



Bloom MV Area IV, Preliminary Forest Conservation Plan, DPA 15-01

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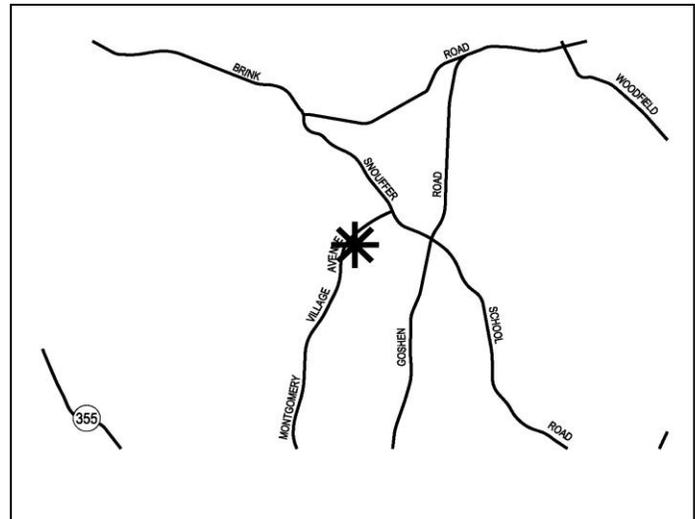
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Completed: 04/13/15

Description

- Preliminary Forest Conservation Plan (PFCP) associated with Development Plan Amendment 15-01 for construction of up to 86 townhouses on the former Montgomery Village Golf Course;
- Town Sector (T-S) Zone, 17.3 acres of land in the *1985 Gaithersburg Vicinity Master Plan* area;
- Location: northeast portion of the former Montgomery Village Golf Course between Montgomery Village Avenue and Arrowhead Road, Montgomery Village;
- Applicant: Monument Realty, LLC;
- Filing Date: March 20, 2015.



STAFF RECOMMENDATION:

Staff recommends **approval with conditions**, contingent upon approval of DPA 15-01.

Summary

The PFCP proposes to:

- Plant 2.86 acres of forest in seven planting areas on-site.
- Record Category II easements over the 7 planting areas.
- Seek approval of a variance request to remove 10 trees and impact nine additional trees, per Section 22A-12(b)(3).

Conditions of Approval

1. The Applicant must obtain permission to remove the FEMA 100-year floodplain delineation from the site prior to submission of a Preliminary Plan of subdivision. Should the Applicant fail to obtain permission to remove the 100-year floodplain designation, the Preliminary Plan must show the removal of units from the FEMA designated floodplain area, including the required 25-foot floodplain building restriction line.
2. The Applicant must obtain permission to remove the WSSC easements (WSSC L.4303 F.338 & WSSC L.4195 F.808) from the site prior to submission of a Preliminary Plan of subdivision. Should the Applicant fail to obtain permission to remove the WSSC easements, the Preliminary Plan must show the removal of the units that overlap these easements.
3. Following Preliminary Plan approval, record Category II easements over afforestation areas.
4. The Final Forest Conservation Plan and Landscape Plan must show the planting of 29 native shade trees of 3 inches caliper or greater, or any combination of larger caliper native shade trees equaling at least 85 caliper inches, in mitigation for variance trees removed.
5. Approval of the Preliminary Forest Conservation Plan is contingent on the approval of the associated Development Plan Amendment.

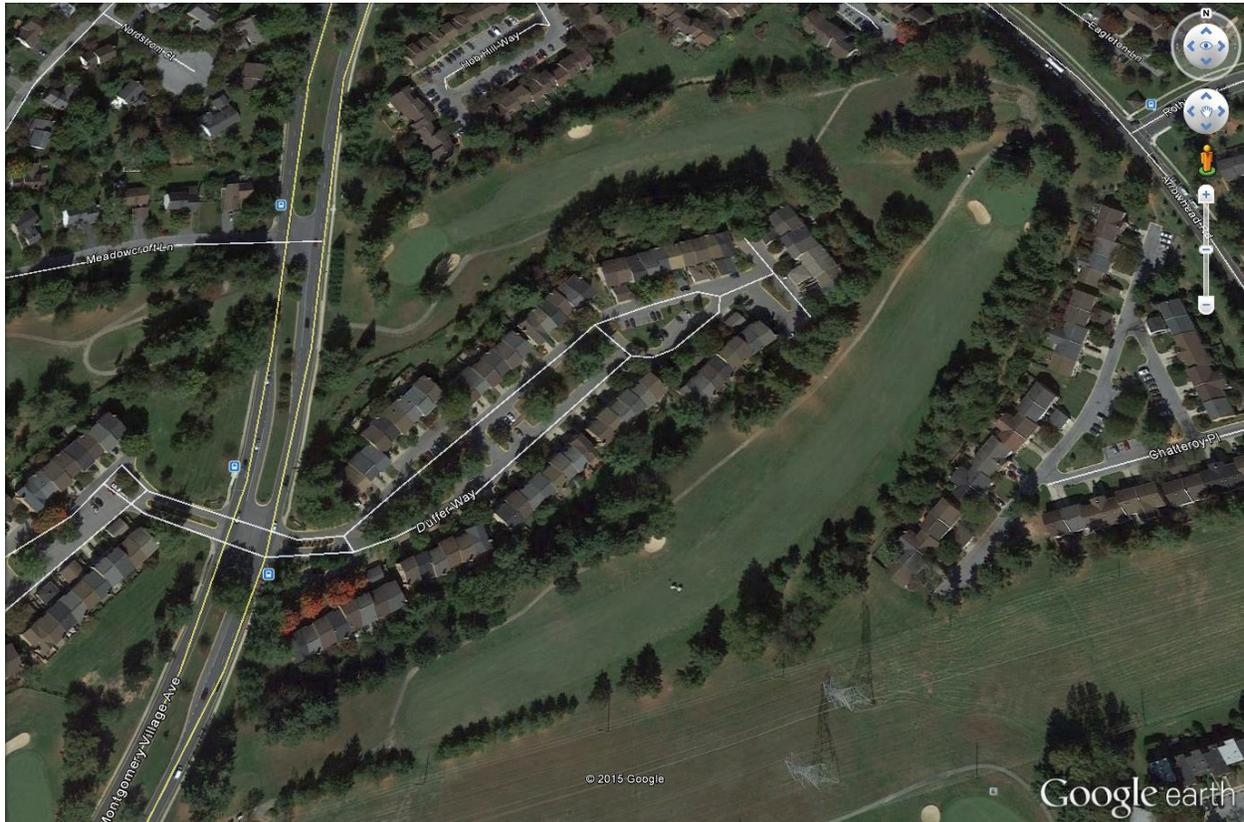
Site Description

The site occupies 17.3 acres in an upland portion of the former Montgomery Village Golf Course adjacent to existing residential development (Fig. 1). The golf course ceased operation at the end of October 2014. The former golf course remains much as it was, dominated by highly managed turf grass, interspersed with paved cart paths and stands of trees. Due to the age of the golf course, a number of the trees have grown to specimen size (greater than 30 inches diameter at breast height, or dbh).

Conformance with Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation for the site on April 3, 2015. The site contains no forest, streams or their buffers, wetlands or their buffers, or known habitats of rare, threatened, and endangered species. A FEMA 100-year floodplain is mapped on a portion of the site. While likely that no 100-year floodplain actually exists on the site, staff does not have authority to amend or remove a Federal floodplain delineation. The Applicant is pursuing steps to analyze the site for the presence of a 100-year floodplain and to seek removal of the floodplain designation from the site. Removal of the FEMA 100-year floodplain will bring the plan into conformance with the *Environmental Guidelines*. Should the Applicant be unsuccessful at having the 100-year floodplain removed from the site, the housing units shown in that portion of the site must be removed at the time of Preliminary Plan application.

Fig. 1 Aerial Photograph of Site



Project Description and Analysis

The Applicant is requesting a Development Plan Amendment to permit the construction of up to 86 townhouses on a portion of the former Montgomery Village Golf Course. The Applicant proposes to use the remaining residential capacity in the Town Sector (T-S) Zone in Montgomery Village. In the recent zoning code rewrite, the T-S Zone is one of the zones retained from the previous ordinance. According to Article 59-8 (Zones Retained from Previous Ordinance) of the Montgomery County Zoning Code, Section 8.1.2.A.1, Amending a Development Plan, “An amendment to an approved development plan or schematic development plan in any zone in Article 59-8 must follow the procedures for amendment of a development plan under the zoning ordinance in effect on October 29, 2014.”

Both the zoning ordinance in effect on October 29, 2014 and Chapter 22A, Forest Conservation, require that a Preliminary Forest Conservation Plan accompany an application for a Development Plan or a Development Plan Amendment. The applicable zoning code reference is Section 59-D-1.3(g)(7), which states that the contents of a development plan must include “The preliminary forest conservation plan prepared in accordance with Chapter 22A.” The references in Chapter 22A include Article II, Section 22A-11(b), which states that any “Project requiring development plan, project plan, preliminary plan of subdivision, or site plan approval” must include a Forest Stand Delineation and a Forest Conservation Plan. Section 22A-11(b)(2)(C), Approval, states that “The Planning Board must review and act on the

forest conservation plan with the development plan, project plan, preliminary plan of subdivision, or site plan, as appropriate. Compliance with the preliminary forest conservation plan, as amended by the Board, must be made a condition of any approval of the first applicable development application. Compliance with the final forest conservation plan, as amended by the Board, must be made a condition of any approval of the last development application. For a development plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-D-1.4. A final forest conservation plan must be approved by the Planning Board or Planning Director, as appropriate, before the Planning Board approves a record plat.”

Section 22A-12(f)(2)(B) further states that “In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).” For the T-S zone (which is a planned unit development), the applicable conservation threshold is 15% of the area of the site (2.6 acres). The Applicant’s Preliminary Forest Conservation Plan shows afforestation totaling 2.86 acres, demonstrating that the minimum on-site afforestation requirement can be met in the proposed Development Plan Amendment.

Several easements or rights-of-way currently exist on the site. Other agencies holding easements do not permit these to overlap easements established for the preservation of afforestation, reforestation or forest retention areas, nor can other buildings or facilities be built over easements without the permission of the holder of the easement or right-of-way. The Applicant must obtain permission to abandon easements or rights-of-way that conflict with the construction of buildings or other facilities needed to serve the development.

Forest Conservation

No forest exists on the site. Chapter 22A-12 establishes the forest conservation threshold and afforestation requirements based on the land use type. The afforestation threshold for planned unit development areas is 15% of the net tract area. This results in an afforestation requirement of 2.6 acres. The Preliminary Forest Conservation Plan shows afforestation in seven planting areas totaling 2.86 acres (Attachment 1). These are proposed to be protected in Category II Forest Conservation Easements (see Fig. 2).

Details of the required planting including required financial security, management and maintenance and additional tree protection measures, will be included in the Final Forest Conservation Plan.

Fig. 2 Afforestation Areas and location of FEMA 100-year floodplain



Afforestation areas shown in green FEMA 100-year floodplain shown in red

Forest Conservation Variance - Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's Critical Root Zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, dbh; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The applicant submitted a variance request on April 7, 2015 for the impacts/removal to trees with the proposed layout (Attachment 2). The applicant proposes to remove 10 trees that are 30 inches and greater, dbh, and to impact, but not remove, 9 others that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Table 1: Trees to be removed or potentially removed

| Tree Number | Species | DBH | Status |
|-------------|------------------------------|-----|--------|
| 109 | <i>Pinus strobus</i> | 30" | Remove |
| 110 | <i>Pinus strobus</i> | 32" | Remove |
| 111 | <i>Pinus strobus</i> | 36" | Remove |
| 145 | <i>Pinus strobus</i> | 31" | Remove |
| 154 | <i>Quercus palustris</i> | 31" | Remove |
| 167 | <i>Pinus strobus</i> | 32" | Remove |
| 409 | <i>Quercus palustris</i> | 34" | Remove |
| 423 | <i>Pinus strobus</i> | 34" | Remove |
| 424 | <i>Platanus occidentalis</i> | 50" | Remove |
| 425 | <i>Pinus strobus</i> | 30" | Remove |

Table 2: Trees to be affected but retained

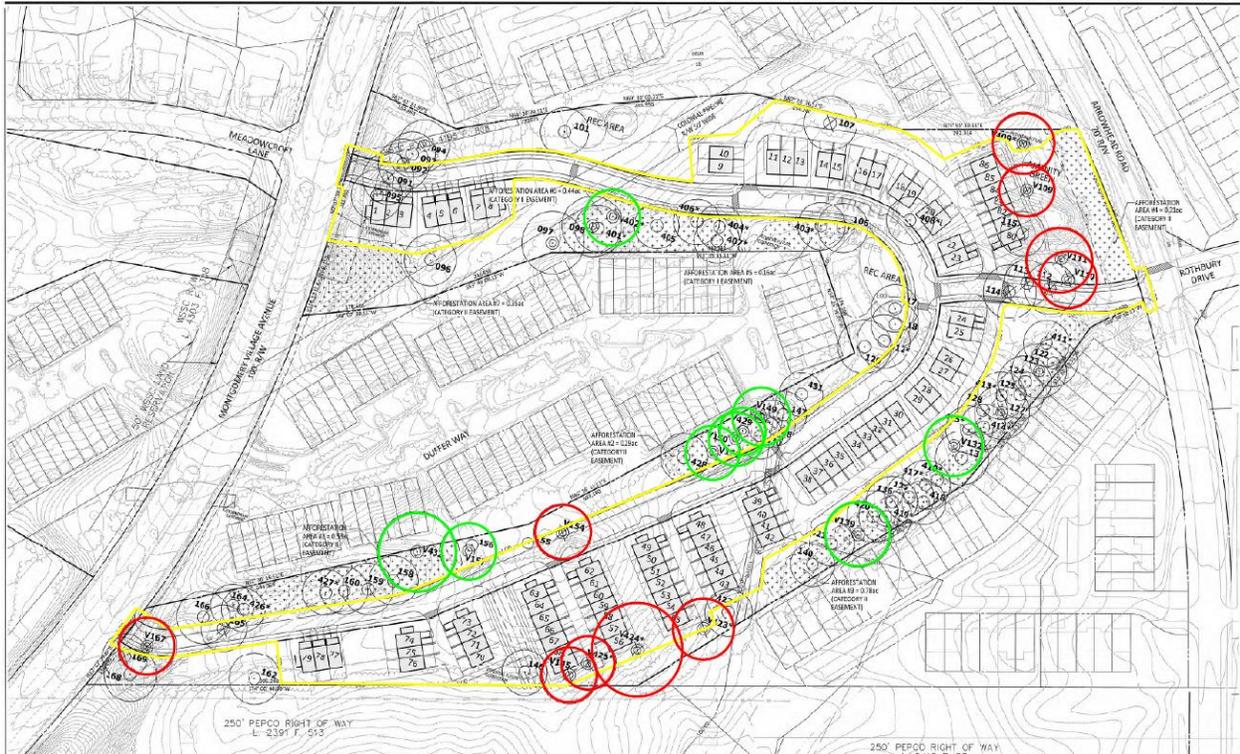
| Tree Number | Species | DBH | CRZ Impact | Status |
|-------------|----------------------|-----|------------|----------|
| 132 | <i>Pinus strobus</i> | 33" | < 25% | Preserve |
| 139 | <i>Pinus strobus</i> | 36" | < 25% | Preserve |
| 149 | <i>Pinus strobus</i> | 32" | < 25% | Preserve |
| 150 | <i>Pinus strobus</i> | 30" | < 25% | Preserve |
| 152 | <i>Pinus strobus</i> | 30" | < 33% | Preserve |
| 157 | <i>Pinus strobus</i> | 31" | < 33% | Preserve |
| 402 | <i>Pinus strobus</i> | 31" | < 25% | Preserve |
| 429 | <i>Pinus strobus</i> | 34" | < 25% | Preserve |
| 432 | <i>Acer rubrum</i> | 44" | < 25% | Preserve |

Unwarranted Hardship Basis

Finding that there is an unwarranted hardship is dependent on the approval of the Development Plan Amendment. If the proposed amendment is approved, it will assign density to this portion of the former golf course and extinguish most of the remaining residential population density envisioned under the original T-S zoning designation for Montgomery Village in fulfillment of the original plan for the Village. The 86 townhouses proposed for the site, along with the accompanying roadways and other infrastructure, cannot be accommodated on the site if all of the specimen trees are preserved, particularly individual specimen trees that occur in the central portions of the site where development would be focused. The site is additionally constrained by the presence of numerous large utility rights-of-way, particularly the Colonial Pipeline right-of-way that passes through the northern portion of the site and the PEPCO transmission line right-of-way to the south. Maintaining appropriate buffers between the new development and existing development adds a further constraint.

The variance trees proposed for removal therefore tend to be clustered in areas of the site where the development is pushed by the various constraints of the site (Fig. 3). Variance trees number 409, 109, 110 and 111 occur in one cluster affected by proposed townhouses 80-86 and the extension of Rothbury Drive that provides access to the site from the west. Saving these trees would require eliminating most, if not all, of the units and a relocation of the Rothbury Drive extension that would likely also eliminate units number 24 and 25. Variance trees number 145, 423, 424, and 425 occur in another cluster along the southern portion of the site adjacent to the PEPCO right-of-way. Saving these trees would likely require eliminating units 55, 56, and 69, and possibly units 54 and 57. Variance tree number 154 is in the path of the access road on the south side of the development. Saving this tree would require pushing the road further south, potentially affecting units 62 and 63. Likewise, variance tree 167 is in the path of the southern entrance to the site. While this entrance could possibly be shifted more to the south to save the tree, this would result in the loss of two trees considered significant, though not specimen size: tree number 168 is a 29-inch dbh white pine, and tree number 169 is 25 inches dbh. The loss of these two trees would cause a greater impact to water quality than the loss of the single 32-inch tree number 167.

Fig. 3 Locations of variance trees to be removed (in red) and to be preserved (in green); Limits of Disturbance shown in yellow



The remaining variance trees will be impacted, but are to be retained.

If the proposed Development Plan Amendment is approved, it will create the potential to develop the site at a density and with a land use that is consistent with the adjacent existing development. Not allowing the removal of the 10 variance trees and the impact to an additional nine variance trees would require the loss of up to 13 of the 86 units proposed, denying the Applicant the opportunity to develop the site in a manner consistent with the adjacent development and the Development Plan Amendment. It will also reduce the number of MPDUs the project must provide, a public benefit consistent with the broader goals of the Master Plan.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed Forest Conservation Plan:

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

1. Will not confer on the applicant a special privilege that would be denied to other applicants.

The proposed design has attempted to balance all of the competing factors that constrain the site. The variance trees on the site are mostly white pine trees that are not ordinarily native to this part of Montgomery County. These trees were planted by the former golf course owners to provide landscaping for the course, and have simply been on the course long enough to achieve specimen size. It is staff's opinion that reasonable steps have been taken to minimize impact to other variance trees, and that granting the variance will not confer a special privilege to the applicant.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant.

The requested variance is based on the constraints of the site and the specifics of the development, infrastructure, facilities and amenities as recommended in the Development Plan Amendment and is not the result of actions by the Applicant. If the Development Plan Amendment is approved, it will signal that the District Council finds development of this type and density appropriate for this site.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

Upon review, staff concurs that the requested variance is a result of the proposed site design and layout on the subject property and not as a result of land or building use on a neighboring property.

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

Removal of the 10 variance trees will be mitigated by the planting of up to 29 new trees of at least 3 inches caliper. As these trees mature, they will replace the water quality functions provided by the existing variance trees being removed. In addition, the new development will be required to provide stormwater management using environmentally sensitive design (esd) designed to mimic "forest in good condition" to the maximum extent practicable. Therefore, staff concurs that the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions - There are 10 trees proposed for removal as a result of the proposed development. There will also be some disturbance within the CRZ of another 9 trees but they are excellent candidates for safe retention.

Mitigation should be at a rate that approximates the form and function of the trees removed. Therefore, staff is recommending that replacement occur at a ratio of approximately 1" dbh for every 4" dbh removed, using trees that are a minimum of 3" dbh. This means that for the 340 caliper inches of trees removed, the required mitigation will be 29 native canopy trees with a minimum size of 3" dbh. While these trees will not be as large as the trees lost, they will provide some immediate canopy and will help augment the canopy coverage. Staff therefore recommends the addition of 29 native canopy trees with a minimum size of 3" dbh (or a combination of larger caliper native canopy trees totaling at least 85 caliper inches) to the landscape plan. Because these trees are in mitigation for specimen trees removed, they do not count toward afforestation requirements.

The trees subject to this variance to be impacted but retained are excellent candidates for safe retention and if given adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. Staff forwarded the request to the County Arborist on April 7, 2015. The County Arborist's response will be posted and distributed as soon as it is received.

Variance Recommendation - Staff recommends that the variance be granted, contingent upon the approval of the Development Plan Amendment.

ATTACHMENTS:

1. Preliminary Forest Conservation Plan
2. Variance Request