



**Preliminary Forest Conservation Plan No. S-2815; Dr. Veena J. Alfred & Alfred House Eldercare, Inc.**

*WJK* Mary Jo Kishter, Senior Planner, Area 3, maryjo.kishter@montgomeryplanning.org, 301.495.4701

*CM* Callum Murray, Supervisor, Area 3, callum.murray@montgomeryplanning.org, 301.495.4733

*JAC* John Carter, Chief, Area 3, john.carter@montgomeryplanning.org, 301.495.4575



Completed: 1/5/12

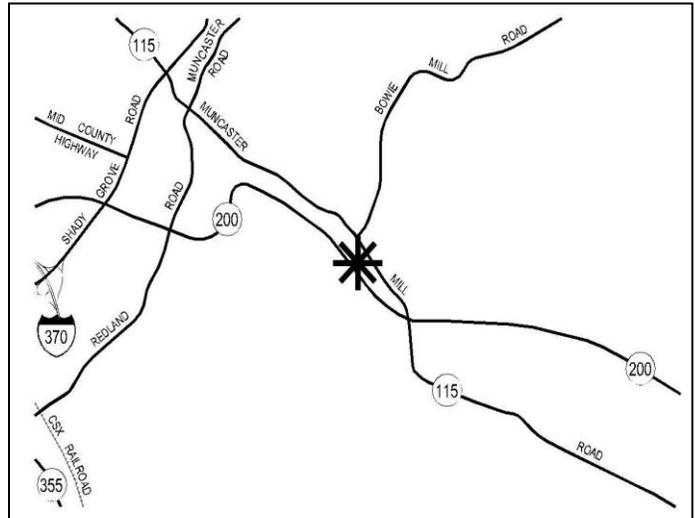
**Description**

**Preliminary Forest Conservation Plan No. S-2815:**

**Alfred House Domiciliary Care Housing**

Applicant: Veena J. Alfred & Alfred House Eldercare, Inc.

- P927 at 6020 Needwood Road, Derwood
- RE-1 Zone, Upper Rock Creek Master Plan, 2004, 2.48-acres
- Request for approval of Preliminary Forest Conservation Plan as part of a Special Exception application for a 34-bed domiciliary care home
- Preliminary Forest Conservation Plan submitted on November 10, 2011



**Summary**

**Recommendation: approval with conditions**

- Application requests approval of a preliminary forest conservation plan as part of an application for a special exception to construct a 34-bed domiciliary care home
- Preliminary Forest Conservation Plan includes 0.97 acres forest clearing to be mitigated at an approved, offsite forest bank
- Application includes a request to remove nine trees and impact seven trees subject to the variance provision
- Staff finds that with the conditions recommended in this staff report, the application for Preliminary Forest Conservation Plan No. S-2815 complies with Chapter 22A of the Montgomery County Code

## RECOMMENDATION

Staff recommends **approval of the Preliminary Forest Conservation Plan with the following conditions:**

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated November 10, 2011. The applicant must satisfy all conditions prior to Montgomery County Department of Permitting Service's (MCDPS) issuance of sediment and erosion control permit(s), as appropriate, including:
  - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
  - b. The Final Forest Conservation Plan must include twenty-seven (27) native canopy trees with a minimum size of 3 inches in diameter at breast height (DBH) (or native canopy trees with a 81-inch cumulative DBH, individual trees with a minimum size of 3 inches DBH) as mitigation for the loss of specimen trees.
  - c. The Sediment Control Plan must be consistent with final limits of disturbance as approved by the M-NCPPC staff.
  - d. M-NCPPC Planning Department staff and M-NCPPC legal counsel approval of a Certificate of Compliance Agreement for use of an approved offsite forest mitigation bank to satisfy the forest mitigation planting requirements.

## SITE DESCRIPTION

The property is identified as Parcel P927, located at 6020 Needwood Road, in the southwestern corner of the intersection of Muncaster Mill Road and Needwood Road, in the Upper Rock Creek Master Plan area. It is zoned RE-1 and is 2.48 acres in size. A single family home, which is currently in use as a small group home for five elderly persons and two non-resident staff persons, occupies the property. The property has access from Needwood Road via an asphalt driveway.

The property is located within the Upper Rock Creek Watershed, which is classified by the State of Maryland as Use IV waters. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. The site is not located within a Special Protection Area (SPA), nor is it located within the Patuxent River Primary Management Area (PMA). In 2006, the property was the subject of a forest conservation violation for approximately 15,500 square feet of unauthorized forest clearing. The applicant was issued a citation and as part of the Corrective Action for this violation, the applicant was instructed to comply with the law and submit a Forest Conservation Plan. It was determined during the preparation of plans, that the remaining trees no longer met the definition of forest and for purposes of forest conservation, the entire original forested area on the property would be counted as "cleared". The 0.97 acres of forest clearing is accounted for in the Preliminary Forest Conservation Plan. No forest currently exists on the site. There are twenty-two (22) large or specimen trees located on or adjacent to the property.

Adjacent land uses include large lot single family homes in the area surrounding the property, the Montgomery Hospice at Casey House is located on Muncaster Mill Road, diagonal to the northeast, Magruder High School lies diagonal to the southwest, and the Intercounty Connector (ICC/MD Rt 200) lies to the west.



*Vicinity Map*



*Site Aerial View*

## **PROJECT DESCRIPTION**

The Preliminary Forest Conservation Plan was prepared as part of a Special Exception application for a 34-bed domiciliary care home (Attachment A). The proposed development will provide housing for elderly residents. The project includes accounting for 0.97 acres of previously unauthorized forest clearing, the removal of nine (9) specimen trees, and impacts to the critical root zones of seven (7) specimen trees for the proposed building, associated parking, and required stormwater management and utilities.

## **ANALYSIS AND FINDINGS**

### **Environmental Guidelines**

The application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 2.48-acre site on February 16, 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*. The topography on the property is gently sloping to the west. There are no streams, wetlands, 100-year floodplain, stream buffers, highly erodible soils, or steep slopes located on the property. The site is located within the Upper Rock Creek watershed, which is classified by the State of Maryland as Use IV waters. The property is not located within the Upper Rock Creek Special Protection Area (SPA), nor is it located within the Patuxent River Primary Management Area (PMA). The subject property is located west of the boundaries of the Upper Rock Creek SPA.

### **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. The plan accounts for 0.97 acres of previously unauthorized forest clearing, resulting in a planting requirement of 1.06 acres. The applicant proposes to satisfy the planting requirement at an approved, off site forest mitigation bank. There are twenty-two (22) large or specimen trees located on or adjacent to the property.

### 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 application 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 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.

Variance Request - The applicant submitted a variance request on November 10, 2011 (Attachment B). The applicant proposes to remove nine (9) trees that are subject to the variance provision, and to impact, but not remove, seven (7) others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Trees to be removed

Tree Number	Species	DBH Inches	Status
3	Silver Maple	30	Fair condition; Needwood Rd. right of way; drainage swale
4	Silver Maple	58	Poor condition; Needwood Rd. right of way; drainage swale
5	Red Maple	34	Fair/Poor condition; Needwood Rd. right of way; drainage swale
6	Red Maple	33	Poor condition; Needwood Rd. right of way; drainage swale
7	Red Maple	30	Fair condition; storm drain outfall improvement as required by MCDPS
9	Silver Maple	33	Good condition; building and stormwater facility
24	E. Red Cedar	30	Good condition; grading, storm drain construction
28	Red Maple	30	Good condition; parking lot and storm drain construction
29	Tuliptree	41	Good condition; grading for parking lot, drainage

Trees to be affected but retained

Tree Number	Species	DBH Inches	CRZ Impact	Status
28	Loblolly Pine	28*	8%	Fair condition; driveway, parking and grading
11	Silver Maple	40	30%	Good condition; grading for drainage; water and sewer connections
14	Norway Maple	32	23%	Fair condition; water and sewer connections
15	Black Cherry	31	29%	Good condition; water and sewer connections
19	Silver Maple	46	7%	Fair condition; storm drain construction
30	Red Maple	31	33%	Fair condition; grading for parking lot and drainage, storm drain construction
31	Tuliptree	34	20%	Good condition; grading for parking lot and drainage

\*This tree is subject to the variance requirement because it has a DBH greater than the current County champion

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 (MHG, November 10, 2011) - *“The subject property consists of the 2.48 acre Parcel 927, located at 6020 Needwood Road. The parcel currently houses a small assisted living facility. According to the Natural Resources Inventory there were 0.97 acres of onsite forest, all of which were removed, prior to the submittal of the plans to the county. Nine of the sixteen affected specimen trees are slated for removal. Of the nine trees that are to be removed, four are located within the frontage dedication for Needwood Road. All four trees have sustained damage from pruning for overhead wires and are in fair or poor condition. These four trees are impacted by both the grading for the swale along Needwood and the bio-retention facility which are required for proper stormwater conveyance. The elevations and existing storm drain in this location dictate that stormwater be met in this location precluding our ability to save these trees. A fifth tree exists off-site at the outfall to the storm drain across Needwood Rd. Montgomery County DPS is requiring the upgrade to this structure and the proximity of the tree to this structure requires its removal.*

*The remaining four specimen trees that are proposed for removal and the additional seven specimen trees that are impacted by the development are scattered throughout the property. The expansion of the assisted living facility through the creation of a new building requires a*

*limit of disturbance (LOD) that impacts a significant portion of the property. The location of the building was chosen in order to cluster the development to the back of the property and protect trees along Muncaster Mill Rd. including the significant trees as shown on the plan as well as vegetated tree cover that exists in that area. Shifting the location of the proposed building would not minimize the impact to specimen trees. Grading in the rear portion of the property was tightened in order to minimize the impact to the specimen trees that line the property and provide a buffer for the adjacent properties. All seven trees that are impacted but are being saved will receive appropriate stress reduction measures under the supervision of a certified arborist.”*

Development on the property is constrained by existing site conditions including the locations of the existing entrance driveway, the existing building to remain in use, the existing storm drain system and outfall, and numerous large trees located throughout the 2.48-acre site. The applicant proposes to construct an assisted living facility to expand the existing facility on the site. The current facility serves an elderly population of modest financial means, and it is the applicant’s intention that the expanded facility will continue to serve this population. This facility requires a building, associated parking, and required stormwater management features. Additionally, four of the trees to be removed are located within the frontage dedication area for Needwood Road, and one of the trees, is located alongside an existing storm drain outfall that is required to be upgraded as part of this development. The existing conditions, the number and locations of the specimen trees, and the requirements for development on the property have limited the ability to avoid removal and impact to specimen trees. The majority of the trees proposed for removal are in “fair” or “poor” condition. Staff has reviewed this application and based on the existing conditions on the property, staff finds 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 (MHG, November 10, 2011) - *“The subject property has a large number of specimen trees scattered throughout the site, making it impossible to develop the property to its full potential without impacting specimen trees. Impact to the specimen trees has been reduced to the best of our ability; however, the removal of specimen trees is unavoidable. The inability to remove or affect the subject trees would severely limit the development of the property. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.”*

The proposed removal and impacts to the subject trees are due not only to the construction of the building, but to the construction associated with the required parking lot, stormwater management, and necessary utility construction needed to accommodate the proposed facility. Additionally, requirements for upgrading the existing storm drain outfall and roadway dedication have resulted in additional impacts. Staff has reviewed the application and finds 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 (MHG, November 10, 2011) - *“A Stormwater Management Concept was submitted to the Department of Permitting Services on 11/2/10. The site has been analyzed and is shown to meet the state water quality standards. Once the approval is received it will confirm that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site. A copy of the Stormwater submittal is included.”*

Staff has reviewed the application and agrees that the variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. Approval of a Stormwater Management Concept Plan will be required by the Montgomery County Department of Permitting Services at the time of preliminary plan review.

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

- Response (MHG, November 10, 2011) - *“A copy of the Preliminary Forest Conservation Plan has been provided as part of this variance request. The proposed removal of nine specimen trees and the impact to seven additional trees are indicated on the plan. A tree variance detail table summarizing the trees to be impacted is included as well as a table detailing mitigation requirements.”*

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 removal of the nine trees and the impacts to the seven trees is due to the development of the site. The 2.48-acre property contains numerous large trees located throughout the property. These trees are located within the 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 development of the site is dictated by the existing entrance driveway, building and storm drain outfall, and the need to provide utility connections out to Muncaster Mill Road. Staff has determined that the impacts and removal of 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, including the existing driveway and building, and the number and locations of the large trees.

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 conditions and the 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.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Concept Plan approval will be required by the Montgomery County Department of Permitting Services.

Mitigation for Trees Subject to the Variance Provision - There are nine (9) trees proposed for removal in this variance request. Mitigation for the removal of these trees is recommended. 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" Diameter at Breast Height (DBH) for every 4" DBH removed, using trees that are a minimum of 3" DBH. For example, this means that for the 319 caliper inches of trees removed, they will be mitigated by the applicant with twenty-seven (27) native, canopy trees with a minimum size of 3" DBH on the site. While these trees will not be as large as the trees lost, they will provide some immediate canopy and ultimately replace the canopy lost by the removal of these trees. There is some disturbance within the critical root zones of seven (7) trees, but they are candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on November 10, 2011. On November 23, 2011, the County Arborist issued recommendations on the variance request and recommended the variance be approved with mitigation (Attachment C).

Variance Recommendation - Staff recommends that the variance be granted.

## **CONCLUSION**

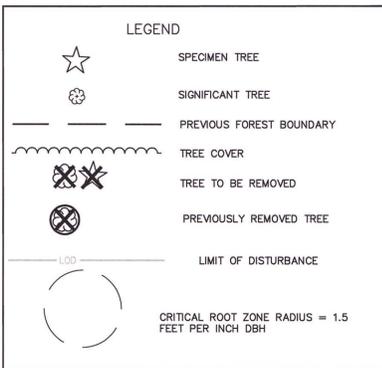
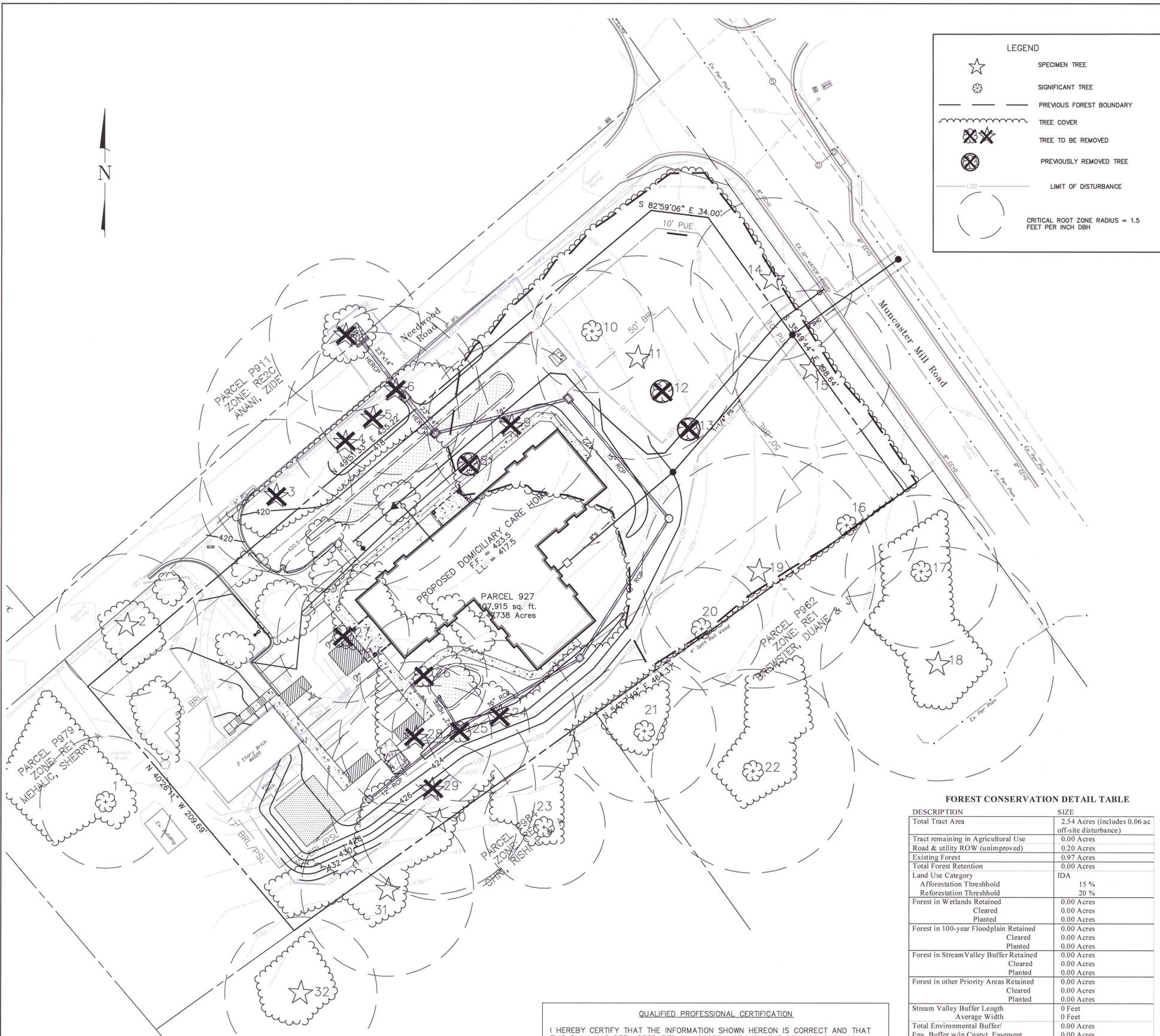
The Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code. Therefore, staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this staff report. The variance approval is included in the Planning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

## **Attachments**

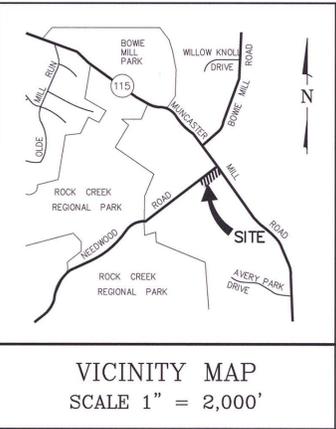
Attachment A – Proposed Preliminary Forest Conservation Plan

Attachment B – Applicant's Variance Request dated November 8, 2011

Attachment C – County Arborist Letter dated November 23, 2011



FOREST CONSERVATION WORKSHEET			
Alfred House - Needwood Road			
			5-Aug-02
NET TRACT AREA:			
A. Total tract area			2.54
B. Land dedication acres (parks, county facility, etc.)			0.00
C. Land dedication for roads or utilities (not being constructed by this plan)			0.20
D. Area to remain in commercial agricultural production/use			0.00
E. Other deductions (specify)			0.00
F. Net Tract Area			2.34
LAND USE CATEGORY: (from Trees Technical Manual)			
Input the number "1" under the appropriate land use, limit to only one entry.			
ARA	MDR	IDA	HDR
0	0	1	0
G. Afforestation Threshold ... 15% x F = 0.35			
H. Conservation Threshold ... 20% x F = 0.47			
EXISTING FOREST COVER:			
I. Existing forest cover ... 0.97			
J. Area of forest above afforestation threshold ... 0.62			
K. Area of forest above conservation threshold ... 0.50			
BREAK EVEN POINT:			
L. Forest retention above threshold with no mitigation ... 0.57			
M. Clearing permitted without mitigation ... 0.40			
PROPOSED FOREST CLEARING:			
N. Total area of forest to be cleared ... 0.97			
O. Total area of forest to be retained ... 0.00			
PLANTING REQUIREMENTS:			
P. Reforestation for clearing above conservation threshold ... 0.13			
Q. Reforestation for clearing below conservation threshold ... 0.94			
R. Credit for retention above conservation threshold ... 0.00			
S. Total reforestation required ... 1.06			
T. Total afforestation required ... 0.00			
U. Credit for landscaping (may not exceed 20% of "S") ... 0.00			
V. Total reforestation and afforestation required ... 1.06			



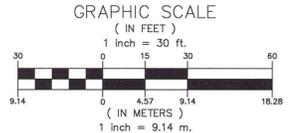
Note:  
 1. 2.54 ac total tract area = 2.48 ac site + 0.06 ac off-site disturbance  
 2. 1.06 acres to be met in an off-site forest mitigation bank.  
 3. Stress Reduction Measures will be required for trees to be impacted.

ID#	Common Name	Botanical Name	DBH	CRZ (s.f.)	CRZ (radius)	Conditions/Remarks
*1	Silver Maple	Acer saccharinum	26	4776	39	Good
*2	Loblolly Pine	Pinus taeda	28	5539	42	Fair - vines, dead branches, OHW. DBH more than county champion
*3	Silver Maple	Acer saccharinum	30	6359	45	Fair - pruned, OHW. Epicormic growth, dead branches; REMOVE
*4	Silver Maple	Acer saccharinum	58	23767	87	Poor - cavity, rot, Epic., dead branch, multistem above 6'; REMOVE
*5	Red Maple	Acer rubrum	34	8167	51	Fair/Poor - leans, Epic., cavity @ 20', poor structure; REMOVE
*6	Red Maple	Acer rubrum	33	7694	49.5	Poor - rot; REMOVE
*7	Red Maple	Acer rubrum	30	6359	45	Fair - dieback; REMOVE
8	Dead	unknown	30	6359	45	REMOVED
*9	Silver Maple	Acer saccharinum	33	7694	49.5	Good; REMOVE
10	Red Maple	Acer rubrum	24	4069	36	Good
*11	Silver Maple	Acer saccharinum	40	11304	60	Good
12	Silver Maple	Acer saccharinum	36	9156	54	REMOVED
13	Silver Maple	Acer saccharinum	44	13678	66	REMOVED
*14	Norway Maple	Acer platanoides	32	7235	48	Fair - dieback, codom @ 5' *No existing county champion
*15	Black Cherry	Prunus serotina	31	6789	46.5	Good
16	Tulip Poplar	Liriodendron tulipifera	28	5539	42	Good
17	Red Oak	Quercus rubra	30	6359	45	Poor - dieback
*18	Silver Maple	Acer saccharinum	46	14950	69	Good
*19	Silver Maple	Acer saccharinum	46	14950	69	Fair - vines, some dieback, codom @ 5'
20	White Mulberry	Moraceae alba	24	4069	36	Fair - vines
21	Black Walnut	Juglans nigra	28	5539	42	Good
22	Silver Maple	Acer saccharinum	40	11304	60	Fair - dieback
23	Black Cherry	Prunus serotina	24	4069	36	Fair - codom @ 5'
*24	Eastern Red Cedar	Juniperus virginiana	30	6359	45	Good; REMOVE
25	Red Maple	Acer rubrum	27	5150	40.5	Fair - cavity, rot, codom @ 5'; REMOVE
26	Red Maple	Acer rubrum	25	4416	37.5	Fair - girdling, dieback; REMOVE
27	Norway Spruce	Picea abies	26	4776	39	Fair/Good - dead branches, sapsucker; REMOVE
*28	Red Maple	Acer rubrum	30	6359	45	Good; REMOVE
*29	Tulip Poplar	Liriodendron tulipifera	41	11876	61.5	Good; REMOVE
*30	Red Maple	Acer rubrum	31	6789	46.5	Fair - dieback, poor structure
*31	Tulip Poplar	Liriodendron tulipifera	34	8167	51	Good
*32	Red Maple	Acer rubrum	30	6359	45	Good

Notes: Diameters are given for each trunk of multiple bole trees when division occurs below 4.5 feet. If major division occurs above 4.5 feet only the trunk diameter at 4.5 feet is given. Tree ID Numbers correspond to those assigned on the Natural Resource Inventory/Forest Stand Delineation Map. Off-site trees locations are estimated.  
 \*Specimen tree

FOREST CONSERVATION DETAIL TABLE	
DESCRIPTION	SIZE
Total Tract Area	2.54 Acres (includes 0.06 ac off-site disturbance)
Tract remaining in Agricultural Use	0.00 Acres
Road & utility ROW (unimproved)	0.20 Acres
Existing Forest	0.97 Acres
Total Forest Retention	0.00 Acres
Land Use Category	IDA
Afforestation Threshold	15 %
Reforestation Threshold	20 %
Forest in Wetlands Retained	0.00 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Forest in 100-year Floodplain Retained	0.00 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Forest in Stream Valley Buffer Retained	0.00 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Forest in other Priority Areas Retained	0.00 Acres
Cleared	0.00 Acres
Planted	0.00 Acres
Stream Valley Buffer Length	0 Feet
Average Width	0 Feet
Total Environmental Buffer/Env. Buffer w/in Cnsrvt. Easement	0.00 Acres

QUALIFIED PROFESSIONAL CERTIFICATION  
 I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF EXISTING STATE AND COUNTY FOREST CONSERVATION LEGISLATION.  
 DATE: 11/8/11  
 FRANK C. JOHNSON  
 RECOGNIZED AS QUALIFIED PROFESSIONAL BY MD. DEPT. OF NATURAL RESOURCES COMAR 08.19.06.01



TAX MAP HT122 WSSC 224NW05

**PRELIMINARY FOREST CONSERVATION PLAN**  
 P927  
**ALFRED HOUSE/NEEDWOOD ROAD**  
 8TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**MHG** Macris, Hendricks & Glascock, P.A.  
 Engineers ■ Planners  
 Landscape Architects ■ Surveyors

9220 Wightman Road, Suite 120  
 Montgomery Village, Maryland  
 20886-1279  
 Phone 301.670.0840  
 Fax 301.948.0693  
 www.mhga.com

Proj. Mgr. MP	Designer FCJ
Date 11/08/11	Scale 1"=30'
Project No. 08.168.12	Sheet 1 of 1

NO.	DATE	DESCRIPTION	BY



November 8, 2011

Maryland National Capital Park & Planning Commission  
Attn: Mark Pfefferle  
8787 Georgia Avenue  
Silver Spring, MD 20910



Re: Alfred House – Needwood Rd FCP  
MHG Project No. 08.168  
S-2815

To Whom It May Concern:

On behalf of Veena Alfred, the applicant of the above referenced Forest Conservation Plan, we hereby request a variance for impacting sixteen specimen trees, required by the revisions to the Maryland Forest Conservation Act, effective October 1, 2009, outlined in Senate Bill 666. In accordance with Chapter 22A-21(b) of the Montgomery County Code, the proposed impacts to specimen trees would satisfy the variance requirements.

- 1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

The subject property consists of the 2.48 acre Parcel 927, located at 6020 Needwood Road. The parcel currently houses a small assisted living facility. According to the Natural Resources Inventory there were 0.97 acres of onsite forest, all of which were removed, prior to the submittal of the plans to the county. Nine of the sixteen affected specimen trees are slated for removal. Of the nine trees that are to be removed, four are located within the frontage dedication for Needwood Road. All four trees have sustained damage from pruning for overhead wires and are in fair or poor condition. These four trees are impacted by both the grading for the swale along Needwood and the bio-retention facility which are required for proper stormwater conveyance. The elevations and existing storm drain in this location dictate that stormwater be met in this location precluding our ability to save these trees. A fifth tree exists off-site at the outfall to the storm drain across Needwood Rd. Montgomery County DPS is requiring the upgrade to this structure and the proximity of the tree to this structure requires its removal.

The remaining four specimen trees that are proposed for removal and the additional seven specimen trees that are impacted by the development are scattered throughout the property. The expansion of the assisted living facility through the creation of a new building requires a limit of disturbance (LOD) that impacts a significant portion of the property. The location of the building was chosen in order to cluster the development to the back of the property and protect trees along Muncaster Mill Rd including the significant trees as shown on the plan as well as vegetated tree cover that exists in that area. Shifting the location of the proposed building would not minimize the impact to specimen trees. Grading in the rear portion of the property was tightened in order to minimize the impact to the specimen trees that line the property and provide a buffer for the adjacent properties. All seven trees that are impacted but are being saved will receive appropriate stress reduction measures under the supervision of a certified arborist.

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

The subject property has a large number of specimen trees scattered throughout the site, making it impossible to develop the property to its full potential without impacting specimen trees. Impact to the specimen trees has been reduced to the best of our ability; however, the removal of specimen trees is unavoidable. The inability to remove or affect the subject trees would severely limit the development of the property. This creates a significant disadvantage for the applicant and deprives the applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.

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;*

A Stormwater Management Concept was submitted to the Department of Permitting Services on 11/2/10. The site has been analyzed and is shown to meet the state water quality standards. Once the approval is received it will confirm that the goals and objectives of the current state water quality standards have been met for the proposed improvements to the site. A copy of the Stormwater submittal is included.

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

A copy of the Preliminary Forest Conservation Plan has been provided as part of this variance request. The proposed removal of nine specimen trees and the impact to seven additional trees are indicated on the plan. A tree variance detail table summarizing the trees to be impacted is included as well as a table detailing mitigation requirements. Please let us know if any other information is necessary to support this request.

Please contact me via email, at [fjohnson@mhgpa.com](mailto:fjohnson@mhgpa.com), or by phone, at (301) 670-0840 should you have any additional comments or concerns.

Thank you,



Frank Johnson



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

November 23, 2011

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

RE: Alfred House - Revised, S-2815, NRI/FSD application accepted on 12/3/2009

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