



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #  
December 16, 2010

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** Mark Pfefferle, Acting Chief, Environmental Planning Division *MP*  
**FROM:** Candy Bunnag, Planner Coordinator, Environmental Planning Division *CB*

**DATE:** December 1, 2010

**REVIEW TYPE:** Preliminary Forest Conservation Plan for Mandatory Referral

**PLAN NAME:** Third District Police Station: Phase 1 (Third District Police Station) and Phase 2 (Undetermined Use) on County- owned Property

**PLAN NUMBER:** MR2009742

**REVIEW BASIS:** Chapter 22A of the County Code

**LOCATION:** Northwestern Quadrant of the White Oak Interchange at Route 29 and New Hampshire Avenue, White Oak Master Plan

**APPLICANT:** Montgomery County Department of General Services

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**STAFF RECOMMENDATIONS**

Environmental Planning recommends approval of the Preliminary Forest Conservation Plan for Phase 1 (Police Station) and Phase 2 (undetermined use) developments, including **approval** of the request for a variance from the County Forest Conservation Law, with the following conditions:

1. Revise the Preliminary Forest Conservation Plan as follows:
  - a. Include detailed calculations for determination of landscape credit for proposed parking lot trees. No forest conservation landscape credit will be provided for trees that overlap with stormwater management easements and/or infrastructure.
  - b. Use tree shelters made of no. 14 gauge wire fabric with 2" x 4" openings instead of plastic tree shelters.
2. The Preliminary Forest Conservation Plan must be amended by the Planning Board to include a specific proposal for Phase 2 prior to the review and approval of a Final Forest Conservation Plan for Phase 2.

3. Submission and approval of a separate Final Forest Conservation Plans for each development phase for the property prior to any land disturbing activities occurring onsite. No land disturbance activities, including forest clearing, can occur on either phase of the site until a Final Forest Conservation Plan is approved for the specific project phase.
4. The Final Forest Conservation Plan for Phase 1 must include the following:
  - a. Submit a tree save plan for Forest Preservation Area A. The tree save plan must identify native trees that are at least 4 inches and greater, diameter at breast height (DBH), and lying within 50 feet of the proposed eastern and southern boundaries of Forest Preservation Area A. The tree save plan must include a critical root zone analysis for such native trees and provide tree preservation measures, such as, but not limited to, reconfiguration of the limits of disturbance in those areas where preservation of such trees may be possible.
  - b. Add root pruning along the limits of disturbance where forest or trees are to be protected, including all areas of forest and trees in Phase 2.
  - c. Detailed five-year maintenance program for removal and management of non-native invasive species and required supplemental forest plantings, as needed, for each forest conservation area.
  - d. Supplemental plantings within forest retention areas must be determined in the field and must include native trees and shrubs.
  - e. Add a note that at least one person performing the invasive plant management work must have experience in invasive plant removal and management techniques. Qualifications of this person must be submitted to M-NCPPC Environmental Planning Division for review and approval prior to the pre-construction meeting.
5. Prior to the start of any onsite clearing or grading the applicant must record Category I conservation easements over all onsite forest retention and forest planting areas shown on the approved Final Forest Conservation Plan for the appropriate phase of development. The applicant must also record a Category II over those landscaped trees that are counted towards meeting the forest conservation plan requirements.

## **BACKGROUND**

The 12.79-acre subject site is zoned R-90/TDR, and lies in the northeastern quadrant of the intersection of New Hampshire Avenue and Route 29 (Figure 1). Montgomery County owns the entire site. The Montgomery County Department of General Services (DGS) proposes a two-phase project for the site: a police station and an undetermined, future use. The Preliminary Forest Conservation Plan includes the proposed police station and most of the remainder of the 12.79-acre site, excluding only that portion that will be dedicated to State Highway Administration (SHA) for purposes of constructing a grade-separated interchange of Route 29 and Stewart Drive. The SHA Stewart Lane interchange project is identified as a needed project in the White Oak Master Plan. The current County's mandatory referral and Forest Conservation Plan for the police station project

reserves a portion of the County site for this interchange project.

Approximately 1.96 acres of the northeastern portion of the subject site is shown to be used for an interchange project for Stewart Lane that will be constructed by SHA in the future. This portion of the site that is reserved for the SHA interchange and is not proposed for disturbance as part of Phase 1 is not included in the current Preliminary Forest Conservation Plan or the mandatory referral review. As with other SHA projects, this interchange project will be reviewed by the Maryland Department of Natural Resources (DNR) under the Maryland Reforestation Law (Natural Resources Article 5-103). In addition, the SHA project will be reviewed by the Planning Board as a mandatory referral. These reviews will occur when SHA submits plans to DNR and M-NCPPC at the appropriate points in its project planning and design process.

**Plan Overview**

**Figure 1. Vicinity Map**



The Preliminary Forest Conservation Plan (FCP) and mandatory referral were originally scheduled for review by the Planning Board on March 4, 2010 but the items were deferred at the request of the applicant. Throughout the review of this project, the community has strongly advocated for a large forested buffer along the western property line to screen adjoining residences from the police station.

On May 27<sup>th</sup>, 2010, the public hearing on the mandatory referral and forest conservation plan was held. The forest conservation plan provided for the hearing showed the applicant, DGS, proposing a 50-foot wide vegetated buffer along most of the western property boundary and a 50-foot wide forest retention area along the northwestern corner of the site. However, DGS had indicated that about half of that buffer would need to be graded or disturbed. The submitted Preliminary FCP submitted in support of the May 27<sup>th</sup> hearing proposed to retain 0.28 acre and replant 0.46 acre of forest onsite and to replant 4.66-acre of forest offsite.

At the public hearing, the Planning Board did not approve the submitted Preliminary FCP. The Board determined that the applicant's proposed tree save area, reforestation area, and forest preservation area were inadequate to provide an appropriate buffer between the police station and the surrounding residential community. The Planning Board indicated that the County's goal for the site should be to locate a police station and to provide as much buffer as possible for the community. The order of magnitude size for the buffer should be roughly 100 to 200 feet wide. This would be consistent with the forest conservation area created on the nearby Sunrise Assisted Living Facility that buffered the special exception use from neighboring residences; this conservation area has a width of roughly 160 feet. The Planning Board Chairman, Dr. Hanson, stated that public agencies should be creating projects that set good examples for others to follow. Public agencies should not propose a project to just meet minimum requirements. In addition, although the onsite forest is currently not in "prime" condition, it has the potential, with maintenance over time, to regenerate into a good forest. Since there is no specific proposal for a second use on the site, the County should not "reserve" area for the unknown second use at the expense of maximizing forest retention and planting onsite. With the proposed Preliminary FCP, the Planning Board could not find that the applicant had made maximum use of all planning and zoning options to achieve the greatest possible forest retention for the site. Before the Planning Board took action, the applicant requested a deferral of both the mandatory referral and the FCP in order to re-design the site to address the Planning Board's and community's concerns.

This staff memorandum provides staff's analysis and recommendations for the latest, revised Preliminary FCP (signed by the qualified professional on October 25, 2010).

## **DISCUSSION**

There are two items for Planning Board review for the Third District Police Station project: recommendations on the mandatory referral for the Police Station and the Preliminary FCP for the entire site. Whereas the mandatory referral covers only the Police Station phase of the County project the preliminary forest conservation plan includes both the police station and an unknown second use. The unknown use would be subject to a second mandatory referral hearing when DGS identifies the use and submits the mandatory referral for Planning Board consideration.

This memorandum covers staff's review and recommendations on the Preliminary FCP for the entire site and some additional offsite area, but excludes the SHA interchange area. It should be noted that the submitted forest conservation plan is labeled as a Preliminary and Final FCP for Phases 1 and 2. However, staff believes the submitted plan should be reviewed as a Preliminary FCP for a two-phase development and not as a Final FCP for the entire property. Final FCPs should be submitted separately for each phase for review and approval if the Preliminary FCP that covers the entire subject site is approved by the Planning Board.

*The Board's actions on the Preliminary Forest Conservation Plan are regulatory and binding. The Planning Board must act on the Forest Conservations Plan before it can proceed to make recommendations on the mandatory referral.*

## **REVIEW UNDER THE COUNTY FOREST CONSERVATION LAW**

### **Natural Resource Inventory/Forest Stand Delineation (NRI/FSD)**

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD #420050860) was originally approved by Environmental Planning staff on November 2, 2004 when the subject site was privately owned, and a private developer had started the process to subdivide the site. The subdivision was never reviewed by the Planning Board and the application expired. An updated NRI/FSD was submitted in February 2009 and was recertified by Environmental Planning staff on March 18, 2009.

The site is located in the Paint Branch watershed (Use III waters), but outside the Special Protection Area (SPA). There are no streams, floodplains, wetlands, or environmental buffers on or affecting the site. The closest stream to the site is over 1000 feet away on the northeastern side of Route 29. The mainstem of Paint Branch lies almost 3000 feet away from the site. The site lies within the Stewart-April Lane subwatershed of Paint Branch. The Montgomery County Department of Environmental Protection's "Countywide Stream Protection Strategy" (February 1998) documents the subwatershed condition as poor and designates the subwatershed as a watershed restoration area.

The site's topography slopes down roughly from northwest to southeast towards Milestone Drive and Route 29. The majority of the topography is less than 15 percent steep. There are relatively small segments of steeper slopes (15 to 25% and 25% and greater) on the southwestern edge of the site adjacent to Milestone Drive and as part of the created slopes adjacent to Seton Drive that was constructed on the northern portion of the site.

There are 9.52 acres of forest on the site. Forest covers the majority of the site except for the northern portion, which has been disturbed for the construction of Seton Drive, an extension of Sherbrooke Woods Lane, from the existing subdivision to the north to Milestone Drive to the east side of the site. The forest is in an early successional stage that was previously disturbed. The dominant native trees are red maples in the 6-inch to 11.9-inch diameter at breast height (dbh) size range, and black locusts in the 12-inch to 19.9-inch dbh size range. Other native trees that exist in the forest include black cherry, black walnut, persimmon, mulberry, boxelder, pin oak, and eastern red cedar. The forest is documented in both the original NRI/FSD and the recertified NRI/FSD to have a large presence of non-native invasive plants, such as bush honeysuckle, multiflora rose, Japanese honeysuckle, and Asiatic bittersweet. The current NRI/FSD estimates that the non-native invasive species make up roughly 75 percent of all the forest layers.

There are 15 trees that are 24 inches and greater dbh. Seven of these trees are of specimen size. There are no champion trees, or trees that are within 75 percent of County champion trees on the site.

### **Preliminary Forest Conservation Plan**

This project is subject to Chapter 22A of the County Code (Montgomery County Forest Conservation Law) because it is a mandatory referral on a tract of land greater than 40,000 square feet. The applicant proposes to develop the subject site in two phases. The first phase is the Third District Police Station, which is the subject of the mandatory referral that is being reviewed by the Planning Board at this time. The second phase is currently undetermined as to its ultimate use. The Preliminary FCP shows a schematic layout that is labeled as a future county building and parking deck.

#### Revised Preliminary Forest Conservation Plan

As previously noted, the latest revision to the Preliminary FCP is the subject of this staff memorandum. The following changes have been made by DGS:

- The May 27, 2010 Preliminary FCP depicted a 50-foot wide forest conservation area along the western property line that was to be made up of a 25-foot wide tree preservation area (covering 0.19 acre) and a 25-foot wide forest planting area (covering 0.46 acre). In contrast, the revised Preliminary FCP proposes a forest preservation area along the western property line that covers 2.17 acres and is roughly 150 feet wide. In addition, the revised Preliminary FCP proposes a 0.32-acre reforestation area adjacent to the preservation area. The reforestation area would add to the 150-foot width of the forest preservation area to create a forest buffer of approximately 180 feet along the western property line that would separate existing residences from the proposed police station facility. The wide forest buffer that is proposed is consistent with the Planning Board's direction stated at the May 27<sup>th</sup> public hearing.
- The May 27, 2010 Preliminary FCP depicted 0.28 acres of onsite forest retention. The revised Preliminary FCP has increased forest retention to 2.69 acres (almost 10 times larger). The onsite forest retention area covers the western and northwestern parts of the property and provides a large forest buffer for the existing residences to the west and northwest of the subject site.
- The May 27, 2010 Preliminary FCP showed that not all forest conservation requirements were going to be met onsite and the DGS would have an offsite planting requirement. The revised preliminary FCP shows that all requirements will be met onsite by retaining 2.69 acres of existing forest, planting 0.99 acre of new forest, and using 0.19 acre of landscape credit for some of the native, overstory parking lot trees that will all occur on the site.

Staff believes that the proposed 2.69 acres of forest save provides the greatest possible forest retention, given that the County proposes a two-phase project. Although the County has not proposed a specific use for its second phase, the land area "reserved" for Phase 2 has decreased significantly from 5.36 acres in the original Preliminary FCP to 2.12 acres in the current FCP.

#### Net Tract for Forest Conservation Worksheet

The gross tract area of the subject site is 12.79 acres. There is land disturbance that is proposed to occur outside the gross tract area as part of the police station project. This disturbance increases the tract area for purposes of the forest conservation worksheet calculations to 12.97 acres. However,

part of the gross tract is covered by Phase 3, which is the proposed location of a State Highway Administration (SHA) project for the future Stewart Lane Interchange at Rte. 29. The Phase 3 land area is proposed for right-of-way reservation. This SHA project has not been reviewed by the Planning Board. Since Phase 3 is part of a separate project by a different government agency, the portion of the Phase 3 land area that will not be disturbed by the County project is, therefore, subtracted from the net tract area for forest conservation purposes. The net tract area for the worksheet for both phases of the County project is 11.15 acres.

#### Phase 1 Development (Third District Police Station)

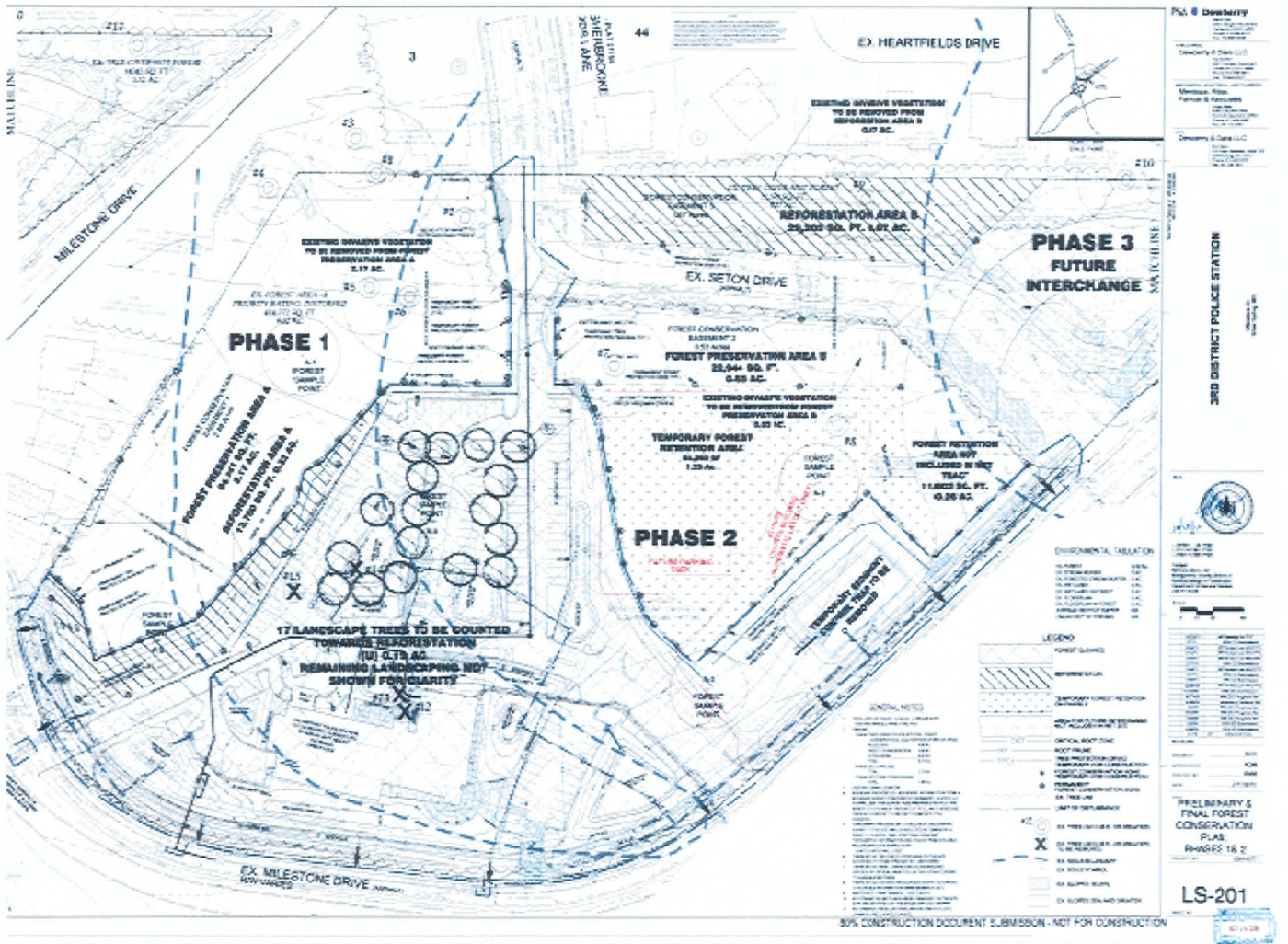
The Preliminary FCP shows how County's two phase project will meet forest conservation plan requirements onsite, assuming no forest preservation in Phase 2. Phase 1 is shown to have all of the required forest retention, forest planting, and landscaped planting for the two-phased project.

Phase 1 development covers 8.71 acres of the 11.15-acre net tract area. This phase of development includes the proposed limits of disturbance for the police station use, the proposed forest retention and planting areas, and limits of disturbance for a sediment trap, sidewalk along Milestone Drive, and storm drain lines.

There is a 1.18-acre reforestation requirement for the entire site (excluding the SHA Stewart Lane interchange area), which includes the clearing associated with the Phase 1 (police station) project and assuming worst-case scenario with no long-term preservation of forest in the Phase 2 portion. The Preliminary FCP proposes to provide 0.19 acre of landscape credit with the use of native shade trees for landscaping. In addition, the Preliminary FCP proposes to provide 0.99 acre of onsite reforestation.

As previously noted, all forest conservation plan requirements will be met onsite. Figure 2, below, shows the revised forest conservation plan.

Figure 2. Revised Preliminary Forest Conservation Plan



The existing forest has a high concentration of non-native invasive plants, including bush honeysuckle, Japanese honeysuckle, multi-flora rose, and oriental bittersweet. Staff recommends a detailed invasive plant management plan that would identify the specific measures that are needed to remove the non-native invasive species. Staff also recommends that the management plan include supplemental planting with native trees and shrubs to fill in gaps in the forest preservation areas that would be created when the non-native invasive plants are removed. Staff recommends that the management plan cover at least 5 years to ensure that removal efforts of the non-native invasives are effective.



## Phase 2 Development

As noted above, the remaining 2.12 acres of land that are outside the Phase 1 development area have no specific use proposed by the County at this time. The Preliminary FCP shows no clearing or grading outside of proposed limits of disturbance for Phase 1. It should be noted that there is proposed clearing and grading on part of the Phase 2 land that are due to a sediment trap, grading for a bioretention facility, and grading for a driveway entrance for Phase 1.

When the County has a specific project for Phase 2, staff recommends that the Preliminary FCP be amended to show the details of the Phase 2 development and that the amended Preliminary FCP is reviewed by the Planning Board together with a mandatory referral or private development plan, as appropriate. Staff also recommends that no clearing or grading can occur within the Phase 2 portion of the site unless a Final FCP for a Phase 2 project is approved, or unless there are areas within Phase 2 that must be cleared or graded as part of Phase 1.

## Forest Conservation Variance

Section 5-1607(c) of the Natural Resources Article, MD Ann. Code affects the Montgomery County Forest Conservation law by identifying the following trees, shrubs, plants, and specific areas as priority for retention and protection and shall be left in an undisturbed condition unless the applicant qualifies for a variance in accordance. 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.*

Under Chapter 22A-21 of the County Code a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant for a variance must:

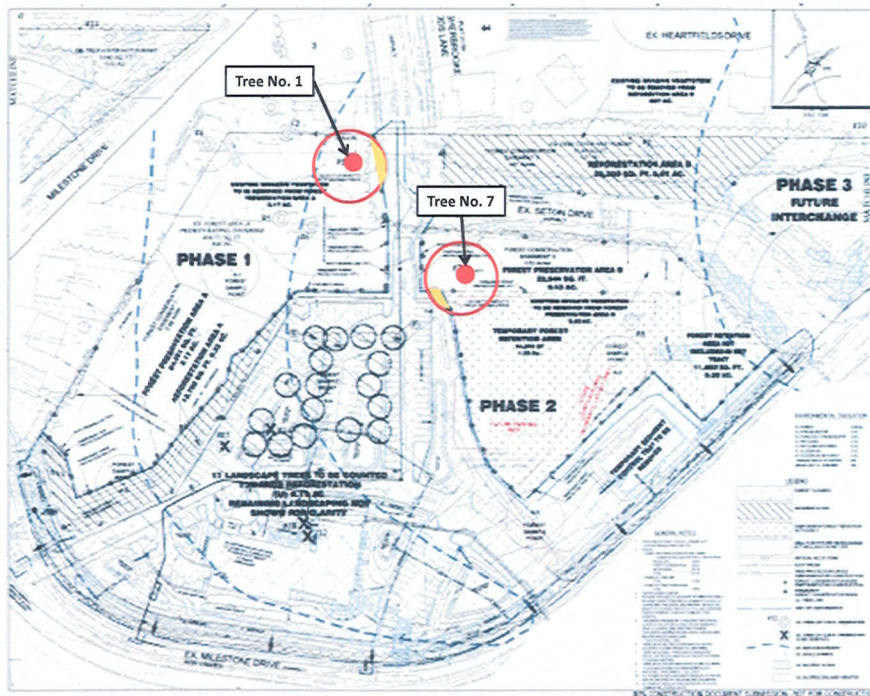
- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights

- commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

In Montgomery County before considering the variance the Planning Board must refer a copy of each request to the County Arborist within the Montgomery County Department of Environmental Protection for a written recommendation. The County Arborist must make a recommendation on the variance request to the Planning Board within 30 days from the receipt of the request. If there is no recommendation from the County Arborist the response is presumed to be favorable.

### VARIANCE REQUEST

On October 21, 2010, the applicant submitted a variance request (Attachment A) for proposed impacts to the critical root zones of two trees that are 30 inches and greater in diameter at breast height (DBH). The three onsite trees are #1 (30-inch, DBH, tulip poplar) and #7 (33-inch, DBH, red maple). For each tree, the disturbance to its critical root zone is less than 33 percent, and is very small. Therefore, the impacts are such that each of these trees can be protected and preserved, if standard tree protection measures are implemented as part of the project.



**Figure 3: Trees Requiring Variance**

The applicant’s October 21, 2010 letter requesting approval of the variance (Attachment A) includes the following rationale:

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

“The property’s physical location within the County and its proximity to existing and proposed roadway network were contributing factors in the decision to utilize the property for the Montgomery County police station. Unfortunately, the existing property contains a rolling landscape which, in order to create site conditions appropriate for the proposed use, must be significantly altered. Forest conservation requirements will be provided 100% on site by the preservation of 2.69 acres and reforestation of 0.99 acres. Additionally, 1.25 acres of forest will be temporarily retained until such time as the Phase 2 development occurs. At that time, the final forest conservation plan will be amended to show the ultimate forest clearing.”

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

“Should this requested variance not be granted, Montgomery County would be unable to develop the property as is currently planned in order to accommodate current and future County service needs.”

- (3) *Verify that State water quality standards will not be avoided 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 be met. As previously discussed, the project is being developed in accordance with the 2007 MD stormwater management act Environmental Site Design criteria. Granting the requested variance will not alter the project approach to, or implementation of, water quality protection.”

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

“In addition, tree #1 is rated in good condition and tree #7 is rated in poor condition as part of the natural resources inventory. Neither of these trees is part of an environmentally significant forest stand in terms of age or size, and neither species provides outstanding qualities of uniqueness, rarity or status as a landmark. Both trees are much smaller than the State Champion tree of their respective species, as identified by Maryland DNR. Both tree species are fast growing, and have limited life spans.”

## **VARIANCE FINDINGS**

The Planning Board must make findings that the applicant has met all requirements of section 22A-21 of the County Code before granting the variance. Staff has made the following determination on the required findings:

1. Will confer on the applicant a special privilege that would be denied to other applicants;

Granting the variance will not confer a special privilege as disturbance of the two specimen trees noted above are the minimum necessary in order to provide public sewer service to the

police station and to provide adequate parking spaces for employees and police vehicles at the police station. Providing public sewer hookup and adequate parking spaces are reasonable and would be a privilege extended to any applicant in a similar situation.

2. Is based on conditions or circumstances which are the result of the actions by the applicant;

The provision of public sewer service is required for any building that is constructed on the subject site. Public sewer service on this site is not limited to only a government agency. In addition, adequate onsite parking must be provided for any project proposed on the subject site since there is no public parking structure nearby or offsite parking available on existing public roads that surround the site.

3. Is 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 County's proposed project to locate a police station and another use on the site. It is not a result of land or building use on a neighboring property.

4. Will violate State water quality standards or cause measurable degradation in water quality.

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being disturbed will not be removed. A stormwater management concept has been conditionally approved by Montgomery County Department of Permitting Services (Attachment B). Prior to clearing and grading on the site, a sediment and erosion control permit will be required by the Department of Permitting Services (DPS).

On November 2, 2010 the County Arborist provided a written statement indicating that she was electing not to review the variance request for the project (Attachment C).

## **MITIGATION**

Staff does not recommend that compensation be required for the proposed impacts to the two specimen trees. The impacts to each of these trees are less than 30 percent of each tree's critical root zone. The impacts are such that each of these trees can be protected and preserved, if standard tree protection measures, as shown on the current forest conservation plan, are implemented as part of the project. The impacts are unavoidable, but they will not result in a requirement to remove either of the affected trees. The trees will be protected as part of proposed forest preservation areas that are located in Phase 1. For Tree #1, the impacts to the tree's critical root zone are due to the proposed connection of a sewer line to the existing line under Sherbrooke Woods Lane. For Tree #7, the impacts are due to a proposed parking lot to provide adequate onsite parking for the employees of the police station and for police vehicles.

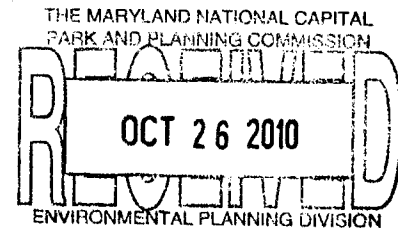
## **SUMMARY**

Staff believes the revised Preliminary Forest Conservation Plan meets the requirements of the County Forest Conservation Law and addresses the Planning Board's concerns from the May 27<sup>th</sup>

public hearing. Staff recommends the Planning Board approve the current Preliminary Forest Conservation Plan with conditions as specified in the staff report.

October 21, 2010

Mr. Mark Pfefferle  
Acting Division Chief  
M-NCPPC Environmental Planning Division  
8787 Georgia Avenue  
Silver Spring, MD 20910



RE: Revised Forest Conservation Variance Request  
3<sup>rd</sup> District Police Station MR2009742

Dear Mr. Pfefferle,

On behalf of our client, the Montgomery County Department of General Services, and in accordance with Section 22A-21 of the County Code, we hereby request a variance to Maryland State Bill 666 and to Section 22A-12(b)(2)(E) to allow disturbance to the critical root zones of two trees 30 inches or greater in diameter as measured 4.5 feet above ground.

A Preliminary Forest Conservation Plan was submitted to the MNCPPC Environmental Planning Division as part of the Mandatory Referral for the proposed 3<sup>rd</sup> District Police Station in White Oak, Maryland. In accordance with your letter dated October 14, 2009, and as part of the submittal process, per Maryland State Bill 666, we are required to refer to your attention any project within which disturbance of trees 30 inches and greater in diameter is proposed. Also, a variance request to permit the removal of said trees must be referred to your attention before the forest conservation plan can be reviewed by the Montgomery County Planning Board.

#### Project Development

The police station is being developed on the south-central portion of a 12.79 acre tract of land owned by Montgomery County, located at the north-eastern corner of the intersection of New Hampshire Avenue and Columbia Pike. The Montgomery County Program of Requirements for the police station calls for a two story building of approximately 30,000 square feet, 37 guest parking spaces in front of the building, and 135 secure parking spaces in the rear, with three access points off Milestone Drive and one access drive off Sherbrooke Woods Lane.

#### Existing Site Conditions

The site has gently rolling topography with two ridges and a swale bisecting the parcel, with existing slopes between 3% and 15% in the interior and an embankment between 6 and 12 feet high across the front of the property, adjacent to Milestone Drive. The County property contains an existing forest stand with a priority rating of Disturbed, described in the project's approved Forest Stand Delineation as follows:

Stand A (9.52 acres) is a disturbed, early seral forest co-dominated by red maple, *Acer rubrum* in the 6" to 11.9" d.b.h. size class and black locust *Robinia pseudo-acacia* in the 12" to 19.9" d.b.h. size class. This stand makes up all of the forest located on the site and is fragmented into three forest areas. The over story species include black cherry, *Prunus serotina*; black walnut, *Juglans*

Mr. Mark Pfefferle  
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*nigra*; persimmon, *Diospiros virginiana*; mulberry, *Morus alba*; boxelder, *Acer negundo*; pin oak, *Quercus palustris*; and eastern redcedar, *Juniperus virginiana* along with the red maple and black locust. Regeneration of the over story species has moderate potential due to the lack of large seed-bearing stock observed, also, the high amount of invasive shrubs and vines is hindering the growth and establishment of smaller stock. Canopy closure is approximately 36%. The understory (44% coverage) is made up of grape, *Vitis sp.*; brambles, *Rubus sp.*; American holly, *Ilex opaca*; dogwood, *Cornus florida*; boxelder; black cherry; black locust, and eastern redcedar. Four invasive species (bush honeysuckle, *Lonicera maackii*; multiflora rose, *Rosa multiflora*, Japanese honeysuckle, *Lonicera japonica*; and Asiatic bittersweet, *Celastrus orbiculatus*) were observed within the stand. These species comprise approximately 75% of all layers. The understory is very thick with brambles, multiflora rose, greenbrier, and Japanese honeysuckle in some places and movement through the stand is made only by deer trails. Very little herbaceous ground cover was observed within the stand. The amount of downed woody debris averages approximately 20% throughout the stand. Several deciduous trees have fallen and it appears that shallow root systems are the reason.

The Subject Property is mostly forested and located within the Paint Branch Watershed that is designated as Use Class III. No streams, wetlands, floodplains or associated buffers exist on or near the property. No critical habitats are known to exist on the site.

As shown on the approved NRI-FSD, there are two specimen-size trees within the project limits near the proposed limits of disturbance of the site:

- #1: 30" Tulip Poplar,
- #7: 35" Red Maple.

#### Proposed Conditions

The project is being developed in accordance with the 2007 MD stormwater management act Environmental Site Design criteria, using a green roof, three infiltration trenches, and six biofiltration facilities. Extensive landscaping in the form of shade and flowering trees, providing over an acre of new tree canopy between the parking bays, will shade the pavement and further reduce the runoff. The design criteria for the biofiltration areas require that the slopes on the pavement be set between zero and three percent grades in all directions, and the access drive from Milestone Drive has a maximum allowable grade of 10 percent. These design factors require the site to be extensively graded in order to remove a ridges where the proposed building sits and fill in a swale under the proposed parking. The overall plan of the site was designed to minimize stormwater impacts by maximizing sheet flow and infiltration, and spreading the stormwater runoff to multiple small drainage areas

As part of this development, a small portion of the critical root zones of tree #1 - 30" dbh Tulip Poplar (553 sq ft) and tree #7 - 33" dbh Black Cherry (351 sq ft) will be impacted by grading activity.

A Phase 2 development is reserved for a 2.1 acre portion of the site, east of the police station. At this time Montgomery County Department of General Services has no proposed use designated for Phase 2, and the future buildings shown on the plans are for illustrative purposes only.

The following rationale is presented to support this variance request:

1. The property's physical location within the County and its proximity to existing and proposed roadway network were contributing factors in the decision to utilize the property for the Montgomery County police station. Unfortunately, the existing property contains a rolling landscape which, in order to create site conditions appropriate for the proposed use, must be significantly altered. Forest conservation requirements will be provided 100% on site by the preservation of 2.69 acres and reforestation of 0.99 acres. Additionally, 1.25 acres of forest will be temporarily retained until such time as the Phase 2 development occurs. At that time, the final forest conservation plan will be amended to show the ultimate forest clearing.
2. Should this requested variance not be granted, Montgomery County would be unable to develop the property as is currently planned in order to accommodate current and future County service needs.
3. State water quality standards will be met. As previously discussed, the project is being developed in accordance with the 2007 MD stormwater management act Environmental Site Design criteria. Granting the requested variance will not alter the project approach to, or implementation of, water quality protection.
4. In addition, tree #1 is rated in good condition and tree #7 is rated in poor condition as part of the natural resources inventory. Neither of these trees is part of an environmentally significant forest stand in terms of age or size, and neither species provides outstanding qualities of uniqueness, rarity or status as a landmark. Both trees are much smaller than the State Champion tree of their respective species, as identified by Maryland DNR. Both tree species are fast growing, and have limited life spans.

In summary, we are requesting a variance to Maryland State Bill 666 and to Montgomery County Code Section 22A-12(b)(2)(E) with the understanding that this site and project present unique conditions which, if the variance were not granted, would result in an unwarranted hardship to the development of this site. The applicant has made efforts to reduce the size and configuration of the proposed development in order to preserve several specimen trees along the north-west property boundary and to create a quality forest conservation area inclusive of those specimen trees adjacent to an existing off-site forest conservation area. The proposed site plan has been designed to meet the State water quality standards by maximizing infiltration, reducing runoff, and providing significant shade to reduce the heat island effect. And finally, the specimen trees in question are not unique in their size, age, or species as defined by Maryland DNR State Champion tree criteria.




Mr. Mark Pfefferle  
RE: Forest Conservation Variance Request  
3<sup>rd</sup> District Police Station MR2009742  
December 10, 2009  
Page 4

ATTACHMENT A  
(page 4 of 4)

We appreciate your consideration of this request and are available via mail, email, or telephone listed below, should you have any further questions or comments regarding this variance application.

Very Truly Yours,  
DEWBERRY



Kevin D. Mack, RLA, ASLA  
Associate

KDM:mdb G:\ADMIN\Files\Kevin\2009\Reports\3rd District Tree Removal Variance.docx

cc: Behrooz Alemi, Montgomery County Dept. of General Services  
Calvin Nelson, M-NCPPC



ATTACHMENTS B  
(page 1 of 2)

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Carla Reid  
Director

November 29, 2010

Mr. Jigar Bhatt  
Dewberry  
203 Perry Parkway, Suite 1  
Gaithersburg, MD 20877

Re: **REVISED Stormwater Management CONCEPT**  
Request for 3<sup>rd</sup> District Police Station  
Preliminary Plan #:  
SM File #: 235445  
Tract Size/Zone: 12.79 acres / R-90 / TDR  
Total Concept Area: 6 acres  
Lots/Block: N/A  
Parcel(s): 725, 731, 790  
Watershed: Paint Branch

Dear Mr. Bhatt:

Based on a review by the Department of Permitting Services Review Staff, the revised stormwater management concept for the above mentioned site is acceptable. The stormwater management concept consists of on-site stormwater management via ESD. This includes the use of an extensive green roof, micro bioretention, and infiltration.

The following items 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. A sediment control permit application (SC 236809) was previously filed for this project. Because the project has been revised substantially, a new sediment control permit application must be submitted. Along with the new application, please submit a written request to close the old application and remove it from the DPS review system.
5. This approval supersedes the stormwater concept approval dated April 27, 2009.

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.



ATTACHMENT B  
(page 2 & 2)

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 Mark Etheridge at 240-777-6338.

Sincerely,



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

RRB:tlm mca

cc: C. Conlon  
M. Pfefferle  
SM File # 235445

QN - ON; Acres: 6  
QL - ON; Acres: 6  
Recharge is provided



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

November 2, 2010

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

RE: 3<sup>rd</sup> District Police Station - Revised, MR 2009742, NRI/FSD recertification applied for on 2/5/2009

Dear Ms. Carrier:

Based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC), the application for the above referenced request is required to comply with Chapter 22A of the Montgomery County Code. As stated in a letter to Royce Hanson from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the specific provisions pertaining to significant trees in the State's Forest Conservation Act do not apply to any application that was submitted before October 1, 2009. Since this application was submitted before this date, I will not provide a recommendation pertaining to the approval of this request for a variance.

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, Acting Chief