

- A. Water Quality Plan MR 2013019: Mandatory Referral for Stringtown Road**
B. Forest Conservation Plan MR 2013019: Mandatory Referral for Stringtown Road
C. Forest Conservation Plan Amendment 820020220: Highlands at Clarksburg
D. Forest Conservation Plan Amendment 820030020: Clarksburg Village, Phase 1

Staff Report Date: February 14, 2013

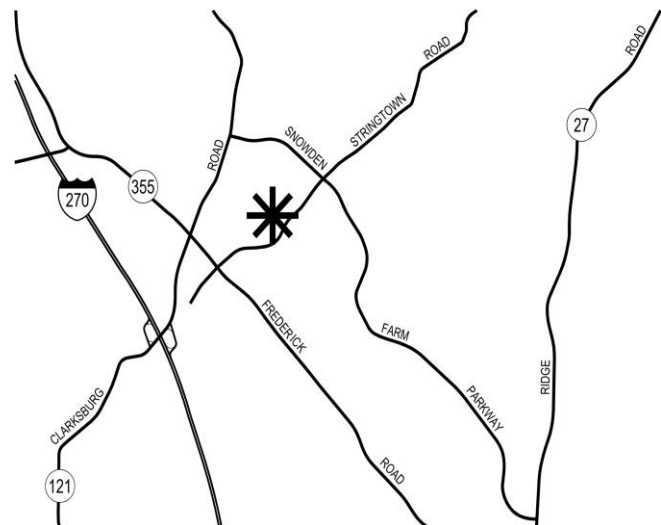
 Katherine Nelson, Planner Coordinator katherine.nelson@montgomeryplanning.org (301) 495-4622
JAC John Carter, Chief, Area 3 Planning, john.carter@montgomeryplanning.org (301) 495-4575

description

Stringtown Road

The Montgomery County Department of Transportation will reconstruct the existing ¾-mile, two-lane section of Stringtown Road as a four-lane divided roadway between Saint Clair Road/Overlook Park Drive and to a point 500 feet west of Snowden Farm Pkwy, Clarksburg Master Plan

- *A. Final Water Quality Plan MR 2013019:
Mandatory Referral for Stringtown Road**
Approval with condition
- *B. Forest Conservation Plan MR 2013019:
Mandatory Referral for Stringtown Road**
Approval with conditions
- *C. Forest Conservation Plan Amendment 820020220:
Highlands at Clarksburg**
Stringtown Road Construction Encroachments
Approval with conditions
- *D. Forest Conservation Plan Amendment 820030020:
Clarksburg Village, Phase I**
Stringtown Road Construction Encroachments
Approval with condition



summary

- There are four items for Planning Board review: the A. Water Quality Plan and B. Forest Conservation Plan for Stringtown Road, and Forest Conservation Plan Amendments for C. Highlands of Clarksburg and D. Clarksburg Village, Phase I.
- The road design and alignment has been reviewed and approved as part of adjacent development projects.
- The Planning Board's actions on the 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 (see separate staff report).

DISCUSSION

The Montgomery County Department of Transportation (“MCDOT” or “Applicant”) proposes to reconstruct and widen Stringtown Road for approximately three quarters of a mile between Saint Clair/Overlook Park Drive and to a point approximately 500 feet west of Snowden Farm Parkway (see Figure 1). This road project will complete this section of Stringtown Road to full width standards as a four lane divided road and connect to sections completed as part of other development projects.

The entire road design and much of the forest conservation requirement has been addressed as part of other Site Plans (Clarksburg Town Center 819980010, Highlands of Clarksburg, and Clarksburg Village, Phase I (Figure 3).

The recent changes to the County’s stormwater management requirements have resulted in an increase in the amount of space needed to accommodate the stormwater management facilities for this road project. The stormwater facilities and grading must expand into areas that were previously shown as forest saved on the Highlands of Clarksburg and Clarksburg Village, Phase I, Forest Conservation Plans and Site Plans (Figure 2). The road project also requires grading on to properties not formerly covered by a forest conservation plan (Figure 3).

In addition, this project is located within the Clarksburg Special Protection Area, and it requires the approval of a Water Quality Plan.



Figure 1: Stringtown Road

A. WATER QUALITY PLAN FOR STRINGTOWN ROAD

Staff Recommendation

Staff recommends **Approval** of the Water Quality Plan for Stringtown Road with the following condition:

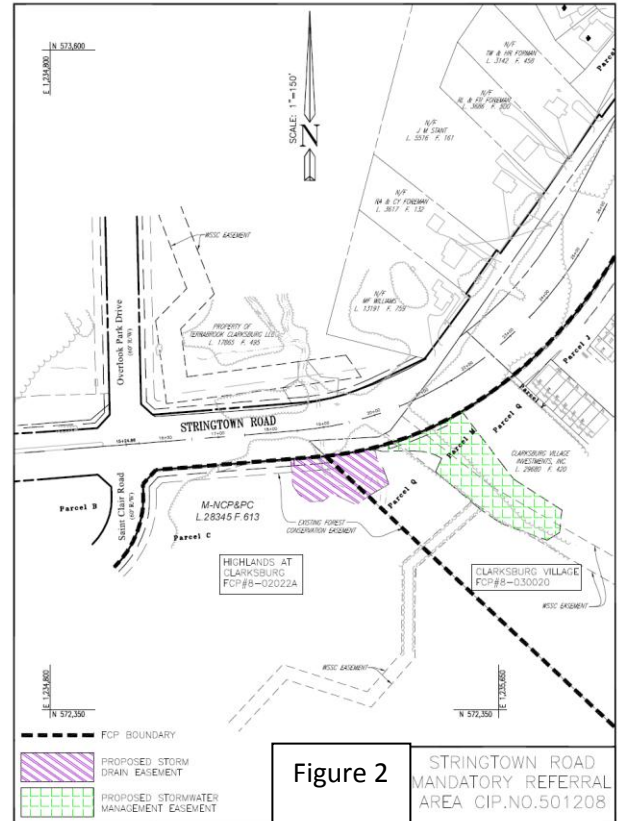
1. Conformance to the conditions as stated in the Montgomery County Department of Permitting Services (DPS) final water quality plan approval letter (Attachment 1).

Analysis and Findings

Water Quality Plan Review

As part of the requirements of the Special Protection Area law, a SPA Water Quality Plan must be reviewed in conjunction with a Mandatory Referral¹. Under the provision of the law, the Montgomery County Department of Permitting Services (MCDPS) and the Planning Board have different responsibilities in the review of a Water Quality Plan. MCDPS reviewed and approved the elements of the Final Water Quality Plan under its purview as part of previous development projects in this area (Attachment 1). The Planning Board's responsibility is to determine if conformance to environmental guidelines, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

Staff recommends that the Planning Board approve the Special Protection Area Water Quality Plan for this project.



Environmental Guidelines

The roadway crosses the Clarksburg tributary of Little Seneca Creek approximately 500 feet east of Saint Clair/Overlook Park Drive. A culvert carries the stream under the existing two-lane roadway. Approximately 34,000 square feet of new stream buffer disturbance will take place as part of the road realignment and widening. 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.

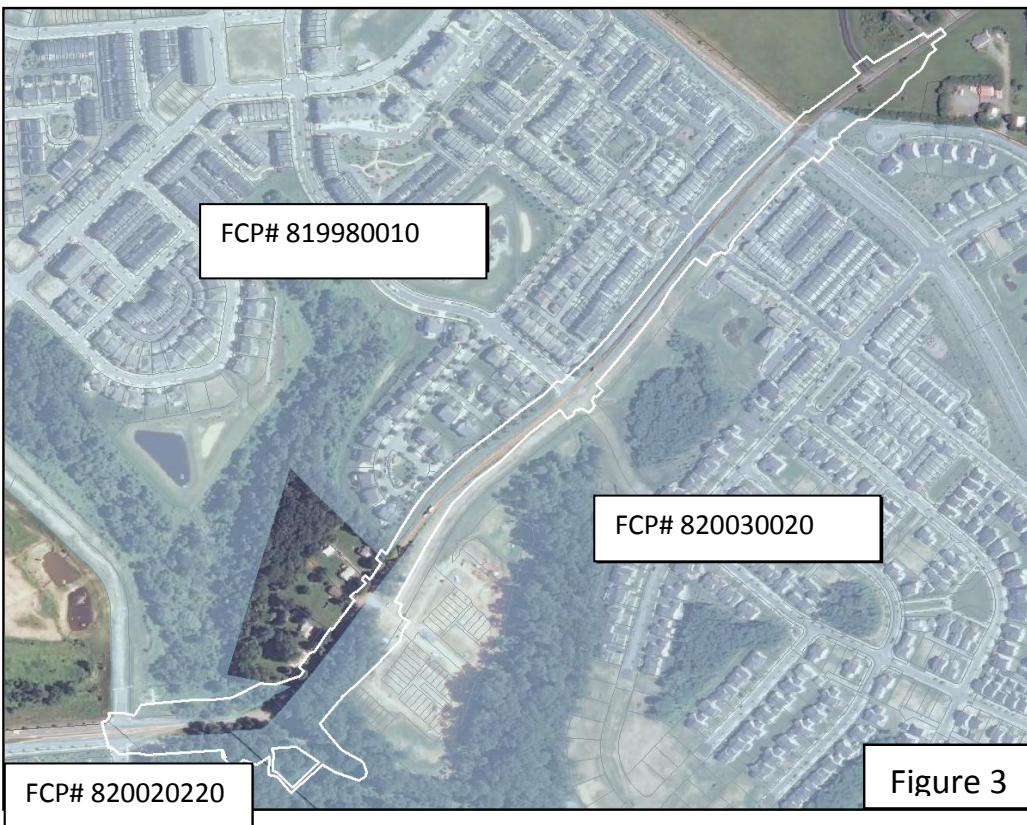
¹ Section 19-62 (c) of the Montgomery County Code states that " before engaging in any land disturbing activity on publicly owned property in an area designated as a special protection area, the applying agency or department should prepare a combined preliminary and final water quality plan."

B. FOREST CONSERVATION PLAN FOR STRINGTOWN ROAD

Staff Recommendation

Staff recommends **Approval** of the Final Forest Conservation Plan for Stringtown Road MR2013019 with the following conditions:

1. Prior to Right-of-Way plat recordation for this project, the Applicant must execute a Partial Release and Amendment to Forest Conservation Easement Agreement to be approved by the M-NCPPC staff and recorded in the land records. Liber and Folio reference to the recorded Agreement must be shown on the Right-of-Way plat(s).
2. Mitigate forest loss within the Seneca Creek watershed.
3. Obtain a Permit from Department of Parks for disturbance within parkland.



Analysis and Findings

Stringtown Road Forest Conservation Plan

The forest conservation plan for the Mandatory Referral, which is a 4.6-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. The road edge is currently forested. The road widening proposes to remove 0.5 acres of forest located within the project area. Under Chapter 22A-9 of the County code, roadway projects compensate for the removal of the forest at a 1:1 to ratio. Since 0.5 acres of forest will be removed there is a 0.5 acre forest planting requirement.

**C. FOREST CONSERVATION PLAN AMENDMENT 820020220: HIGHLANDS OF CLARKSBURG, AND
D. FOREST CONSERVATION PLAN AMENDMENT 820030020: CLARKSBURG VILLAGE, PHASE I**

Staff Recommendation

Staff recommends **Approval** of the Forest Conservation Plan Amendment 8200220: Highlands of Clarksburg, subject to the following conditions:

1. Execute an abandonment of easement in the area of stormwater management encroachment to be shown on the right-of-way plat.
2. Mitigate easement loss at a 2:1 basis within the Seneca Creek watershed.

Staff also recommends **Approval** of the Forest Conservation Plan Amendment 820030020: Clarksburg Village, Phase I, subject to the following condition:

1. Mitigate forest loss at a 2:1 basis within the Seneca Creek watershed.

Analysis and Findings

In order to implement the Mandatory Referral for Stringtown Road, the Planning Board must approve Forest Conservation Plan Amendments to two previously approved Forest Conservation Plans. The Forest Conservation Plan associated with the Mandatory Referral does not overlap with the previously approved Forest Conservation Plans for Clarksburg Village or the Highlands of Clarksburg.

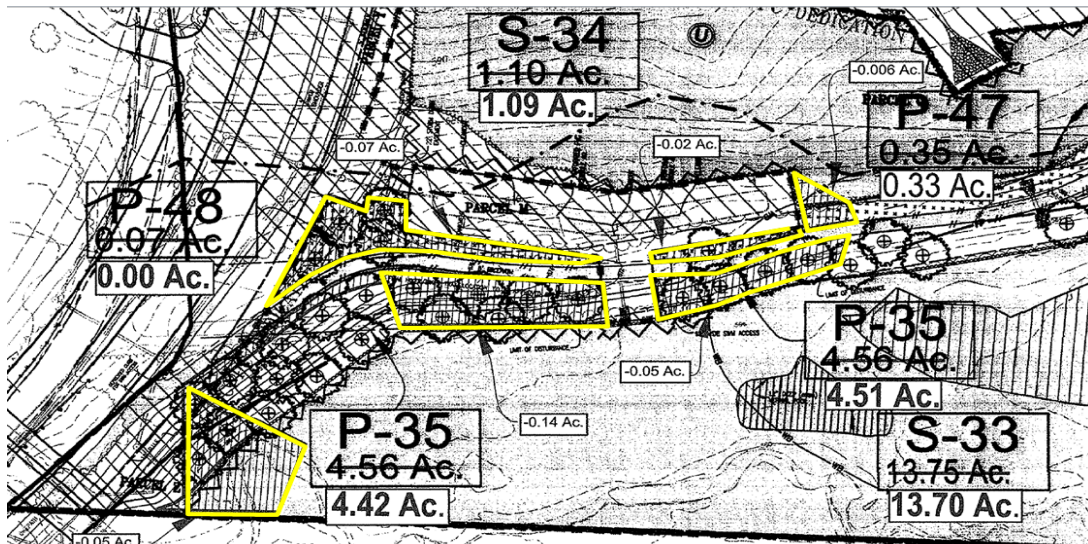


Figure 4: Clarksburg Village FCP
Additional Encroachment Areas

Forest Conservation Plan Amendments: Highlands of Clarksburg (Figure 5) and Clarksburg Village, Phase I (Figure 4)

Both plans accounted for the widening and realignment of Stringtown Road. Due to the expanded area now required for stormwater management, an additional 0.14 acres of forest from the Highlands of Clarksburg and 0.34 acres of forest from Clarksburg Village will be removed. Loss of forest requires replacement at a 2:1 ratio; the standard when easement area is permanently removed, but not replaced onsite.

To mitigate for the removal of forest for the entire project including the easement removed from the two site plans, MCDOT will need to plant 1.46 acres of offsite forest to meet the forest planting requirements for this project. MCDOT will meet the requirements by utilizing a forest mitigation bank in the Seneca Creek watershed.

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 and required sidewalks and pathways. Staff has not found any opportunities to further minimize the imperviousness levels associated with this project and believes that it does not increase imperviousness to excess.

County DPS Special Protection Area Review Element

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

- Stormwater Management
- Sediment Control
- Performance Goals
- Monitoring

Review for this section of Stringtown Road, including the stream crossing was done as part of the review of the Highlands of Clarksburg 820020220/1-1995042. Detailed requirements for these elements are discussed on the attached approval memo dated October 11, 2005 (Attachment 1).

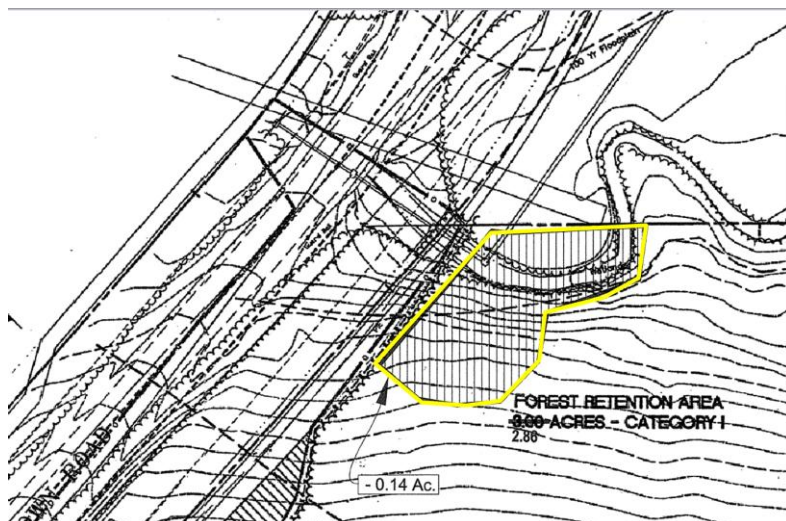


Figure 5: Highland of Clarksburg FCP
Additional Encroachment Areas

FOREST CONSERVATION PLAN VARIANCE

The Forest Conservation Variance covers all four items of the Mandatory Referral for Stringtown Road. Forest Conservation Variance (Attachment 2) 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 (“Protected Trees”). 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.*

Analysis and Findings

Unwarranted Hardship Basis

There are ten (10) Protected Trees in the project area that will be impacted, five of which will need to be removed. As a roadway widening, the limits of disturbance for this project have very little flexibility and have been established to some degree by the right-of-way that has been previously dedicated for the road. The existing road must remain operational while the new road and stream crossing is constructed which eliminates the possibility of constructing the new road within the existing road alignment. The area of disturbance is primarily within a stream valley and the area on the adjacent forest conservation plans previously shown as permanent conservation. It is not possible to construct the road to the master plan recommended 4-lane divided cross section and avoid impacts to Protected 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 Chapter 22A-21 before granting a variance. Staff has made the following determination on the approval of a 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 Stringtown Road. The trees and their critical root

zones lie within the dedicated right-of-way and adjacent limits of disturbance that includes stormwater facilities meeting the new design standards. The completion of this roadway to the master planned recommended cross section must comply with established stormwater regulations as would any road project. 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 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 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 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 has been accepted by the MCDPS – Stormwater Management Section. In accordance with that approval, the concept design will satisfy the SPA quality, quantity and recharge requirements to maintain appropriate water quality standards. The offsite planting of forest will further mitigate to some degree, any water quality impacts associated with tree loss for this project.

Mitigation for Trees Subject to the Variance Provisions

Ten (10) trees proposed for impact and 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 February 8, 2013. She recommended the variance be approved with mitigation (Attachment 3).

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

ATTACHMENTS

1. Final Water Quality Plan from DPS
2. Forest Conservation Variance Request
3. Forest Conservation Arborist Recommendation

G: carter/Stringtown Road Staff Report



Copy to MATT SHEA - Newland
Div. MARS, Sel Handls
~~Copy to BIRD~~

ATTACHMENT 1

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

October 11, 2005

Robert C. Hubbard
Director

Mr. Brian Davila, P.E.
Charles P. Johnson and Associates
1751 Elton Road, Suite 300
Silver Spring, MD 20903

Re: Stormwater Management Final Water Quality
Plan and **CONCEPT** Request for Completion of
Stringtown Road.
Preliminary Plan #: 1-95042
SM File #: 1-95042
Tract Size/Zone: 5.52 Acres/Roadway
Total Concept Area: 5.52 acres
Watershed: Little Seneca Creek

Clarksburg Special Protection Area

Dear Mr. Davila:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists on-site water quality control via sand filters, hydrodynamic structures, and Stormfilters. Channel protection is not required.

The following items and conditions will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. Formal written confirmation from MCDPWT allowing the stormwater structures within the Right of Way must be presented prior to final plan approval.
6. All structures will be provided with driveway aprons from Stringtown Road.
7. The stream crossing culvert design must comply with the County's Environmental Stream Crossing Design Guidelines. A completed stream survey must be submitted with the crossing design.



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

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

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Richard Gee at 240-777-6333.

Sincerely,



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

RRB:dm CN218600

cc: C. Conlon
S. Federline
SM File # 218600

QN -NA; Acres: 5.52
QL - On site; Acres: 5.52
Recharge is not provided

February 6, 2013

Mr. Mark Pfefferle
 Acting Chief
 Environmental Planning, Community-Based Planning
 Maryland – National Capital Park and Planning Commission
 8787 Georgia Ave.
 Silver Spring, MD 20910

RE: Stringtown Road Phase 3A & 3B
 Forest Conservation Plan, 30" Tree Variance

Dear Mr. Pfefferle:

Charles P. Johnson Associates on behalf of the Montgomery County Department of Transportation, respectfully requests a variance from Section 22A-21 of the Montgomery County Code. This request is being made in concert with design plans prepared for the Stringtown Road Realignment (Project Sites 3A & 3B) in Clarksburg, MD that requires removal and impacts to several trees having a diameter breast height of thirty (30) inches or greater.

A paper copy of the Preliminary Forest Conservation Plan set and a CD containing a digital copy of this Variance Request letter are attached for your review and comment. The tables below summarize impacts to specimen trees (≥30" diameter breast height) that the subject of this Variance Request. More detailed tables including tree protection measures can be referenced on the FCP title sheet.

NEW TREES TO BE REMOVED (NOT PREVIOUSLY INCLUDED IN EX. APPROVED FCP)

ID	FCP Sheet No.	Common Name	DBH (in.)	Condition	Tree Within LOD	CRZ Within LOD	Plan view % CRZ Impacts	Remove/ Retain
11200	3	White Oak	51	Poor	Y	Y	100%	Remove

TREES COUNTED AS REMOVED BUT RETAINED AT THIS TIME

ID	FCP Sheet No.	Common Name	DBH (in.)	Condition	Tree Within LOD	CRZ Within LOD	Plan view % CRZ Impacts	Remove/ Retain
11046	3	Tulip Poplar	35	Good	N	Y	56%	Retain
11094	3	Tulip Poplar	32	Fair	N	Y	38%	Retain
11130	3	Tulip Poplar	30	Fair	N	Y	1%	Retain
11190	3	Tulip Poplar	34	Fair	N	Y	21%	Retain

TREES RETAINED w/CRZ IMPACTS

ID	FCP Sheet No.	Common Name	DBH (in.)	Condition	Tree Within LOD	CRZ Within LOD	Plan view % CRZ Impacts	Remove/ Retain
10913	3	Flowering Cherry	30	Fair	N	Y	18%	Retain
11049	3	Tulip Poplar	32	Good	N	Y	7%	Retain
11050	3	Tulip Poplar	31	Fair	N	Y	3%	Retain
11057	3	Tulip Poplar	37.5	Fair	N	Y	0%	Retain
11083	3	Tulip Poplar	30	Fair	N	Y	22%	Retain

NO ADDITIONAL DISTURBANCE ABOVE EX. APPROVED FCP (TREES NOT SUBJECT TO VARIANCE)

ID	FCP Sheet No.	Common Name	DBH (in.)	Condition	Tree Within LOD	CRZ Within LOD	Plan view % CRZ Impacts	Remove/ Retain
10911	3	Tulip Poplar	30	Good	Y	Y	100%	Remove (FCP 820030020)
10981	3	Tulip Poplar	31	Good	Y	Y	100%	Remove (FCP 820030020)
10999	3	Tulip Poplar	30	Good	Y	Y	100%	Remove (FCP 820030020)
11079	3	Tulip Poplar	35	Poor	Y	Y	100%	Remove (FCP 820030020)
11081	3	Tulip Poplar	36	Good	Y	Y	100%	Remove (FCP 820030020)
11181	3	Tulip Poplar	30	Fair	Y	Y	100%	Remove (FCP 820030020)

Additionally, it is our understanding that applicants for a variance must demonstrate the following criteria. Information regarding how each criteria have been met follow each point.

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

The Stringtown Road Improvements begin at the Overlook Park Drive/St. Claire Road intersection and continue to just beyond Snowden Farm Parkway. These road improvements were originally to be completed as part of the construction of the adjacent Clarksburg Town Center and Clarksburg Village subdivisions. A portion of the previously approved road improvements has been constructed along the Clarksburg Village frontage, spanning from Gate Rail Road (station 25+30) to Rainbow Arch Drive (station 43+20). However, since then, the Montgomery County Department of Transportation has incorporated the remaining road improvements as shown on the Forest Conservation Plan as a Capitol Improvement Project, Project Number 2000717 (501208).

The goals of the Stringtown Road expansion project are to:

- Meet the transportation needs of a growing community,
- Provide safe driving conditions,
- Provide safe pedestrian passage, and
- Treat stormwater run-off.

In order to accommodate the proposed new Stringtown Road improvements and meet the project goals removal of tree #11200 is required. Tree #11200, located on sheet #2 of the FCP plans, is in very poor health. It is located at the edge of the existing forest adjacent to Stringtown Road. Several additional trees will likely be impacted by the proposed project, however they may also be healthy enough to sustain temporary construction impacts likely to occur to the critical root zone. Due to the uncertainty of the survival of these trees they have been included in this variance request as trees for removal, but will be saved and protected during construction in an effort to avoid unnecessary removals.

Among these trees listed for removal is tree #11190, located south of the existing Stringtown Road culvert. Tree #11190 is not within the project LOD however it is within a proposed stormwater easement that will replace the existing protective forest conservation easement. Because the stormwater easement will allow for future facility access, maintenance and repairs in this area, tree #11190 is listed for removal but will be also protected during construction to avoid an unnecessary removal at this time.

Lastly, portions of the Stringtown Road FCP tract area overlaps with areas that have existing approved Forest Conservation Plans. In order to clarify which trees are subject to the current variance, trees that were previously approved for removal have been listed.

Overall, should the variance to remove a total of 5 trees not be granted, the proposed plan cannot be implemented and would result in a hardship to the developing local community that is dependent on improved road infrastructure for its success.

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

Enforcement of these rules would deprive the County of their right to improve driver and pedestrian safety along the String town Road corridor. These road improvements are required to meet the current and anticipated transportation needs of the local community. The proposed design was configured to avoid impacts to as many existing trees as possible.

- 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.*

State water quality standards will not be violated and a measurable degradation in water quality will not occur as a result of granting this variance. In this case, the proposed road expansion includes stormwater management facilities which do not currently exist on site. Therefore, the proposed design will provide a significantly higher standard of water quality treatment than what currently exists. In addition, the Stormwater Management Concept and a Sediment Control Plan will be submitted for review and approval by Montgomery County Department of Permitting Services to ensure that current State and County water quality standards and regulations will be met.

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

The approved NRI/FSD #420121470 acknowledges that there are no rare, threatened or endangered species within the boundaries of the project site as delineated. Also, the Maryland Historical Trust has determined that there are no historic properties affected within the project site. Please also note that efforts to retain all trees were made, however due to population growth and expanding development within the Clarksburg Village area, road improvements are required to meet the safe transportation needs of motorists, cyclist's and pedestrians.

- 5) *Applicants must apply for and include mitigation in their requests for variances for all trees, and other vegetation, regulated under section 5-1607 that are removed or disturbed by the applicant's activity.*

Mitigation for tree #11200 and #11190 will be provided for within a Montgomery County Department of Transportation forest mitigation bank site.

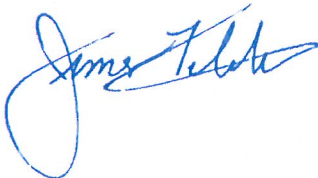
Additional criteria in Section 22A-21(d) states that a variance must not be granted if granting the request:

- (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.

The purpose of the project, as proposed by Montgomery County Department of Transportation, is to perform road improvements along Stringtown Road, while minimizing environmental impacts to the greatest extent possible. The existing conditions are not the result of the applicant, nor did the existing conditions arise from land or building use on a neighboring property. The improvements along Stringtown Road are required to accommodate greater volumes of traffic, unanticipated at the time of the original road construction. As a result of the road improvements, significant improvements to water quality will occur through the installation of stormwater management facilities.

If you have any other questions or need additional information, please contact me at 301-208-9573 or via email at: JFetchu@cpja.com.

Sincerely,



James Fetchu, RLA
Division Manager, Environmental Services

Cc: File
Justin Bell, CPJ Silver Spring

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

February 8, 2013

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

RE: Stringtown Road, MR 2012019/2003806, NRI/FSD application accepted on 3/22/2012

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.

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.

Françoise Carrier
February 8, 2013
Page 2

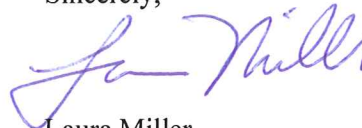
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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