



Damascus Hills, Preliminary Plan Amendment, 12004080A

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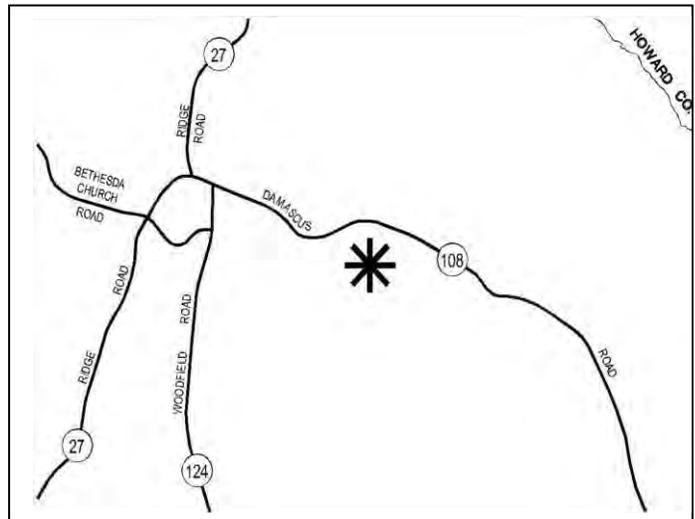
Completed: 09/02/16

Description

Damascus Hills, Preliminary Plan No. 12004080A:
Application to create seven lots for seven one-family detached dwellings, located at the end of Stanley Hills Way, approximately 1,100 feet south of the intersection with MD 108; 42.41 acres, RC Zone, 2006 Damascus Master Plan

Recommendation – Approval with conditions

Applicant: Roy Stanley
Submittal Date: 8/23/2011
Review Basis: Chapter 50, Chapter 22A



summary

- This Application is for 7 new lots, park dedication and rural open space on approximately 42.41 acres in the RC zone. This amends an existing 29 lot, 146.36 acre subdivision in the RE-2C and RC zones, which was approved by Plan No. 120040800, creating a total of 36 lots.
- This Application is reviewed under the cluster provisions found in Section 59-C-9.5 of the zoning ordinance in effect on October 29, 2014.
- The Applicant requests that the Planning Board make a finding that it's not possible to meet the on-site forest retention as required by Section 22A-12(f)(3), which requires that a minimum of 25 percent of the site be retained in forest.
- Fire department access to lots 21-23 is provided through a performance based review allowing portions of the driveway to be as narrow as 12 feet in the crossing of environmentally sensitive areas.

SECTION 1 – RECOMMENDATION AND CONDITIONS

Preliminary Plan Amendment No. 12004080A: The recommendation and conditions contained herein pertain only to the 42.41 acre Subject Property area covered by this amendment. The conditions and findings of Preliminary Plan No. 120040800 remain in full force and effect for the 146.36 acres contained in the original approval unless expressed otherwise. Staff recommends approval of the Preliminary Plan Amendment and associated Final Forest Conservation Plan amendment subject to the following conditions:

- 1) This Preliminary Plan amendment is limited to seven lot(s) for seven dwelling units.
- 2) The Applicant must comply with the following conditions of approval for the Final Forest Conservation Plan No. 12004080A, approved as part of this Preliminary Plan amendment:
 - a. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must record a Category I conservation easement over 8.68 acres of land, including 7.67 acres of forest retention, and forest planting, and must protect an additional 6.75 acres of forest and stream valley buffer through forest retention and planting on dedicated park land as shown on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be recorded in the Montgomery County Land Records in the form of a deed approved by the M-NCPPC Office of the General Counsel, and the Liber Folio for the easement must be referenced on the record plat.
 - b. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 1.82 acres of new forest planting.
 - c. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must submit a Maintenance and Management Agreement for the 1.82 acres of new forest planting. The Agreement must be approved by the M-NCPPC Office of the General Counsel and recorded in the Montgomery County Land Records.
 - d. At the direction of the M-NCPPC forest conservation inspector, the Applicant must install permanent conservation easement signage along the perimeter of the Category I conservation easements as specified on the approved Final Forest Conservation Plan or as determined by the M-NCPPC forest conservation inspector.
 - e. 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 FCP may be required by the M-NCPPC forest conservation inspector.
 - f. The Final Sediment Control Plan must be consistent with the final limits of disturbance as shown on the approved Final Forest Conservation Plan.
- 3) Prior to the start of any clearing, grading, or demolition on the Subject Property, The Applicant must dedicate to M-NCPPC the approximately 15.59 acre portion of the Subject Property identified as “Parcel D” on the Preliminary Plan for use as a stream valley park per the Damascus Master Plan. The land must be dedicated to the Commission prior to record plat in the form of a deed approved by the Office of General Counsel, and the dedication must be noted on the record plat. At the time of conveyance, the property must be free of any trash and unnatural debris. At the direction of M-NCPPC Staff, the Applicant must install permanent park property line poles along the perimeter of the park dedication areas as specified on the approved Final Forest Conservation Plan or as determined by M-NCPPC staff.

- 4) No clearing, grading, or demolition on the Subject Property prior to recordation of the Record Plat(s)
- 5) The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated August 17, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) Prior to recordation of plat(s), the Applicant must satisfy the provisions for access and improvements as required by MCDOT.
- 7) Prior to recordation of the plat(s) the Applicant must satisfy MCDPS requirements to ensure the construction of a five-foot wide sidewalk along the property frontage on Stanley Hills Way, unless construction is waived by MCDPS.
- 8) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Water Resources Section in its stormwater management concept letter dated December 23, 2013, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 9) The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Service (“MCDPS”) – Well and Septic Section in its letter dated August 15, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Well and Septic Section provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 10) The Applicant must provide dedication for the cul-de-sac at the end of Stanley Hills Way, as shown on the Preliminary Plan Drawing.
- 11) The Applicant must construct all road improvements within the rights-of-way shown on the approved Preliminary Plan to the full width mandated by the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the Preliminary Plan, “To Be Constructed By _____” are excluded from this condition.
- 12) The certified Preliminary Plan must contain the following note:

“Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building

height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."

- 13) The record plat must reflect common ingress/egress, and utility easements over all shared driveways.
- 14) The record plat must have the following note: *"The land contained hereon is within an approved cluster development and subdivision or resubdivision is not permitted after the property is developed."*
- 15) The record plat must reflect all areas under Homeowners Association ownership and specifically identify stormwater management parcels.
- 16) The record plat must reflect an access easement over the shared driveway, and a portion of lot 21, to grant HOA access to use and maintain Open Space Parcel E as identified on the Preliminary Plan drawing.
- 17) The certified Preliminary Plan must correct the area tabulations identified on the plan notes to reflect the values presented in the data table within the Staff Report.
- 18) Prior to recordation of the plat, the Applicant must grant to M-NCPPC a rural open space easement over no less than 60 percent of the net lot area of the Subject Property as shown on the Preliminary Plan amendment and record the easement, in a form approved by the Office of General Counsel, in the Montgomery County Land Records. Reference to the recorded easement must be noted on the record plat(s).
- 19) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of this Planning Board Resolution.

SECTION 2 – SITE LOCATION, HISTORY, AND DESCRIPTION

Site Location

The total tract area including previous approvals, park dedication, and the land subject to this amendment is approximately 176.7 acres in size, and is located along the south side of Damascus Road (MD 108), opposite the intersection with Viewland Drive, approximately one mile east of the Town Center of Damascus (figure 1). The portion of the total property subject to this amendment, however, is limited to approximately 42.41 acres of mostly RC zoned land and a small area of RE-2C zoned land in the eastern portion of the site, located at the current terminus of Stanley Hills Way, and identified in the orange dashed outline in Figure 1. This area was identified on Preliminary Plan No. 120040800 as a 12.3 acre open space parcel, 30.11 acres of land noted as “Area Not Included (future phase)” on the plan drawing.

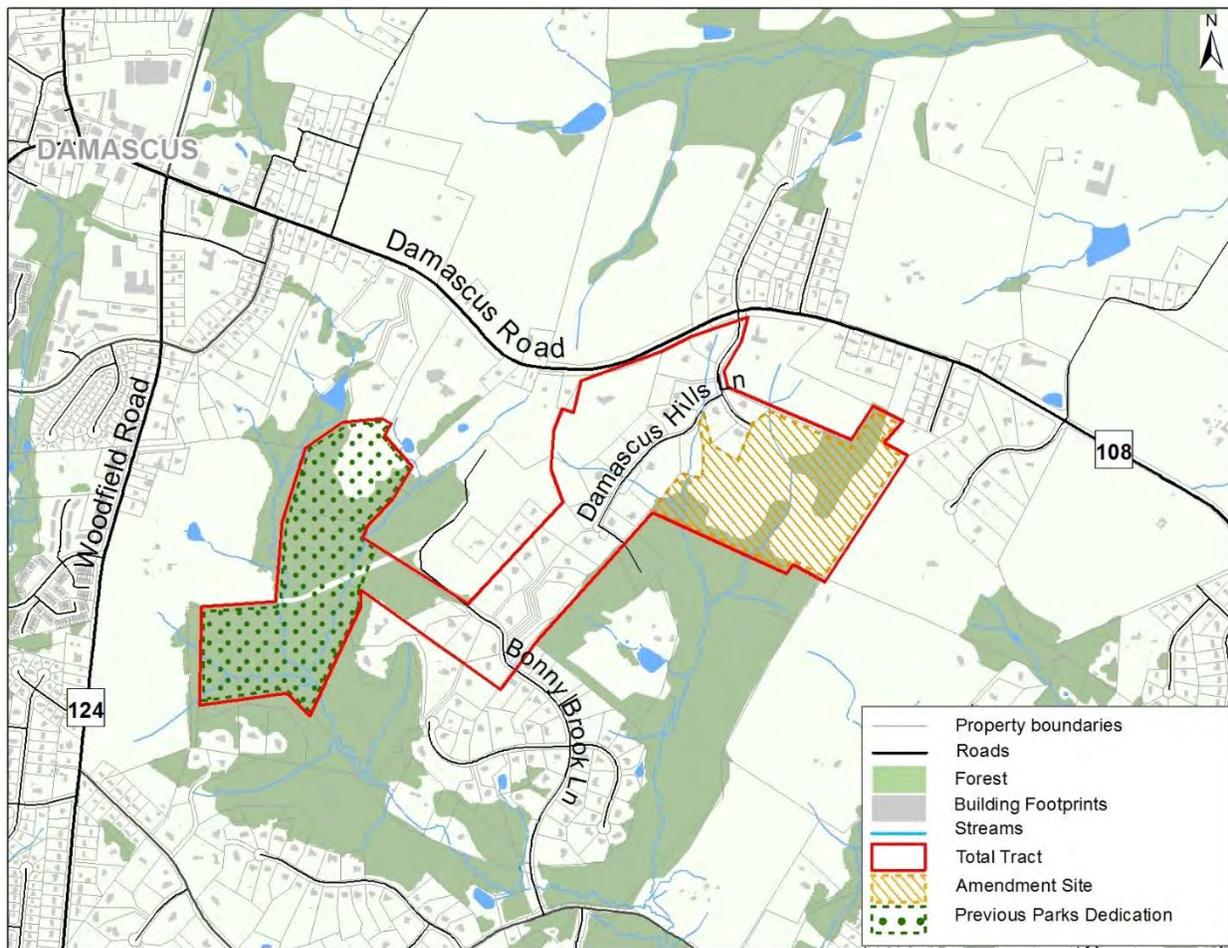


Figure 1 – Vicinity Map

Site Vicinity

The site is located approximately 1 mile east of the town center of Damascus and is located within the 2006 Damascus Master Plan area. To the north and east of the site is a mix of agricultural uses and one-family detached residences located in the RC zone. To the south, the land is predominantly forested or in

agricultural uses, is part of the Great Seneca Stream Valley Park and is zoned RC. West of the site is one-family detached housing and a Stream Valley Park owned by M-NCPPC in the RE-2C zone.

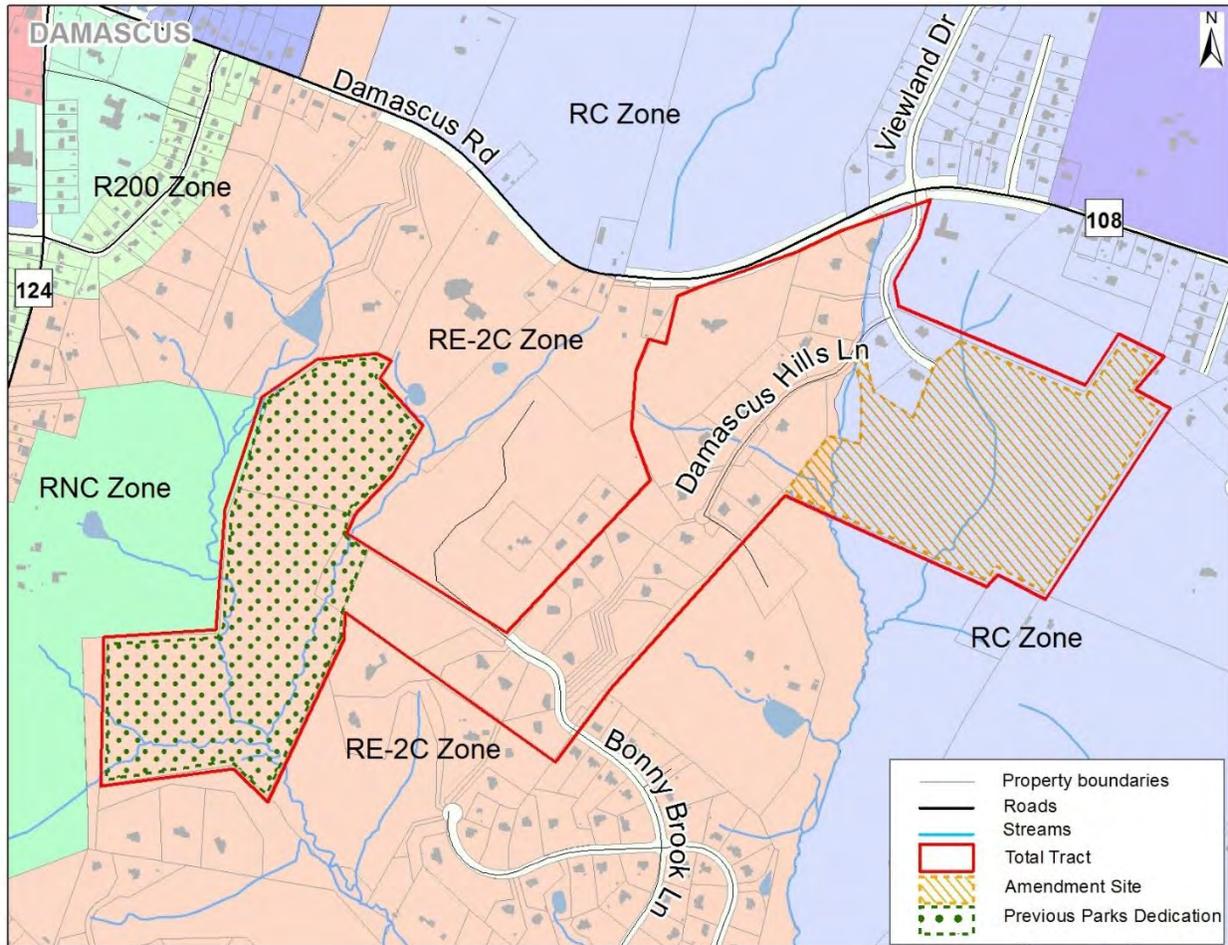


Figure 2 – Area Zoning

Site Description

The total tract is 176.7 acres in size and includes all 146.36 acres that were part of Preliminary Plan No. 120040080, approved by the Planning Board by opinion dated April 13, 2005 (Original Approval), and an additional 30.11 acres that were identified as “Area Not Included (future phase)” on the Original Approval’s plan drawings (Total Tract). Within the Original Approval is 52.24 acres in the westernmost portion of the site that was dedicated to MNCPPC for a Stream Valley Park, and another 12.3 acres in the southeastern site area that was also identified for park dedication that never occurred. The current Preliminary Plan Amendment is 42.41 acres in size, and includes the 12.3 acres of park dedication that has not occurred, and the 30.35 acres of “Area Not Included (future phase). All undefined references to the property or the site will be only referring to the 42.46 acres being amended, unless otherwise specifically identified.

The total 176.7 acre Total Tract is split-zoned with the easternmost 50.05 acres in the RC zone, and the remainder of the property in the RE-2C zone (Figure 2). The site area subject to this amendment is almost entirely located within the RC Zone, except for a small corner located in the RE-2C zone which is within the area identified for park dedication.

The property is rolling in topography, with the highest elevations in the north near MD 108, and the lowest elevations are in the south within the two areas of stream valley. The site contains approximately 13 acres of forest, clustered in the two areas; within the two stream valleys, and in an upland area in the site's northeast corner. The Total Tract has been partially improved with the development of 29 dwellings, is partially forested in park land, and is partially still in agricultural use. The site subject to this Amendment is unimproved except for existing agricultural uses (Figure 3). The Original Approval created a stub street called Stanley Hills Way, which is to be continued and properly terminated in a cul-de-sac by this Application.

The property is located within the Great Seneca Creek watershed, which is classified by the State of Maryland as Use Class I-P waters. The Property is not located within a Special Protection Area or the Patuxent River Primary Management Area. The property includes several seeps and wetlands areas as well as stream buffer associated with these stream systems. There are areas of slopes greater than 15 percent located on highly erodible soils located within the stream buffer and proposed open space areas. There is no FEMA, MCDPS or M-NCPPC mapped 100-year floodplain on the property. Twenty-nine trees greater than or equal to 24 inches Diameter at Breast Height (DBH) were identified on the portion of the property subject to this amendment, seventeen of them have a DBH of 30 inches and greater.

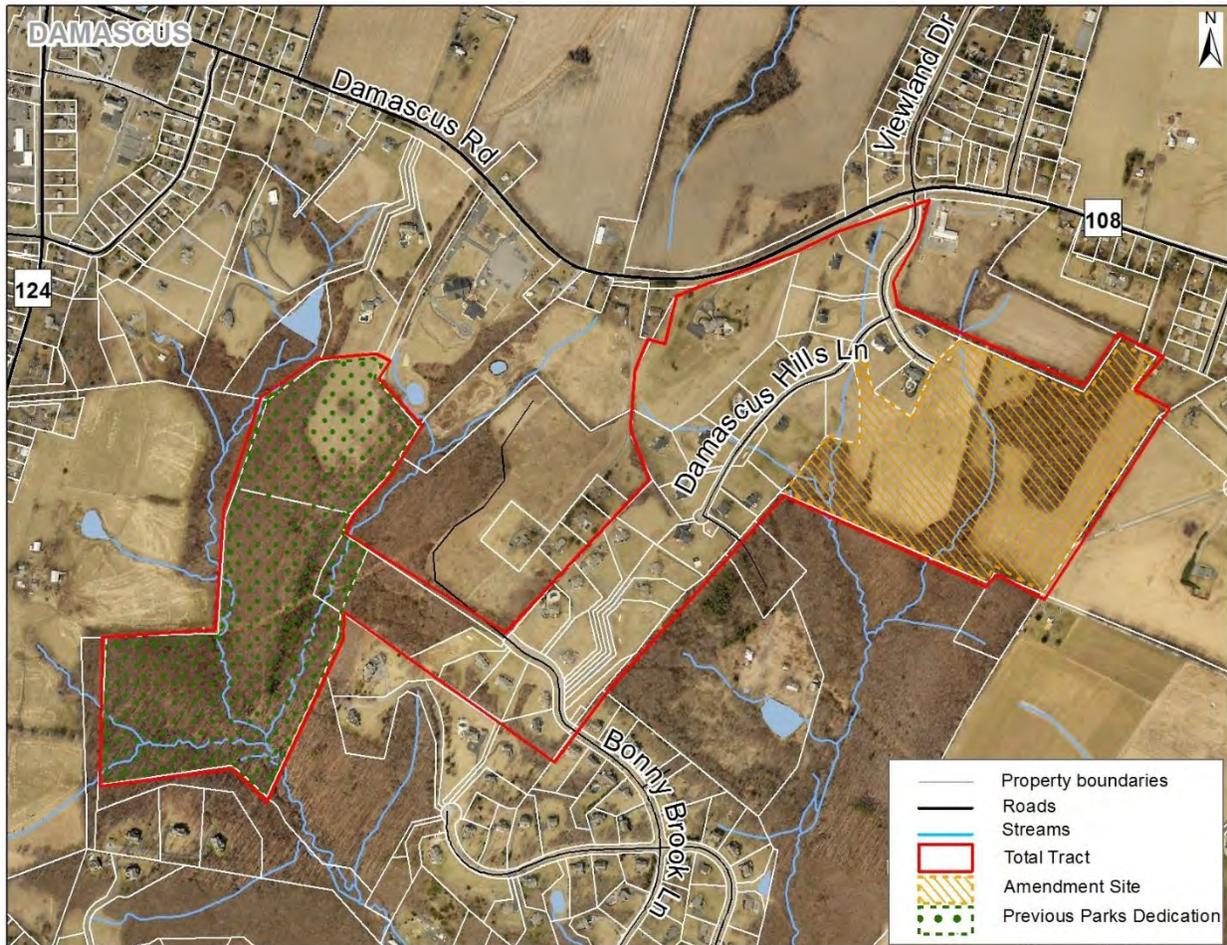


Figure 3 – Aerial Map

The development of the seven proposed lots is a natural extension of the previously approved and constructed dwellings and roadways. This Amendment will properly terminate Stanley Hills way in a cul-de-sac, which will also serve as the street frontage and access for the seven new dwellings. Three of the dwellings will share one 20-foot-wide driveway, and are located on a ridge south of the cul-de-sac between the two stream valley areas. The remaining four lots will share a second shared driveway, with one of the dwellings located close to the cul-de-sac and the other three clustered on a ridge in the eastern portion of the site. All of the new dwellings will be served with public water, but will provide sewage treatment through the use of private on-site septic systems.

The driveway access to the three easternmost lots (lots 21 – 23) will remain just outside of the stream valley buffer, but does require the removal of 0.27 acres of existing forest just outside of the stream buffer. The Applicant, in coordination with the Fire Marshal's office, has agreed to reduce the driveway width to 12 feet in critical locations to minimize the amount of forest clearing necessary. The Applicant will plant a total of 1.82 acres of new forest to reforest all unforested stream valley buffers and to mitigate for the forest lost to construct the shared driveway. The associated Final Forest Conservation Plan Amendment covers the full 176.7 acre Total Tract, and will protect the approximately 13.7 acres of forest (retained and planted) within the Amendment area through a combination of Category 1 conservation easements and M-NCPPC park dedication.

The Amendment proposes a total of 15.59 acres of park dedication as an extension of the Great Seneca Stream Valley Park system located immediately adjacent to the property's southern boundary. 12.3 acres of this was conditioned to be dedicated by the original preliminary plan approval but was never dedicated. The Applicant is dedicating the total area of the 12.3 acres and adding an additional 3.29 acres to reach the total dedication required by this Amendment.

SECTION 4 – ANALYSIS AND FINDINGS, PRELIMINARY PLAN NO. 12004080A

1. *The Preliminary Plan substantially conforms to the Master Plan*

Land Use

The Preliminary Plan substantially conforms to the *2006 Damascus Master Plan* (Master Plan). The Master Plan envisions a small town surrounded by agricultural and rural open spaces. The subject property is located within the transition area identified by the future land use plan (Figure 5). Transition areas are described as areas designed to reduce imperviousness, protect scenic vistas, to allow connectivity to activity centers and to provide a small town like design pattern. The property is generally split between the Neighborhood Transition area that covers the previously developed RE-2C portion of the site, and the Rural Transition area that covers the undeveloped RC zoned area. The Rural Transition area recommends a mix of low-density residential and agricultural uses, and has limited total development potential because of the County's sewer policy. Although a small portion of the property is zoned RE-2C, all of the new lots and the open space area lie within the RC zoned portion of the property. The Application proposes a low density residential development with seven new lots at a density of one unit per five acres on septic system, and provides 60 percent open space. This is consistent with the Master Plan vision for low imperviousness and for providing a transition between the agricultural reserve and the town center.

In addition, the Master Plan land use plan and the open space plan identifies a portion of the property as future parkland opportunity and the original preliminary plan had identified a 12.3 acre area on the subject property as land to be dedicated to M-NCPPC for stream valley parks. The headwaters of two tributaries are on the subject property, and the site is adjacent to existing land protected by the Great Seneca Stream Valley park. This land has yet to be dedicated to parks, and is therefore the dedication is still a requirement of this Amendment. The Applicant is proposing to dedicate a total of approximately 15.59 acres to the Great Seneca Stream Valley Park system, including all of the area identified in the previous 12.3 acre dedication.

Environment

The Master Plan's environmental resources section emphasizes protecting forest resources within the Master Plan boundary to help create green infrastructure, and specifically recommends protecting forest resources in environmental buffers, environmentally sensitive areas, and in high priority stands. The Master Plan also strives to protect watershed and stream quality, and has identified Upper Great Seneca Creek as a stream suitable for fishing and swimming that should be protected using normal levels of regulatory protection measures. The Master Plan recommends protecting the existing hydrology and reducing nutrient and sediment loads with limited new impervious surfaces and best management practices. The Amendment meets the environmental goals within the Master Plan by protecting 11.9 of the approximately 12.3 acres of existing forest. The Applicant will plant an additional 1.82 acres of forest within the un-forested portions of the stream valleys to increase forest cover, protect water quality, improve green infrastructure and to mitigate the 0.4 acres of forest clearing that is proposed. Impervious surfaces have been minimized through the use of shared driveways and reducing driveway widths to the extent possible.

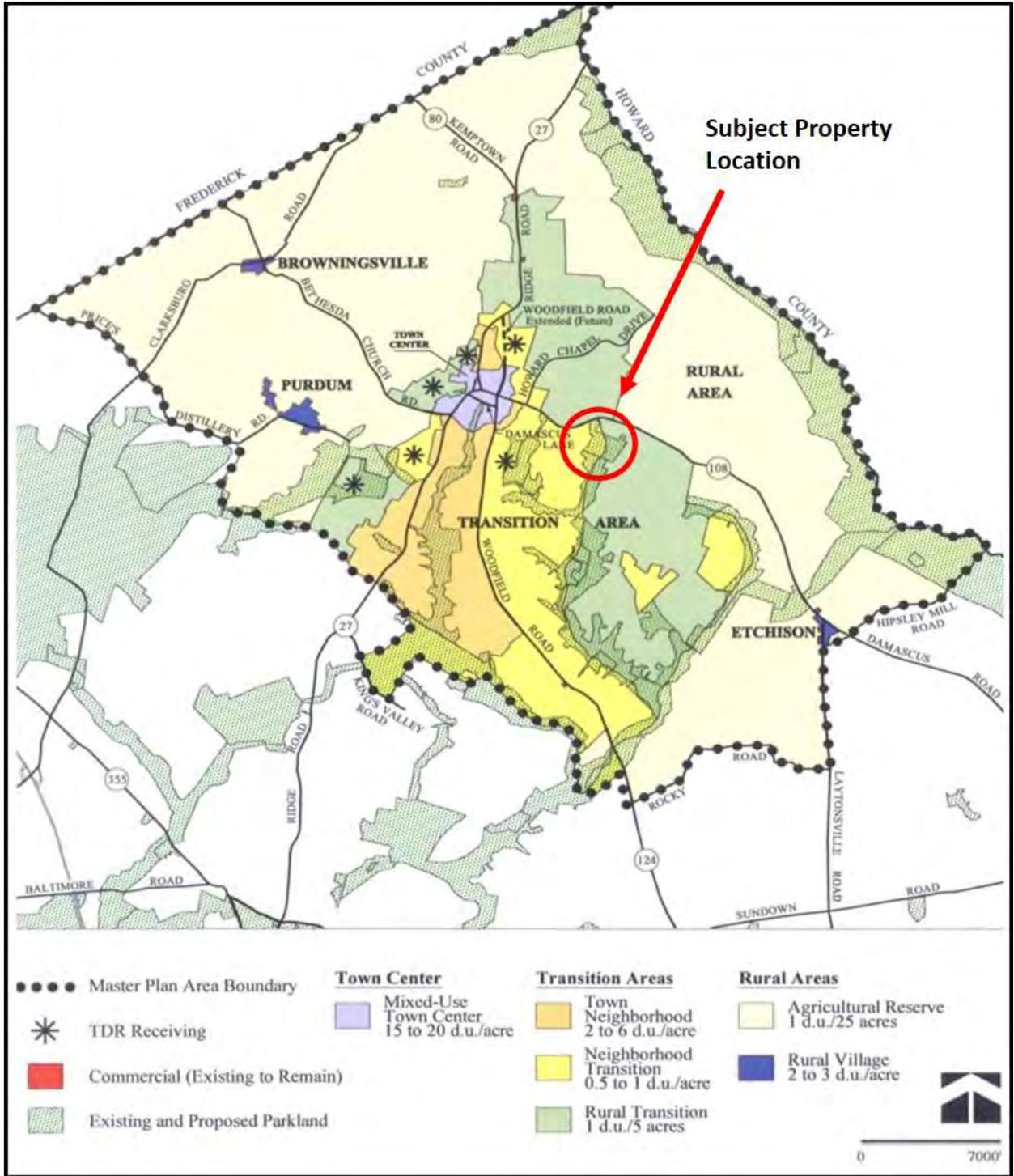


Figure 5 – Land Use Plan

2. *Public Facilities will be adequate to support and service the area of the approved subdivision*

Roads and Transportation Facilities

The property is located at the current terminus of Stanley Hills Way, which is an open section secondary residential street with a 60 foot wide right-of-way. As part of this Application, dedication will take place to properly terminate the road in a cul-de-sac. The road, as designed, is adequate to handle both the existing and the proposed number of dwellings. The Amendment is located in the RC zone, which does not generally support the inclusion of sidewalks along tertiary or secondary roads; however, the Applicant is only responsible for completing the cul-de-sac end of an existing street, and the existing street does have sidewalks. Therefore, this Amendment is including sidewalks around the cul-de-sac.

Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR)

The Applicant submitted a transportation statement stating that the addition of seven one-family detached dwellings generates 30 or fewer additional peak-hour trips, therefore, the Application is exempt from review under the LATR guidelines. The property is located in the Damascus Policy Area, which is adequate for both the roadway and transit tests, therefore, no transportation and transit payments are required under the TPAR guidelines.

Other Public Facilities and Services

Other public facilities and services including water and sewer, fire and rescue, police, health and education are available and currently operating within the standards set by the Subdivision Staging Policy currently in effect. The local telecommunications and utility companies reviewed the Preliminary Plan and found that the Application can be adequately served. The property is located in the W-3 and S-6 categories for water and sewer, and all new dwellings will be serviced by public water with private on-lot septic. The Fire Marshal's office has approved the use of a modified shared driveway to minimize impacts to environmentally sensitive areas (Attachment 5). The Application is within the Damascus school cluster which is not in moratorium and not subject to any school facility payments for FY 2017.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision, taking into account the recommendations included in the applicable master plan, and for the type of development contemplated.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections of the Subdivision Regulations. The proposed lot sizes, widths, shapes and orientations are appropriate for the location of the subdivision taking into account the lot size and open space requirements of RC zoning, and the land use and environmental recommendations in the Master Plan. In this instance, creating pipe stem lots and sharing driveways minimizes the environmental impact to the site and creates the open space required by the zone. The lot and open space sizes and locations are also adequate to meet the 60 percent required rural open space, and allows room for on-site septic systems consistent with the County's current sewer policy. The RE-2C zoning standards were not reviewed because all of the new lots are located exclusively on the RC zoned portion of the site.

The lots were reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in Table 1.

Table 1 – Development Standards in the RC Zone

Standard	Required/Permitted	Proposed
Density)	1 unit/5 acres – 10 DU total	10 DU total – 7 new
Minimum lot size	40,000 sq ft	71,870 sq ft or larger
Front setbacks	50 ft. min.	50 ft. or more
Side setbacks	17 ft. min., 35 ft. total	17ft./35ft. or more
Rear setbacks	35 ft. min.	35 ft. or more
Min Lot Width at Front	25 ft.	25 ft. or more
Max Lot Coverage	10%	3% shown, not to exceed 10%
Max Building Height	50 ft max	50 ft. max
Open Space	60% Min (30.06 acres)	60% (30.06 acres)
Site Plan Required	No	No
Area added to Plan		30.11 acres
Area of Amendment		42.41 acres
MPDUs Required	No	No

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) #420091490 for the 42.41 acre property area subject to the Amendment was approved and recertified on August 15, 2011. The NRI/FSD identified all of the required environmental features on and adjacent to the subject property, as further described in the *Guidelines for Environmental Management of Development in Montgomery County* (Environmental Guidelines).

As stated in the introduction of this Staff Report, the property is located within the Great Seneca Creek watershed and is adjacent to the Great Seneca Stream Valley. There are two stream valley systems located within the property, one in the southwestern corner of the site and the other more centrally located. One of the streams originates within a forested area in the southeastern corner of the site, where several seeps and wetlands exist at the head of perennial streams. The streams flow in a southeastern direction, before converging immediately south of the property within parkland. The second stream system originates from a seep and wetland area located within a hedgerow in the center of the site, and flows in a southern direction into a forested area before exiting the property at the southern site boundary.

There is no mapped 100-year floodplain on the property. There are areas of slopes greater than 15 percent located on highly erodible soils located within the stream buffer and proposed open space areas. The Total Tract includes approximately 61.5 acres of forest; however, the portion of the property proposed to be amended contains approximately 13.0 acres of forest. Twenty-nine trees

greater than or equal to 24 inches Diameter at Breast Height (DBH) were identified on the Amendment site and seventeen of them have a DBH of 30 inches and greater.

Forest Conservation Plan

The Application is amending the Final Forest Conservation Plan which will include the entire 176.7 acre Total Tract; however, the following discussion refers specifically to the Amendment as there are no proposed changes to the Final Forest Conservation Plan outside of the Amendment area.

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law and Staff recommends approval of the Final Forest Conservation Plan (“FCP”) amendment submitted with the Preliminary Plan Amendment (Attachment 2). The amended FCP includes the Total Tract of 176.7 acres, with the focus of the plan on the 30.4 acres that was not included in the original FCP approval and subject to this amendment. Construction of the portion of the property that was previously approved is complete. The existing subdivision includes two zones, RE-2C and RC, resulting in two forest conservation worksheets. The RE-2C zoned portion of the project is not being amended and the worksheet remains unchanged. This Amendment includes the additional 30.11 acres of RC zoned property, and the RC zone forest conservation worksheet has been updated to reflect the additional land, forest areas and disturbance.

The RC zone worksheet shows a total of 12.3 acres of existing forest on the 50.05 acres of land, and the Applicant is clearing 0.4 acres of land. The RC zone optional method of development requires on-site forest retention of at least 25 percent which the Applicant is unable to meet, therefore there is a planting requirement of 0.8 acres. The Applicant is offering an additional 1.02 acres of forest planting for not meeting the retention requirements of Chapter 22A-12(f)(3). In total this Amendment retains 11.9 acres of forest, and plants 1.82 acres of forest for a total of 13.72 acres of forest. Therefore a total of 14.42 acres of forest or forest planting will be protected through a combination of 8.68 acres of category 1 conservation easement and through park dedication.

Planning Board finding 22A-12(f)(3)

The proposed optional method of development for the entire residential subdivision requires compliance with Section 22A-12(f) of the Montgomery County code. This section of the code requires developments utilizing an optional method of development to either retain or plant a certain percentage of forest onsite. The RE-2C zoned portion of the project complies with Section 22A-12(f)(2)(B) by providing on-site forest retention of 40.2 acres, which is in excess of the conservation threshold of 31.67 acres.

The RC zoned portion of the project is subject to Section 22A-12(f)(2)(A), which states that on-site forest retention must equal 25 percent of the net tract area. In this case, 25 percent of the 50.05-acre net tract area is 12.51 acres. Since there are only 12.3 acres of existing forest, it is not possible to retain 25 percent of the net tract area. Section 22A-12(f)(2)(C) states that “*if existing forest cover is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided*”. However, Section 22A-12(f)(3) states that if the Planning Board, “*finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation, not including landscaping.*” Following is a discussion of why retention of all existing forest is not possible and what measures have been required of the Applicant to minimize additional

forest loss and to mitigate the forest loss impacts.

The FCP amendment proposes to clear 0.40 acres of forest in the RC zoned area. Approximately 0.13 acres of this “clearing” is located in the southeastern corner of the site, at the rear of proposed Lot 22 where there is an existing narrow strip of trees. This strip of trees currently meets the dimensional definition of forest because it is contiguous with a larger area of offsite forest. However, the adjacent offsite contiguous forest is unprotected, and the onsite strip does not meet the definition of forest on its own, therefore, this area of forest must be counted as forest clearing even though it is outside of the proposed limits of disturbance on the FCP. The remaining 0.27 acres of forest clearing is the result of construction of the private, shared driveway and a water line from Stanley Hills Way, which will provide access and water service, to proposed Lots 21, 22, and 23.

In reviewing the FCP Amendment, Staff investigated numerous options to see if it would be possible to meet the requirements of 22A-12(f)(2)(c) by saving all existing forest, in addition to supplemental plantings to reach 25 percent of the net tract area. As stated earlier, the two areas of forest impact are either isolated on the rear of lot 22, or is along the alignment of the shared driveway for lots 21, 22, and 23. Because the removal of the 0.13 acres of forest on lot 22 is the result of definitions and not a physical impact proposed by the Applicant, the 0.27 acres of forest clearing for the construction of the private, shared driveway was the focus of greater scrutiny and is examined below in two sections; Lot Relocation and Lot Access.

1 Lot Relocation

Staff required the Applicant to investigate alternative locations for the three lots, as well as alternative means of access that would not require forest clearing. The lots could not be relocated because they are served by private on-site septic systems which require specific soil and water table conditions for approval of septic field locations, and the topography of the site isolates much of the prime developable area from the on-site road access with stream buffers or forested area. Therefore, Staff is satisfied that there are no alternative locations for the lots that meet the septic requirements and that would not require forest removal. Therefore, relocating the lots as a means of saving forest was determined to be infeasible.

2 Lot Access

The Applicant also investigated alternative means of accessing the lots, including what seemed to be the most feasible alternative of contacting adjacent property owners in an effort to secure an access easement using off-site driveways (Attachment 7) (Figure 6). Staff required the Applicant to reach out to four adjacent property owners to see if they could gain access to existing driveway(s) for access to lots 21, 22 and 23. In response to the Applicant’s outreach, Staff received written correspondence from one of the owners (Ness) and telephone correspondence from a second owner (Betts) of the land upon which the driveways traversed. In both cases, the correspondence expressed an unwillingness to grant the Applicant use of said driveway(s). Neither the Applicant or Staff received a response from the other two adjacent property owners (Wenzloff and Duvall) which was interpreted as declines to the request. Staff is satisfied that the Applicant exhausted all reasonable efforts to secure alternative access to Lots 21, 22 and 23 through adjacent properties. Staff has determined that it is not possible to develop these three lots without some forest impact and recommends that the Planning Board can make the proper findings to allow forest removal under Section 22A-12(f)(3).

The Applicant worked with Staff and the Fire Marshal to minimize forest removal required to access Lots 21, 22, and 23, including reducing substantial lengths of the shared driveway from the standard 20 foot width to 14 feet and to further reduce the width to 12 feet where it intersects the forest. The Applicant also aligned the driveway to traverse the narrowest area of forest while remaining outside of the stream valley buffer. Additionally, the water line for the three homes will be run under the driveway to reduce further impacts to the forest.



Figure 6 – Neighboring Properties

Staff is requiring the Applicant to mitigate for the loss of forest with on-site reforestation as required by Section 22A-12(f)(3). The clearing of the forest for the driveway creates a separation between the 7.5 acres of retained upland forest located north of the proposed driveway, and the larger forested area to the south of the driveway that is contiguous with the Great Seneca Stream Valley Park. In an effort to create canopy closure and minimize the fragmenting of the forest, the Applicant proposes to plant seventeen, 3-inch caliper, native canopy trees and six, 1-inch caliper, native understory trees in the area disturbed for the construction of the driveway. This will mitigate the effects of the forest clearing and the larger planting stock will accelerate the process of achieving canopy closure in this area. To further mitigate the loss of forest, the Applicant agrees to reforest an additional 1.02 acres of currently un-forested stream valley buffer area. These plantings are to meet the mitigation requirements of Section 22A-12(f)(3) and are in addition to the forest planting to meet the standard requirements of the forest conservation law.

The forest conservation worksheet for the RC-zoned portion of the property includes the proposed 0.40 acres of forest clearing, resulting in a reforestation requirement of 0.80 acres. To comply with the requirements of Section 22A-12(f)(2)(C) and 22A-12(f)(3), as described in the preceding paragraph, the Applicant proposed to achieve the required on-site forest requirements by retaining 11.9 acres of forest on-site, the maximum amount of forest possible that still allows access to proposed Lots 21, 22, and 23, in combination with providing an additional 1.02 acres of forest planting within the unforested stream buffer area. This results in a total of 11.9 acres of forest retention and 1.82 acres of forest planting, for a total of 13.72 acres of on-site forest, which exceeds the 12.51-acre minimum on-site forest requirement (Figure 7).

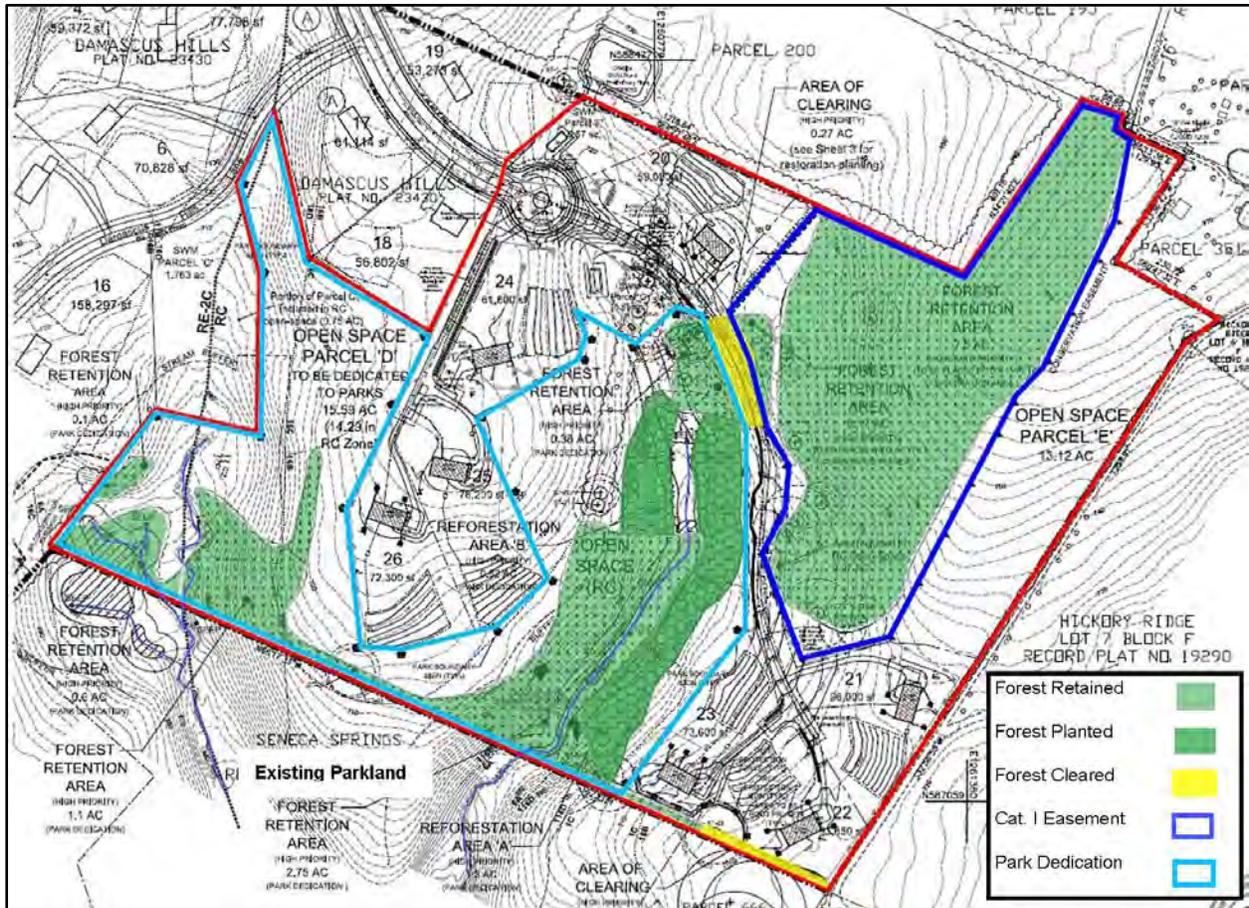


Figure 7 – Forest Conservation Plan Annotated

In summary, the Applicant has demonstrated efforts to avoid forest clearing by investigating alternative means of accessing the lots, and minimized forest clearing by reducing the width of pavement for the driveway through the forest. The forest clearing is necessary to access the proposed lots rather than to facilitate construction the houses. Additionally, the Applicant has proposed to replant part of the forest clearing area adjacent to the proposed driveway with larger stock trees to achieve canopy closure across the driveway. The Applicant has also proposed to plant 1.02 acres of forest in addition to the 0.80 acres of forest planting required by the forest conservation worksheet within the currently unforested stream buffer area on-site. The retained and planted forest and stream buffer areas will be protected either through a Category I conservation easement or dedication to the M-NCPPC Department of Parks.

Forest Conservation Tree 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. 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 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 (“Protected Trees”). Any impact to a Protected Tree, including removal or disturbance within the Tree’s critical root zone (“CRZ”) requires a variance. An application 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. Staff recommends that a variance be granted.

Variance Request - The Applicant submitted a variance request in a letter dated May 5, 2016, for the impacts/removal of trees (Attachment 8). The Applicant proposes to impact, but not remove, four (4) Protected Trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. None of the trees subject to this provision will be removed. Details of the Protected Trees to be affected but retained are shown graphically in Figure 8 and listed in Table 2.

Table 2 – Trees to be affected but retained

Tree Number	Species	DBH Inches	CRZ Impact	Status
ST-9	Red Maple	33	20%	moderate condition; SWM outfall
ST-10	Tuliptree	38	13%	moderate condition; grading, driveway and water line
ST-18	Silver Maple	45	17%	poor condition; grading, driveway and water line
ST-19	Silver Maple	43	27%	poor condition; grading, driveway and water line

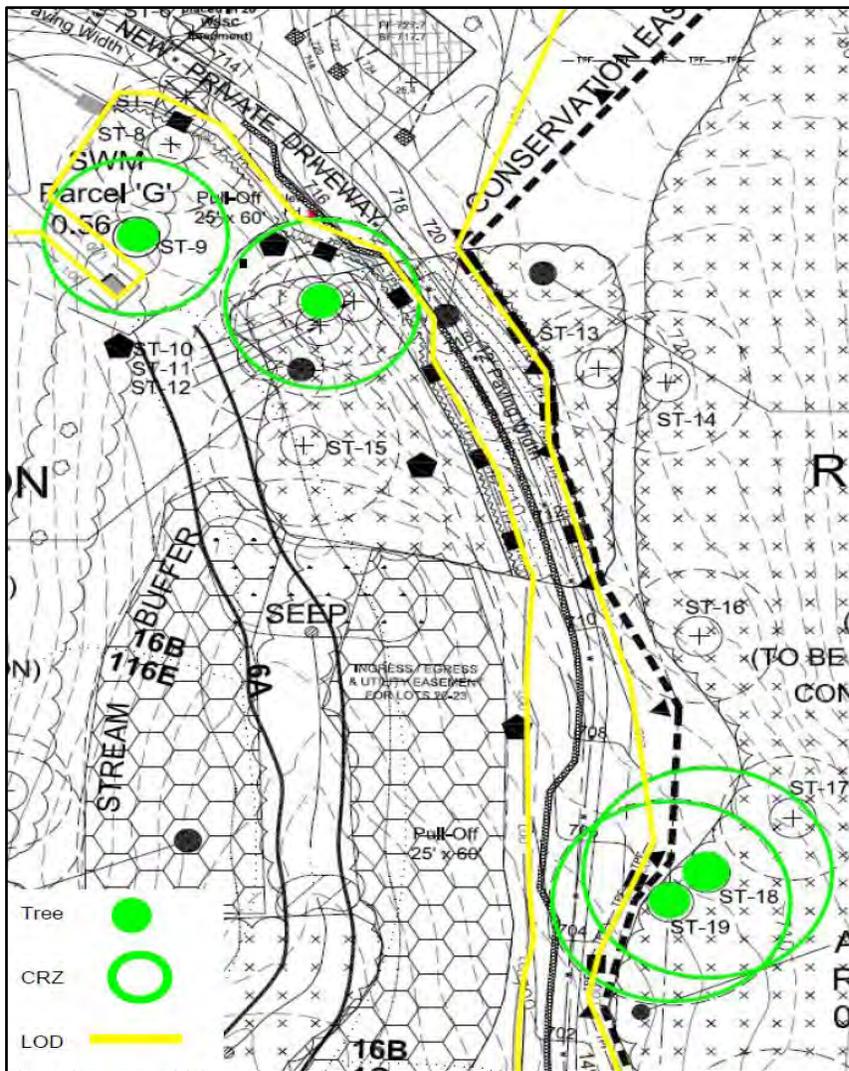


Figure 8 - Variance Trees

Unwarranted Hardship Basis - Per 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 a property. The Applicant contends that an unwarranted hardship would be created due to the existing conditions on the Property and the development standards of the zone. The Protected Trees impacted by the development are located along the edge of existing forest and the forest bisects two unforested, upland, developable portions of the site. In addition, Stanley Hills Way is a constructed road and the location of its terminus somewhat dictates the layout of the lots on this portion of the site. None of the Protected trees are proposed to be removed. Of the four trees proposed to be affected but retained, two are in moderate condition and two are in poor condition. These trees will be minimally impacted due to grading and will receive tree protection measures during construction. If the variance were not considered, the site would not be able to fully develop in a manner consistent with the Master Plan and the zoning recommendations found within the Master Plan. 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, in order 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. The Protected Trees are located within the area most suitable for providing access to the eastern part of the site, which is dictated by the location of the existing terminus of Stanley Hills Way and the necessity to avoid the sensitive resources including seeps, wetlands, stream and stream buffer to the south. Granting a variance request to allow land disturbance to access a 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 existing terminus of Stanley Hills Way, the location of the sensitive resources protected within the stream buffer, and the number and locations of the Protected Trees.

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 site design and layout on the site, and not 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. No trees located within a stream buffer, wetland or special protection area (SPA) will be impacted or removed as part of this Application. The existing stream buffer located on the Property will be planted with forest and protected in a Category I conservation easement or through parkland dedication. In addition, the Montgomery County Department of Permitting Services has found the stormwater management concept for the proposed project to be acceptable as stated in a letter dated December 23, 2013. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Protected Trees – No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a

recommendation prior to acting on the request. The request was forwarded to the County Arborist. On August 10, 2016, the County Arborist provided a letter recommending that the variance be granted with mitigation (Attachment 9).

Variance Recommendation - Staff recommends that the variance be granted.

5. All stormwater management requirements shall be met as provided in Montgomery County Code Chapter 19, Article II, titled "Storm Water Management," Sections 19-22 through 19-35.

The Preliminary Plan Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS water resources division on December 23, 2013 (Attachment 6). The Application will meet stormwater management goals through a variety of techniques including the use of micro biofiltration, bioswales, drywells, and non-structural practices.

SECTION 5 – CITIZEN CORRESPONDENCE AND ISSUES

The Applicant has met all proper signage, noticing and pre-submission meeting requirements for the submitted Applications. A pre-submission meeting for the Preliminary Plan and Site Plan was held on February 28, 2011 at the Damascus Library. According to the meeting sign-in sheets and provided minutes, there were two people in attendance that were not part of the Applicant's team. The Applicant provided a brief summary of the seven proposed lots and provided an overview of how the review and development process works. The attendees provided minor comments about labeling on the plan drawings which were addressed in the formally submitted version of the plans. As of the posting of this Staff Report, Staff has received no correspondence from the public on this Amendment.

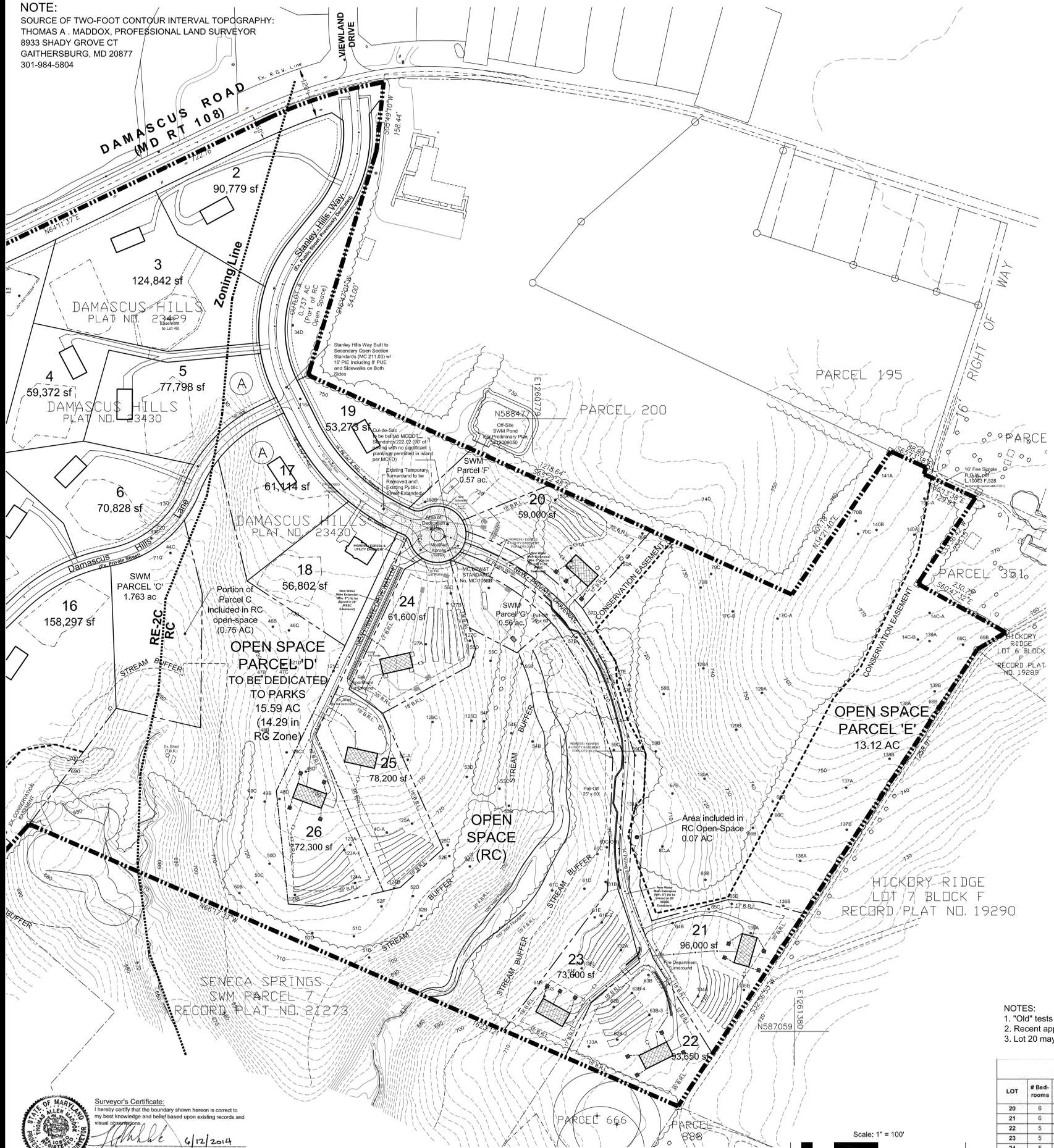
SECTION 6 – CONCLUSION

The proposed lots meet all of the requirements established in the Subdivision Regulations and the Zoning Ordinance, and conform to the recommendations of the 2006 Damascus Master Plan. Access to the lots is adequate and all public facilities and utilities have been deemed adequate to serve this Application. The Application was reviewed by other applicable County agencies, all of whom have recommended approval of the plans. Therefore, staff recommends approval of the Application, with the conditions as specified.

Attachments

Attachment 1 – Preliminary Plan
Attachment 2 – FFCP Amendment
Attachment 3 – MCDOT letter
Attachment 4 – MCDPS Well and Septic letter
Attachment 5 – Fire Marshal letter
Attachment 6 – MCDPS Water Resources letter
Attachment 7 – Neighboring property access
Attachment 8 – Variance request
Attachment 9 – Arborist recommendation

NOTE:
SOURCE OF TWO-FOOT CONTOUR INTERVAL TOPOGRAPHY:
THOMAS A. MADDOX, PROFESSIONAL LAND SURVEYOR
8933 SHADY GROVE CT
GAITHERSBURG, MD 20877
301-984-5804



ZONING STANDARDS:

ZONE: RC - (Cluster)	Req.	Prov.
Lot Size	40,000 SF	71,870 SF or larger
Front Setback	50'	50' or more
Sideways	17' min., 35' total	17' or more
Rearyard	35'	35' or more
Building Height	50' Max.	50' or less
Lot Coverage	10% Max.	3%
Lot Width @ Building Line	125'	125'
Lot Frontage	25'	25'

Sheet 2 of 2
Revisions

Rev. 1-15-15
Rev. 5-5-16
Rev. 7-22-16



date: 6/3/14
scale: 1" = 100'

GENERAL NOTES:

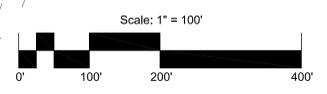
- THE WIDTH FROM EDGE OF PAVEMENT TO RIGHT-OF-WAY LINE (R.O.W.) SPECIFIED ON THE APPROACH ROAD STANDARD SHALL BE MAINTAINED AROUND ENTIRE CUL-DE-SAC WIDTHS AND LATERAL LOCATIONS OF CURBED ELEMENTS SUCH AS SHOULDER, DITCH LINES, SIDEWALKS, AND PUBLIC IMPROVEMENT EASEMENTS SHALL BE MAINTAINED.
- A 90' DIAMETER PAVED CUL-DE-SAC IS MINIMUM AS REQUIRED BY THE CURRENT FIRE SAFETY CODE - APPARATUS ACCESS REGULATIONS.
- CURBS AND GUTTERS ON CENTER ISLAND TO BE MC-101.01 WITH SPILLED GUTTER.
- PAVING SECTION AND THICKNESS WITHIN CUL-DE-SAC SHALL CONFORM TO THE SAME PAVING SECTION AS THE APPROACH ROAD.
- CENTER ISLAND TO BE MOUNDING TO DRAIN AT 2% MIN. GRADE AND STABILIZED WITH SOO OR LOW-GROWING LANDSCAPE MATERIAL (NO TREES).
- PROVIDE 2% MINIMUM DITCH GRADE. EDGE OF PAVEMENT AND DITCH ELEVATIONS ARE REQUIRED ON PLANS AT INTERVALS NOT TO EXCEED 50 FEET.
- THIS STANDARD MAY BE USED ON PRIMARY, SECONDARY, AND TERTIARY RESIDENTIAL STREETS ONLY.

APPROVED <u>23 August 14</u> DATE	MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION
<u>[Signature]</u> DIRECTOR, DEPARTMENT OF TRANSPORTATION	CUL-DE-SAC OPEN SECTION ROADS
<u>[Signature]</u> CHIEF, DIVISION OF TRANSPORTATION ENGINEERING	STANDARD NO. MC-222.02

Bemming & Associates, Inc.
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)984-0240

Surveyor's Certificate:
I hereby certify that the boundary shown hereon is correct to my best knowledge and belief based upon existing records and visual observations.

[Signature] 6/12/2014
Signature Date



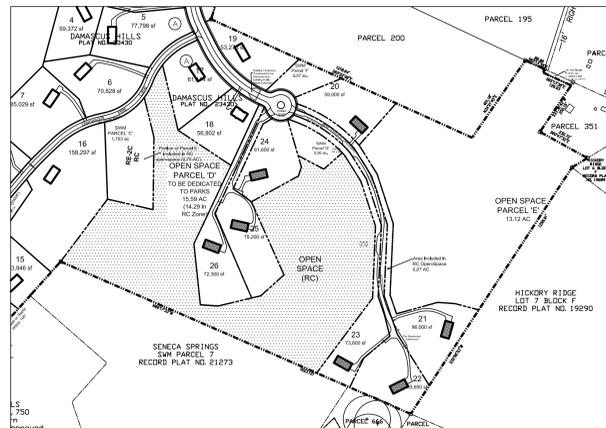
NOTES:
1. "Old" tests from Damascus Development Trust Property (1-80039).
2. Recent application numbers include 7-19980200, 7-20000210, and 1-20040800.
3. Lot 20 may require a septic pump.

SEWAGE DISPOSAL SYSTEM - DESIGN DATA:

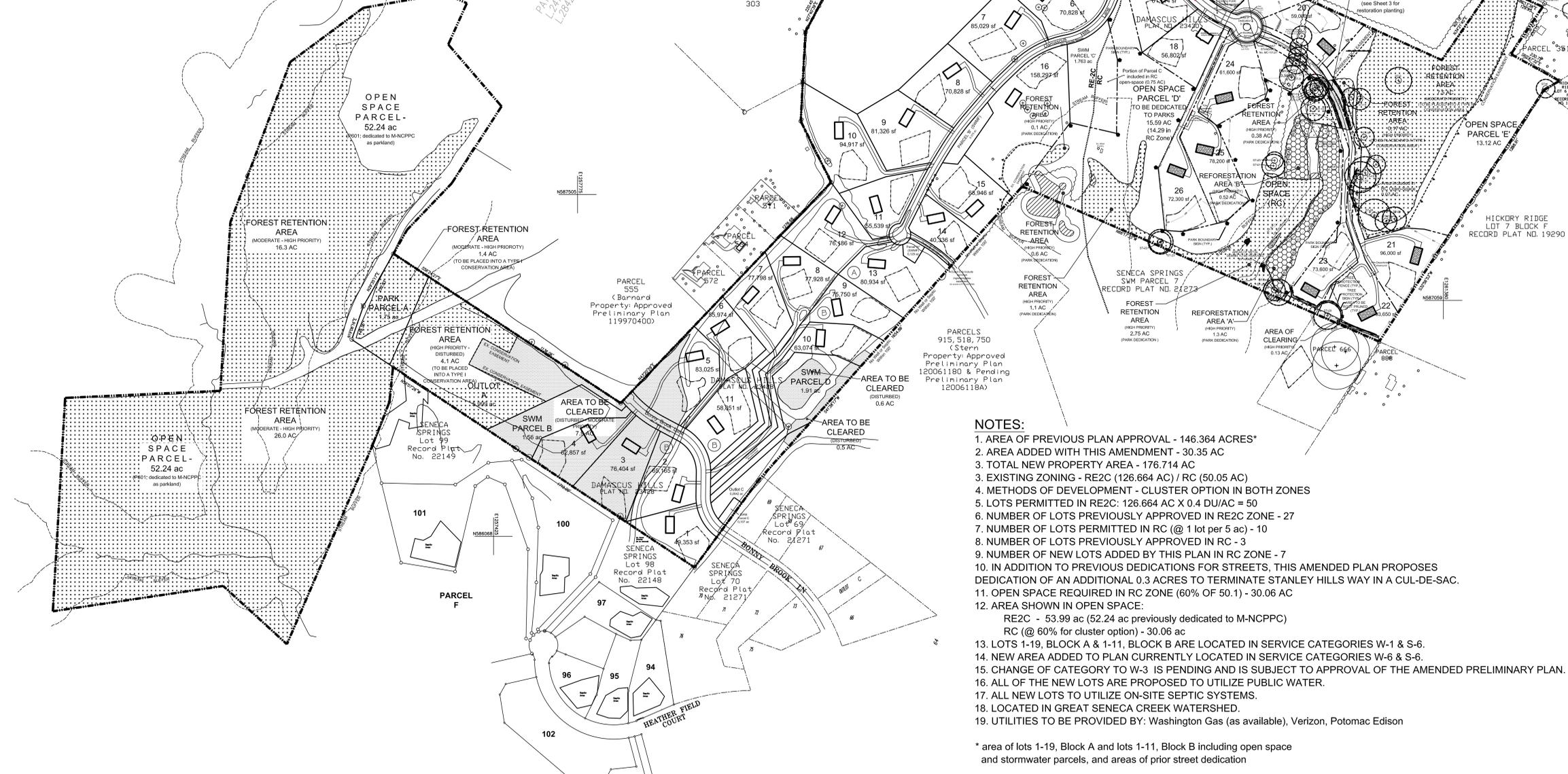
LOT	# Bed-rooms	Test Site	Time (min.)	Depth of Tests	Test Site	Time (min.)	Depth of Tests	Test Site	Time (min.)	Depth of Tests	Average Test Rate	Inv. Low Fixture	Inv. In	Inv. Out	Inv. Beg.	Length of Initial System	Depth of Stone	Length of Entire System	Overall Area
20	6	151-A	12	2.5' & 12'	C1-A	14	2.5' & 12'	---	---	---	13 min.	727.3	724.8	724.5	731.0	217'	4"	868'	10,000' ±
21	6	135B	16	2.5' & 12.5'	134A	16	2.5' & 12'	---	---	---	16 min.	723.6	720.3	720.0	717.9	277'	4"	1,108'	10,000' ±
22	5	62B-2	23	2.5' & 11.5'	62B	10	2.5' & 11.5'	---	---	---	17 min.	720.1	716.8	716.5	714.5	239'	4"	956'	10,000' ±
23	5	132A	16	2.5' & 11'	61F	21	4' & 11.5'	62E1	20	2.5' & 11'	19 min.	710.0	706.8	706.5	704.5	239'	4"	956'	10,000' ±
24	5	127A	22	3.5' & 12.5'	127B	12	3.5' & 12.5'	127C	16	2.5' & 12.5'	18 min.	734.0	730.8	730.5	726.0	239'	4"	957'	10,000' ±
25	5	4C-A	10	3.5' & 13'	124B	19	5' & 14.5'	125C	30	2.5' & 12.5'	20 min.	732.0	731.3	731.0	717.9	239'	4"	957'	10,000' ±
26	4	123A-1	30	3' & 13'	123B	18	5' & 13.5'	124A	25	2' & 12.5'	24 min.	725.9	725.3	725	718.3	250'	4"	1,000'	10,000' ±

PRELIMINARY PLAN
DAMASCUS HILLS
Montgomery County, Maryland

Attachment 2



DETAIL VIEW / PARK DEDICATION
SCALE: 1" = 300'



LEGEND:

- Proposed House (New Lot)
- Proposed / Existing House (Approved / Recorded Lot)
- Existing or Proposed Well Site
- Proposed Septic
- Lot Line
- Conservation Easement
- Stream / Environmental Buffer
- Proposed Limit of Disturbance
- Significant Tree
- Critical Root Zone
- Retention Area
- Area to be Cleared
- Afforestation Area
- Wetlands
- Drywell
- Storm Drain Pipe
- Riprap Outfall
- Permanent Conservation Marker
- Tree Protection Sign
- Tree Protection Fence - TPF
- Root Pruning
- Park Boundary Sign

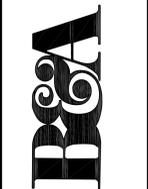
Sheet 1 of 5
Revisions

01/15/2015
05/05/2016
07/22/2016
07/27/2016



date: 6/3/14
scale: 1" = 200'

Bemping & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240

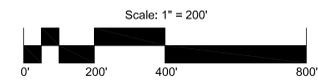


NOTES:

1. AREA OF PREVIOUS PLAN APPROVAL - 146.364 ACRES*
2. AREA ADDED WITH THIS AMENDMENT - 30.35 AC
3. TOTAL NEW PROPERTY AREA - 176.714 AC
3. EXISTING ZONING - RE2C (126.664 AC) / RC (50.05 AC)
4. METHODS OF DEVELOPMENT - CLUSTER OPTION IN BOTH ZONES
5. LOTS PERMITTED IN RE2C: 126.664 AC X 0.4 DU/AC = 50
6. NUMBER OF LOTS PREVIOUSLY APPROVED IN RE2C ZONE - 27
7. NUMBER OF LOTS PERMITTED IN RC (@ 1 lot per 5 ac) - 10
8. NUMBER OF LOTS PREVIOUSLY APPROVED IN RC - 3
9. NUMBER OF NEW LOTS ADDED BY THIS PLAN IN RC ZONE - 7
10. IN ADDITION TO PREVIOUS DEDICATIONS FOR STREETS, THIS AMENDED PLAN PROPOSES DEDICATION OF AN ADDITIONAL 0.3 ACRES TO TERMINATE STANLEY HILLS WAY IN A CUL-DE-SAC.
11. OPEN SPACE REQUIRED IN RC ZONE (60% OF 50.1) - 30.06 AC
12. AREA SHOWN IN OPEN SPACE:
RE2C - 53.99 ac (52.24 ac previously dedicated to M-NCPPC)
RC (@ 60% for cluster option) - 30.06 ac
13. LOTS 1-19, BLOCK A & 1-11, BLOCK B ARE LOCATED IN SERVICE CATEGORIES W-1 & S-6.
14. NEW AREA ADDED TO PLAN CURRENTLY LOCATED IN SERVICE CATEGORIES W-6 & S-6.
15. CHANGE OF CATEGORY TO W-3 IS PENDING AND IS SUBJECT TO APPROVAL OF THE AMENDED PRELIMINARY PLAN.
16. ALL OF THE NEW LOTS ARE PROPOSED TO UTILIZE PUBLIC WATER.
17. ALL NEW LOTS TO UTILIZE ON-SITE SEPTIC SYSTEMS.
18. LOCATED IN GREAT SENECA CREEK WATERSHED.
19. UTILITIES TO BE PROVIDED BY: Washington Gas (as available), Verizon, Potomac Edison

* area of lots 1-19, Block A and lots 1-11, Block B including open space and stormwater parcels, and areas of prior street dedication

MISS UTILITY
Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. The excavator must notify all public utility companies with underground facilities in the area of proposed excavation and have those facilities located by the utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter 36A of the Montgomery County Code.



NOTE: THIS PLAN IS AN AMENDMENT TO APPROVED FINAL FOREST CONSERVATION PLAN 1-20040800 TO ADD LOTS 20-26, BLOCK A. FOR DETAILS REGARDING LOTS 1-19, BLOCK A AND 1-11, BLOCK B SEE EARLIER APPROVED PLANS.

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 12004080A, including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: **STANLEY ENTERPRISES**
Printed Company Name

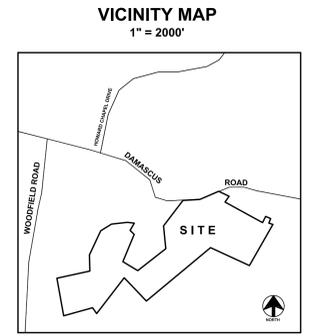
Contact Person or Owner: **Roy Stanley**
Printed Name

Address: **PO Box 577
Damascus, MD 20872**

Phone and Email: **301-253-0575 restanley@comcast.net**

Signature: _____

Prepared for:
STANLEY ENTERPRISES
c/o Roy Stanley
PO BOX 577
DAMASCUS, MARYLAND 20882
(301) 253-0575



FINAL FOREST CONSERVATION PLAN
DAMASCUS HILLS
Montgomery County, Maryland



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Al R. Roshdiah
Director

August 17, 2016

Mr. Benjamin Berbert, Planner Coordinator
Area 3 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 12004080A
(formerly 120120030)
Damascus Hills

Ben:
Dear Mr. Berbert:

We have completed our review of the preliminary plan signed and sealed on June 12, 2014. An earlier version of this preliminary plan was previously reviewed by the Development Review Committee at its meeting on September 26, 2011 but followup submissions were delayed until March of 2014. In the meantime, our Lead Reviewer for this project retired and I mistakenly assumed this project had been terminated. Until July 27th, we were unaware that this project had been reactivated. We regret this unfortunate situation.

We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Necessary dedication for the extension of Stanley Hills Way as an open section secondary residential street with sidewalks per MCDOT design standard no. MC-211.03 ("Secondary Residential Road, Open Section, with Sidewalks and Street Trees") and termination as an open section cul-de-sac per MCDOT design standard no. MC-222.02 ("Cul-de-sac, Open Section Road").
2. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.

Office of the Director

101 Monroe Street, 10th Floor • Rockville, Maryland 20850 • 240-777-7170 • 240-777-7178 FAX

www.montgomerycountymd.gov/dot

Located one block west of the Rockville Metro Station



3. Public Improvements Easements will be necessary along both sides of the extension and cul-de-sac on Stanley Hills Way, in order to accommodate the required sidewalk construction. The applicant will need to either dedicate additional right of way or execute a Declaration of Public Improvements Easement document. That document is to be recorded in the Land Records of Montgomery County, with the liber and folio referenced on the record plat. Unless otherwise noted, the Public Improvements Easement [PIE] is to be a minimum width of seven (7) feet with the overlapping Public Utilities Easement [PUE] being no less than feet (15) feet wide.

NOTE: the notes on the preliminary plan indicate a fifteen (15) foot wide PIE and an eight (8) foot wide PUE. These notes are incorrect; the PIE should be seven (7) feet wide with a fifteen (15) foot wide overlapping PUE. These notes should be corrected prior to approval of the Certified Preliminary Plan.

4. Grade establishments for all new public streets and/or pedestrian paths must be approved prior to submission of the record plat.
5. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
6. Wells and septic systems cannot be located within the right of way nor slope or drainage easements.
7. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lots accessed by each common driveway.
8. Private common driveways shall be determined through the subdivision process as part of the Planning Board's approval of a preliminary plan. We defer to the Planning Board and the Department of Permitting Services/Fire and Rescue for the composition, typical section, horizontal alignment, profile, access locations and sight distances, landscaping, lighting, drainage characteristics, and maintenance of private common driveways beyond the public right-of-way.
9. Curb radii for intersection type driveways should be sufficient to accommodate the turning movements of emergency apparatus as required by the Department of Permitting Services/Fire and Rescue.

Mr. Benjamin Berbert
Preliminary Plan No. 12004080A
August 17, 2016
Page 3

10. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
11. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
12. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
13. Trees in the County rights of way – spacing and species to be in accordance with the applicable MCDOT standards. Tree planning within the public right of way must be coordinated with DPS Right-of-Way Plan Review Section.
14. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:
 - A. Street grading, paving, shoulders, sidewalks and handicap ramps, side drainage ditches and appurtenances, and street trees along the extension of Stanley Hills Way (in accordance with MCDOT design standard no. MC-211.03) and terminating in a cul-de-sac (in accordance with MCDOT design standard no. MC-222.02) per comment no. 2 in this letter.

* **NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1.**

- B. Enclosed storm drainage and/or engineered channel (in accordance with the MCDOT Storm Drain Design Criteria) within the County rights-of-way and all drainage easements.

Construct a receiving inlet on the cul-de-sac with appropriately sized discharge pipe and end treatment. The outfall for public storm drain pipe should extend beyond the structure on proposed lot 20. Ensure non-erosive flow velocity at the end of the outfall treatment.

- C. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.

Mr. Benjamin Berbert
Preliminary Plan No. 12004080A
August 17, 2016
Page 4

- D. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by the DPS.
- E. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- F. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the MCDOT Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at greg.leck@montgomerycountymd.gov or (240) 777-7170..

Sincerely,



Gregory M. Leck, Manager
Development Review Team
Office of Transportation Policy

M:\corres\FY2017\Traffic\12004080A, Damascus Hills amended PP, MCDOT FINAL.docx

- cc: Roy Stanley
David McKee Benning & Associates
Jim Clifford Clifford, Debelius, Bonifant FIT
Kipling Reynolds M-NCPPC Area 3
Richard Weaver M-NCPPC Area 3
Preliminary Plan folder
Preliminary Plan letters notebook
- cc-e: Atiq Panjshiri MCDPS RWPR
Avinash Dewani MCDOT OTP
Deepak Somarajan MCDOT OTP



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

MEMORANDUM

August 15, 2016

TO: Cathy Conlon, Development Review,
Maryland National Capital Park and Planning Commission

FROM: Gene von Gunten, Manager- Well & Septic Section
Department of Permitting Services

SUBJECT: Status of Preliminary Plan: #12004080A

Gene von Gunten
8-15-16

Damascus Hills, lots 20-26 (7 lots)

This is to notify you that the Well & Septic Section of MCDPS approved the plan received in this office on July 28, 2016.

Approved with the following reservations:

1. The record plat must be at the same scale as the preliminary plan, or submit an enlargement of the plat to match the preliminary plan.
2. All new septic systems must utilize Best Available Treatment (BAT) as defined by State of Maryland (MDE) regulations.
3. All lots to utilize public water from WSSC; and individual on-site (septic) sewage disposal systems.

If you have any questions, contact Gene von Gunten at (240) 777-6319.

CC: Surveyor
File



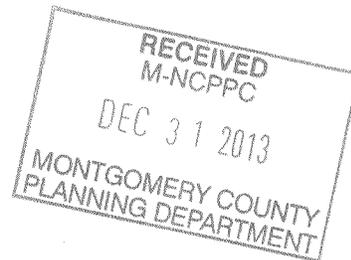
FIRE MARSHAL COMMENTS

DATE: 11-Oct-13
TO: Joshua Maisel - benninglandplan@aol.com
Benning and Associates
FROM: Marie LaBaw
RE: Damascus Hills
420420030 12004080A

PLAN APPROVED

1. Review based only upon information contained on the plan submitted **11-Oct-13**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

***** Performance based design *****





DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

December 23, 2013

Mr. Jon Shiancoe, P.E.
JAS Engineering, LLC
5105 Mount Oaks Sanctuary Drive
Bowie, MD 20720

Re: Stormwater Management **CONCEPT** Request
for Damascus Hills
Preliminary Plan #: 12004080A
SM File #: 240595
Tract Size/Zone: 42.46/RC & RE-2
Total Concept Area: 11.25ac
Lots/Block: Proposed # 20 - # 26
Parcel(s): N/A
Watershed: Great Seneca Creek

Dear Mr. Shiancoe:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via the use of micro biofiltration, bioswales drywells, micro infiltration and other non structural practices.

The following **Item(s)/condition(s)** will need to be addressed **during/prior to** the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
4. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are for illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.
5. The required ESD volume for each lot must be provided on that lot. Some of the lots may fill material located within the proposed property limits and will not be suitable for infiltration type practices.

RECEIVED
M-NCPPC
DEC 31 2013
MONTGOMERY COUNTY
PLANNING DEPARTMENT

Mr. Jon Shiancoe, P.E.
Page 2
December 23, 2013

Please note that the fill placement and foundation systems for the proposed buildings will be required to follow the Department of Permitting Services (DPS) complex structure approval due to the nature and complexity of the project. As such, the fill placement and foundation systems must be constructed under the supervision of a DPS approved geotechnical engineer licensed in the State of Maryland. This engineer must certify and submit reports on the compaction and soil bearing capacity of the fills and certify that the fill is adequate for the proposed foundation systems. If you have any questions please call George Muste, 240-777-6232.

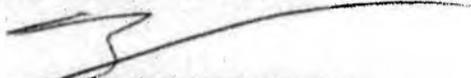
This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required.**

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 Thomas Weadon at 240-777-6309.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: me CN 240595

CC: C. Conlon
SM File # 240595

ESD Acres:	11.9ac
STRUCTURAL Acres:	N/A
WAIVED Acres:	N/A

STANLEY ENTERPRISES



June 17, 2015

Monroe Duvall
25804 Bowman Acres Lane
Damascus, MD 20872

Dear Monroe,

I am writing to you in reference to the subdivision known as Damascus Overlook, which is near your home. We are currently in the process of adding seven additional homes to the subdivision and working on the access for three of the lots. Maryland National Capital Park and Planning Commission (M-NCPPC) has suggested an access route that would require an easement on your property for a driveway.

Attached you will find two separate letters regarding your opinion on placing an easement on your property. Please note, there will not be cash offering for the easement.

Thank you for taking the time to complete the letter of affidavit to M-NCPPC. Enclosed is a postage paid envelope for you to return the affidavit. Thank you for taking the time to review the information and completing the affidavit.

Sincerely,

Roy E. Stanley

Attachment
Enclosure

POST OFFICE BOX 577 • DAMASCUS, MD • 20872
PHONE: 301-253-0575 • FAX: 301-253-6535
EMAIL: INFO@STANLEYBUSINESS.NET
WWW.STANLEYBUSINESS.NET

COPY

Date

Mary Jo Kishter
Maryland Capital National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mrs. Kishter,

I have been approached by Mr. Stanley of Stanley Enterprises regarding the Damascus Overlook subdivision and the need to explore alternative access options for three of the proposed lots.

I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am in agreement with the proposed access easement and will cooperate with Mr. Stanley to execute an easement agreement for this purpose.

Sincerely,

Monroe Duvall
25804 Bowman Acres Lane
Damascus, MD 20872

COPY

Date

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I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am not in agreement with the proposed access easement and therefore deny this option.

Sincerely,

Monroe Duvall
25804 Bowman Acres Lane
Damascus, MD 20872

STANLEY ENTERPRISES

COPY

June 17, 2015

Phillip and Margaret Wenzlaff
8650 Damascus Road
Damascus, MD 20872

Dear Mr. & Mrs. Wenzlaff,

I am writing to you in reference to the subdivision known as Damascus Overlook, which is near your home. We are currently in the process of adding seven additional homes to the subdivision and working on the access for three of the lots. Maryland National Capital Park and Planning Commission (M-NCPPC) has suggested an access route that would require an easement on your property for a driveway.

Attached you will find two separate letters to M-NCPPC regarding your opinion on placing an easement on your property. Please note, there would not be a cash payment for the easement.

Thank you for taking the time to complete the affidavit. Enclosed is a postage paid envelope for you to return the affidavit. Thank you for taking the time to review the information and completing the affidavit.

Sincerely,

Roy E. Stanley

Attachment
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Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

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I am in agreement with the proposed access easement and will cooperate with Mr. Stanley to execute an easement agreement for this purpose.

Sincerely,

Phillip & Margaret Wenzlaff
8650 Damascus Road
Damascus, MD 20872



Date

Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

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I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am not in agreement with the proposed access easement and therefore deny this option.

Sincerely,

Phillip & Margaret Wenzlaff
8650 Damascus Road
Damascus, MD 20872

STANLEY ENTERPRISES

COPY

May 28, 2015

James Ness
8650 Damascus Road
Damascus, MD 20872

Dear Mr. Ness,

I am writing to you in reference to the subdivision known as Damascus Overlook, which is near your home. We are currently in the process of adding seven additional homes to the subdivision and working on the access for three of the lots. Maryland National Capital Park and Planning Commission (M-NCPPC) has suggested an access route that would require an easement on your property for a driveway.

Attached you will find a letters of affidavit to M-NCPPC regarding your opinion on placing an easement on your property. Please note, there would not be a cash payment for the easement.

Thank you for taking the time to complete the affidavit. Enclosed is a postage paid envelope for you to return the affidavit. Thank you for taking the time to review the information and completing the affidavit.

Sincerely,

Roy E. Stanley

Attachment
Enclosure

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EMAIL: INFO@STANLEYBUSINESS.NET
WWW.STANLEYBUSINESS.NET

COPY

Date

Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mrs. Kishter,

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I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am not in agreement with the proposed access easement and therefore deny this option.

Sincerely,

James Ness
8640 Damascus Road
Damascus, MD 20872

Date

COPY

Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mrs. Kishter,

I have been contacted by Mr. Stanley of Stanley Enterprises regarding the Damascus Overlook subdivision and the need to explore alternative access options for three of the proposed lots in this subdivision.

I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am in agreement with the proposed access easement and will cooperate with Mr. Stanley to execute an easement agreement for this purpose.

Sincerely,

James Ness
8640 Damascus Road
Damascus, MD 20872

November 16, 2015

R. Lane & Charlotte Betts
25801 Bowman Acres Lane
Damascus, MD 20872

Dear Mr. and Mrs. Betts,

I am writing to you in reference to the subdivision known as Damascus Overlook, which is near your home. We are currently in the process of adding additional homes to the subdivision and working on the access for three lots. Maryland National Capital Park and Planning Commission (M-NCPPC) has suggested an access route that would require an easement on your property for a driveway.

Attached you will find two separate letters regarding your opinion on placing an easement on your property. Please note, there will not be a cash offering for the easement.

Thank you for taking the time to complete the letter of affidavit to M-NCPPC. Enclosed is a postage paid envelope for you to return the affidavit. Thank you for taking the time to review the information and completing the affidavit.

Sincerely,

A handwritten signature in cursive script that reads "Roy Stanley".

Roy Stanley

Attachment

Date

Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mrs. Kishter,

I have been contacted by Mr. Stanley regarding the Damascus Overlook subdivision and the need to explore alternative access options for three of the proposed lots.

I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am not in agreement with the proposed access easement and therefore deny this option.

Sincerely,

R. Lane Betts & Charlotte Betts
25801 Bowman Acres Lane
Damascus, MD 20872

Date

Mary Jo Kishter
Maryland Capital National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mrs. Kishter,

I have been contacted by Mr. Stanley regarding the Damascus Overlook subdivision and the need to explore alternative access options for three of the proposed lots.

I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am in agreement with the proposed access easement and will cooperate to execute an easement agreement for this purpose.

Sincerely,

R. Lane Betts and Charlotte Betts
25801 Bowman Acres Lane
Damascus, MD 20872

6/29/15
Date

Mary Jo Kishter
Maryland National Park and Planning Commission
Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910

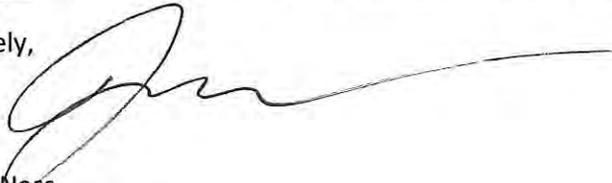
Dear Mrs. Kishter,

I have been approached by Mr. Stanley of Stanley Enterprises regarding the Damascus Overlook subdivision and the need to explore alternative access options for three of the proposed lots.

I understand that M-NCPPC has suggested the exploration of an easement across a portion of my property for road access for the aforementioned three lots.

I am not in agreement with the proposed access easement and therefore deny this option.

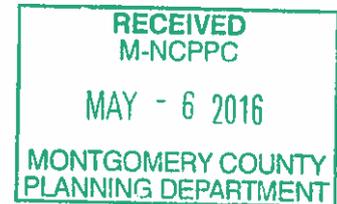
Sincerely,



James Ness
8640 Damascus Road
Damascus, MD 20872

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
8933 Shady Grove Court
Gaithersburg, MD 20877
Phone: 301-948-0240
Fax: 301-948-0241
E-mail: jmaisel@benninglandplan.com



To: Ms. Mary Jo Kishter, Area 3 Planner, MNCPPC
From: David W. McKee
Date: 05-05-16
Re: Damascus Hills (120120030) - Request for Variance

Dear Ms. Kishter,

In accordance with Chapter 22A-21 of the Montgomery County Code, I am writing to request a variance for the impact to specimen trees located on the subject site which will result from development of the property. Although 4 specimen trees will be impacted, none are proposed to be removed for this project.

Project Description

The previously approved Preliminary Forest Conservation Plan for this project is proposed to be amended to add 7 new lots in the eastern part of the site. The specimen trees affected by this amendment are located within the new area to be developed.

The project has been carefully planned to avoid impacts to forest and specimen trees. However, limited impacts are necessary to gain access to 3 lots located in the southeast corner of the site and one tree is impacted by a storm drain outfall.

ST-9 is a 33" Red Maple located within the planned open space of the project. A storm drain outfall necessitated by the location of the existing road and site topography affects 20% of the critical root zone of the tree. The tree is proposed to remain. ST-10, ST-18, and ST-19 all receive minor impacts from grading, paving from a proposed shared driveway serving lots 21-23, and utility installation including a new water line. The driveway has been carefully placed to minimize clearing of forest and to avoid tree impacts and the water line is to be placed under the pavement to minimize impacts outside of the areas to be paved. ST-10, a 38" Tulip Poplar will receive impacts to 13% of its root zone from grading, driveway pavement, and utility installation. ST-18, a 45" Silver Maple, will receive impact to 17% of its root zone from grading and paving for the driveway and utilities. And, ST-19, a 43" Silver Maple, will receive impact to 27% of its root zone from grading and paving for the driveway and utility installation. All of these trees are within open space areas of the property and are proposed to remain.

SIGNIFICANT TREE CHART

TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	IMPACT TO CRZ	STATUS
ST-9	Acer rubrum	Red Maple	33.0"	Moderate	20%	To be retained
ST-10	Liriodendron tulipifera	Tulip Poplar	38.0"	Moderate	13%	To be retained
ST-18	Acer saccharinum	Silver Maple	45.0"	Poor	17%	To be retained
ST-19	Acer saccharinum	Silver Maple	43.0"	Poor	27%	To be retained

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states the applicant must:

1. Describe the special conditions peculiar to the property which would cause 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 violated or that a measurable degradation in water quality will not occur as a result of granting of the variance; and
4. Provide any other information appropriate to support the request.

There are special conditions unique to the property which would cause unwarranted hardship should the variance not be approved. The area to be developed is zoned Rural Cluster and only the open areas of the property are proposed for new lots. All of the existing forest and specimen sized trees are located in the open space. Lots 21-23 are located in an open area but in order to gain access to these lots, some minor clearing and impacts to specimen trees is necessary. The unique conditions of site topography, existing road location, septic suitability, and location of existing forest have led to the plan layout as proposed.

Should this variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. This project has been designed to meet or exceed all development standards for the RC zone. No waivers of any subdivision or zoning standard have been requested. The proposed subdivision meets all of the requirements for subdivision but the property cannot be developed without approval of the variance due to the presence of specimen trees.

The granting of a variance will not result in a violation of State water quality standards or any measurable degradation in water quality. The project has been planned to provide environmental site design (ESD) practices in accordance with the latest State and County requirements for stormwater management. Site topography and the need to protect as much of the existing forest as possible has led to the plan as proposed. Environmentally sensitive areas have been protected in order to avoid any degradation in water quality. In addition, to offset the small amount of forest clearing proposed for the project, extra forest planting is proposed within and adjoining stream buffers areas currently unforested.

In addition, Section 22A-21(d) indicates 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.

This request for a variance will not confer a special privilege that would be denied to other applicants. The subject property has been planned to meet or exceed all development standards of the RC zone. Approval of a variance to permit subdivision in accordance with all zoning and subdivision standards does not confer a special privilege to the applicant.

This variance request is not based on conditions and circumstances which are the result of actions by the applicant. The applicant has prepared and submitted plans which meet all applicable development standards and requirements. The variance request is based upon plans which meet all requirements but result in impacts to certain specimen trees. The variance request is not based upon any actions by the applicant.

The request for a variance does not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property. The adjacent properties are not a contributing factor for the variance request.

The variance if approved will not violate State water quality standards or cause measurable degradation in water quality. On the contrary, approval of this variance will support the plan for this site which minimizes forest clearing to the maximum extent possible, avoids any impact to the majority of specimen trees on the site and avoids causing removal of any of the 29 specimen trees, and proposes reforestation within and adjacent to unforested stream buffer areas.

For the above reasons, we respectfully request approval of this request for a variance from provisions of Section 22A-21 of the Montgomery County Code. If you have any questions or concerns regarding this request, please do not hesitate to contact me.

Sincerely,



David W. McKee



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

August 10, 2016

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

RE: Damascus Hills – Revised Amendment, DAIC 12004080A, recertification for NRI/FSD received on 7/18/2011

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department (“Planning Department”) has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the



variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

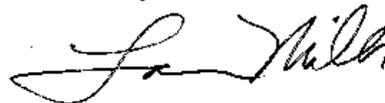
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller
County Arborist

cc: Mary Jo Kishter, Senior Planner