



Maryland Catering Company, Inc. Conditional Use #2015006: Forest Conservation Plan

JP

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RAW

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Staff Report Date: 02/10/17

Description

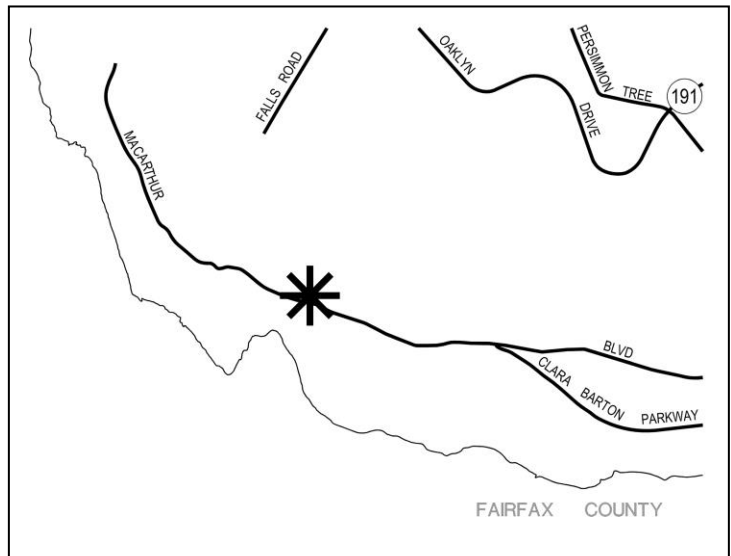
Maryland Catering Company, Inc.: Forest Conservation Plan No. CU201506

Request to approve a Preliminary Forest Conservation Plan #CU2015006 to allow for Conditional Use for a Country Inn; 10801 MacArthur Boulevard, Potomac; 7.67 acres; R-200 Zone/NR-0.75; Potomac Subregion Master Plan.

Staff Recommendation: Approval with Conditions

Applicant: Maryland Catering Company, Inc.

Submittal Date: 03/24/15



Summary

- The submitted forest conservation plan requires a variance to be approved under Section 22A-21. The submitted variance request is recommended for Approval.
- There are two items for Planning Board review for the Maryland Catering Company, Inc. project: The Forest Conservation Plan and the Conditional Use. The Conditional Use hearing was on 2/16/2017. This memorandum covers Staff review and recommendations for the Forest Conservation Plan. The Planning Board's action on the Forest Conservation Plan is regulatory and binding.

PRELIMINARY FOREST CONSERVATION PLAN RECOMMENDATION:

Approval of the Preliminary Forest Conservation Plan subject to the following conditions:

1. The Applicant must comply with the conditions of approval for the Preliminary Forest Conservation Plan No. CU201506:
 - a. A Final Forest Conservation Plan must be approved by M-NCPPC Staff prior to the issuance of the Sediment and Erosion Control Permit and address the following conditions:
 - i. The Final Forest Conservation plan must be consistent with the approved Preliminary Forest Conservation Plan.
 - ii. The Final Forest Conservation Plan must include a worksheet that includes all areas of offsite limits of disturbance in the net tract area.
 - iii. The Final Forest Conservation Plan must identify the final location of the trees planted as mitigation for the tree variance.
 - b. Mitigation for the removal of six (6) trees subject to the variance provision must be provided in the form of planting native canopy trees totaling 55 caliper inches, with a minimum size of three (3) caliper inches. The trees must be planted in final locations to be shown on the Final Forest Conservation Plan, outside of any rights-of-way, or utility easements, including stormwater management easements. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC forest conservation inspector.
 - c. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.
 - d. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.

SITE DESCRIPTION

The subject property is identified as Parcel 527 and Parcel 530 on Tax Map FN-22. Parcel 530 is a 0.35 acre piece of land surrounded on three sides by Parcel 527 with frontage on MacArthur Blvd. Parcel 530 is almost completely developed with the Angler's Inn and is designated Historic. Parcel 527 is irregularly shaped with minor improvements. The southeastern most part of Parcel 527, approximately one-acre of area, is improved with a small existing building, a gravel parking lot, terraces, and patios that are all utilized by the adjoining Old Angler's Inn, a restaurant. The eastern portion of Parcel 527 contains a stream that traverses it, flowing from north to south. Parcel 527 also contains 4.67 acres of existing forest, steep slopes ranging from 15 percent to 25 percent and gentle and moderate slopes ranging from two percent to 15 percent. The property slopes from the northwest (back) to the southeast (front). The property rises from its low point elevation of 140 feet at the southeast corner along MacArthur Boulevard to its high point of 220 feet at the northwest portion of the property.

The net tract area for purposes of this forest conservation review is 7.74 acres; including Parcel 527 (7.32 acres), Parcel 530 (0.35 acre), and offsite improvements (0.07 acre).

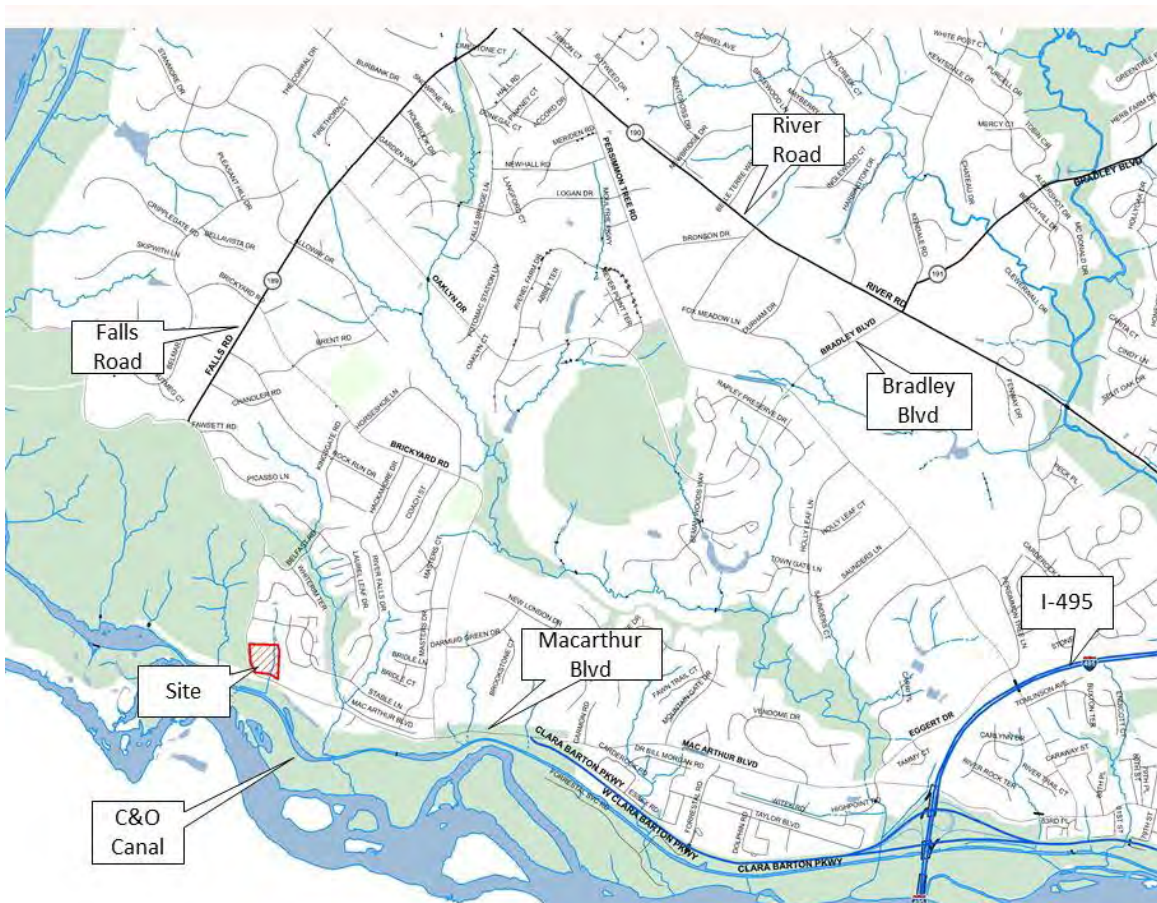


Figure 1: Vicinity Map



Figure 2: 2015 Aerial Photograph

PROJECT DESCRIPTION

The Applicant, Maryland Catering Company, seeks approval of a Conditional Use to allow establishment of a country inn on a portion of 7.67-acre property. The Conditional Use Application proposes to construct a new Country Inn with dining facilities on the subject property. The proposed development includes a single 2-story, 9,000 square-foot building with a maximum height of 18.18 feet. The Applicant's statement of operation indicates that the facility will be designed to accommodate approximately 240 guests. The facility will include 4 suites for overnight guests, event hosting areas, bathroom facilities, reception area, closet and storage areas and a commercial size kitchen area for food preparation. The Application also proposes 80 parking spaces.

ANALYSIS AND FINDINGS

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 7.67-acre site in June 24, 2010 and was recertified on March 26, 2013. The NRI/FSD identified all of the required environmental features on, and adjacent to the property, as further described in the *Environmental Guidelines for Environmental Management of Development in Montgomery County*. The topography on the property is sloping from the northwest (back) to the southeast (front). The eastern portion of the property contains a stream that traverses the property north to south. The site contains 4.67 acres of existing forest. The site is located within the Potomac River Direct watershed, which is classified by the

State of Maryland as Use I-P waters.

The NRI/FSD was approved on March 26, 2013 and was valid until March 26, 2015. Chapter 22A of the Montgomery County Code states in section 22A-10(b)(4) that an approved forest stand delineation is not valid after 2 years unless: (A) a forest conservation plan has been accepted as complete; or (B) the delineation has been recertified by the preparer. A forest conservation plan was accepted with the original application on March 24, 2015. Therefore, the NRI/FSD is still valid.

In the southeast portion of the site is an existing gravel parking lot that is in the Stream Valley Buffer (SVB). This pre-existing use is not related to the Conditional Use, but is used for the Old Angler's Inn. The parking lot encroaches into approximately 5,200 SF of unforested SVB. The Applicant is proposing to plant approximately 20,800 sf, or approximately a 4:1 ratio, to offset the existing parking lot in the buffer (the complete planting list can be found on sheet 3 of the forest conservation plan). The proposed planting area is located between the proposed building and the existing sewer line in the SVB. This area of the SVB does not have much understory, so supplemental planting using native deciduous shrubs and American Holly will improve the quality of the stream buffer and also provide additional screening. Staff believes the proposed mitigation qualifies as enhanced vegetation and provides for onsite compensation for the loss of buffer function

Forest Conservation

The application meets the requirements of Chapter 22A of the Montgomery County Code.

A Preliminary Forest Conservation Plan (PFCP) has been submitted for review. There is approximately 4.67 acres of existing forest on the property. The forest is dominated by tuliptree (*Liriodendron tulipifera*), some American Beech (*Fagus grandifolia*), and oak species (*Quercus* sp.). There are approximately fifty (50) large or specimen trees located on or adjacent to the property.

The property is split zoned R-200 (7.39 acres/Parcel 527) and NR-0.75 (0.35 acre/Parcel 530) which generates two separate land use categories and subsequently two separate PFCP worksheets. The complete PFCP worksheets can be found on sheet 3 of the forest conservation plan (Attachment A). The project will clear 1.39 acres of forest and retain 3.28 acres of forest. The forest retention will satisfy the conservation threshold for the R-200 portion of the property and offset the 0.05-acre afforestation requirement of the NR-0.75 portion of the site. No additional forest planting is required.

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 an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are

at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request on March 20, 2015 and provided revised variance requests dated April 21, 2015, December 21, 2016, and February 6, 2017 (Attachment B). The Applicant proposes to remove six (6) variance trees on Parcel 527, impact, but not remove, four (4) other variance trees on Parcel 527, and impact, but not remove, two (2) variance trees on Parcel 530.

Under Section 22A-12(b) (3) of Montgomery County Forest Conservation Law; The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21: (B) Any tree that is: (i) part of a historic site, (ii) associated with a historic structure. The entirety of Parcel 580 is considered a Historic Site and all trees on Parcel 530 are subject to the variance. The proposed Limits of disturbance runs along the eastern boundary of Parcel 530 and an existing stand of trees. The variance request did evaluate any trees greater than 1" dbh on Parcel 530 with impacts and therefore is complete.

Unwarranted Hardship Basis – Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an Applicant reasonable and significant use of the Property. The Applicant contends that an unwarranted hardship would be created due to existing constraints. The Subject Property contains 3.71 acres in the stream valley buffer and 0.35 acre Parcel P530. Parcel P530 contains the existing Old Angler's Inn, which is listed as a historic site. Some of the existing uses associated with the Inn are on Parcel 527, including parking, service access and outdoor dining. The access to Parcel 527 must be located on the northern edge of the property in a location that provides for adequate site distance. Considering the location of the existing Old Anger's Inn and its associated uses, the site topography, required site access location and utility connections, it is not feasible to develop the site without disturbing critical root zones of variance trees.

Staff has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings – 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, for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the preliminary forest conservation plan:

Granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property and the unique Site conditions. The Protected Trees are in the developable area of the Property, outside of any

environmental buffers. Granting a variance to allow land disturbance within the developable portion of the site is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing site conditions, including the location of the Protected Trees within the developable area of the Site.

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

The need for a variance is a result of the existing conditions and the proposed design and layout of the Property, and not a result of land or building use on a neighboring property. The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. No trees located within a stream buffer or wetland buffer will be removed. The Site includes 4.67 acres of forest of which 3.28 acres will be retained onsite. The Application proposes to provide nineteen (19) mitigation trees that will replace many of the functions provided by the Protected Trees to be removed. These trees will help reduce the amount of runoff generated by this subdivision. In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Trees Subject to the Variance Provision –Mitigation for the removal of these ten (10) trees is recommended 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-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. This Application proposed to remove 219 inches in DBH, resulting in a mitigation requirement of 55 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. While these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on May 21, 2015 and revised requests were sent on January 10, 2017 and February 6, 2017. On February 9,

2017, the County Arborist issued recommendations on the variance request and recommended the variance be approved with mitigation (Attachment C).

Variance Recommendation - Staff recommends that the variance be approved with mitigation.

CONCLUSION

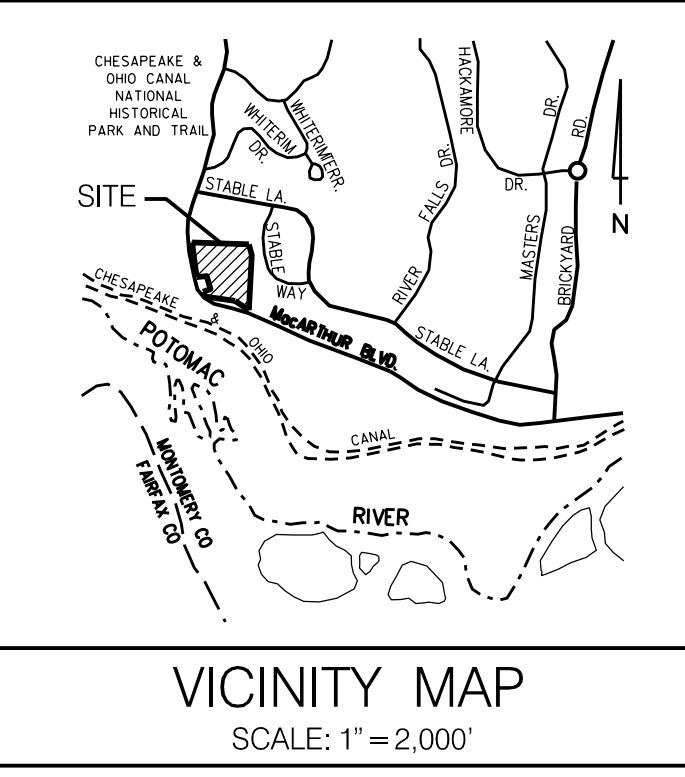
The Preliminary Forest Conservation Plan meets all of the applicable requirements of Chapter 22A of the County Code. Therefore, staff recommends that the Planning Board Approve with conditions the Preliminary Forest Conservation Plan.

Attachments

Attachment A – Proposed Preliminary Forest Conservation Plan

Attachment B – Applicant’s Variance Request dated February 6, 2017

Attachment C - County Arborist Letter dated February 9, 2017



SHEET INDEX

1. PLAN VIEW
2. PLAN VIEW - MITIGATION
3. NOTES & DETAILS

LEGEND

- #60: SPECIMEN TREE (>30 INCHES DBH) (FIELD SURVEYED)
- #11: SIGNIFICANT TREE (>24 AND <30 INCHES DBH) (FIELD SURVEYED)
- #66: TREES > 1" ON OR NEAR P530 SIGNIFICANT TREE TO BE REMOVED
- #3: SIGNIFICANT TREE TO BE REMOVED
- #2: SPECIMEN TREE TO BE REMOVED
- : FOREST STAND BOUNDARY LINE
- : 100 YEAR FLOODPLAIN
- SB: STREAM VALLEY BUFFER
- : FLOODPLAIN BRL
- : EXIST. STREAM
- : EXISTING TREE CANOPY LINE
- 41B / 116D: MAPED SOIL TYPES
- *
- : DUMP/DEBRIS PILE
- : EPHEMERAL ROADSIDE DRAINAGEWAY
- : LOD: LIMIT OF DISTURBANCE
- : CRITICAL ROOT ZONE
- OR2: TREES COUNTING TOWARDS MITIGATION FOR THE REMOVAL OF TREES REQUIRING A VARIANCE
- : EX. FOREST TO BE REMOVED
- : EX. FOREST TO REMAIN AND BE PLACED IN CATEGORY 1 CONSERVATION EASEMENT
- : EX. FOREST TO REMAIN - APPLICANT PROPOSES TO UTILIZE FOR PASSIVE OUTDOOR AREA - COUNT AS CLEARED
- : OFFSITE LOD

NOTE: SEE SHEET 2 FOR PROPOSED PLANTING TO OFFSET EXISTING PARKING IN BUFFER AND TREES COUNTING TOWARDS MITIGATION FOR THE REMOVAL OF TREES REQUIRING A VARIANCE



OWNER / DEVELOPER
MARYLAND CATERING COMPANY INC.
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POTOMAC, MD 20854
ATTN. MARK REGES

Kim Engineering, Inc.

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Gaithersburg, Maryland 20886
301-337-6734
Silver Spring, MD - Baltimore, MD - Gaithersburg, MD - Fairfax, VA
Civil Engineering - Land Surveying - Geotechnical Engineering - Structural Engineering

NO.	REVISION	BY	DATE
3	REVISED TO ADDRESS 1/30/17 MNCPPC COMMENTS	KVC	2/3/17
2	REVISED TO ADDRESS 12/5/16 MNCPPC COMMENTS	KVC	12/21/16
1	REVISED TO ADDRESS DRC COMMENTS	KVC	8/25/16

DATE	DESIGNED	TECHNICIAN	CHECKED
MARCH 2015	KVC	HN	ECW

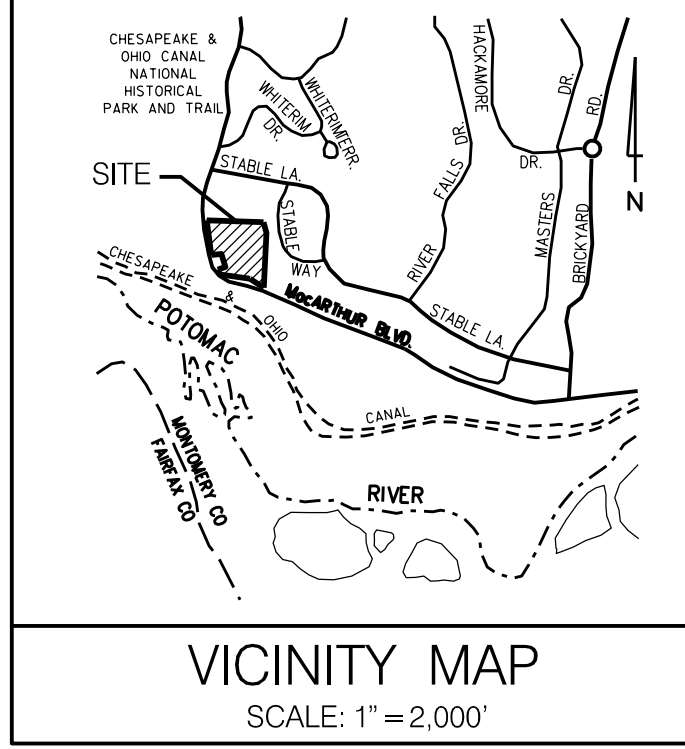
GRAPHIC SCALE 1"=30'

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES
DIVISION OF LAND AND NATURAL RESOURCES
LAND SURVEYING

WSSC GRID: 229NW11 TAX MAP: FN 122
1030/ENG/
JOB NO. 1030 X LEVEL SYMBOLGY

PRELIMINARY FOREST CONSERVATION PLAN
for
CONDITIONAL USE PLAN

PRELIMINARY FOREST CONSERVATION PLAN
OLD ANGLERS INN
10TH. ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND



SHEET INDEX
1. PLAN VIEW
2. PLAN VIEW MITIGATION
3. NOTES & DETAILS

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2	REVISED TO ADDRESS 12/9/16 MNCPPC COMMENTS	KVC	12/21/16
1	REVISED TO ADDRESS DRC COMMENTS	KVC	8/25/16

DATE	DESIGNED	TECHNICIAN	CHECKED
MARCH 2015	KVC	HN	ECW

GRAPHIC SCALE 1"=30'	WSSC GRID: 229NW11	TAX MAP: FN 122
	1030/ENG/	
	JOB NO. 1030	X LEVEL SYMBOLOLOGY

**MITIGATION PLANTING
 PRELIMINARY FOREST
 CONSERVATION PLAN**
 for
CONDITIONAL USE PLAN

**PRELIMINARY FOREST
 CONSERVATION PLAN**
OLD ANGLERS INN
 10TH. ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

SHEET
2 OF
3
 SCALE
 1"=30'



February 3, 2017

Mr. Josh Penn
MNCP & PC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Old Angler's Inn – Conditional Use Application – New Banquet Facility on Parcel 527
Forest Conservation Plan – Variance Request
Kim Engineering No. 1030

Dear Mr. Penn:

On behalf of the property owner, Kim Engineering is requesting a variance for the removal of 6 on-site trees and for impact to the critical root zone of 4 on-site trees, all 30 inches or greater in DBH, as required under Section 22A-21 of Montgomery County's Forest Conservation Law. This variance request also includes information regarding trees 1 inch or greater in DBH which exist on the historic site immediately adjacent to the subject parcel, which contains the existing Old Angler's Inn and is owned and operated by this applicant. The variance request includes a request to impact the critical root zone of two trees with a DBH 1" or greater that are located on the historic site. The removal and/or impact of certain trees is necessary in association with the development of the above referenced property which is located on MacArthur Boulevard in Potomac, Maryland.

The significant and specimen trees were identified and shown on the previously approved NRI/FSD. The trees 1" or greater in DBH on the historic site are shown on the Preliminary Conservation Plan. Two of the trees 1" or greater on the historic site, specifically Tree 25 and Tree 86, will be impacted by this plan. The trees affected by this variance request are also shown on the Preliminary Forest Conservation Plan. The trees to be removed are located within the limits of disturbance or have impacts to their critical root zones which are too large to reasonably expect tree survival.

The site design consists of a proposed Country Inn banquet facility with associated parking, utility and drainage improvements. The applicant is making application for a Conditional Use approval for the new Country Inn banquet facility. The new driveway accessing MacArthur Boulevard is located at its proposed location because this location is optimal for adequate site distance in both the north and south directions along MacArthur Boulevard.

As shown in the approved NRI/FSD, nearly half of the property is mapped as stream valley buffer area. The new building and parking area were located to avoid impacts to the stream valley buffer, to avoid impacts to the existing historic Angler's Inn site and with consideration to the significant steep slopes which exist at the site. In doing so, the impacts to the specimen trees have been minimized and limited to unavoidable impacts at the new driveway connection and within the area being graded for the new development.

As shown in the plan, a proposed sewer main and storm drain extend into the stream valley buffer. Both of these pipes have been located to minimize disturbance of impacts to specimen trees within the buffer.



The storm drain pipe extends into the buffer so as to outfall the storm drain pipe at a safe location near the bottom of a steep slope to avoid creating erosive conditions on the steep slope.

Efforts were made to protect the existing specimen trees whenever feasible. Many of the existing specimen trees being impacted are in poor condition. The following is a description of the specimen trees proposed for removal and specimen trees proposed to be saved with impacts to their critical root zone areas. (See Exhibit A for a list of trees) See the Preliminary Forest Conservation Plan for locations of these specimen trees to be retained and removed as well as the trees 1" or greater in DBH on the historic Angler's Inn site.

Tree number 2 is a 35" diameter Yellow Poplar in good condition which needs to be removed to accommodate the new driveway connection to MacArthur Boulevard. As mentioned previously, the new driveway location was selected with the highest priority to safety by locating the driveway approximately 335 feet from the vehicular view line from the northbound lane, near a sharp curve in MacArthur Boulevard in front of the existing restaurant, as necessary to meet the minimum site distance on an arterial roadway. The new driveway cannot be shifted further to the south without compromising the site distance requirements. The driveway cannot be shifted in a meaningful way to the north without compromising the site distance in that direction, which is currently about 390 feet from the driveway as proposed. In addition it should be noted that Tree number 2 is located within the MacArthur Boulevard right of way dedication and could not be counted as retained.

Tree number 5 is a 40" diameter Black Cherry in very poor condition. The tree is located within the limit of grading at a proposed driveway location and needs to be removed.

Tree number 7 is a 31" diameter Yellow Poplar in good condition. The tree is located in a favorable area where only limited grading will occur within 12% of its large root zone, and while a variance is needed, we are confident this tree can be saved given the minimal impact.

Tree number 9 is a 34" Yellow Poplar in good condition. The tree is located within the limit of grading at the edge of the proposed building. Given that the building location (and new parking area) are located to avoid impacts to the stream buffer and existing historic site and zoning setbacks, the building location cannot be adjusted in a meaningful way and this tree must be removed.

Tree number 12 is a 38" diameter Yellow Poplar in good condition. The tree is located in a favorable area where only limited grading will occur within 4% of its large root zone, and while a variance is needed, we are confident this tree can be saved given the minimal impact.

Tree number 19 is a 46" diameter Yellow Poplar in poor condition located within the limit of grading at a proposed parking area. This tree must be removed to allow for construction of the new parking area.

Tree number 20 is a 37" diameter Black Cherry in fair condition located immediately adjacent to Tree number 19. Nearly all the critical root zone is impacted and this tree must be removed to allow for construction of the new parking area.

Tree number 23 is a 41" diameter Sycamore in good condition located adjacent to an existing gravel service driveway near its connection to MacArthur Boulevard. The gravel driveway is proposed to remain in its existing



condition. A new micro bioretention feature and a new retaining wall are proposed to be constructed within the critical root zone of this tree but are located on the opposite side of the existing gravel driveway. While the impact to the critical root zone is mapped at 26%, we would expect that the actual impact would likely be less, given the existence of the gravel driveway, which would typically discourage critical root expansion. The plan proposes to save this attractive tree. An arborist recommendation may be desirable to ensure its survival.

Tree number 27 is a 34" diameter Sycamore in Fair/Good condition which is located at the edge of the existing gravel parking lot. The proposed impact to this critical root zone is minimal at 9%. We expect that with root pruning this tree can be saved. The proposed impact is due to a proposed sewer house connection to an existing sewer manhole and a proposed storm drain outfall. The outfall locations cannot be adjusted to completely avoid impact to the critical root zone of tree number 27.

Tree number 85 is a 32" diameter Yellow Poplar in very poor condition which is located well within the limits of grading, in the proposed parking area, and must be removed.

It is our understanding that any trees located within a historic setting with a 1" DBH or greater require a variance if they are proposed to be removed or if there are any impacts within the critical root zone. The adjacent historic site contains trees greater than 1 "inch DBH numbered 25, 26, 66, 67, 69 through 77 and 86 through 94 as shown on the Preliminary Forest Conservation Plan. There is minimal grading impact related to the proposed development (3%) of the critical root zones of Tree 25 and Tree 86 (4%) only. Therefore; Trees 25 and 86 are included in the variance request. The trees are in a favorable area where only limited grading will occur within 3% the critical root zone for tree 25 and 4% of the critical root zone of tree 86, and while a variance is needed, we are confident these trees can be saved given the minimal impact. The impact is unavoidable due to the proximity of the grading and retaining wall. The grading cannot be significantly adjusted to avoid the impact.

Mitigation for the removal of the 6 specimen trees (219 caliper inches) is proposed in the form of planting native canopy trees. The Forest Conservation Plan proposes planting 19 - three inch caliper native trees. $(219/4)=54.75/3=18.25= 19 - \text{three inch caliper trees.}$

1. *Describe the special conditions peculiar to the property which would cause the unwarranted hardship.*
The subject property is made up of a parcel of land with a gross area of 7.32 acres, of which 3.71 acres are in the stream valley buffer. The adjacent property, P530 which is under the same ownership contains the existing Old Angler's Inn, which is listed as a historic property. Some of the existing uses associated with the Inn are on the subject property, including parking, service access and outdoor dining. This application proposes to revise the property lines to put all of the uses associated with the existing inn on a new Inn parcel. The access to the proposed County Inn facility is located on the northern edge of the property in a location that provides for adequate site distance. Considering the location of the existing Old Anger's Inn and its associated uses, the site topography, required site access location and utility connections, it is not feasible to develop the site for the County Inn without disturbing some of the critical root zone of the existing trees.
2. *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.*



As described above, the property is zoned R-200 and is located along MacArthur Boulevard. To the south and west of the property is the existing Old Angler's Inn, a historic site, under the same ownership. The inability to disturb any of the critical root zones of the existing trees would cause the property to be undevelopable. Efforts have been undertaken during the design phase to limit the grading and disturbance within the critical root zone areas of the trees subject to the variance request. In fact, during the review process the sewer outfall was relocated to be adjacent to the storm drain outfall, thereby reducing the fragmentation of the existing forest. Considering the size and configuration of the property and the requirement to retain the Old Angler's Inn, the proposed County Inn and facilities cannot be adjusted in a meaningful way to avoid impacts to the critical root zones. The same criteria has been applied to similar projects where CRZ disturbance is unavoidable. Therefore, the potential to not impact the critical root zones of the existing specimen tree would create a significant disadvantage to the applicant that deprives the applicant of the opportunities afforded to the neighboring or similar properties that have not experienced this unique review and approval process.

3. *Verify that State water quality standards will not be violated or that measurable degradation in water quality will not occur as a result of the granting of the variance.*

Kim Engineering has prepared a Stormwater Management Concept, which is currently under review by the Montgomery County Department of Permitting Services. That concept proposes to address stormwater management requirements through Environmental Site Design, by providing 3 micro-bioretenion facilities and a bioswale to treat the parking lot and part of the building runoff. The plan also proposes dry wells to treat the remaining building runoff. The design intent of these stormwater features is to provide water quality that will replicate a wooded site in good condition, after development. Therefore, State water quality standards will not be violated or a measurable degradation in water quality will not occur as a result of the granting of the variance request.

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

In addition, the Forest Conservation Plan and the Landscape Plans propose the addition of nineteen - 3-3 ½ inch caliper trees to mitigate the removal of the 6 specimen trees.

Thank you for your consideration of this Tree Variance request. In summary, we believe that the information provided in this letter justifies the variance to remove 6 specimen trees and to impact the critical root zone of three (4) specimen trees and two trees located within the historic setting that are to be preserved.

Sincerely,

A handwritten signature in blue ink that reads "Karen V. Carpenter". The signature is stylized and includes a large, sweeping flourish at the end.

Karen V. Carpenter
MD RLA No. 527
Kim Engineering, Inc.



Exhibit A

OLD ANGLER'S INN ON-SITE TREE LIST VARIANCE REQUEST

ID	COMMON NAME	SPECIES NAME	DBH (INCHES)	CONDITION	PERCENT CRZ DISTURBED	RECOMMENDATION
#2	Yellow Poplar	Liriodendron tulipifera	35	Good	80%	REMOVE
#5	Black Cherry	Prunus serotina	40	Very Poor - hollow trunk, crown dieback, leader broken off	100%	REMOVE
#7	Yellow Poplar	Liriodendron tulipifera	31	Good	12%	SAVE, ROOT PRUNE
#9	Yellow Poplar	Liriodendron tulipifera	34	Good	100%	REMOVE
#12	Yellow Poplar	Liriodendron tulipifera	38	Good	4%	SAVE, ROOT PRUNE
#19	Yellow Poplar	Liriodendron tulipifera	46 (2-trunk)	Poor - one trunk dead	85%	REMOVE
#20	Black Cherry	Prunus serotina	32	Fair - crown dieback, broken limbs	89%	REMOVE
#23	Sycamore	Platanus occidentalis	41	Good	26%	SAVE, ROOT PRUNE
#25	Yellow Poplar	Liriodendron tulipifera	26	Good	3%	SAVE, ROOT PRUNE
#27	Sycamore	Platanus occidentalis	34	Fair, crown dieback	9%	SAVE, ROOT PRUNE
#85	Yellow Poplar	Liriodendron tulipifera	32	Very Poor - most of trunk broken off	100%	REMOVE
#86	Flowering Dogwood	Cornus florida	4	Fair, few branches	4%	SAVE, ROOT PRUNE



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

February 9, 2017

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

RE: Maryland Catering Company (Old Anglers Inn), CU 2015006, NRI/FSD recertification application accepted on 12/18/2012

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.

255 Rockville Pike, Suite 120 • Rockville, Maryland 20850 • 240-777-0311 • 240-777-7715 FAX
www.montgomerycountymd.gov/dep

Casey Anderson
February 9, 2017
Page 2

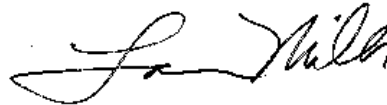
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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 meeting 'conditions of approval' pertaining to variance trees recommended by Planning staff, as well as 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: Josh Penn, Planner Coordinator