Attachment A

Date of Mailing: November 25, 1992

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation
(Motion of Comm. Floreen, seconded by Comm. Aron, with a vote of 5-0; Comms. Floreen, Aron, Bauman, Baptiste and Richardson voting in favor.)

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-91105
NAME OF PLAN: GREENACRES

On 10-29-91, LITTLE FALLS SWIMMING CLUB, submitted an application for the approval of a preliminary plan of subdivision of property in the R60 zone. The application proposed to create 1 lots on 2.90 ACRES of land. The application was designated Preliminary Plan 1-91105. On 10-15-92, Preliminary Plan 1-91105 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-91105 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code,as amended) and approves Preliminary Plan 1-91105, subject to the following conditions:

The findings of fact and conclusions of law which support this written opinion expressly include those certain letters dated November 6, 1992 prepared on behalf of the Planning Board by the Chairman and forwarded to MCDOT and MCDEP.

The Planning Board in this action, at the request of the applicant, agreed to grant a variation pursuant to Section 50-38 of the Montgomery County Code, exempting the applicant's resubdivision application from the application of certain of the subdivision regulations. In particular, the Board agreed to grant a variation from Section 50-32(a) and 50-32(g) governing a general prohibition against development within a floodplain. Given the existing and unique nature of the use, a pool and bathhouse, proposed for continued existence within the floodplain, the Board, for reasons set forth in greater detail in staff memoranda presented to the Departments of Transportation and Environmental

- Continued -

Protection, agreed to grant the requested variation. This grant of a variation from the prohibition of development within the floodplain is to be construed narrowly both for any further development on site and as a precedent for development anywhere else

APPROVAL, including variation from Section 50-32(g), for the allowance for reconstruction of a building in a floodplain, subject to:

1. Prior to recording of plat(s), applicant must meet the conditions of the forest conservation plan as part of the preliminary plan

2. Prior to MCDEP issuance of the sediment and erosion control permit, applicant must meet the conditions of the forest conservation plan

3. Agreement with Planning Board limiting development to a private club (swimming club) pursuant to Board of Appeals Case No. CBA-331-A

4. Record plat to reflect delineation of 100-year flocdplain

5. Conditions of DEP stormwater management approval

6. Access and improvements as required to be approved by MCDOT

7. Necessary easements

Attachment B

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/

(240) 777-6600

Case No. S-289-B
[CBA-321, CBA-321-A, CBA-321-B,
CBA-2545, CBA-2546, S-289, S-289-A]

PETITION OF LITTLE FALLS SWIM AND TENNIS CLUB

RESOLUTION TO RE-OPEN THE RECORD
AND TO MODIFY SPECIAL EXCEPTION
(Resolution Adopted March 30, 2016)
(Effective Date of Resolution: April 18, 2016)

The Board of Appeals granted Case No. CBA-321 to the Little Falls Swim Club on July 7, 1955, to permit a community swimming pool. The Board has granted modifications to the special exception in Case Nos. CBA-2545, CBA-2546, S-289, S-289-A and CBA-321 A-B effective March 26, 1969, to permit redevelopment of the facility; January 16, 1974 to permit the addition of three tennis courts; April 26, 1977 to permit a change in the hours of operation, increase the number and change times for swim meets, some use of starting guns and change the time for playing tennis; August 11, 1982 to increase the membership to 325 families, allow guests to use the pool under supervision of a guest; June 22, 1983, to increase membership to 325, install a backboard on the tennis courts; February 14, 1989, increase membership to 377; March 2, 1992, to replace the bathhouse; November 30, 1994, allow the pool to open at 6:30 am Monday through Friday; September 12, 1997, remove the restriction on the number of member families eligible for tennis; June 1, 1998, eliminate the separate category of tennis membership; February 2, 1999, allow the tennis backboard to remain on the east side of Lot 30. In an Opinion dated June 8, 2005, and based upon a Report and Recommendation from the Hearing Examiner for Montgomery County, the Board granted Case No. S-289-B, a major modification to the special exception, and in a Resolution dated May 12, 2010, the Board administratively modified that Opinion to allow additional flexibility with respect to changes to the Landscape Plan. In addition, the Board has received and adopted Supplemental Reports and Recommendations from

the Hearing Examiner in Resolutions effective August 29, 2005, October 12, 2005, May 3, 2006 and October 31, 2006.

The subject property is Lots 27-34, Block I, Green Acres Subdivision, located at 5001 Little Falls Drive, Bethesda, Maryland in the R-60 Zone.

The Board of Appeals has received a letter, dated March 22, 2016, from Catherine Stocker, Board Member and Renovation Chair of the Little Falls Swim Club. Ms. Stocker requests an administrative modification of the above-captioned special exception to renovate the pool complex by replacing the existing pools, which she states are near the end of their useful life and do not meet current safety and ADA standards. Her letter represents that the renovations are limited to the pool area of the property, and do not encroach on the tennis court area. Ms. Stocker's letter states that there will be no change to parking or to the hours of operation, and that the pool does not anticipate an increase to the existing pool membership as a result of these modifications. She notes that the pool will also be making cosmetic improvements to the existing bathhouse, such as painting, new fixtures and ceramic tile. See Exhibit 252.

The drawings attached to Ms. Stocker's letter include a site plan showing the renovated pool complex (including a competition pool with diving well, a toddler pool, and a baby pool) as well as a site plan showing the existing pools superimposed over the proposed pools. See Exhibits 252(a) and (b).

Because Case No. S-289-B and the preceding special exceptions pertaining to this Property were approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004) provides, pertaining to modification of special exceptions:

> If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board of Appeals considered Ms. Stocker's letter at its Worksession on March 30, 2015. John Chadwick, the construction

manager for the pool board, appeared at the Worksession. Mr. Chadwick confirmed that there would be no change to the parking or other facilities, membership, or hours of operation. He stated that construction would start in September, 2016, and should finish by May, 2017, and that the new pool will be ADA-compliant.

The Board finds that the proposed replacement of the existing pool complex will be accommodated within the currently-designated pool area of this special exception site, and will not entail any increase in the membership, expansion of operating hours, or other operational change. Thus the Board finds that the proposed modification will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood, and can be granted. Therefore, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-289-B is re-opened to receive the correspondence from Ms. Stocker, with attachments, including the Site Plan reflecting the new pool complex (Exhibit 252(a));

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to modify the special exception is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of April, 2016.

Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

LERCH EARLY & BREWER
ideas that work

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Attachment C

September 30, 2016

VIA ELECTRONIC DELIVERY

Mr. Elza Hisel-McCoy
Master Planner, Regulatory Supervisor
Planning Area 1
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910-3670

RE: Supplemental Statement of Justification – Section 50-38(a)(1) Waiver
Little Falls Swimming Club
Preliminary Plan Amendment No. 11991105B

Dear Mr. Hisel-McCoy,

On behalf of our client, The Little Falls Swimming Club (the "Applicant"), please accept this Supplemental Statement of Justification in support of Preliminary Plan Amendment No. 11991105B (the "Amendment") for the renovations proposed to the existing community swimming pool facility ("Pool") at 5001 Little Falls Drive, Bethesda, Maryland (the "Property"). As explained in previous submissions by the Applicant and its representatives, this Application is proposed in connection with the modernization of the Pool, for the purpose of bringing its facilities up-to-date with certain ADA requirements and U.S.A. Swimming regulations and preserving its ability to provide an amenity to its members, many of whom reside in the area. However, because the Pool has been allowed to exist and operate within a recognized 100-year floodplain for at least 24 years of its more than 60 years of existence pursuant to a waiver from Section 50-38 of the Subdivision Regulations, this waiver must now be affirmatively re-authorized in connection with this Amendment.[1]

Attachment B

We note that, since the initial submission, the Applicant and its consultants have substantially revised the Amendment in response to Planning Department Staff comments. The resulting changes have reduced potential impacts from the proposed renovations, which include the replacement of the existing swimming pools with two new pools, among other things (the

[1] The Planning Board granted a waiver pursuant to Section 50-38 of the Subdivision Regulations for development in the floodplain at the time of the last Preliminary Plan approval in 1992, stating that the waiver was to be "construed narrowly both for any further development on the site and as a precedent for development anywhere else." The waiver was required to address Sections 50-32(a) and 50-32(f) (at that time, 50-32(g)) of the Subdivision Regulations, which impose certain restrictions on development within a floodplain that may be waived with the approval of the Planning Board.

"Project"). More specifically, the Applicant has incorporated the following revisions into the plans:

- Pulling back the fence various distances to substantially reduce the level of impact, as follows: (i) by 8.5 feet in several areas along Little Falls Drive; (ii) by 27 feet on the north side of the Pool behind the diving boards; and(iii) by 10 feet and 15 feet along Glen Cove Parkway;
- Tightening the space between the main pool and the training pool;
- Pulling back the proposed raised decking and pergolas; and
- The preservation of several trees.

With these changes to the Project, the overall limits of disturbance ("LOD") have been reduced by approximately 18 percent (from 42,186 square feet to 34,588 square feet),[2] and the Amendment now meets the requirements for approval of a waiver under Section 50-38(a)(1), which requires the Planning Board to find as follows:

> *[That] practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.*

This Supplemental Statement addresses each of the above findings in turn below.

I. The Pool's Longstanding, Permitted Existence Within a Floodplain Presents Practical Difficulties and Unusual Circumstances That Prevent Full Compliance from Being Achieved.

Here, the Applicant is affected both by certain practical difficulties and unusual circumstances that arise because of its longstanding existence as a community swimming pool constructed within a floodplain, as acknowledged in the Planning Board's 1992 waiver. The Planning Board, in its previous Opinion dated November 25, 1992, found that the prior waiver for development within the floodplain was justified "[g]iven the existing and unique nature of the use, a pool and bathhouse, proposed for continued existence within the floodplain." Those same unusual circumstances — *i.e.,* the Pool's continuous active use over time despite its floodplain location — exist today just as in 1992 and justify the waiver proposed with this Amendment.

Although the Pool has remained in active use since its inception in approximately 1955, the requirements applicable to swimming pools and the demands of their membership have changed substantially over time, even while the existing improvements have aged in place. Moreover, as the Pool ages, it is nearing the end of its usable life. Consequently, as explained in the Applicant's previous submission, the Pool requires substantial renovations and updates in order to continue operating into the future, including changes that are needed to make the Pool

[2] Note that, while the LOD has been reduced, the plans treat a portion of the existing gravel driveway between the parking lot and the Pool as if it were with the LOD so as to require mitigation for increased activity across that area during the period of construction.

ADA-compliant and sufficient for competitive swimming standards. Even though the Pool exists within a floodplain, as recognized at the time of the Planning Board's previous waiver, the use constitutes an essential part of the fabric of the community and the proposed changes will ensure that it continues to be an amenity for its members and guests, many of whom reside in the surrounding area. It would impose practical difficulties and hardships on the Applicant — and, by extension, its members and its neighbors — to require the Pool to remain "as is" in perpetuity and to prohibit further changes needed to meet modern demands.

II. The Substantial Changes Made to the Amendment by the Applicant and the Proposed Mitigation Measures Now Ensure that the Waiver Is the Minimum Necessary to Provide Relief.

Through its efforts to incorporate Staff's recommendations into the Project, the Applicant has ensured that the waiver is the minimum necessary to accommodate the needed changes to the Pool while minimizing potential impacts. While the initial plans submitted for this Amendment were more impactful, proposing among other things an LOD that would affect an on-site forested area located on the southernmost portion of the Property, the Project has been scaled down substantially to avoid such encroachments. The proposed fence has been pulled back from the initial proposal at various distances to now be located directly adjacent to the existing sidewalk that circumscribes the Pool. Additionally, the configuration of the main pool and the training pool has been tightened to reduce the footprint of the swimming pools and decking associated with the Project. Together, these changes have resulted in an approximate 18 percent reduction in LOD from the initial proposal. Moreover, the Applicant is proposing additional mitigation measures to address any long-term impacts that may result from the changes being implemented, including significant buffer plantings. As a result, the relief being requested has been thoroughly evaluated to confirm that it is the minimum necessary to permit the needed changes to the site.

III. The Waiver Is Consistent with the General Plan, as Well as with the 1990 Bethesda-Chevy Chase Master Plan.

The Project achieves the appropriate balance between various, sometimes competing, objectives of the 1964 General Plan ("General Plan") and the 1990 Bethesda-Chevy Chase Master Plan ("Master Plan"), and is, therefore, consistent with these plans. Initially, it is important to note that maintaining this amenity furthers the goals of the 1964 General Plan, which specifically calls for expanding opportunities for outdoor recreation, including swimming. (*See* General Plan at 18.) Likewise, the Project balances the objectives of the Master Plan which, through various recommendations, aims to protect not only the residential character and natural environment throughout the area, but also the high quality of life and cultural resources of the area. (*See e.g.,* Master Plan at 3: "The major goal of the Master Plan is to protect the high quality of life, the residential character, and the natural environment throughout the area . . . In the Palisades, the Plan endorses protection of the *environment*, *character*, and *cultural resources* of the area" [*emphasis added*].)

More specifically, the Pool predates the Master Plan, having been initially approved by the Board of Appeals in 1955. The Pool therefore constitutes part of the same conditions that the Master Plan observes to create a "high quality of life" and "residential character." The changes that the Applicant proposes are intended to ensure that this amenity remains in active use into the future and can continue to contribute to maintaining the high quality of life in the community. To the extent that the proposed Amendment has potential impacts for the natural environment, the Applicant has scaled back the project significantly and will appropriately mitigate those impacts so as to not disturb the character of the community. Thus, the Amendment — which will facilitate the changes necessary to update the Pool for modern demands while also providing mitigation to address environmental concerns — properly balances the various goals expressed in the Master Plan and is consistent with its recommendations.

IV. The Waiver Is Not Adverse to the Public Interest.

For the same reasons discussed above, the Project will not be adverse to the public interest. To the contrary, the Project will serve to maintain this valuable amenity which contributes to the high quality of life in the area. While the Applicant proposes to increase the footprint of the Pool, the Project will also include environmental mitigation measures, resulting in an improved site with minimal impacts over existing conditions. Moreover, we understand that the Project has the overwhelming support of neighbors in the community who want to see the renovations completed. This support reinforces the conclusion that the requested Amendment, with the concomitant waiver, will not be adverse to the public interest.

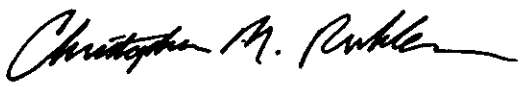
Further, with respect to the public interest, we understand that the Planning Department Staff also previously provided comments with respect to the Forest Conservation Law and the Environmental Guidelines regarding the loss of forest adjacent to a stream. However, as shown in the revised plans submitted by the Applicant, the Project has now been substantially altered to reduce impacts on the forested portions of the Property. Specifically, as noted above, the proposed fence has been pulled in and the configuration of the main pool and the training pool has been tightened, both of which reduce the footprint of the Project. For more information, please refer to the separate justification for certain remaining tree variances required for the Project that is being submitted for the record by Norton Land Design, LLC.

* * * *

For all of these reasons, the Amendment meets the requirements for waiver under Section 50-38(a)(1) of the restrictions on development within a floodplain, and the Project conforms with the Master Plan. The Project furthers the goals of the Master Plan and will allow the Applicant to implement necessary updates that will enable the Pool to continue to serve as an amenity for the area moving forward into the future. Furthermore, the Amendment proposes only the minimum changes needed to achieve the Pool's objectives and minimize impacts, and therefore continues to be within the scope of the original Planning Board waiver that was granted to address the unusual circumstances affecting this particular Property.

We trust that you will let us know if you have any questions or if additional information is required.

Very truly yours,



Christopher M. Ruhlen, Esq.

cc: Ms. Rose Krasnow
Mr. Robert Kronenberg
Mr. Marco Fuster
Ms. Cathy Stocker
Mr. John Chadwick
Mr. Jason Azar
Ms. Dana Wilder Clark
Mr. Michael Norton
W. Lawrence Ferris, Esq.

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September 29, 2016

Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Little Falls Swimming Club
Request for Specimen Tree Variance
MNCPPC PP#1191105B
NORTON #15-120

Dear Mr. Fuster:

On behalf of The Little Falls Swimming Club and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow impacts to, or the removal of, the following trees identified on the associated Amended Forest Conservation Plan.

Variance Summary

Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	C.R.Z. Impacts	%C.R.Z. Impacts	Tree Condition	Comments	Impacts	Status
7	JUGLANS NIGRA	BLACK WALNUT	30	840	13%	GOOD		Pool deck and pool construction	SAVE & PROTECT
10	JUGLANS NIGRA	BLACK WALNUT	34	1789	22%	GOOD		Pool deck and pergola construction	SAVE & PROTECT
12	PLATANUS OCCIDENTALIS	SYCAMORE	48	3349	21%	GOOD		Within existing gravel parking lot for contractor	SAVE & PROTECT
13	QUERCUS RUBRA	RED OAK	33	1058	14%	GOOD		Within existing gravel parking lot for contractor	SAVE & PROTECT
15	ACER SACCHARINUM	SILVER MAPLE	50	261	1%	GOOD		Within existing gravel parking lot for contractor	SAVE & PROTECT
35	POPULUS DELTOIDES	COTTONWOOD	40	2239	20%	GOOD	SPLIT AT 6', LEANING, OFFSITE	Bridge grading and construction	SAVE & PROTECT
37	CELTIS OCCIDENTALIS	HACKBERRY	38,20,16	1000	10%	GOOD	OFFSITE	Bridge grading and construction	SAVE & PROTECT
39	JUGLANS NIGRA	BLACK WALNUT	44	5369	39%	GOOD		Access to pool deck and grading	SAVE & PROTECT
41	ULMUS RUBRA	SLIPPERY ELM	35,10	1463	17%	GOOD	OFFSITE	Site grading and for landscape elements	SAVE & PROTECT

Project and Variance Description:

The Little Falls Swimming Club owns and operates an existing, actively used community swimming pool located at 5001 Little Falls Drive in Bethesda, Montgomery County, Maryland. This is a 2.78-acre site that consists of one parcel – Parcel "A". The site is currently improved with an existing pool, a one story building, tennis courts and a parking lot. The site is bordered by Little Falls Drive, Glen Cove Parkway and residences fronting on Baltimore Avenue. The site is adjacent to residential communities, and a public elementary school.

The proposed construction consists of a zero entry pool, a wading pool, a competition pool with a dive well, various landscape decks/structures and a temporary construction bridge crossing Little Falls Creek. The construction is needed because the existing facilities are nearing the end of their

useful life. However, simple like-kind replacement is not a practical option, given the age of the facility (± 61 years) and the needs of, and requirements applicable to, modern community swimming pools. More specifically, the current pool does not meet applicable "zero entry"/ADA accessible swimming pool requirements and does not satisfy U.S.A. Swimming regulations for competitions.

At the same time, Little Falls Branch is present to the northwest of the property, a tributary is present to the west of the property, and much of the property is encompassed by a floodplain and Stream Valley Buffer. This constrains options for more substantial renovations to the facility. As a result, Little Falls Swimming Club has worked carefully with Staff of the Montgomery County Planning Department to refine plans for the proposed renovations. With these refinements, the plans now ensure that the proposed changes to the site are the minimum reasonably necessary to accommodate the facility's needs while limiting potential impacts and providing necessary mitigation.

With respect to tree impacts, the facility upgrades to the Little Falls Swimming Club will impact the critical root zones of nine specimen trees and, therefore, a specimen tree variance is requested. Of these nine trees, four trees will be impacted by the construction of the pool and deck improvements adjacent to the club house. Two trees are located near the proposed temporary construction bridge, and their critical root zones will be minimally impacted. For the remaining specimen trees, critical root zone impacts will occur as a result of construction activity associated with vehicle movement and materials placement within the limits of the existing gravel parking lot, outside of the limits of disturbance of the project. The disturbance to critical root zones does not warrant the removal of any of the impacted specimen trees, and they will be saved and protected.

Requirements for Variance Application:

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

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
(4) Provide any other information appropriate to support the request.

Justification for Variance:

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

Response: As described above, this existing, actively used community swimming pool facility is located within a floodplain. While waivers were obtained in the past to acknowledge these conditions and exempt the existing facility from certain prohibitions in the Montgomery County Subdivision Regulations, the applicable Planning Board Opinion provides that these exemptions are to be narrowly construed with respect to further development of the site. Simultaneously, if the proposed updates and renovations were to be restricted only to areas of current development, it would not be possible to accommodate the facility's needs for hosting swim meets nor applicable ADA requirements, resulting in a significant deterioration of the facility over time and thus a hardship.

Even though the Little Falls Swimming Club has worked in consultation with Planning Department Staff to scale back its plans for the proposed renovations, the site is constrained in other fundamental respects. Primarily, the existing facilities to be renovated are located at a distance from the location of a temporary construction bridge that will be needed to implement the project. As such, even though the existing gravel parking lot is not actually within the limits of disturbance of the project, there will necessarily be vehicle and construction activity across the parking lot area which could impact the critical root zones of certain trees on the site. It should be noted that these impacts would result from any significant work on the site, based on the existing physical location and configuration of the improvements.

As noted, the project will require disturbance of the root zones of a total of nine (9) specimen trees. No specimen trees are required to be removed. Three of the specimen trees (#12, 13 & 15) are included in the variance as the root zone is under the existing gravel parking lot. While there are no impacts to the gravel parking lot proposed, as it will be used for Contractor parking and access to the disturbance area of the pool project, a tree protection fence is proposed to wrap around the entire parking lot to ensure contractor impact to the adjacent specimen trees is not expanded. If The Little Falls Swimming Club is not allowed to temporarily impact the trees and Stream Valley Buffer, the re-design of the facility will not be able to be carried out and swim meets could become a liability with substandard depths. As such, this would cause an *unwarranted hardship* to the community that it serves.

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

Response: If the County were required to keep all improvements outside the root zones of the specimen trees, the pool would not be able to be updated and remodeled. As described above, even the plans for the bridge would not be able to be carried out due to the close proximity of specimen trees. Furthermore, the presence of critical root zones under the existing gravel parking lot presents practical difficulties with respect to

equipment access to the facility. As a result, unlike other community swimming pools in the County, this particular facility would be required to "age in place" if the Forest Conservation Ordinance were to be strictly enforced. This community swimming pool would be denied the ability to make improvements that are necessary for its long-term viability, resulting in the deterioration and loss of an established, important community amenity.

(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 the granting of the variance;

Response: Tree removals have been minimized by the compact design of the remodel layout ensuring the preservation of as many specimen trees as possible. Impervious areas were also limited as much as possible. Although the pool deck surface is being slightly expanded, a substantial landscape buffer planting plan has been proposed in consultation with Planning Department Staff to help mitigate any potential impacts from increased imperviousness and constitutes a significant part of the proposed renovations. Additionally, the areas to the North and East of the pool area are proposed to be placed in a Category I Conservation Easement.

Furthermore, even though a Stormwater Management Waiver has been approved by the Montgomery County Department of Permitting Services for the proposed renovations, Little Falls Swimming Club has agreed to a set of enhanced environmentally-oriented features and practices with the proposed renovations for the purpose of mitigating impacts to water quality.[1] Gutters and downspouts (which do not exist at the present time) will be installed on the building, and three rain barrels will be used to collect and store rainwater for landscaping irrigation. The pool deck drain will also be added to the pool maintenance documentation in order to establish practices to ensure that chlorinated water will not be discharged through the drain (which outfalls directly into the creek). With the mitigation described above and the proposed environmentally-oriented features and practices, the proposed variance not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality*.

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

Response: The proposed renovation plans are the result of continual efforts among the design team to address the Planning Department's initial review comments, minimize tree and forest impacts, and mitigate for any remaining resulting impacts as much as possible. Following a meeting with Staff and the design team, it was agreed that a landscape plan should be prepared that would replace and improve upon the buffer plantings that were

[1] Further water quality best management practices cannot be used due to poor soils for infiltration and high groundwater, and DPS agrees that stormwater management best management practices ("BMPs") installed in a floodplain are not generally effective.

present in the 1994 and 2004 Landscape Plans. This has been carried out, and the current Landscape Plan provides stream shading, erosion control via plant material, screening and native pollinator plants. The tree canopy coverage from the previous approvals has been overlaid on the current plan to verify the area is consistent with previous approvals. We believe that the resulting plan will actually be more ecologically beneficial than what is currently provided onsite.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which 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;

Response: This property is a fully developed, actively used community swimming pool that is an important part of the neighborhood and dates back several decades. The club is going through renovations to meet ADA and general upgrades to current standards; there are no changes in pool operating hours, membership, or onsite parking. Given that the proposed renovations do not expand the membership of the pool and are consistent with the Planning Board's prior waiver acknowledging the facility's longstanding existence within the floodplain, but that the plans have also been scaled back significantly and an additional mitigation package has been assembled, granting the variance will not confer a special privilege on the applicant.

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

Response: The Little Falls Swimming Club has taken no actions leading to the conditions or circumstances that are the subject of this variance request. Rather, the circumstances result from the special conditions affecting the site, primarily its longstanding existence within a floodplain and the presence of critical root zones under an existing gravel parking lot. The renovations proposed have been limited in scope to be the minimum needed to accommodate changes in ADA requirements since the original construction of the facility in 1955 as well as modern U.S.A. Swimming competitive standards.

(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

Response: The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

Response: Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. As described above, enhanced environmentally-oriented features and practices are being proposed with the renovations that will better protect water quality than current conditions.

Conclusion:

For the above reasons, the applicant respectfully requests that the Planning Board approve its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, grant permission to impact/remove the specimen trees in order to allow the construction of this project.

The recommendations in this report are based on tree conditions noted at the time the field work was conducted. Tree condition can be influenced by many environmental factors, such as wind, ice and heavy snow, drought conditions, heavy rainfall, rapid or prolonged freezing temperatures, and insect/disease infestation. Therefore, tree conditions are subject to change without notice.

The site plans and plotting of tree locations were furnished for the purpose of creating a detailed Tree Protection Plan. All information is true and accurate to the best of my knowledge and experience. All conclusions are based on professional opinion and were not influenced by any other party.

Sincerely,

Michael Norton

Copy to: The Little Falls Swimming Club

Attachment E

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

January 28, 2016

Mr. Jason Azar
Nobis Engineering
20410 Century Blvd. Suite 230
Germantown, MD 20874

Re: ***COMBINED STORMWATER MANAGEMENT CONCEPT/SITE DEVELOPMENT STORMWATER MANAGEMENT PLAN***
Request for Little Falls Swim Club
Preliminary Plan #: NA
SM File #: 281613
Tract Size/Zone: 2.88ac.
Total Concept Area: 2.88ac
Lots/Block: NA
Parcel(s): A
Watershed: Little Falls

Dear Jason:

Based on a review by the Department of Permitting Services Review Staff, the Combined Stormwater Management Concept/Site Development Stormwater Management Plan for the above mentioned site is **acceptable**. Due to site constraints, a waiver of stormwater management requirements is required for the project.

The following **item(s)/condition(s)** will need to be addressed **during** the final stormwater management design plan stage:

1. Do not install the Micro Bioretention facility as originally proposed on the submitted concept. The facility does not meet MC DPS design requirements as existing groundwater is too high.

2. A Floodplain delineation study approved by FEMA and MC DPS is required to prove development will not have a negative effect on the Floodplain or endanger neighboring persons and property.

3. A Floodplain District Permit is required for the proposed work in the Floodplain and its associated 25' Buffer.

4. An engineered sediment control plan must be submitted for this development.

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 required** for the waived of Stormwater Management.

This letter must appear on the final stormwater management design 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 Bill Musico at 240-777-6340.

Sincerely,

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

MCE: WJM

cc: SM File # 281613

ESD Acres:	0.0
STRUCTURAL Acres:	0.0
WAIVED Acres:	2.88