



Arden Courts of Germantown, Residential Care Facility Conditional Use No. CU 2017-02

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Completed: 10/21/16

Description

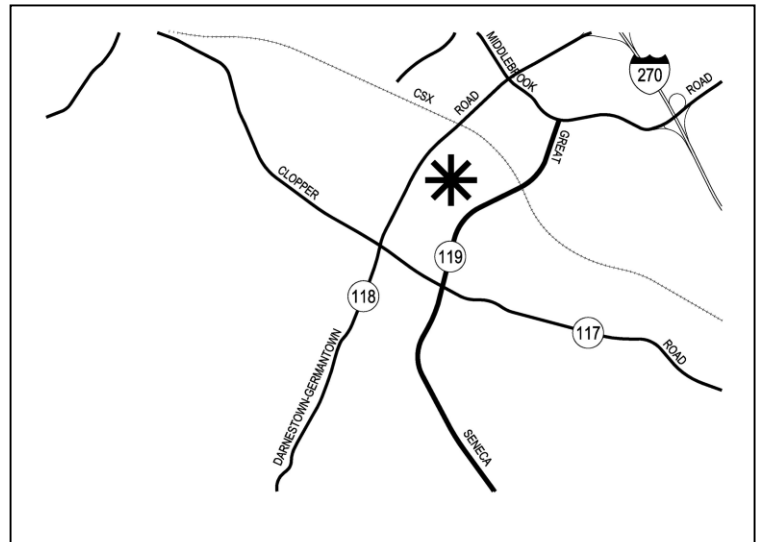
A. Preliminary Forest Conservation Plan CU 2017-02

Request for approval of a Preliminary Forest Conservation Plan as part of a Conditional Use application to construct a 64 bed residential care facility located at 19115 Liberty Mill Road, Germantown, MD; 3.62 acres; identified as Parcel 515 on Tax Map EU 341, at southeast corner of the intersection of Liberty Mill and Dawson Farm Roads; R-200 Zone; 1989 *Germantown Master Plan*; Great Seneca Creek Watershed.

Applicant: Arden Courts of Germantown, LLC

Submittal Date: July 20, 2016

Review Basis: Chapter 22A; Forest Conservation Law



SUMMARY

- **Staff Recommendation: Approval with Conditions**
- The Planning Board must take action on the Forest Conservation Plan for Conditional Use Application CU2017-02. The development proposed under this application fully complies with Chapter 22A, the Forest Conservation Law.

STAFF RECOMMENDATION: Approval of Preliminary Forest Conservation Plan (“PFCP”) No. CU2017-02, subject to the following conditions:

1. Applicant must submit a Final Forest Conservation Plan (“FFCP”) to M-NCPPC Staff for review with the Preliminary Plan submittal.
2. The FFCP must be consistent with the final approved PFCP.
3. Applicant must obtain approval of the FFCP prior to recordation of the plat.
4. The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.

SITE DESCRIPTION

The subject property is identified as Parce 515 on Tax Map EU 341 and is located at 19115 Liberty Mill Road, at the southeast corner of the intersection of Liberty Mill and Dawson Farm Roads in the Clopper Village Analysis Area of the 1989 Germantown Master Plan (“Subject Property” “Property”). The Property is zoned R-200 and is 3.60 acres in size. The Property currently has a single family detached residence located in the North corner of the Property with several associated out structures.

The Property is kept in grass with some large trees near the existing house and trees and vegetation along the east and south property lines. The Property generally slopes from the north corner to the low point in the south corner with an overall 4.0 percent slope. There are no steep slopes, highly erodible soils, or 100-year floodplains on the Property. However, there is a adjacent stream 55-feet off of the south corner and approximately a 0.07 acre (3,049 square feet) portion of that stream valley buffer (SVB) is on the Property. The Property contains three trees with a Diameter at Breast Height (“DBH”) of 30 inches or greater in the immediate area of the existing house. In addition there are six trees with a DBH between 24-inches and 30-inches on the Property. There is no forest on the Property.

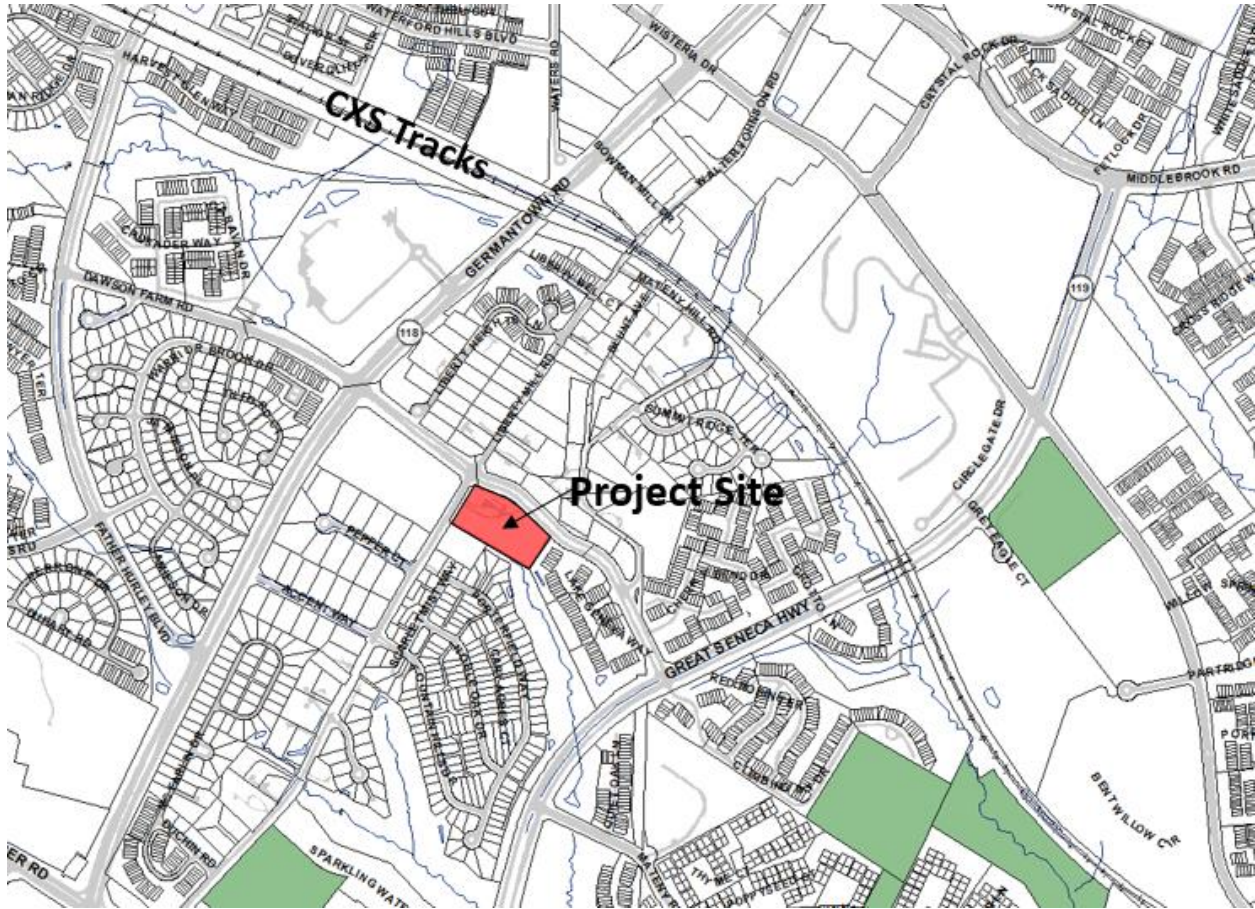


Figure 1. Project Vicinity

Neighboring properties are all zoned R-200. The neighboring land uses to the north, east and south are all residential. The property to the west across Liberty Mill Road from this site is Germantown Elementary School (Figure 2).

PROJECT DESCRIPTION

The PFCP (Attachment A) was prepared in support of Conditional Use Application No. CU2017-02. The conditional use application is to retain the existing residence and to construct a sixty-four bed residential care facility in a residential zone. While the Planning Board is advisory on Conditional Use applications per 59.7.3.1 of the Zoning Ordinance, the Planning Board must make a finding that the pending conditional use application complies with Chapter 22A of the County Code and approve the Preliminary Forest Conservation Plan.



Figure 2. 2015 Aerial Photograph of Project Site

ANALYSIS AND FINDINGS

Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County code. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved by M-NCPPC staff ("Staff") for the Property on February 5, 2016. There is no forest on the Property. However, there is a small segment of stream valley buffer (SVB) in the lower southern corner of the Property that extends from an off-site stream. A Preliminary Forest Conservation Plan has been submitted for review as part of the conditional use application. Since there is no forest on the property the County Code requires an afforestation requirement equal to 15 percent of the net tract area. This site generates a 0.56-acre planting requirement. The Applicant proposes to meet this requirement by planting 0.07-acre of the on-site SVB and purchasing credits in an off-site forest mitigation bank for the remaining 0.49-acres.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be 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. Any impact to high priority vegetation, including disturbance to the 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. Development of the Property requires impact to two trees identified as high priority for retention and protection, therefore, the Applicant has submitted a variance request to impact these trees.

Variance Request - The Applicant submitted a variance request in a letter dated September 7, 2016. The Applicant proposes to impact the critical root zones (CRZ) of two specimen trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County code. Table 1 below identifies the trees and the area of CRZ to impacted for each tree.

Tree Number	Species	DBH Inches	Status
2	Red Maple (<i>Acer rubra</i>)	55"	To be impacted. Tree is in good to fair condition. Construction will impact approximately 13% of the CRZ.
4	Silver Maple (<i>Acer saccharinum</i>)	38"	To be impacted. Tree is in good condition. Construction will impact approximately 16% of the CRZ.

Table 1: Variance Trees to be impacted or removed

Unwarranted Hardship Basis

Per Section 22A-21(a), an applicant may request a variance from Chapter 22A if the applicant can demonstrate that enforcement of Chapter 22A would result in an unwarranted hardship.

This site is located in the Clopper Village, CL-2 Analysis Area of the Germantown Master Plan. The Master Plan specifically calls out this area as being suitable for a child or elderly care facility. The layout and arrangement of the proposed facility is driven by the need to provide the most efficient care possible for the residents. The location of the structure is in part necessitated by the requirement to protect a portion of a stream valley buffer in the southern corner of the Property thereby pushing the building slightly to the north and west and closer to the existing residential unit. As a result, some construction impacts to two variance trees located adjacent to the existing residence are necessary.

In this case, the Applicant is faced with having to impact the CRZs of two variance trees, Trees #2 and #4. Both of these trees are located adjacent to the existing residence (Figure 3). The impacts to these two variance trees comes from the need to install storm water management structures and for some site grading. Given the small area in which to construct the residential care facility, its access and its parking requirements these small impacts to the variance trees cannot be avoided. The arboriculture industry standard for construction impacts to trees is to limit those impacts to no more than approximately 30 percent of the Critical Root Zone (CRZ). More than 30 percent impact to the CRZ and the overall healthy

viability of the tree comes into question. Tree #2 is proposed to have approximately 13 percent of its CRZ impacted and Tree #4 about 16 percent. This low percentage of impact to both trees is well under the industry standard and these trees are fully expected to rebound from this construction impact and remain in healthy condition.

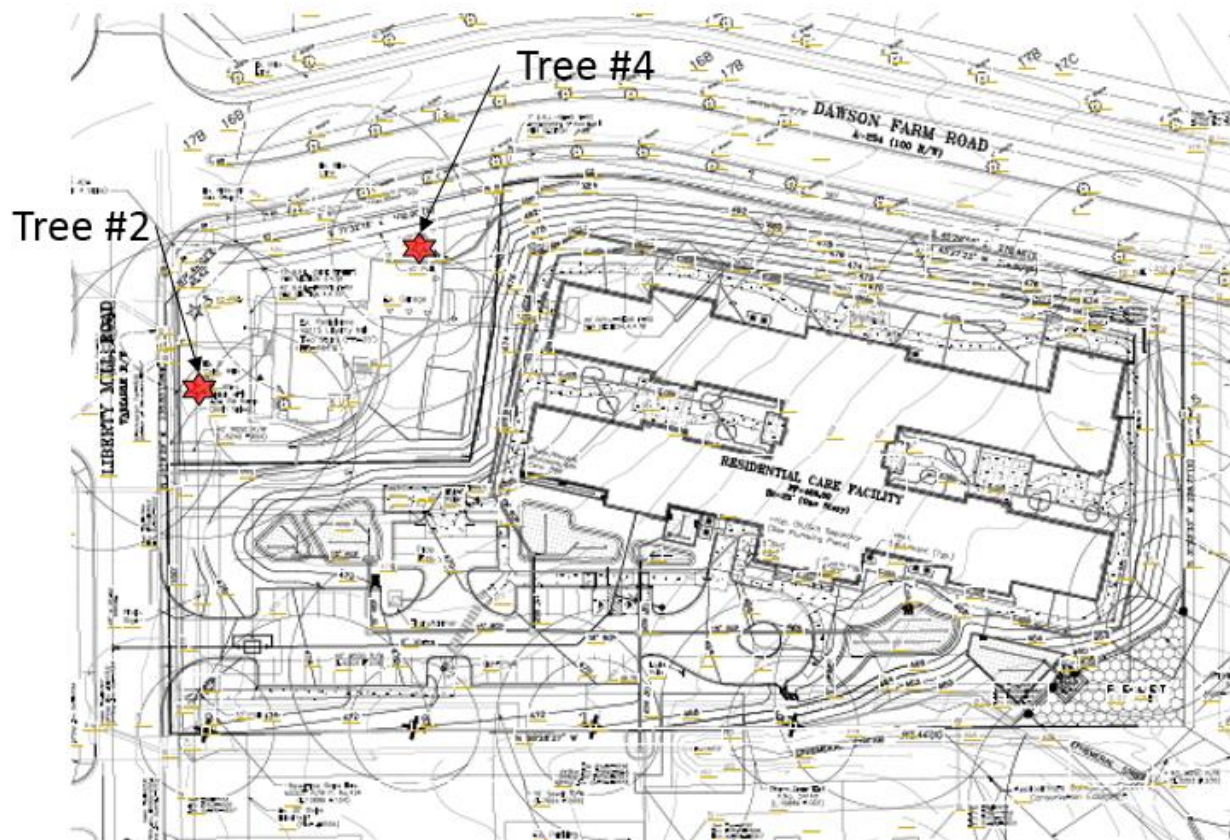


Figure 3. PFCP showing location of 2 variance trees

Based on the above information, Staff concludes that the Applicant has a sufficient unwarranted hardship to justify a variance request.

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, 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:

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 impact to these two trees is due to the location of the trees and necessary site design requirement. Therefore,

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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements including the need to provide stormwater management for the existing house.

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

The requested variance is a result of the existing conditions 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.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees are only having a small portion of their CRZs being impacted. 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 Provision – As per standard Staff practice, mitigation is only required in the event a variance tree is removed. In this case, the two specimen trees are only being slightly impacted. As a result, Staff is not requiring replacement mitigation for this variance request.

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 September 14, 2016. Under Section 22A-19(c), the County Arborist has 30 days to provide a recommendation back to the Planning Board, otherwise the recommendation must be presumed to be favorable. Staff received a response from the County Arborist on September 23, 2016 recommending Planning Board approval of the variance request (Attachment B).

Variance Recommendation - Staff recommends approval of the variance request.

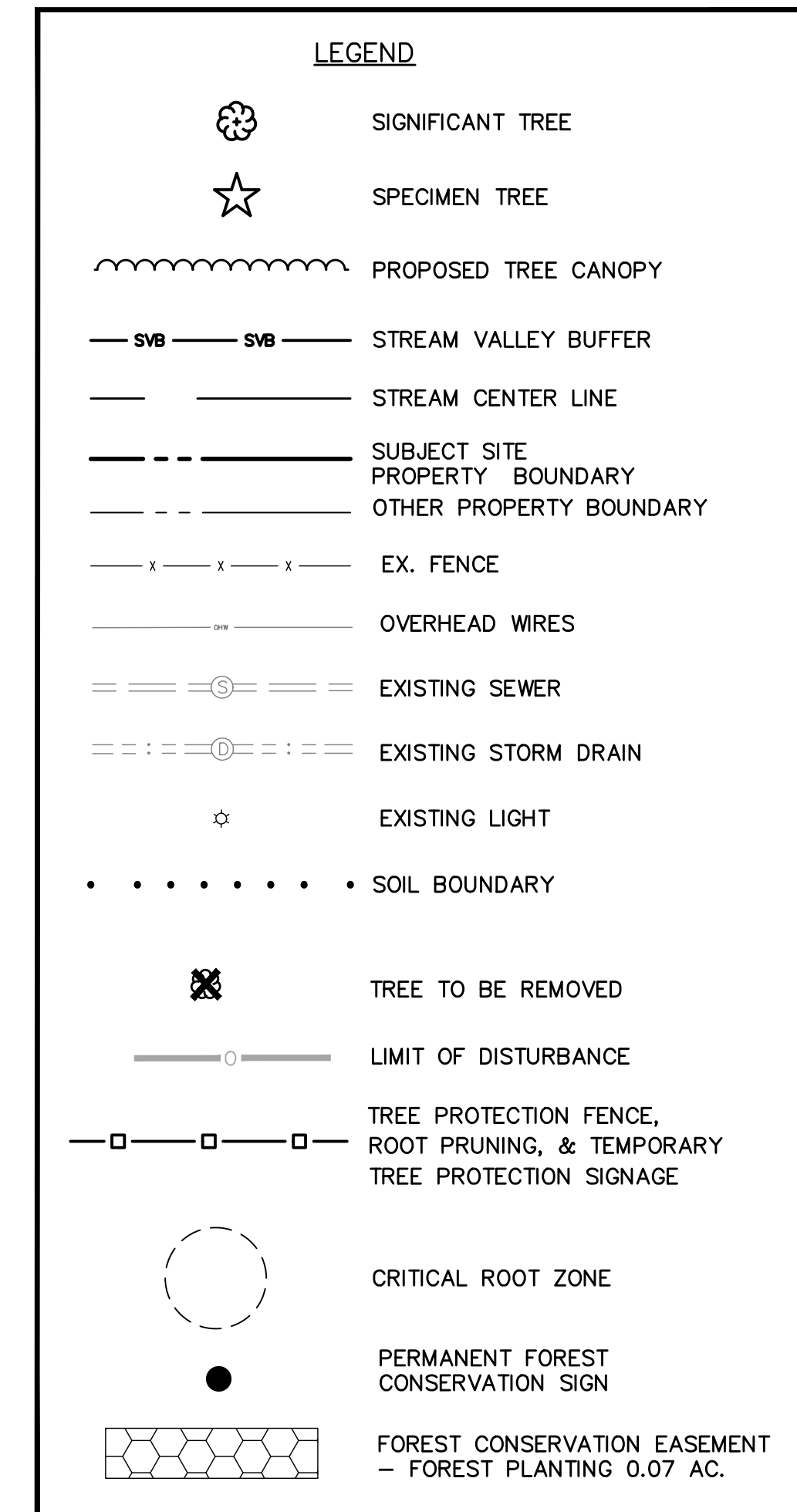
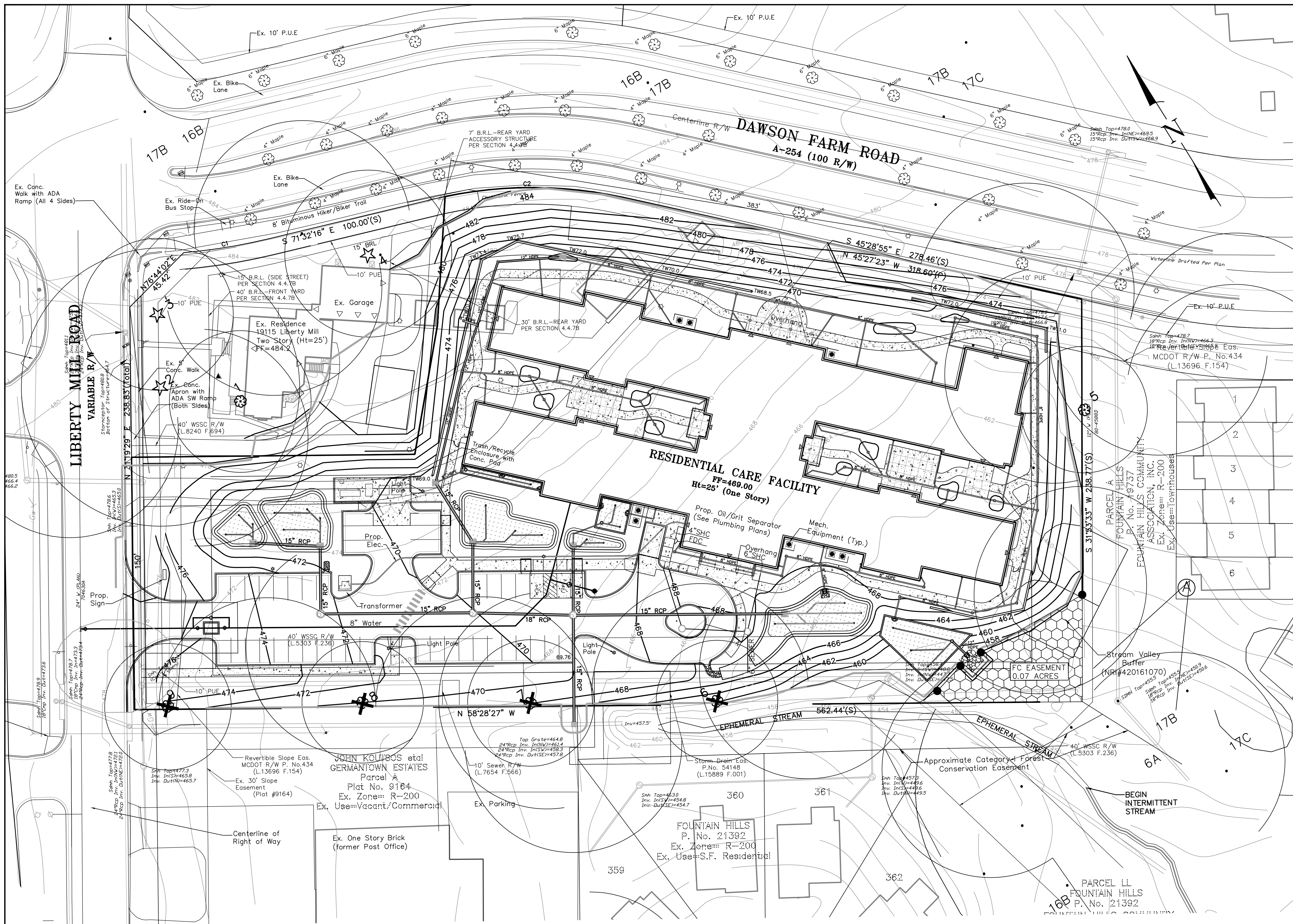
CONCLUSION

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve Applicant's request for a variance from Chapter 22A and the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

Attachments:

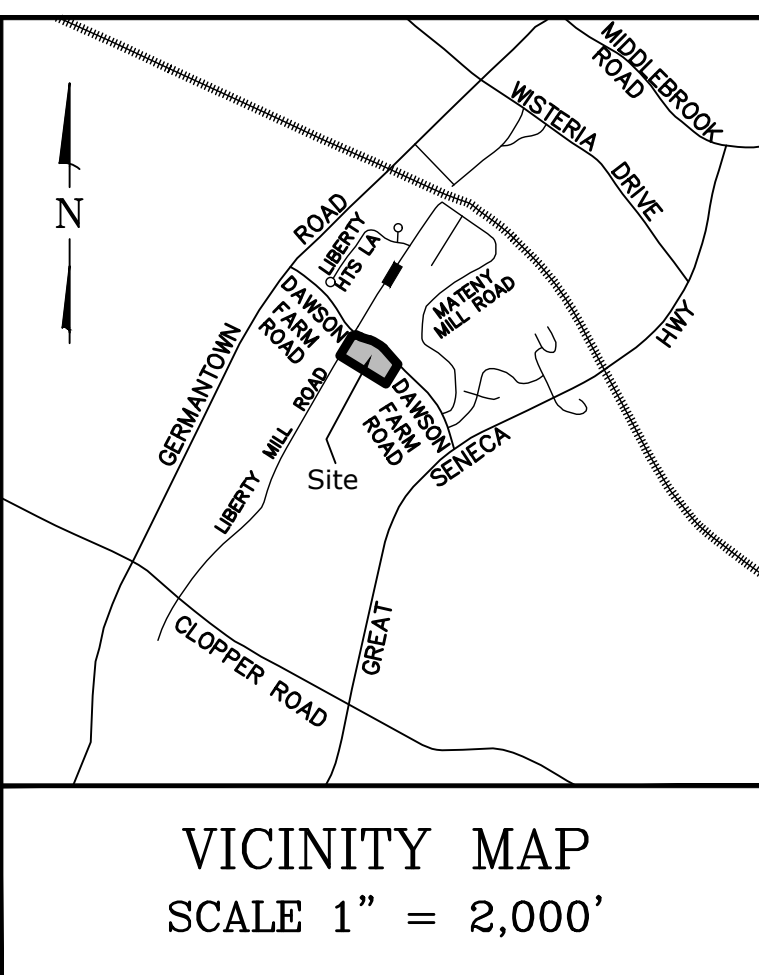
Attachment A – Preliminary Forest Conservation Plan

Attachment B – County Arborist Tree Variance Response Letter



SOIL KEY

16B	Brinklow-Blocktown channel silt loams, 3 to 8 percent slopes
17B	Not hydric, not highly erodible
17C	Ocoquan loam, 3 to 8 percent slopes
	Not hydric, not highly erodible
	Ocoquan loam, 8 to 15 percent slopes
	Not hydric, not highly erodible
6A	Baile silt loam, 0 to 3 percent slopes
	Hydric, not highly erodible, Off-site



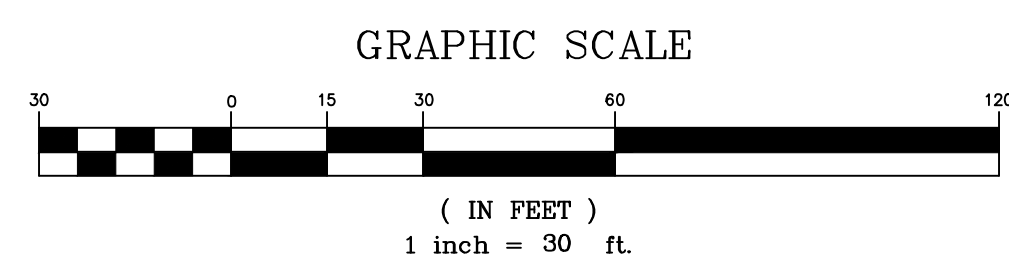
FOREST CONSERVATION WORKSHEET

NET TRACT AREA:									
A. Total tract area ...									3.67
B. Land dedication acres (parks, county facility, etc.) ...									0.00
C. Land dedication for roads or utilities (not being constructed by this plan) ...									0.00
D. Area to remain in commercial agricultural production/use ...									0.00
E. Other deductions (specify) ...									0.00
F. Net Tract Area ...									3.67
LAND USE CATEGORY: (from <i>Trees Technical Manual</i>)									
Input the number "1" under the appropriate land use, limit to only one entry.									
	ARA	MDR	IDA	HDR	MPD	CIA			
	0	0	0	1	0	0			
G. Afforestation Threshold ...					15%	x F =			0.55
H. Conservation Threshold ...					20%	x F =			0.73
EXISTING FOREST COVER:									
I. Existing forest cover ...									0.00
J. Area of forest above afforestation threshold ...									0.00
K. Area of forest above conservation threshold ...									0.00
BREAK EVEN POINT:									
L. Forest retention above threshold with no mitigation ...									0.00
M. Clearing permitted without mitigation ...									0.00
PROPOSED FOREST CLEARING:									
N. Total area of forest to be cleared ...									0.00
O. Total area of forest to be retained ...									0.00
PLANTING REQUIREMENTS:									
P. Reforestation for clearing above conservation threshold ...									0.00
Q. Reforestation for clearing below conservation threshold ...									0.00
R. Credit for retention above conservation threshold ...									0.00
S. Total reforestation required ...									0.00
T. Total afforestation required ...									0.55
U. Credit for landscaping (may not exceed 20% of "S") ...									0.00
V. Total reforestation and afforestation required ...									0.55

0.55 acre forest conservation requirement to be met as follows:
0.07 acres on-site forest conservation easement planting area
0.48 acres off-site forest mitigation bank

FOREST CONSERVATION NOTES

- Total site area = 3.63 acres (157,930 s.f.) and consists of Parcel 515, Liber 36179, Folio 283. The property is located at 19115 Liberty Mill Road in Germantown, at the southwest corner of the intersection with Dawson Farm Road.
- Boundary information from deeds of record. 2' contour topography on site is by Macris Hendricks and Glascock, P.A. 2' topography on adjacent properties is from M-NCPPC, WSSC Quadrant 226NW13, dated August 4, 2014.
- Soils on-site are mapped as Brinklow-Blocktown Channery silt loams (mapping unit 16B) and Ocoquan loam (mapping unit 17B and 17C) according to the on-line Web Soil Survey of the USDA Natural Resources Conservation.
- The site drains to Gunners Branch. This portion of the Great Seneca Creek watershed is designated as Class I-P waters by the state of Maryland.
- No seeps, springs, wetlands or floodplains exist on site. No stream exists on site, but a stream valley buffer extends into the site from an intermittent stream that begins near the southern-most corner of the property. An ephemeral stream/rap channel continues northwest paralleling the property line to a storm drain outfall.
- Utilities (i.e. water, sewer, storm drain, culverts, electric, phone) are shown in surveyed locations.
- There is no forest on site.
- The property is not shown as a historic site or within a historic district according to MC-Atlas on-line. No structure or evidence suggesting historical or archaeological significance was observed during site investigation.
- Except for Tree #5, individual trees are survey-located. The location of Tree #5 was estimated using field measurements and surveyed site features. Trees DBH were measured using a Tree Diameter Tape.
- Fieldwork for this inventory was conducted on 12/18/15 by Frank Johnson.
- No rare, threatened or endangered species were observed on-site.
- No trees on-site have a DBH equal to or greater than the current state or county champions. No trees on-site have a DBH equal to or greater than 75% of the county champion.
- This inventory in no way constitutes a hazard tree survey. Tree conditions are generally accurate based on visual observation per usual and customary practice in accord with state and county forest conservation legislation. The examination detail required to provide a comprehensive analysis of biological and structural health is beyond the scope of this investigation. Condition ratings are the opinion of the undersigned preparer and not the approving agency. MHG assumes no liability for injury or property damage that may occur as a result of tree failure on this property.
- This development is proposing impacts to two specimen trees and is requesting a specimen tree variance as required by the Maryland Natural Resources Article, Title 5, Subtitle 16, Forest Conservation, Section 5-1611, and in accordance with Chapter 22A-21(b) of the Montgomery County Code.



QUALIFIED PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF EXISTING STATE AND COUNTY FOREST CONSERVATION LEGISLATION.

DATE _____ FRANK C. JOHNSON

RECOGNIZED AS QUALIFIED PROFESSIONAL
BY MD. DEPT. OF NATURAL RESOURCES
COMAR 08.19.06.01

Applicant:
Arden Courts of Germantown MD, LLC
7361 Calhoun Place #300
Rockville, MD 20855
Attn: Bryan Palmer
Tel: 240.453.8500

NO.	DATE	DESCRIPTION	BY

TAX MAP EU341

PRELIMINARY FOREST CONSERVATION PLAN

CHESTNUT RIDGE
ARDEN COURTS-GERMANTOWN
Liber 36179 Folio 283
9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND



Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0893
www.mhga.com

Proj. Mgr.
KDJ
Date
5/31/16
Project No.
15.244.11
Designer
FCJ
Scale
1"=30'
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1 of 1

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WSSC 226NW13



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

September 23, 2016

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

RE: Arden Courts, DAIC CU 2017-02, NRI/FSD application accepted on 1/12/2016

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.



Casey Anderson
September 23, 2016
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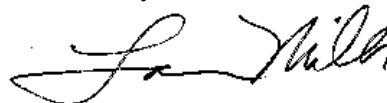
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, 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: Doug Johnsen, Senior Planner



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

September 23, 2016

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

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Casey Anderson
September 23, 2016
Page 2

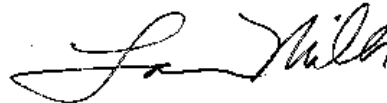
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Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon meeting 'conditions of approval' pertaining to variance trees recommended by Planning staff, as well as the applicant mitigating for 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.

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Sincerely,



Laura Miller
County Arborist

cc: Doug Johnsen, Senior Planner