for when a tree should be removed versus when arboricultural measures have a reasonable chance of success.

Tree 4 – 34" Red Maple. Alternatives for this tree were examined, but the vertical and horizontal constraints proved too significant for retention. The density of the site at the proposed zoning merits a subterranean parking garage. Retaining Tree 4 would require a loss of parking spaces, and due to the relatively inflexible modules in configuring parking garages (required aisles, turnaround allowances, and efficient parking layout), the site may not be able to meet required parking spaces. Horizontally, retaining the tree would require a large courtyard configuration where no site grading, utility installation or removal, or stormwater management practices could occur, and minimal site landscaping would be possible. On a very tight, already developed urban site, the horizontal constraint alone makes the retention of Tree 4 infeasible.

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

As referenced in the response to (1), urban properties with transit access and existing infrastructure, (and other above-listed characteristics) have been determined high priority for redevelopment by State and County land use agencies.

Sites with these characteristics are expected to be developed at a high density and high intensity land use, as reinforced by the County Council in their provision of the appropriate zoning designation and accompanying density. Prohibiting a site with these characteristics from developing due to the presence of subject trees would



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deprive the landowner of rights commonly enjoyed by others in similar areas, as projects in similar areas have been granted variances.

*(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*

The site currently has no stormwater (SWM) quantity or quality management facilities. Under the proposed redevelopment scenario, the site will comply with current SWM laws and practices, which will represent a substantial improvement in the quality of water discharged from the site. Construction on the site will be governed by an approved Erosion and Sediment Control Plan, which will only be approved by the Department of Permitting Services upon their satisfaction that water quality and sediment control standards will be met. The granting of the variance will allow the project to proceed - including the implementation of SWM controls - and will not result in measurable degradation in water quality.

*(4) provide any other information appropriate to support the request*

The Glen Aldon site represents a rare opportunity to provide increased access to reasonably priced housing within the central Bethesda area, and within walking distance of two Metro stations (Medical Center and Bethesda) and the world-class research center of the National Institutes of Health (NIH). The applicant seeks to provide the most housing units in the most efficient manner possible, while balancing myriad planning and policy objectives of the County Council, Master and Sector Plans, Maryland Department of the Environment, and the MNCPPC. Impacts to four subject trees are necessary and unavoidable in order to implement the proposed redevelopment of the site, and to provide an enhanced urban fabric in this dynamic infill area.

Please do not hesitate to contact us with any questions or comments concerning this variance request. We can be reached at 301-948-4700 or hmurray@roddgers.com

Sincerely,  
Rodgers Consulting, Inc.

Hannah R. Murray RLA, LEED AP+ND  
Senior Environmental Planner

Cc: Anthony Falcone, Aldon Management Corp  
Nancy Regelin, Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
Jennifer Russel, RCI  
File

Attachment C- Letter from County Arborist



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

April 4, 2012

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

RE: Glen Aldon, DAIC 20102090, NRI/FSD application accepted on 5/20/2010

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:

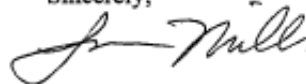
1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this condition.

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. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates future potential of the area to support a tree or provide stormwater management. 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