

**A. Water Quality Plan, B. Forest Conservation Plan MR2010815: Shawnee Lane and C. Forest Conservation Plan MR2010815: Clarksburg High School**



Katherine Nelson, Planner Coordinator  
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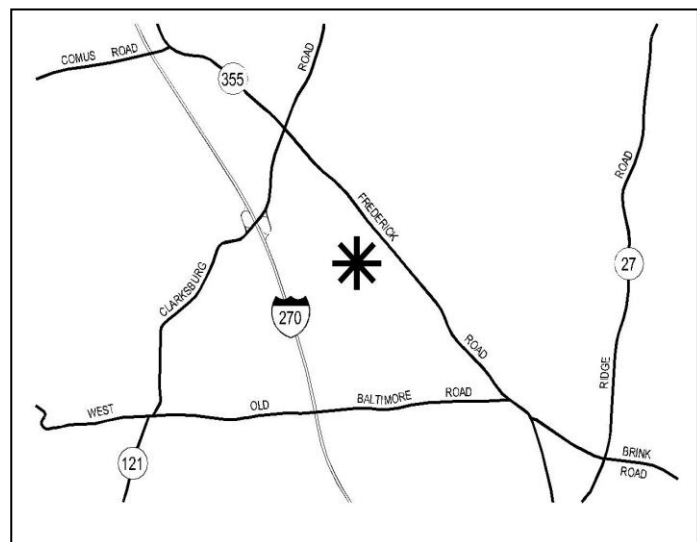
**description**

**Shawnee Lane**

The applicant in partnership with the Department of Permitting Services and MCPS plan to reconstruct the existing two-lane Shawnee Lane as a four-lane divided roadway for approximately ½-mile between Gateway Center Drive and MD355.

**Staff Recommendations:**

- A. Water Quality Plan  
*Staff Recommendation:* Approval with Conditions
- B. Forest Conservation Plan MR 2010815: Shawnee Lane (FCP) for Shawnee Lane  
*Staff Recommendation:* Approval with Conditions
- C. Forest Conservation Amendment MR2004302: Clarksburg High School  
*Staff Recommendation:* Approval with Conditions



**summary**

There are four items for Planning Board review: The Mandatory Referral, the Special Protection Area (SPA) Final Water Quality Plan, the FCP for Shawnee Lane and the revised FCP for Clarksburg High School for road construction encroachments. This memorandum covers staff's review and recommendations on the SPA Final Water Quality Plan and the two FCPs.

*The Board's action on the SPA Water Quality Plan and Forest Conservation Plans are regulatory and binding. The Planning Board must act on these items before it can proceed to make recommendations on the Mandatory Referral.*

## RECOMMENDATIONS

**Approval** of the SPA Water Quality Plan subject to the following condition:

1. Conformance to the conditions as stated in the Montgomery County Department of Permitting Services (DPS) preliminary water quality plan approval letter (Attachment 1).

**Approval** of the Forest Conservation Plan for Shawnee Lane (MR 2010815) subject to the following conditions:

1. Submission and approval of a final forest conservation plan prior to any land disturbing activities that shall include the following:
  - a. Final mitigation calculations
  - b. Method and location for off-site forest mitigation within the Clarksburg SPA

**Approval** of the Forest Conservation Plan amendment for Clarksburg High School (MR2004302)

1. Record a Conservation Easement over the designated areas of the Clarksburg High School site prior to utilizing additional forest conservation credits for other school sites.
2. Obtain a final inspection of the planted forest areas.

## ANALYSIS

The applicant proposes to reconstruct and widen Shawnee Lane approximately ½-mile between Gateway Center Drive and MD355. This road project construction was a condition of approval of preliminary plan number 120051010, Gallery Park, a residential development located adjacent to Shawnee Lane. This project overlaps two other forest conservation plan areas: Clarksburg High School and proposed Garnkirk Farms. The road is located within the Clarksburg SPA.

### Final Water Quality Plan

#### Review for Conformance to the SPA Requirements

As part of the requirements of the Special Protection Area law, a SPA Water Quality Plan should be reviewed in conjunction with a mandatory referral<sup>1</sup>. Under the provision of the law, the Montgomery County Department of Permitting Services (DPS) and the Planning Board have different responsibilities in the review of a water quality plan. DPS has reviewed and conditionally approved the elements of the Preliminary/Final Water Quality Plan under its purview. The Planning Board responsibility is to determine if conformance to environmental guidelines, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

#### Environmental Guidelines

The roadway crosses an unnamed tributary of Little Seneca Creek approximately 800 feet west of MD355. A culvert carries the stream under the existing roadway. Wetlands are located adjacent to the stream and the current embankments to the road. 6,285 square feet of wetland disturbance and 24,829 square feet of stream buffer disturbance will take place as part of the road project. The applicant has worked to minimize sensitive area disturbance by receiving a series of “design exceptions” from Montgomery County Department of Transportation (see Attachment 2). These design changes reduced

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<sup>1</sup> Section 19-62 (c) of the Montgomery County Code states that “ before engaging in any land disturbing activity on publicly owned property in an area designated as a special protection area, the applying agency or department should prepare a combined preliminary and final water quality plan.”

pavement width and modified stormwater management measures, resulting in a 31-35 percent decrease in sensitive area impact.

The applicant's proposal is consistent with the environmental guidelines to either avoid the environmental impact and when that is not possible to minimize the impacts.

**MR 2010815: Shawnee Lane**

This 11.2-acre project is subject to the Montgomery County Forest Conservation law as a government entity subject to Mandatory Referral on a tract of land greater than 40,000 square feet. Approximately 53 percent of the current road edge is forested. The road widening proposes to remove all of the 2.88 acres of forest located within the site area. Mitigation will take place offsite and within the Clarksburg SPA.

Issues left to be resolve as part of the final forest conservation plan:

1. Inclusion of Garnkirk Farm's FCP Area (820120100) within Shawnee Lane's area of existing forest  
Garnkirk Farm is located on the north side of Shawnee Lane and is completely forested in that location. Their proposed FCP, submitted in May of 2012, proposes to remove the forest located on the Shawnee Lane frontage. The Shawnee Lane applicant has therefore included dual mitigation calculations on their forest conservation plan; one that includes the forest on the Garnkirk Farm plan, one that does not. At the time of Final Forest Conservation Plan approval, it can be more clearly determined which project actually removes the forest in question and therefore takes responsibility for that area of forest loss.
2. Forest Mitigation Calculation Method  
Normally, CIP road projects replace forest loss on a one-to-one basis (22A-9 Attachment 3). The State allows this method to provide relief for a public project that by its nature will not be able to save any of the forest within the project area. However this road, although it is existing and within public right-of-way, is not in the CIP and is being funded by a private developer. The normal way of calculating mitigation for private development is to use a formula that creates a severe penalty for developers making no effort to preserve even a small area of forest on site. The mitigation penalty for removing the last area of forest on a site is eight times the penalty for removing other forested areas on site. Since the applicant is receiving no public funds, the letter of the law requires them to create a forest conservation worksheet to calculate mitigation requirements and be subject to the penalty for removing all forest on the project site. The applicant wants to confirm this interpretation of the law and would like the Planning Board to discuss this issue. Staff recommends interpreting the law as it is written.

***Conservation Plan Revision MR2004302: Clarksburg High School***

Construction and widening of Shawnee Lane will remove .26 acres of forest in an area designated for conservation on the Clarksburg High School Forest Conservation Plan. The applicant, in conjunction with Montgomery County Public Schools, has submitted a revised forest conservation plan for Clarksburg High School showing the conservation area needed for the road project and proposed a mitigation method.

Loss of forest conservation area would normally be replaced at a 2:1 ratio, as is the standard when easement area is permanently removed, but not replaced onsite. However, the High School was required to plant in excess of their mitigation requirements to fulfill the SPA requirement that all stream buffer areas be planted. The forest conservation plan allowed the 2.03 acres of excess planting to "meet

forest planting requirements on future Montgomery County Public Schools projects". The applicant therefore proposes to mitigate the .26 acres of forest lost to Shawnee Lane on the School site. Since the mitigation is taking place onsite, the mitigation is calculated 1:1 and the requirement is .26 acres.

There are two outstanding issues that will be resolved as part of this plan revision.

1. Montgomery County Public Schools has not yet recorded a forest conservation easement over the sensitive areas of the property as required by their FCP. A condition of FCP approval is recordation of the easement area.
2. The FCP had mitigation planting requirements, as well as a requirement to plant all of the property's sensitive areas. According to the inspection record, planting successfully took place in November of 2008. However as a public agency, there was no trigger obliging Public Schools to call for a final inspection of the planting. Although the planted trees met the survival requirement, a condition of FCP approval is to obtain a final inspection.

Both the Shawnee FCP and the Clarksburg FCP revision meet the requirements of the Forest Conservation Law.

### ***Site Imperviousness***

The Clarksburg SPA does not have an impervious surface restriction; however impervious levels must be minimized to the extent possible. Roadway projects provide only limited opportunities to reduce impervious surfaces because of roadway standards, required sidewalks and pathways.

The applicant has minimized the amount of new impervious surfaces for the project by receiving a series of "design exceptions" from Montgomery County Department of Transportation (see Attachment 2). These design changes reduced pavement width and resulted in 4.65 acres of imperviousness. This is an increase of 2.81 acres above the existing road pavement.

### ***County DPS Special Protection Area Review Elements***

DPS has reviewed and conditionally approved the elements of the SPA water quality plan under its purview:

- Stormwater Management
- Sediment Control
- Performance Goals
- Monitoring

Detailed requirements for these elements are discussed on the attached approval memo dated September 13, 2011 (Attachment 1).

### **Forest Conservation Plan Variance**

Forest Conservation Variance (Attachment 4)

Section 22A-12(b) (3) of the County Code requires applicants to identify certain trees, shrubs, plants, and specific areas as priority for retention and protection. This section requires those areas to be left in an undisturbed condition unless the applicant obtains a variance in accordance with Chapter 22A-21 of the County code. More specifically the vegetation to remain undisturbed includes:

- A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
  - (1) *The federal Endangered Species Act of 1973,*

- (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
- (3) *COMAR 08.03.08;*
- B. *Trees that:*
  - (1) *Are part of an historic site,*
  - (2) *Are associated with an historic structure, or*
  - (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*
- C. *Any tree having a diameter measured at 4.5 feet above the ground of:*
  - (1) *30 inches or more, or*
  - (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

Unwarranted Hardship Basis

There are ten (10) specimen trees on the project area that will need to be removed. As a roadway widening, the limits of disturbance for this project have little flexibility. The area of disturbance includes a stream crossing and the area on the Clarksburg High School site previously shown a permanent conservation. It is not possible to develop this site and avoid impacts to specimen trees. The location of the existing road and development requirements, including stormwater management, has limited the ability to avoid removal and impact to specimen trees. Staff has reviewed the Applicant’s justification and based on the existing conditions of the roadway and surrounding properties, finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings

The Planning Board must make findings that the Applicant has met all requirements of this Chapter 22A-21 before granting the variance. Staff has made the following determination on the approval of the 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 disturbance and/or removal of trees are due to the widening of Shawnee Lane. The trees and their critical root zones lie within the right-of-way and construction area. Granting a variance request to allow land disturbance within this planned road area is not unique to this applicant.
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 of the Applicant. The Applicant has prepared and submitted plans which meet all applicable master plan, and forest conservation requirements. The requested variance is based upon existing site conditions, including the number and location 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 proposed development and not a result of land or building use on a neighboring property.

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

A Stormwater Management Concept Plan is under review by the MCDPS – Stormwater Management Section. In addition Maryland Department of Environment is reviewing this application for the wetland disturbance and mitigation associated with the stream crossing.

Mitigation for Trees Subject to the Variance Provisions – Eleven (11) trees proposed for removal in this variance request are located within the existing forest and their removal is accounted for in the forest clearing calculations. Staff does not recommend additional mitigation for the removal of trees that are accounted for in the forest clearing calculations.

#### 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 and received her response and recommendations on October 11, 2012. She recommended the variance be approved with mitigation. (Attachment 5)

Staff recommends that the variance be granted and finds that the Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code.

**Vicinity Map**





## DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County ExecutiveCarla Reid  
Director

September 13, 2011

Mr. Edward Wallington  
Loiederman Soltesz Associates, Inc.  
2 Research Place, Suite 100  
Rockville, Maryland 20850Re: **Revised Preliminary/Final Water  
Quality Plan for Shawnee Lane-Eastside**  
SM File #: 232762  
Tract Size/Zone: 11.2Ac/Roadway  
Tax Plate: EV and EW  
Watershed: Little Seneca Creek**SPECIAL PROTECTION AREA**

Dear Mr. Wallington:

Based on a review by the Department of Permitting Services, the Revised Preliminary/Final Water Quality Plan (P/FWQP) for the above mentioned site is conditionally approved. This approval is for the elements of the Preliminary/Final Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or stream buffer encroachments.

**Site Description:** The proposal is for the widening of Shawnee Lane and the addition of a sidewalk and bike path from MD Route 355 to Gateway Center Drive. This is located within the portion of the Little Seneca Creek watershed which is in the Clarksburg Special Protection Area.

**Stormwater Management:** The stormwater management concept proposes to meet required stormwater management goals through Environmental Site Design (ESD) via enhanced bioswales along both sides of the roadway and will provide the required ESD volume to satisfy the quality, quantity and recharge requirements.

**Sediment Control:** Redundant sediment controls are to be used throughout the site, with sediment traps used where feasible. Silt fence alone will not be allowed as a perimeter control. The use of super silt fence will be acceptable for small areas of disturbance.

**Performance Goals:** The performance goals that were established at the pre-application meeting for the Eastside development are to be carried over to this site also since it is an extension of the Eastside development.

The performance goals are as follows:

1. Maintain the natural on-site stream channels.
2. Minimize storm flow run off increases.

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3. Minimize increases to ambient water temperatures.
4. Minimize sediment loading.
5. Maintain stream base flows.
6. Protect springs, seeps, and wetlands.
7. Minimize nutrient loading.
8. Control insecticides, pesticides and toxic substances.

**Monitoring:** The monitoring must be in accordance with the BMP monitoring protocols which have been established by the Department of Permitting Services (DPS) and Department of Environmental Protection (DEP). The pre-construction monitoring requirements that were established at the pre-application meeting and further described in the Preliminary Water Quality Plan for the Eastside development are still applicable. The construction and post construction monitoring requirements are described in the "Attachment to the Preliminary Water Quality Plan" memorandum by DEP dated September 24, 2004 and included with the Preliminary Water Quality Plan approval letter for the Eastside subdivision. **No additional monitoring will be required for this extension of the original subdivision.**

Prior to the start of any monitoring activity, a meeting is to be held on site with DEP, DPS, and those responsible for conducting the monitoring to establish the monitoring parameters. **One year of pre-construction monitoring must be completed prior to the issuance of a sediment control permit.**

**Conditions of Approval:** The following are additional conditions which must be addressed in the initial submission of a detailed sediment control/stormwater management plan. This list may not be all inclusive and may change based on available information at the time of the subsequent plan reviews:

1. The proposed bioswales must provide an underdrain that connects into the proposed storm drain system.
2. Provide documentation showing that MCDOT will allow the bioswale and conveyance system in the public right-of-way.
3. The planting media in the bioswale must conform to the soil filter/planting media specifications for Montgomery County biofilters.
4. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
5. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.

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



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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 Leo Galanko at (240) 777-6242.

Sincerely,



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

RRB:tlc:CN232762

cc: C. Conlon (MNCPPC-DR)  
M. Pfefferle (MNCPPC-ED)  
R. Gauza (MCDEP)  
L. Galanko  
SM File # 232762

ESD Provided 11.2 ac.  
Recharge Provided



## DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett  
County Executive

May 12, 2008

Arthur Holmes, Jr.  
Director

Mr. Edward C. Wallington  
Vice President of Land Development  
Loiederman Soltesz Associates, Inc.  
2 Research Place, Suite 100  
Rockville, Maryland 20850

RE: Preliminary Plan No. I-20051010  
Eastside

Non-Standard Design for Shawnee Lane

Dear Mr. Wallington,

We are writing in response to your request for the Department of Public Works and Transportation's support for a non-standard design to construct your client's required improvements along Shawnee Lane between Gateway Center Drive and Frederick Road (MD 355). This letter is based on consideration of the comments contained in your June 8, 2007 application package, your December 18, 2007 Final Water Quality Plan proposal, 2007 revisions to Chapter 49 of the Montgomery County Code, various meetings that we have had since the original submission of your package, and on-going coordination with the Department of Permitting Services/Water Resources Plan Review Section. Please accept our apology for the length of time it has taken to complete this review.

The proposed changes include modifying DPWT Design Standard No. MC-217.03 by:

- narrowing the median width to sixteen (16) feet
- reducing the pavement (curb-to-curb) width to twenty five (25) feet to provide an eleven (11) foot wide inside lane and a fourteen (14) foot wide outside lane
- replacing curb-opening inlets with slotted drains per MSHA Design Standard No. 640.02 ("Standard Curb Opening Details for Combination Curb & Gutter")
- providing redundant stormwater management water quality and quantity control measures within the public right-of-way: including eight (8) stormfilters (or approved equivalents) and adjacent quantity storage tanks, with two (2) foot wide flat bottom swales bounded by 3:1 (maximum) side slopes on both sides of the road.

Division of Operations

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Shawnee Lane non-standard design  
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These modifications were requested for a number of reasons, including:

- the applicant was required to widen Shawnee Lane between Gateway Center Drive and Frederick Road (MD 355) in order to satisfy Local Area Transportation Review requirements
- the site is located within the Clarksburg Special Protection Area, where redundant water quality control and groundwater recharge measures are required
- Shawnee Lane crosses a significant tributary stream to Little Seneca Creek, which drains to a Use IV watershed; reducing the footprint of the roadway cross-section and stormwater management facilities will lessen the environmental impact on the stream
- your client does not control most of the property adjacent to Shawnee Lane within the improvement limits; minimizing the impacts on the adjacent properties is desirable
- the modified typical section will allow all required public improvements to be located within the master planned 120 foot right-of-way – averting the need for Public Improvements Easements on the abutting properties.

This letter is to advise you that we approve your proposed modified typical section, subject to the following conditions:

- final approval of the size and location of the proposed stormfilters and adjacent quantity storage tanks shall be handled by the Department of Permitting Services (coordinated approvals by their Right-of-Way Plan Review & Permitting and their Water Resources Plan Review Sections); these structures will need to be sufficiently close to the road to facilitate their maintenance by trucks parked in the outside lane
- the proposed curb openings should be located in accordance with the Maryland State Highway Administration's Highway Drainage Manual (or other acceptable engineering criteria) to ensure proper drainage of the roadway
- providing an enclosed storm drain system within the public right-of-way and perpetual easements, designed and constructed in accordance with the DPWT Storm Drain Design Criteria and errata
- providing safe and convenient connections between the road, sidewalk, and shared use path across the flat bottom side ditches
- no street trees may be planted in the three (3) foot wide shelf between the roadway and the front slope of the side ditches
- relocation of existing utilities as necessary to accommodate the reconstruction
- the extra one (1) foot gained by narrowing the roadway cross-section can be added to increase the width of the shelf between the back slope of the side ditch and the front edge of the sidewalk/shared use path – to make it four and a half (4'-6") wide

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During our meeting on February 8, 2008, we also discussed the location of the proposed median breaks. Our policy on the location of median breaks is that they should be spaced no closer than six hundred (600) feet, although we can allow exceptions based on projected traffic movements and volumes. We accept your proposal to provide median breaks at: the intersection with proposed Soper House Road/future entrance to the Garnkirk Property, the existing entrance to the MCPS Bus Depot, and the driveway for the Moyer Moving Property. (Modifications to the access points for the Bus Depot and the Moyer Moving Properties will be necessary in the future when Observation Drive is constructed.) Left turn storage lanes will be needed at each of these median breaks.

Of the two concepts that were proposed to provide median breaks and left storage lanes for the entrances at Soper House Road and the Bus Depot, we prefer Option #2. This option will allow the existing on-site bus loop to remain unchanged. Instead of the proposed "special pavement" approaching the Soper House left turn storage lane, please provide a painted striped/hatched in its place. The median break opposite the depot exit should be channelized and signed to permit only a northbound left turn exit movement.

Montgomery County Public Schools has requested to be included in future design discussions for this project. For any notifications or status meetings, please include Mr. John Mathews, the Director of their Transportation Department. Mr. Mathews may be contacted by e-mail at [john\\_mathews@mcpsmd.org](mailto:john_mathews@mcpsmd.org).

Regarding Observation Drive, you will need to coordinate your drawings with those of our Facility Planning Study for the extension of that roadway. Mr. Uzair Asadullah, Senior Planning Specialist in our Division of Capital Development, is the Project Manager of that study. Please contact Mr. Asadullah prior to submitting for DPS approval of your paving and storm drainage plans. Mr. Asadullah may be contacted at 240-777-7221.

With respect to modifications at the intersection with Frederick Road (MD 355), due to the offset pavement on each side of MD 355, the final decision on those measures lies with the Maryland State Highway Administration. We would happy to participate in a meeting with yourself and the MSHA to discuss adjustments of the eastbound approach on Shawnee Lane to improve intersection operations.

Mr. Edward C. Wallington  
Shawnee Lane non-standard design  
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Thank you for your cooperation and assistance in this matter. If you have any questions regarding this letter, please contact me at your earliest convenience.

Sincerely,



Gregory M. Leck, Manager  
Development Review Group  
Traffic Engineering and Operations Section

M:\sub\gm\docs\pp\1-20051010, Eastside, DPWT comments on Shawnee Ln mods

- cc: Bob Spalding; Miller and Smith
- John Mathews; MCPS Transportation
- Mary Pat Wilson; MCPS Real Estate Management
- Steven Foster; MSHA Engineering Access Permits
- Shahriar Etemadi; M-NCPPC Transportation Planning
- Leo Galanko; DPS Water Resources Plan Review
- Sarah Navid; DPS Right-of-Way Permitting and Plan Review
- Uzair Asadullah; DPWT Capital Development/Design
- Emil Wolanin; DPWT Traffic Engineering and Operations
- Fred Lees; DPWT Traffic Engineering and Operations
- Seifu Kerse; DPWT Traffic Engineering and Operations
- Sam Farhadi; DPWT Traffic Engineering and Operations

### Attachment 3

## Chapter 22A. Forest Conservation Law

### **Sec. 22A-9. County Highway Projects**

(a) General.

(1) This section applies to construction of a highway by the County as part of an approved Capital Improvements Program project.

(2) The construction should minimize forest cutting or clearing and loss of specimen or champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make a reasonable effort to minimize the cutting or clearing of trees and other woody plants.

(b) If the forest to be cut or cleared for a County highway project equals or exceeds 20,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

(c) Reforestation for County highway projects must meet the standards in subsections 22A-12(e), (g) and (h).

(d) Any mitigation requirement for loss of specimen or champion trees must be based on the size and character of the tree. (2001 L.M.C., ch. 19, § 1; 2010 L.M.C., ch. 55, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

(a) a preliminary or final forest conservation plan approved before this Act took effect November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].



Sept 13, 2012

Katherine Nelson, Planner Area 3  
M-NCPPC  
Environmental Planning Division  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Shawnee Lane #82005038A  
Final Forest Conservation Plan – Updated Variance Request  
LSA Project #1896-00-00  
NRI #420101750  
Mandatory Referral #2010815

Dear Ms. Nelson,

On behalf of Miller and Smith at Eastside, LLC., Loiederman Soltesz Associates, Inc. is requesting a variance for the removal of ten (10) trees and impact to the critical root zone (CRZ) of four (4) trees, all 30 inches or greater in dbh, as required under Section 22A-21 of Montgomery County's Forest Conservation Law and recent revisions to the State Forest Conservation Law. The removal or impact of these trees is for construction of county required master plan road improvements to Shawnee Lane.

### **Project Information**

Shawnee Lane is located between Frederick Road (Md Route 355) and Gateway Center Drive, in the community of Clarksburg, Montgomery County, Maryland. Shawnee Lane is bordered by fragmented hardwood forest and residential properties to the north and commercial and institutional properties to the south. The road improvements are required as a condition of site plan approval for Gallery Park, a residential development located adjacent to Shawnee Lane.

The trees identified in this variance request for removal or CRZ impacts are shown on the Shawnee Lane Final Forest Conservation Plan (FFCP). The trees to be removed are either located within the limits of disturbance (LOD) or the LOD impacts to their critical root zones making tree survival unlikely. The trees listed for critical root zone impacts have 30% or less of their CRZs impacted.

### **Trees for Removal**

The 10 trees identified for removal in this variance request fall into two categories, those trees to be removed due to their location within the minimum limit of disturbance and those to be removed due to extensive root zone impact and fair or poor condition.

<b>Table 1. Trees to be Removed</b>			
<b>Tree #</b>	<b>Species</b>	<b>D.B.H (inches)</b>	<b>Tree Condition</b>
1	Black Oak	32	Good
5	Northern Red Oak	32	Fair
8	Northern Red Oak	30	Good
14	Southern Red Oak	55	Fair, twin
18	Tulip Poplar	31	Good
20	Tulip Poplar	31	Poor, trunk rot
21	Tulip Poplar	32	Fair, leaning
23	Southern Red Oak	44	Poor, twin with many dead limbs
30	Tulip Poplar	31	Good
36	Red Maple	32	Good, located on private residence

Trees 1, 5, 8, 14, 18, 20, 21, 23, 30 and 36 are all proposed for removal because the entire tree is located within the minimum LOD required for the road improvements. Additional minimization is not feasible for these trees.

### **Critical Root Zone Impacts**

There are five (4) specimen trees impacted by the minimum LOD for the required road improvements. These trees have less than 30% CRZ disturbance and would be expected to survive with typical tree protection measures (Table 2). Please note that several of these trees are in poor or fair condition (22, 31, and 33). We are not proposing to remove these trees at this time as they are or could provide nesting/cavity habitat for wildlife, regardless of their survival. But, in consultation with the MNCPPC inspector at the pre-construction meeting a determination will need to be made as to whether these trees could or will pose a hazard that warrants their removal due to their proximity to roads, sidewalks and/or structures.

<b>Table 2. Trees with Critical Root Zone Impact Only</b>				
<b>Tree #</b>	<b>Species</b>	<b>D.B.H. (Inches)</b>	<b>Tree Condition</b>	<b>% CRZ Impact</b>
22	Tulip Poplar	30	Poor, twin, half dead	20%
31	Tulip Poplar	31	Fair	2%
33	Red Maple	37	Poor, cavity, large dead limb	10%
35	Pin Oak	35	Existing root disturbance	4%

### **Clarksburg High School Property Trees**

There is one (1) tree identified for removal (Table 3) and two (2) trees impacted (Table 4) on the Clarksburg High School Property caused by the grading for the Shawnee Lane



will be shown on the pending Clarksburg High School Final Forest Conservation Plan Amendment. The revision to the Clarksburg High School Final Forest Conservation Plan as a limited amendment is a revision to a plan which was approved prior to the requirement for a tree variance for impacted specimen trees. We do not believe a variance is not required for the removal and impact of these, however should one be required, the impact and tree removal data on the property is listed below. The same application requirements and minimum criteria demonstrated for the trees along Shawnee Lane apply to these trees as well. The county requires that the applicant improve Shawnee Lane as outlined in the Master Plan. A non-standard design of Shawnee Lane reduces the impacts and total disturbed area compared to the standard design.

Table 3. Tree to be Removed on CHS (variance not required)			
Tree #	Species	D.B.H. (Inches)	Tree Condition
26	Red Maple	31	Poor, large cavity

Table 4. Trees with Critical Root Zone Impact Only on CHS (variance not required)				
Tree #	Species	D.B.H. (Inches)	Tree Condition	% CRZ Impact
28	Red Maple	35	Poor, 3 stem, storm damage	26%
34	Tulip Poplar	30	Good	21%

### Additional Application Requirements

Per Montgomery County's Forest Conservation Law Section 22A-21(b) of the *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) Provided any other information appropriate to support the request.

Pursuant to: Item "(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship; and" Item "(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas".

As part of a condition of the Gallery Park residential development located at the corner of Gateway Center Drive and Shawnee Lane, the county requires that the applicant improve existing Shawnee Lane to provide for the increased traffic and pedestrian circulation associated with this area. Part of the road improvements require a sidewalk/bike path for children to safely commute to the abutting Clarksburg High School and the nearby middle school. Additionally, a transit station is programmed to be located

on future Observation Drive, near its intersection with Shawnee Lane. The proposed bike path and sidewalk will provide for pedestrian and bicycle access to the transit station from MD 355 and Gateway Center Drive. Additionally the existing Shawnee Lane is a master planned road right of way as noted in "Clarksburg Master Plan & Hyattstown Special Study Area", and the bike path has been designed to meet requirements outlined in the Master Plan.

If the applicant is denied the requested variance to remove the trees, it would be impossible to proceed with the required master plan road improvements. As such, this would cause **unwarranted hardship** to the applicant, as well as to the community that this road serves.

Enforcement of a prohibition on removing the specimen trees would **deprive the citizens of the county and the public of rights commonly enjoyed by others** who are served by similar master plan roads and associated amenities.

Pursuant to *"(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 existing Shawnee Lane is located within the Little Seneca Creek Watershed, Use IV and the site is also located within the Clarksburg Special Protection area. A perennial stream and adjacent wetlands are present in the vicinity of the road project. A perennial stream flows through an existing culvert beneath Shawnee Lane. The Wetlands on site in the Clarksburg Special Protection Area receive a 75 foot buffer and the stream requires a 125 foot minimum buffer which is expanded because of the presence of wetlands, wetland buffers and steep slopes.

There is 3.66 acres of existing forest within the Shawnee Lane project area. Of the total forested area, 0.70 acres exists within the stream buffer and is identified on the NRI/FSD as a high priority for retention. The majority of the trees 30 inches and greater in dbh are located in the forested portion of the site. The trees 30 inches and greater in dbh that will be removed or CRZ impacted are necessary to accomplish the required road improvements.

Pursuant to: Item *"(4) Provided any other information appropriate to support the request."*

Due to the requirement by the county for the applicant to improve existing Shawnee Lane to provide for the increased traffic and pedestrian circulation associated with this area, the impacts caused by the location of the improvements were unavoidable. A request to the Maryland Department of Public Works and Transportation (DPWT) for a non-standard design for the required road improvements along Shawnee Lane was submitted on June 8, 2007 and was accepted on May 12, 2008. The non-standard design for the road improvements reduces the impacts and total disturbed area compared to the standard design.

### Minimum criteria for Variance

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 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*

Pursuant to “(1) *Will confer on the applicant a special privilege that would be denied to other applicants.*” The removal/impact of specimen trees associated with this variance request are for road improvements require by the Clarksburg Master plan. These improvements are intended to improve vehicle and pedestrian circulation for the community as a whole, not just for the applicants associated residential development. As such, this is not a **special privilege** to be conferred on the applicant.

Pursuant to “(2) *Is based on conditions or circumstances which are the result of actions by the applicant; and (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property*” the applicant has taken no **actions leading to the conditions or circumstances** that are the subject of this variance request. The variance request is necessary to fulfill requirements as stated in the Clarksburg master plan. Furthermore, the **surrounding land uses** do not have any **inherent characteristics that have created** this particular need for a variance.

Pursuant to “(4) *Will violate State water quality standards or cause measurable degradation in water quality*” the applicant cites the reasoning in the previous response to requirement 22A-21 (b)(3), and restates its belief that granting this variance request **will not violate State water quality standards or cause measurable degradation in State water quality standards.**

For these reasons listed above, we believe it is appropriate to grant this request for a variance. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,  
LOIEDERMAN SOLTESZ ASSOCIATES, INC.



Keely Lauretti  
Landscape Architect

Attachment



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

October 11, 2012

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

RE: Shawnee Lane, DAIC 82005038A, NRI/FSD application accepted on 4/15/2010

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

These recommendations apply to the request for all removals and disturbance to trees associated with the Shawnee Lane plan, DAIC 82005038A, including those on the associated amendment to the Clarksburg High School forest conservation plan.

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 criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance

of trees, or other vegetation, as a result of development activity is not, in and of itself, is not interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, 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 criterion.
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 criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. 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 the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, 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. 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.

In the event that revisions to the LOD are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

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, Chief