

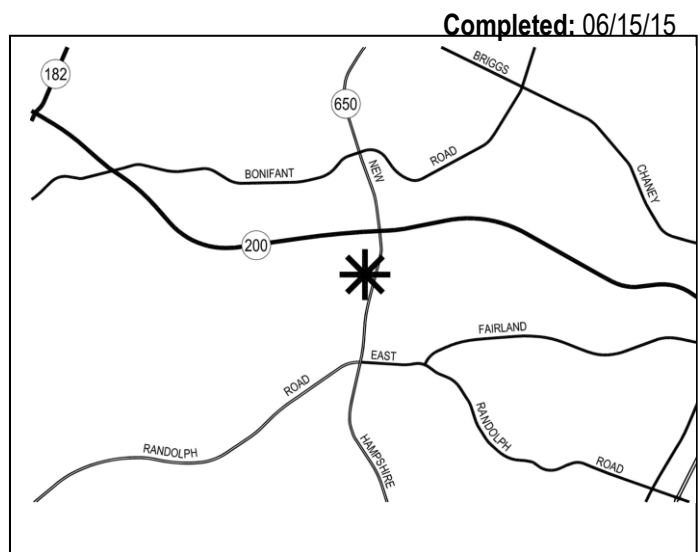


Colesville Senior Living, Preliminary Forest Conservation Plan, S-2881

- AVL Amy Lindsey, Planner Coordinator, Area 2 Division, amy.lindsey@montgomeryplanning.org, 301.495.2189
- KA Khalid Afzal, Planner Supervisor, Area 2 Division, khalid.afzal@montgomeryplanning.org, 301.495.4650
- GK Glenn Kreger, Chief, Area 2 Division, glenn.kreger@montgomeryplanning.org, 301.495.4653

Description

- Preliminary Forest Conservation Plan associated with the Special Exception for the construction of a senior living facility with 113 suites (136 beds);
- 13908 New Hampshire Avenue, Silver Spring, Maryland;
- 5.98 acres zoned R-200;
- 1997 *White Oak Master Plan*;
- Applicant: Columbia/Wegman Companies, Inc.;
- Filing date: December 23, 2014.



Summary

Staff recommends **approval with conditions**.

The Applicant proposes to:

- Remove 0.38 acres of forest, retain 0.22 acres of forest, plant 0.65 acres of forest, and meet the remaining 0.43 acres of forest conservation planting off-site.
- Remove 1 tree that requires a variance, per Section 22A-12(b)(3).
- Pursuant to Chapter 22A of the County Code, the Board's actions on Forest Conservation Plans are regulatory and binding.

Conditions of Approval

1. The Applicant must submit a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan at the time of Preliminary Plan.
2. The Applicant must place a Category I conservation easement over approximately 0.22 acres of forest retention as shown on the Preliminary Forest Conservation Plan. Prior to any demolition, clearing, or grading, the easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records. The liber and folio of the recorded easement must be referenced on the record plat.
3. The Applicant must place a Category II conservation easement over approximately 0.65 acres of forest planting as shown on the Preliminary Forest Conservation Plan. The easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records prior to clearing or grading. The liber and folio of the recorded easement must be referenced on the record plat.
4. Prior to any clearing, grading, or demolition, the Applicant must submit a financial surety and a maintenance and management agreement for the forest planting shown on the Preliminary Forest Conservation Plan.

Project Description

Columbia/Wegman Companies, Inc. is proposing to construct a domiciliary care facility for assisted living and memory care residence with 113 suites (136 beds) on New Hampshire Avenue, between Randolph Road and the Inter-County Connector, S-2881. The currently vacant site is a relatively flat property, sloping east and west from the center high point. There are two stands of forest, totaling 0.60 acres of moderate priority forest. The site lies in both the Paint Branch watershed and Northwest Branch watersheds, but outside any Special Protection Areas.



ANALYSIS

Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420150350) on October 14, 2014. There are no streams, wetlands, floodplains, or environmental buffers on the site. The proposed project is in compliance with the *Environmental Guidelines*.

Forest Conservation

The site is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan (Attachment 1) in conjunction with the Special Exception. There is 0.60 acres of forest on site and the Applicant proposes to remove 0.38 acres and retain 0.22 acres in a Category I Forest Conservation Easement, with a 1.08-acre planting requirement. The Applicant proposes to meet this requirement by planting 0.65 acres of forest on-site and meeting the remaining 0.43-acre planting requirement off-site. A Category II Forest Conservation Easement will cover the 0.65 acres of forest planting, to allow for maintenance and recreational use. The 0.65 acres of forest planting will incorporate a hard surface trail to allow for use by all residents and visitors.

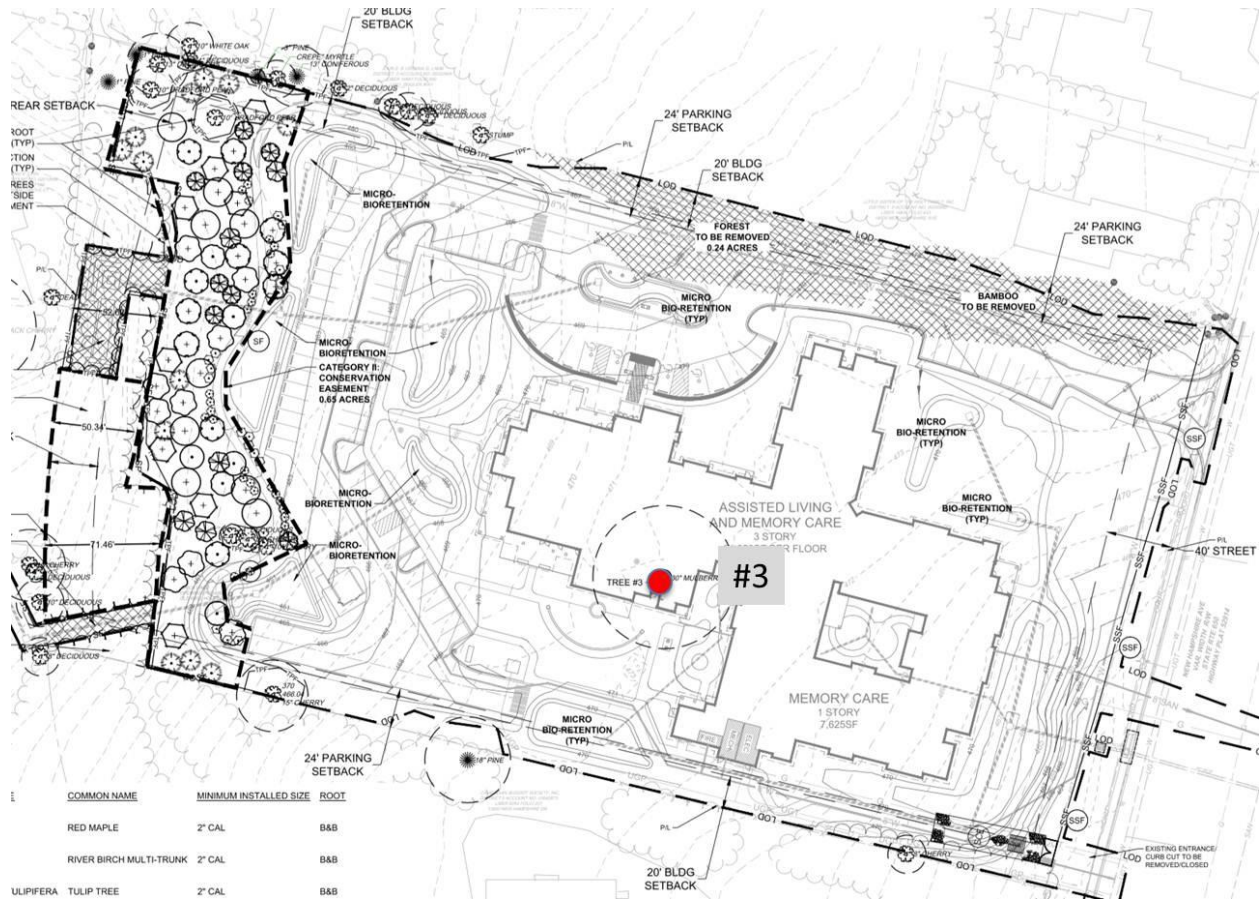


Forest Conservation Variance

Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request on 12/21/2014 and a revised variance request on 5/19/2015 for the impacts to trees. (Attachment 2) The proposed layout will remove one tree that is considered high priority for retention under Section 22A-12 (b) (3) of the County Forest Conservation Law.

Variance Tree Location



Variance Tree Table

Tree No.	Species	Diameter	Field Condition	Disposition	CRZ Area (SF)	CRZ Impacts (SF)	CRZ Impacts (%)
3	Red Mulberry	30"	Good	Poor Form and Habit, Little Value as Specimen	6,358.5	6,358.5	100

Unwarranted Hardship for Variance Tree Impacts

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The requested variance is necessary because of the location of the tree and the need to provide stormwater management and site circulation. The tree is located in the center of the site and there is no way to avoid the tree or its critical root zone. To the extent practicable, the proposed development has minimized disturbance. The site has been designed to integrate open spaces and stormwater management with the parking and site circulation.

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

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified tree is due to the location of the tree and the need to provide stormwater management and site circulation. Tree #3, 30" red mulberry, is located in the center of the site, at the high point. Any sort of development of this property would require grading to drain water away from the development and disturbance of the high point of the site, and therefore, impact this tree.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. It is based on the locations of the tree and the minimum disturbance required to develop the Property with the proposed project. Tree #3, 30" red mulberry, is located in the center of the site, at the high point. The tree is located where the building is proposed for development. Even if the building was reconfigured, the tree would be removed for stormwater management facilities, site circulation, or grading for water flow.

3. *The need for the variance 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 location of tree and the impacts by the proposed layout of the retirement residence on the Property, and not a result of land or building use on a neighboring property.

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

The proposed development will not impact environmental buffers and will provide plantings to mitigate for the size and function of the lost tree. The requested variance will not violate State water quality standards or cause a measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove one tree. The Applicant will plant three, 3-inch caliper, Southern red oaks as shown on the Preliminary Forest Conservation Plan as mitigation for the removal of tree #3, 30" red mulberry.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The County Arborist has reviewed the variance request and recommended approval with mitigation (Attachment 3).

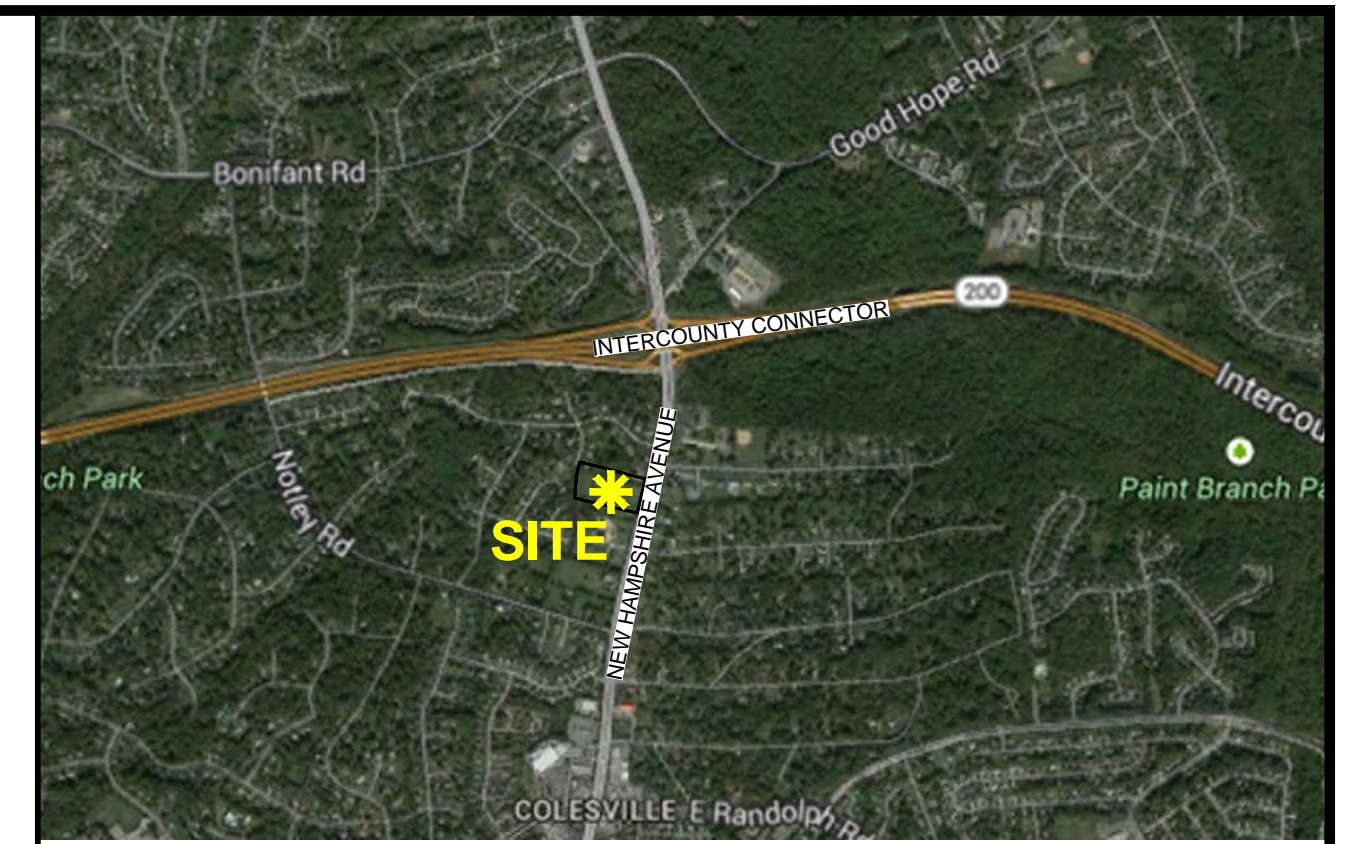
Variance Recommendation - Staff recommends that the variance be granted.

CONCLUSION

Staff concludes that the proposed Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Staff therefore recommends that the Planning Board approve the Preliminary Forest Conservation Plan and associated variance, with the above conditions.

Attachments

1. Preliminary Forest Conservation Plan
2. Variance request
3. Letter from County Arborist



VICINITY MAP
SCALE 1" = 2,000'

FOREST CONSERVATION WORKSHEET
Colesville Senior Living Facility

NET TRACT AREA:

A. Total tract area ...	5.98
B. Land dedication acres (parks, county facility, etc.) ...	0.00
C. Land dedication for roads or utilities (not being constructed by this plan) ...	0.00
D. Area to remain in commercial agricultural production/use ...	0.00
E. Other deductions (specify) additional disturbance outside of prop. line	-0.14
F. Net Tract Area	6.12

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	MPD	CIA
0	0	1	0	0	0

G. Afforestation Threshold ... 15% x F = 0.92
H. Conservation Threshold ... 20% x F = 1.22

EXISTING FOREST COVER:

I. Existing forest cover	0.60
J. Area of forest above afforestation threshold	0.00
K. Area of forest above conservation threshold	0.00

BREAK EVEN POINT:

L. Forest retention above threshold with no mitigation	0.00
M. Clearing permitted without mitigation	0.00

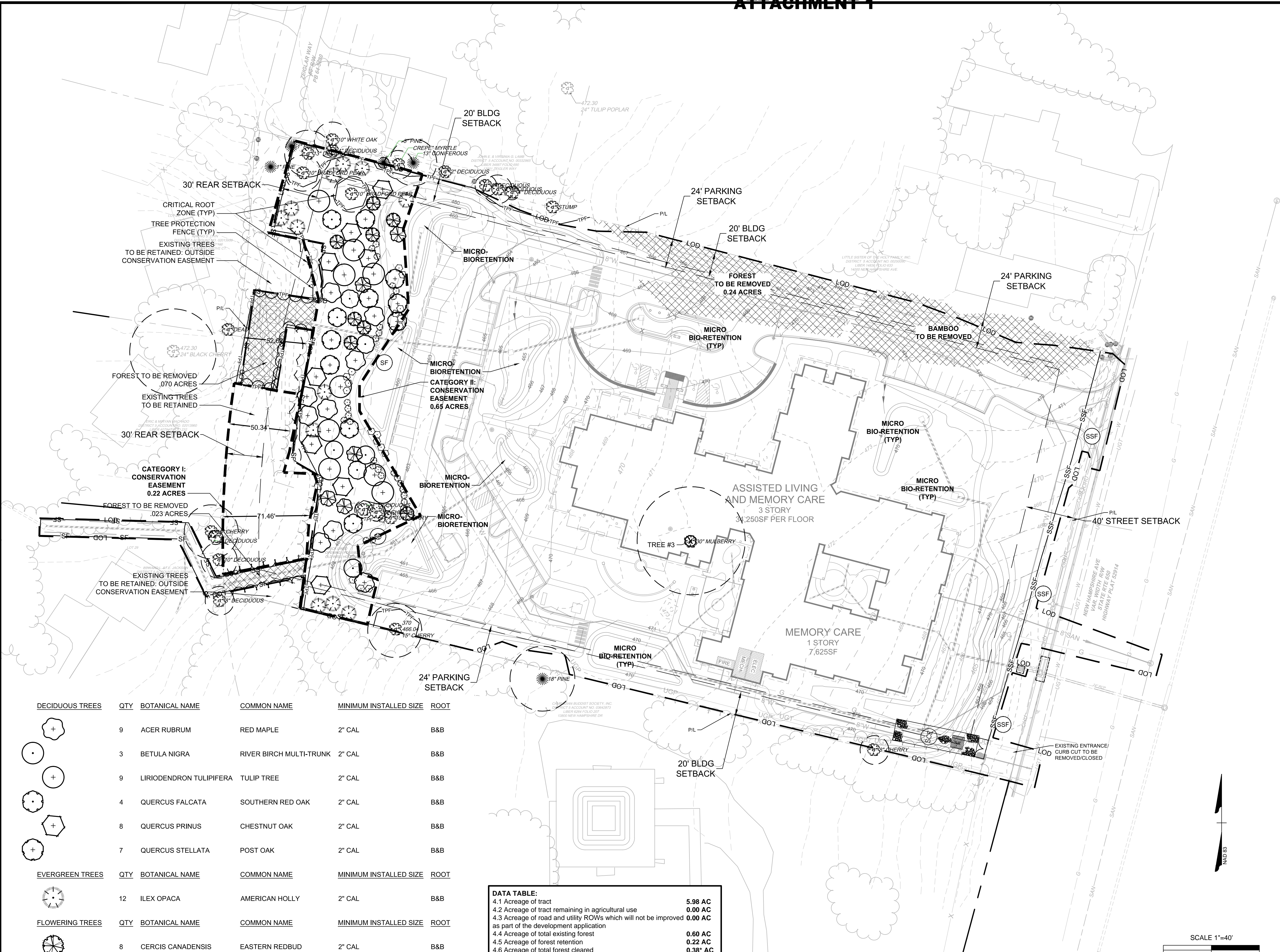
PROPOSED FOREST CLEARING:

N. Total area of forest to be cleared	0.38
O. Total area of forest to be retained	0.22

PLANTING REQUIREMENTS:

P. Reforestation for clearing above conservation threshold	0.00
Q. Reforestation for clearing below conservation threshold	0.76
R. Credit for retention above conservation threshold	0.00
S. Total reforestation required	0.76
T. Total afforestation required	0.32
U. Credit for landscaping (may not exceed 20% of "S")	0.00
V. Total afforestation and reforestation required	1.08

* .05 AC TO BE RETAINED BUT DOES NOT MEET 50' WIDE REQUIREMENT FOR FOREST



DECIDUOUS TREES	QTY	BOTANICAL NAME	COMMON NAME	MINIMUM INSTALLED SIZE	ROOT
	9	ACER RUBRUM	RED MAPLE	2" CAL	B&B
	3	BETULA NIGRA	RIVER BIRCH MULTI-TRUNK	2" CAL	B&B
	9	LIRIODENDRON TULIPIFERA	TULIP TREE	2" CAL	B&B
	4	QUERCUS FALCATA	SOUTHERN RED OAK	2" CAL	B&B
	8	QUERCUS PRINUS	CHESTNUT OAK	2" CAL	B&B
	7	QUERCUS STELLATA	POST OAK	2" CAL	B&B

EVERGREEN TREES	QTY	BOTANICAL NAME	COMMON NAME	MINIMUM INSTALLED SIZE	ROOT
	12	ILEX OPACA	AMERICAN HOLLY	2" CAL	B&B

FLOWERING TREES	QTY	BOTANICAL NAME	COMMON NAME	MINIMUM INSTALLED SIZE	ROOT
	8	CERCIS CANADENSIS	EASTERN REDBUD	2" CAL	B&B
	5	CORNUS FLORIDA	EASTERN DOGWOOD	2" CAL	B&B

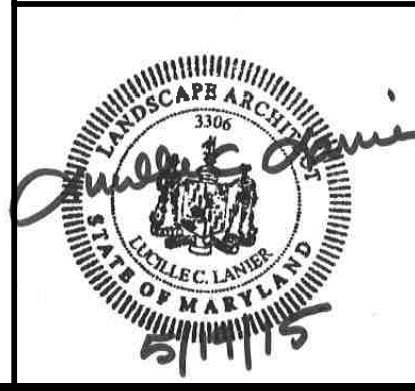
MITIGATION PLANTING	QTY	BOTANICAL NAME	COMMON NAME	MINIMUM INSTALLED SIZE	ROOT
	3	QUERCUS FALCATA	SOUTHERN RED OAK	3" CAL	B&B

SHRUBS	QTY	BOTANICAL NAME	COMMON NAME	MINIMUM INSTALLED SIZE	REMARKS
	22	AMELANCHIER SPP.	SERVICEBERRY	36" HT/SPRD	CONTAINER
	28	HAMAMELIS VIRGINIANA	COMMON WITCH HAZEL	36" HT/SPRD	CONTAINER

DATA TABLE:

4.1 Acreage of tract	5.98 AC
4.2 Acreage of tract remaining in agricultural use	0.00 AC
4.3 Acreage of road and utility ROWs which will not be improved as part of the development application	0.00 AC
4.4 Acreage of total existing forest	0.60 AC
4.5 Acreage of forest retention	0.22 AC
4.6 Acreage of total forest cleared	0.38 AC
4.7 Land use category and conservation/afforestation thresholds	IDA CON=20% AFF=15%
4.8.a Acreage of forest retained within wetlands	0.00 AC
4.8.b Acreage of forest cleared within wetlands	0.00 AC
4.8.c Acreage of forest planted within wetlands	0.00 AC
4.9.a Acreage of forest retained within 100-year floodplain	0.00 AC
4.9.b Acreage of forest cleared within 100-year floodplain	0.00 AC
4.9.c Acreage of forest planted within 100-year floodplain	0.00 AC
4.10.a Acreage of forest retained within stream buffers	0.00 AC
4.10.b Acreage of forest cleared within stream buffers	0.00 AC
4.10.c Acreage of forest planted within stream buffers	0.00 AC
4.11.a Acreage of forest retained within priority areas	0.00 AC
4.11.b Acreage of forest cleared within priority areas	0.00 AC
4.11.c Acreage of forest planted within priority areas	0.00 AC
4.12 Linear feet and average width of stream buffer provided on each side of streams	0 LF

CALCULATION:
TOTAL AFFORESTATION AND REFORESTATION REQUIRED = 1.08 AC
TOTAL AFFORESTATION / REFORESTATION PROVIDED = 0.65 AC (PLUS 0.43 AC OFF-SITE CREDITS)
TREES REQUIRED = 100 TREES PER ACRE OF REQUIRED AFFORESTATION AND REFORESTATION = 65 TREES
TREES PROVIDED = 65 TREES, OFF SITE CREDITS TO BE PROVIDED FOR ADDITIONAL 43 TREES



GENERAL:
THIS PLAN HAS BEEN PREPARED BY:
NAME: LUCILLE LANIER
ADDRESS: 1001 BOULDERS PARKWAY, SUITE 300
RICHMOND, VIRGINIA 23225

Revision Number	Construction Revision	Revision Date
1	REVISIONS PER COUNTY COMMENTS	01/20/2015
2	REVISIONS PER COUNTY COMMENTS	02/20/2015
3	REVISIONS PER COUNTY COMMENTS	05/19/2015

PRELIMINARY FOREST CONSERVATION PLAN NARRATIVE:
IN CONFORMANCE WITH THE FOREST CONSERVATION LAW AND GUIDELINES SET FORTH IN THE TREES TECHNICAL MANUAL, THIS PRELIMINARY FOREST CONSERVATION PLAN APPROPRIATELY OUTLINES THE INTENTIONS FOR PRESERVING EXISTING FOREST ON SITE AND REFORESTING/AFFORESTING OTHER AREAS PER THE RESULTS OF THE WORKSHEET ABOVE.

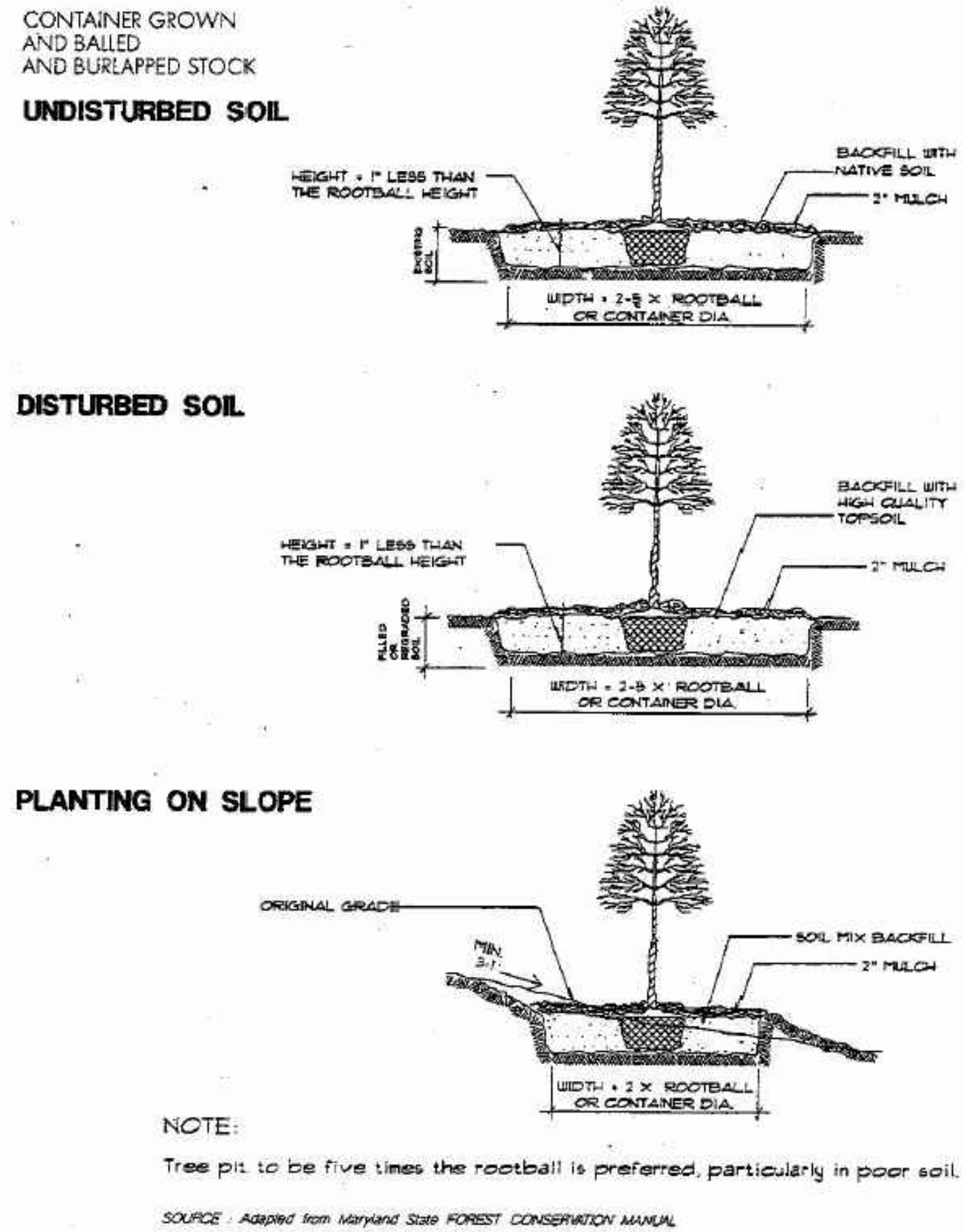
THE EXISTING FOREST AND INDIVIDUAL TREES THAT ARE TO BE PRESERVED ON SITE WILL BE PROTECTED BY THE APPROPRIATE TREE PROTECTION MEASURES. A TREE VARIANCE REQUEST HAS ALSO BEEN SUBMITTED FOR THE REMOVAL OF A RED MULBERRY (30" DBH). (3) 3" CALIPER QUERCUS FALCATA TREES HAVE BEEN PROVIDED AS MITIGATION FOR THE REMOVAL OF THE 30" RED MULBERRY.

NATIVE TREE AND SHRUBS SPECIES ARE BEING PLANTED TO ACHIEVE THE 100 TREES PER ACRE REQUIREMENT FOR REPLANTING TREES AT INSTALLED SIZES OF AT LEAST 2" CALIPER. THESE TREES WILL BE REASONABLY PLANTED IN A PARK-LIKE SETTING AT THE REAR OF THE PROPERTY CONTIGUOUS TO THE EXISTING FOREST ON SITE TO ENHANCE THE BUFFER BETWEEN THE ADJACENT RESIDENCES AND EXTEND THE PRE-EXISTING FOREST HABITAT. A TRAIL WILL MEANDER THROUGH THIS AREA TO PROVIDE RESIDENTS AND VISITORS TO THE PROPOSED DEVELOPMENT WITH AN OPPORTUNITY FOR PASSIVE RECREATION. NATIVE FLOWERING TREES AND SHRUBS WILL PROVIDE SEASONAL INTEREST AND SPECIES DIVERSITY TO THE OVERSTORY TREES.

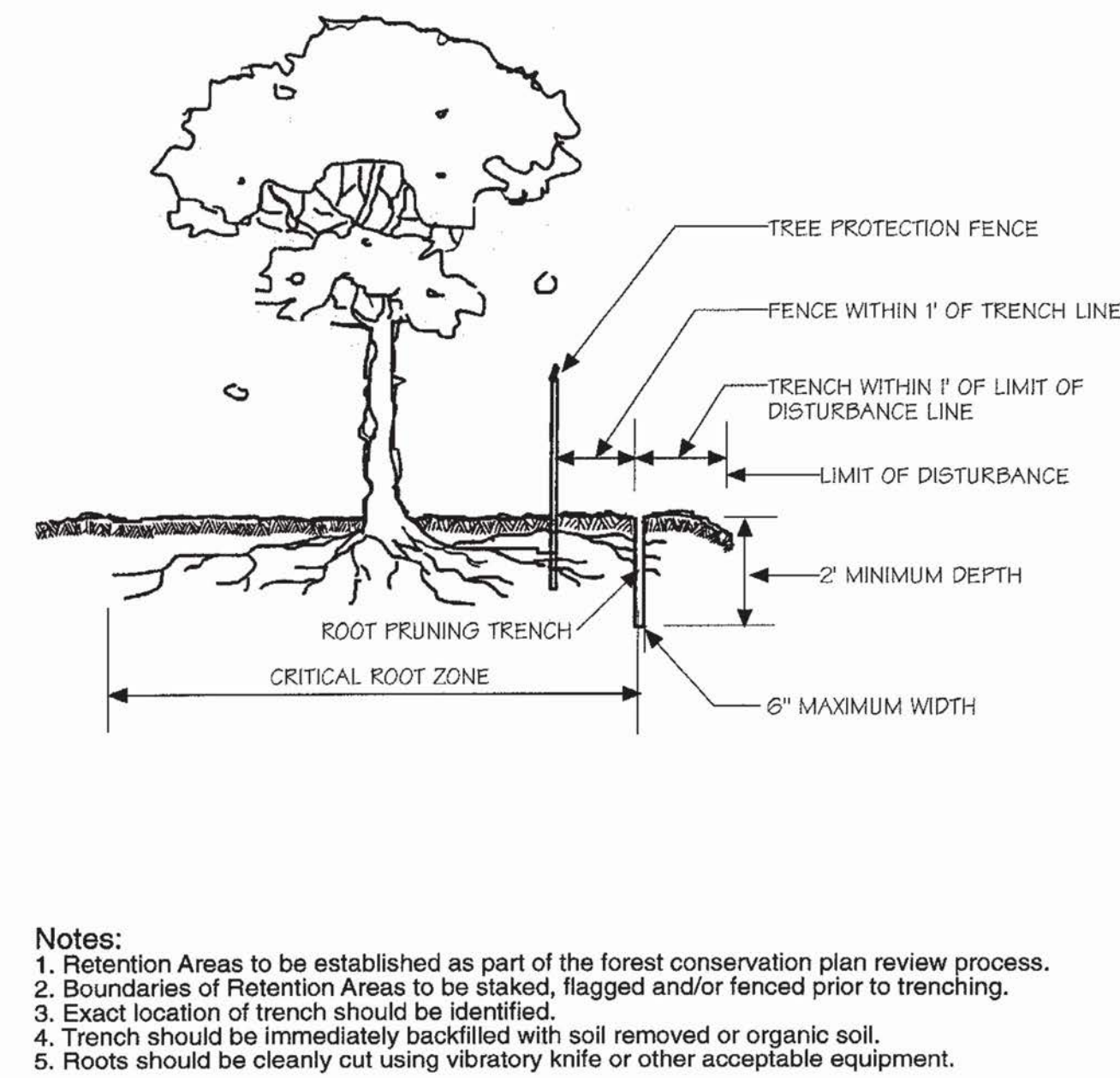
A CATEGORY ONE CONSERVATION EASEMENT IS TO BE PROVIDED AS SHOWN FOR THE FORESTED AREA TO REMAIN. A CATEGORY TWO CONSERVATION EASEMENT IS TO BE PROVIDED FOR THE LANDSCAPED AREA AS SHOWN.

PRELIMINARY FOREST CONSERVATION PLAN
PARCEL 305
COLESVILLE SENIOR LIVING FACILITY
L.15001 F.440
5TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

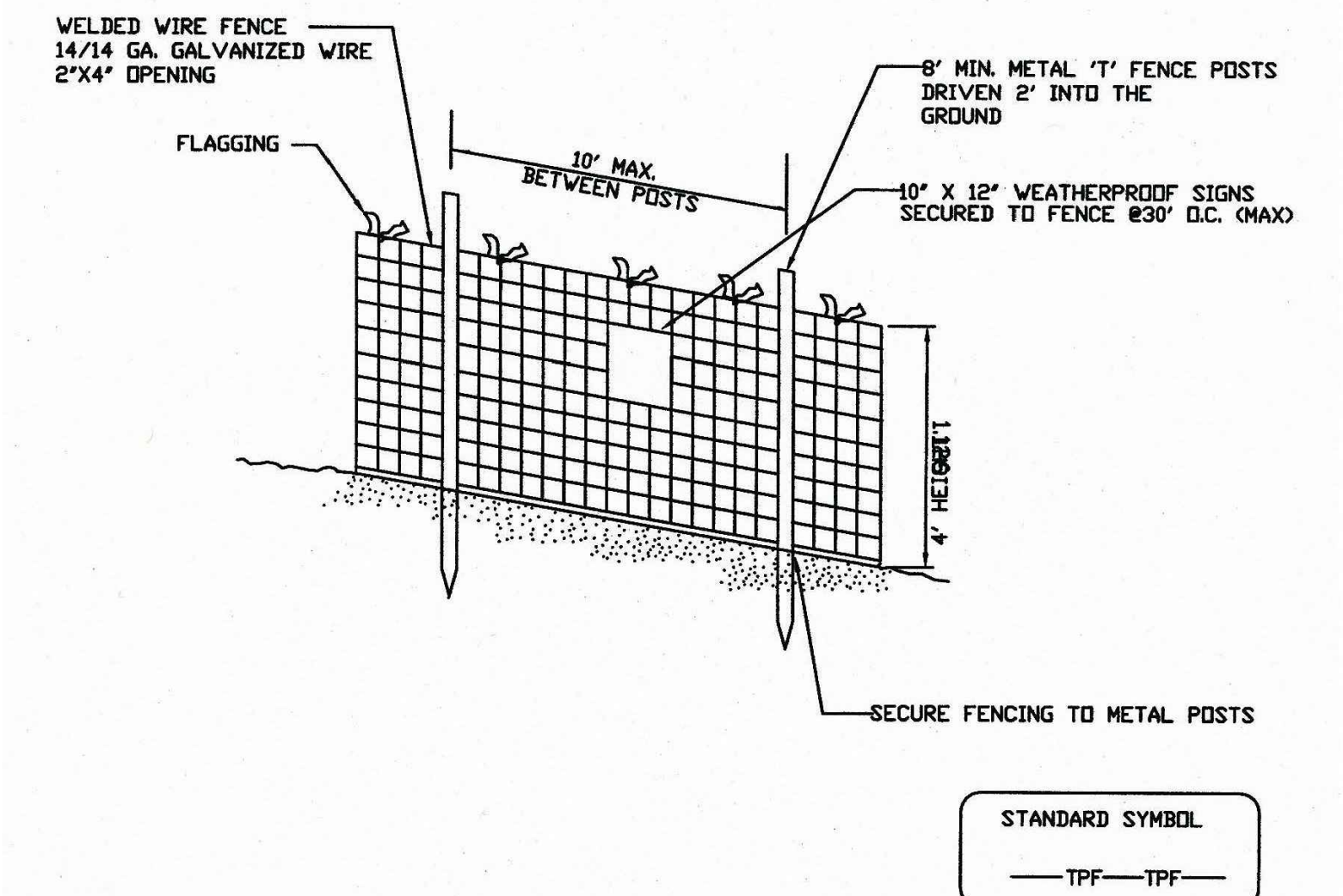
	3150 Kettle Court, SE Salem, OR 97301 Tel 503.399.1090 Fax 503.399.0565	Proj. Mgr SW	Designer PT
	20098 Ashbrook Place Suite 195 Ashburn, VA 20147 Tel 703.726.1342 Fax 703.726.1345	Date 12/10/2014	Scale AS SHOWN
		Project No. 35276	Sheet PFPC (1)



3 TREE PLANTING DETAIL
NTS



2 ROOT PRUNING DETAIL
NTS



- NOTES**
1. Practice may be combined with sediment control fencing.
 2. Location and limits of fencing should be coordinated in field with arborist.
 3. Boundaries of protection area should be staked prior to installing protective device.
 4. Root damage should be avoided.
 5. Protection signage is required.
 6. Fencing shall be maintained throughout construction.

1 TREE PROTECTION FENCE
NTS

PRELIMINARY FOREST CONSERVATION PLAN
PARCEL 305
COLESVILLE SENIOR LIVING FACILITY
L.15001 F.440
5TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

	Revision Number	Construction Revision	Revision Date		3150 Kettle Court, SE Salem, OR 97301 Tel 503.399.1090 Fax 503.399.0565	Proj. Mgr SW	Designer PT
	1	REVISIONS PER COUNTY COMMENTS	01/20/2015		Date	Scale	
	2	REVISIONS PER COUNTY COMMENTS	02/20/2015		12/10/2014	AS SHOWN	
	3	REVISIONS PER COUNTY COMMENTS	05/19/2015	Project No.	Sheet		
				35276	PFCP (2)		

TIMMONS GROUP
YOUR VISION ACHIEVED THROUGH OURS.

20098 Ashbrook Place
Suite 195
Ashburn, VA 20147
Tel 703.726.1342
Fax 703.726.1345

ATTACHMENT 2

December 10, 2014

Mr. Carlton Gilbert
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Forest Conservation Tree Variance Request (Columbia/Wegman Acquisitions, LLC;
Special Exception Application No. S-2881/NRI/FSD No. 420150350)

Dear Mr. Gilbert:

On behalf of our client, Columbia/Wegman Acquisitions, LLC, we are submitting this Tree Variance Request to comply with Natural Resources, Title 5, Section 5-1607 of the Maryland Annotated Code requiring an applicant to file for a variance to impact or remove trees that have a diameter at breast height (DBH) of 30 inches or greater or are 75% of the diameter of the County champion for that species.

The project concerns an application for a domiciliary care residential facility at 13908 New Hampshire Avenue in the White Oak section of Silver Spring. This tree variance request is accompanying the review of the Special Exception application for this project and in anticipation of a future Preliminary Plan of Subdivision. As shown on the NRI/FSD and the Preliminary Forest Conservation Plan, a total of one (1) trees with 30 inches DBH or greater will be impacted by the redevelopment of the subject property. The subject site is 5.98 acres in size and is zoned R-200. The subject domiciliary care facility is allowed in the zone as a Special Exception use and is the subject of the pending Special Exception application. The subject site is primarily cleared and has approximately 1/3 acre of forest cover and consists primarily of lawn, meadow,

and pasture. There are clusters of existing ornamental trees around the property and various trees exist along the property lines. No threatened or endangered species were located during the NRI/FSD process. No County champion trees, State champion trees or trees champion sized exist within the site.

Of the significant trees on the site, one (1) tree (Number 3) has to be removed to accommodate the planned development. Table 1 lists the specimen tree as it is identified in the Forest Conservation Plan and provides the respective proposed impacts:

TABLE 1

Tree No.	Species	Diameter	Field Condition	Disposition	CRZ Area (SF)	CRZ Impacts (SF)	CRZ Impacts (%)
3	Red Mulberry	30"	Good	Poor Form and Habit, Little Value as Specimen	6,358.5	6,358.5	100

The assessment was performed by Timmons Group at the time of the field work for the NRI as a visual, at grade level inspection with no invasive, below grade or aerial inspections performed at the time. Decay or weakness may be hidden out of sight for large trees.

TREE NO. 3

Tree #3 is a Red Mulberry, 30" diameter at breast height (DBH) in good/fair condition. This tree is intended to be removed as a part of the development which is necessary to achieve the programmatic elements of the site in an orderly fashion. This tree is located where the future Assisted Living portion of the building will be, making removal necessary. The critical root zone

(CRZ) extends out 45' ± from the base of the tree for a total critical root zone area of 6,358.5 SF around the tree. The entire critical root zone area (100%) will be impacted with development.

JUSTIFICATION/NARRATIVE FOR TREE DISTURBANCE

The proposed domiciliary care facility will provide needed housing for seniors in this part of the County. It will consist of up to 113 suites generally within the footprint shown in the Special Exception application. The project is allowed through the Special Exception process in the subject zone. As shown on the Special Exception plan for the property, the development addresses the challenges of the site which includes required setbacks from New Hampshire Avenue, compatibility with adjoining properties and sensitive design consistent with residential uses in the area.

To grant the requested variance, the Planning Board must find that the request:

1. Describes the special conditions peculiar to the property which would cause the unwarranted hardship;
2. Describes how enforcement of these rules will deprive the land owner of rights commonly enjoyed by others in similar areas;
3. Verifies that state water quality standards will not be violated or that a measureable degradation in water quality will not occur as a result of the granting of the variance;
4. Provides any other information appropriate to support the request.

We submit the following rationale in support of the request for a Forest Conservation Tree Variance.

1. The requested tree variance is necessary for implementation of this project which has an approved NRI and is proceeding through the Special Exception and subdivision approval process. The White Oak Master Plan specifically recommends the incorporation of various types of housing for senior and handicapped individuals. The Special Exception application includes market information and other data to show a need for this type of housing in this area. The Master Plan notes that “a significant increase in the number of elderly residents is expected over the next 20 years” and encourages the location of elderly housing and elderly support services along bus routes and near shopping and public facilities. The subject site and the pending Special Exception application respond to this vision. The subject tree must be removed for the proposed residential building and access to it in a way that will accommodate necessary parking, access, stormwater management and landscaped areas. The subject tree is not part of a forest nor does it have any particular environmental significance. Once redeveloped, the property will be planted with appropriate landscaping consistent with its long term use.
2. Conditions related to this request are neither unique nor special to this project and instead are unavoidable consequences of the development process under the zoning applied through the Master Plan. The requested variance is based on plans being developed under the allowable Special Exception use for this zone consistent with the

White Oak Master Plan. There is no existing forest. The majority of trees within the existing property are lawn trees planted as part of the Landscape Plan for the existing development.

3. The Concept Stormwater Management Plan submitted with the Special Exception incorporates Environmental Site Design to the maximum extent practical able, according to the latest revision to Chapter 5 of the MDE Stormwater Management Design Manual. Water quality treatment will be provided by approximately seven (7) micro bio-filter areas, one (1) bio-swale, and one (1) infiltration trench located in strategic areas of the property. The proposed ESD measures will treat a targeted rainfall of 1.8" that will return the developed site runoff characteristics back to woods in good condition. Therefore the removal of the specimen tree will not adversely affect water quality in any measurable way.

4. We believe the information provided above supports the granting of the tree variance request.

Sincerely,



SCOTT WILEY, LA
TIMMONS GROUP

cc: Amy Lindsay
Mark Lowen
Bob Harris

ATTACHMENT 3



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

June 18, 2015

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

RE: Colesville, S 2881, NRI/FSD application accepted on 8/19/2014

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). 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, 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.

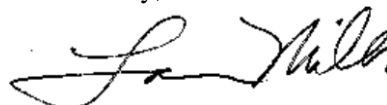
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 minor revisions to the impacts to trees subject to variance provisions 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: Amy Lindsey, Senior Planner