



Parkview at Aspen Hill, Preliminary Forest Conservation Plan, CU 17-04

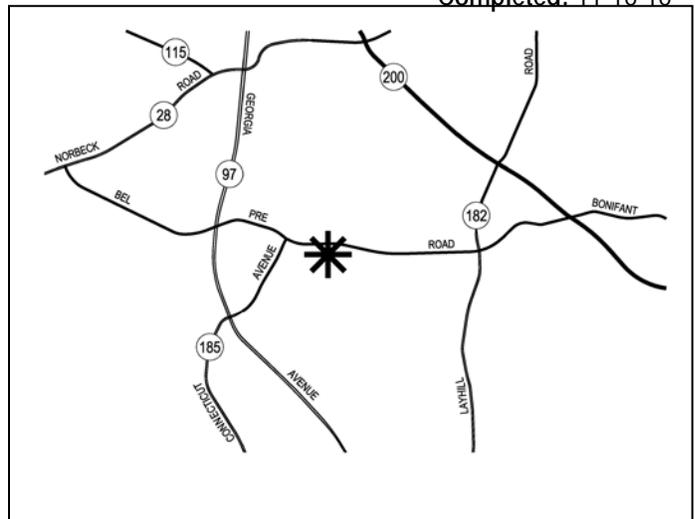
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Description

- Preliminary Forest Conservation Plan associated with the Conditional Use for the construction of an independent living facility for seniors;
- 3132 Bel Pre Road, Silver Spring, Maryland;
- 11.70 acres zoned RE-2;
- 1994 *Approved and Adopted Aspen Hill Master Plan*;
- Applicant: Pennrose Properties, LLC and the Housing Opportunities Commission;
- Filing date: August 22, 2016.

Completed: 11-16-16



Summary

- The Applicant proposes to clear 0.15 acres and remove 3 trees that require a variance, per Section 22A-12(b)(3).
- Pursuant to Chapter 22A of the County Code, the Board’s actions on Forest Conservation Plans are regulatory and binding.
- Staff recommends approval with conditions.

## Conditions of Approval

1. The Applicant must submit a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan at the time of Preliminary Plan.
2. The Final Forest Conservation Plan must include detailed and specific tree protection measures, invasive species management measures, and supplementary planting details.
3. The Applicant must place a Category I Conservation Easement over approximately 2.01 acres of forest retention and planting as shown on the Preliminary Forest Conservation Plan. Prior to any demolition, clearing, or grading, the easement must be approved by the M-NCPPC Office of General Counsel and recorded by deed in the Montgomery County Land Records. The liber and folio of the recorded easement must be referenced on the record plat.
4. The Applicant must plant a minimum total of 31-caliper inches of native canopy trees as mitigation for the tree variance impacts on the Site within one calendar year or two growing seasons after completion of building construction. The trees must be a minimum of three-inch caliper each.

## Project Description

Aspen Hill, LLP, a joint venture between Pennrose Properties, LLC and the Housing Opportunities Commission, is proposing to construct an independent living facility for seniors on the property that currently contains Wheaton Seventh-Day Adventist Church. The existing church will remain and the property will go through the subdivision process prior to plan implementation.



## Site Description

The site gently slopes down from both the northeast and southeast corners of the property to a low point on the western property line. A floodplain covers 0.49 acres on the western portion of the site and is enclosed by an environmental buffer. There are 0.46 acres of forest in one stand on the eastern side of the property, as well as mature tree cover along the southern and western property lines.

## ANALYSIS

### Environmental Guidelines

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420162110) on July 19, 2016. The site lies in the Upper Turkey Branch subwatershed of the Rock Creek watershed. While there are no streams or wetlands, there are 0.49 acres of floodplain on the property that will be included in an environmental buffer. The proposed project follows the *Environmental Guidelines* by planting forest in the buffer and protecting it with a Category I Conservation Easement.

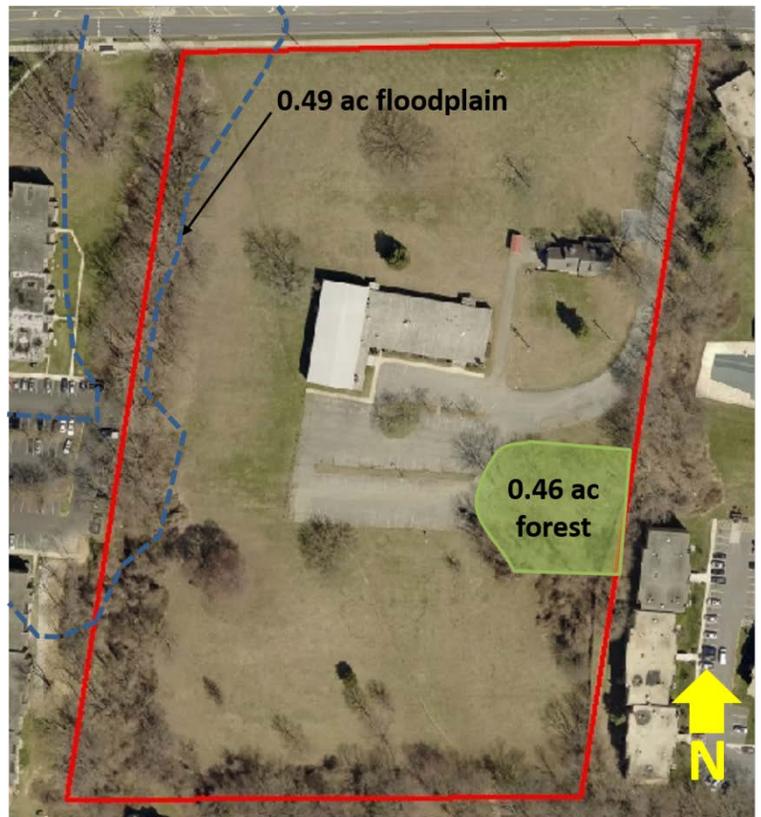
### Forest Conservation

The site is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and the Applicant has submitted a Preliminary Forest Conservation Plan (PFCP) (Attachment 1) in conjunction with the Conditional Use. The PFCP covers the entire 11.72-acre lot, not just the 5.99-acre Conditional Use site. There are 0.46 acres of forest on site and the

Applicant is proposing to clear 0.15 acres to build a hard surface walking path. There is a 2.18-acre reforestation and afforestation requirement. The Applicant proposes to meet this requirement through 0.8 acres of supplemental planting and invasive species management within existing tree cover areas, 0.9 acres of forest planting, and 0.06 acres of landscape credit. The remaining 0.42 acres of reforestation and afforestation will be met off-site through purchase of credits in a forest conservation bank.

### Forest Conservation Variance

Section 22A-12(b) (3) of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a historic structure; are designated as national, State, or County champion trees; are at least 75





## Removals

Tree No.	Species	Notes
#24	Red Maple	Parking lot and utilities
#35	Tulip Poplar	Building and grading
#40	White Mulberry	Path construction, grading, and stormwater management

**Unwarranted Hardship for Variance Tree Impacts** - Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The variance is necessary because of the need to locate this facility and all related behind the existing church. Additionally, the location of the floodplain and existing forest also constrain the location of the development. Trees #24 and #40 are located in the center of the property and there are no feasible alternatives to provide access to, and develop the property, without impacts to both trees.

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

Granting this variance will not confer a special privilege on the Applicant as disturbance of the specified trees is due to the location of the trees in the developable portions of the site and the need to provide access to the existing church and proposed independent living facility. Disturbance has been minimized using a compact development form that is designed to fit with the shape and topography of the site.

2. *The need for the variance is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. It is based on the locations of the trees in the most reasonable place for new development and the minimum disturbance required to develop the property with safe access and adequate stormwater facilities. Trees #3 and #5 will be impacted by the removal of the existing church driveway, which will be done using minimally invasive techniques. While trees #7, #8, and #39 will be impacted by the construction of an asphalt path for the residents to walk on, the path will be constructed as close to on grade as possible. This will minimize impacts while still providing recreation. Trees #37, #35, and #39 will be impacted by the building construction and associated grading. Trees #24 and #40 are impacted by the site access and parking. Trees #27, #21, #14, and #40 are impacted by the stormwater management areas and stormdrain connection. The Applicant has minimized disturbance and consolidated impervious wherever possible.

3. *The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed layout of the independent living facility on the property in the most reasonable location where protected trees are located and not a result of land or building use on a neighboring property.

4. *Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.*

The proposed development does not impact environmental buffers and provides mitigation plantings for trees the size and function of the trees lost. Additionally, the Applicant is providing invasive species management and supplemental plantings within the environmental buffer, which will have water quality benefits. The requested variance will not violate State water quality standards or cause a measurable degradation in water quality.

#### Mitigation for Trees Subject to the Variance Provisions

The Applicant is requesting a variance to remove three variance trees, with a total of 124" DBH. The Applicant will plant 11, 3-inch caliper, native shade trees as part of the Final Forest Conservation Plan, mitigating for the form and function of the three variance trees proposed for removal.

#### 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. No letter of recommendation has been received prior to the staff report posting.

Variance Recommendation - Staff recommends that the variance be granted.

## **CONCLUSION**

Staff concludes that the proposed Preliminary Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Staff therefore recommends that the Planning Board approve the Preliminary Forest Conservation Plan and associated variance, with the above conditions.

#### Attachments

1. Preliminary Forest Conservation Plan
2. Variance request

**ATTACHMENT 1**

- GENERAL NOTES**
- SITE AREA: 11.72 AC. ZONE: RE2
  - BOUNDARY INFORMATION FROM GUTSCHICK, LITTLE & WEBER, P.A. MARCH 2016.
  - TOPOGRAPHY FROM GUTSCHICK, LITTLE & WEBER, P.A. MARCH 2016.
  - THIS SITE IS LOCATED IN THE ROCK CREEK UPPER TURKEY BRANCH WATERSHED, USE CLASS I-P.
  - FLOODPLAIN INFORMATION FROM FPS# 281918.
  - EXISTING WATER & SEWER CATEGORIES: S-1, W-1.
  - THIS PROPERTY WILL BE SUBJECT TO A FOREST CONSERVATION PLAN.
  - THIS PROPERTY DOES NOT CONTAIN A SITE LISTED ON THE INVENTORY OF HISTORIC SITES.
  - THERE ARE NO KNOWN RARE, THREATENED ENDANGERED SPECIES OR CRITICAL HABITATS ON SITE.
  - THERE ARE NO KNOWN COUNTY CHAMPION TREES AS PER THE 2011 PUBLICATION OF CHAMPION TREES IN MONTGOMERY COUNTY, MARYLAND.
  - TREES WERE MEASURED WITH A D-TAPE IN THE FIELD ON MARCH 18, 2016 BY JULIE SOSS OF GUTSCHICK, LITTLE & WEBER P.A. TREE LOCATIONS WERE FIELD SURVEYED BY GUTSCHICK, LITTLE & WEBER ON MARCH 22, 2016.

**PLANT SCHEDULE - MITIGATION PLANTINGS AND LANDSCAPE CREDIT**

KEY	QTY.	BOTANICAL NAME	COMMON NAME	SIZE	CONT. / B4B	COMMENTS
AR	7	<i>Acer rubrum</i>	Red Maple	3" Cal.	B4B	6' min. branching height
QR	7	<i>Quercus rubra</i>	Red Oak	3" Cal.	B4B	6' min. branching height

**SPECIMEN/SIGNIFICANT TREE LIST**

No.	Common Name	Species Name	DBH (in.)	Condition	Disposition
1	EASTERN RED CEDAR	JUNIPERUS VIRGINIANA	26 & 15	GOOD/FAIR	TO REMAIN
2	SOUTHERN RED OAK	QUERCUS FALCATA	43	GOOD	TO REMAIN
3	TULIP POPLAR	LIRIODENDRON TULIPIFERA	41	GOOD	TO BE DISTURBED
4	NORWAY SPRUCE	PICEA ABIES	24	FAIR	TO REMAIN
5	WILLOW OAK	QUERCUS PHELLOS	48	GOOD	TO BE DISTURBED
6	SYCAMORE	PLATANUS OCCIDENTALIS	25	GOOD	TO REMAIN
7	WHITE MULBERRY	MORUS ALBA	33	FAIR/POOR	TO BE DISTURBED
8	RED MAPLE	ACER RUBRUM	34	GOOD	TO BE DISTURBED
9	SYCAMORE	PLATANUS OCCIDENTALIS	18 & 24	GOOD	TO BE DISTURBED
10	TULIP POPLAR	LIRIODENDRON TULIPIFERA	24	GOOD	TO REMAIN
11	TULIP POPLAR	LIRIODENDRON TULIPIFERA	24	GOOD	TO REMAIN
12	SILVER MAPLE	ACER SACCHARINUM	28	GOOD	TO REMAIN
13	SILVER MAPLE	ACER SACCHARINUM	26	GOOD	TO BE DISTURBED
14	SYCAMORE	PLATANUS OCCIDENTALIS	32	GOOD	TO BE DISTURBED
15	RED MAPLE	ACER RUBRUM	24	GOOD	TO REMAIN
16	SYCAMORE	PLATANUS OCCIDENTALIS	28	GOOD	TO REMAIN
17	TULIP POPLAR	LIRIODENDRON TULIPIFERA	26	GOOD	TO REMAIN
18	SILVER MAPLE	ACER SACCHARINUM	24	GOOD	TO BE DISTURBED
19	SILVER MAPLE	ACER SACCHARINUM	26 & 24	GOOD	TO BE DISTURBED
20	SYCAMORE	PLATANUS OCCIDENTALIS	24	GOOD	TO REMAIN
21	SILVER MAPLE	ACER SACCHARINUM	33 & 15	GOOD	TO BE DISTURBED
22	SILVER MAPLE	ACER SACCHARINUM	26	GOOD	TO BE REMOVED
23	SILVER MAPLE	ACER SACCHARINUM	24	GOOD	TO BE REMOVED
24	RED MAPLE	ACER RUBRUM	56	GOOD	TO BE REMOVED
25	BLACK CHERRY	FRAXINUS SP. SEROTINA	25	GOOD	TO BE DISTURBED
26	SILVER MAPLE	ACER SACCHARINUM	30	GOOD	TO REMAIN
27	TULIP POPLAR	LIRIODENDRON TULIPIFERA	33	GOOD	TO BE DISTURBED
28	TULIP POPLAR	LIRIODENDRON TULIPIFERA	24	GOOD	TO REMAIN
29	TULIP POPLAR	LIRIODENDRON TULIPIFERA	24	GOOD	TO REMAIN
30	SILVER MAPLE	ACER SACCHARINUM	34	GOOD	TO REMAIN
31	COTTONWOOD	POPULUS SP.	31	GOOD	TO REMAIN
32	TULIP POPLAR	LIRIODENDRON TULIPIFERA	28	GOOD	TO BE DISTURBED
33	TULIP POPLAR	LIRIODENDRON TULIPIFERA	28	GOOD	TO BE DISTURBED
34	RED MAPLE	ACER RUBRUM	25, 24, 18	GOOD	TO BE DISTURBED
35	TULIP POPLAR	LIRIODENDRON TULIPIFERA	31	POOR	TO BE REMOVED
36	SOUTHERN RED OAK	QUERCUS FALCATA	24 & 22	GOOD	TO BE DISTURBED
37	TULIP POPLAR	LIRIODENDRON TULIPIFERA	34	GOOD	TO BE DISTURBED
38	TULIP POPLAR	LIRIODENDRON TULIPIFERA	31	GOOD	TO BE DISTURBED
39	TULIP POPLAR	LIRIODENDRON TULIPIFERA	TWIN 30	GOOD	TO BE DISTURBED
40	WHITE MULBERRY	MORUS ALBA	37	GOOD	TO BE REMOVED

● TREE MITIGATION CALCULATIONS FOR 30" AND GREATER TREES TO BE REMOVED OUTSIDE OF FORESTED AREAS: (56" x 31" x 31") 124" DBH / 4 = 31" OF TREE MITIGATION / 3" CALIPER. PROPOSED NATIVE TREES = 11 REPLACEMENT MITIGATION TREES

**FOREST CONSERVATION WORKSHEET**  
Parkview At Aspen Hill

NET TRACT AREA:

A. Total tract area ... 11.72  
 B. Land dedication acres (parks, county facility, etc.) ... 0.00  
 C. Land dedication for roads or utilities (not being constructed by this plan) ... 0.00  
 D. Area to remain in commercial agricultural production/use ... 0.00  
 E. Other deductions (specify) ... 0.00  
 F. Net Tract Area ... 11.72

LAND USE CATEGORY: (from Trees Technical Manual)  
 Input the number "1" under the appropriate land use, limit to only one entry.

ARA	MDR	IDA	HDR	MPD	CIA
0	1	0	0	0	0

G. Afforestation Threshold ... 20% x F = 2.34  
 H. Conservation Threshold ... 25% x F = 2.93

EXISTING FOREST COVER:

I. Existing forest cover ... 0.46  
 J. Area of forest above afforestation threshold ... 0.00  
 K. Area of forest above conservation threshold ... 0.00

BREAK EVEN POINT:

L. Forest retention above threshold with no mitigation ... 0.00  
 M. Clearing permitted without mitigation ... 0.00

PROPOSED FOREST CLEARING:

N. Total area of forest to be cleared ... 0.15  
 O. Total area of forest to be retained ... 0.31

PLANTING REQUIREMENTS:

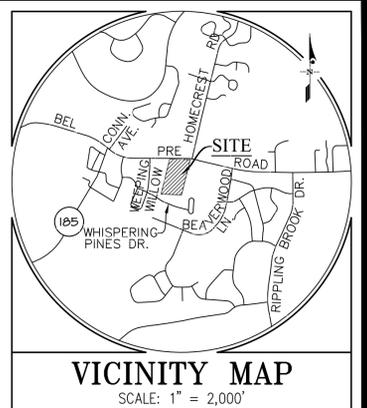
P. Reforestation for clearing above conservation threshold ... 0.00  
 Q. Reforestation for clearing below conservation threshold ... 0.30  
 R. Credit for retention above conservation threshold ... 0.00  
 S. Total reforestation required ... 0.30  
 T. Total afforestation required ... 1.88  
 U. Credit for landscaping (may not exceed 20% of "S") ... 0.06  
 V. Total reforestation and afforestation required ... 2.12

REFORESTATION CALCULATIONS

W. Total off-site afforestation/supplemental planting provided on-site ... 1.70  
 X. Total off-site afforestation/forestation ... 0.42

**MAPPED SOIL TYPES**

Map Unit	Description	Highly Erodible	Hydric	Prime Farmland
2B	Glennville silt loam, 3-8% slopes	NO	NO	YES
2C	Glennville silt loam, 8-15% slopes	NO	NO	YES
5A	Glennville silt loam, 0-3% slopes	NO	NO	NO
6A	Baile silt loam, 0-3% slopes	NO	YES	NO
66UB	Wheaton-Urban land complex, 0-8% slopes	NO	NO	NO



**Forest Conservation Data Table**

Tract	Number of Acres
Remaining in Agricultural Use	0.00
Road & Utility ROWs	0.00
Total Existing Forest	0.46
Forest Retention	0.31
Forest Cleared	0.15

**Land Use & Thresholds**

Land Use Category	ARA, MDR, IDA, HDR, MPD, or CIA
Conservation Threshold	25 percent
Afforestation Threshold	20

**Stream(s)**

Total Channel Length (ft.)	Average Buffer Width (ft.)
0	0

**Acres of Forest in**

Wetlands	Retained	Cleared	Planted
100-Year Floodplain	0.00	0.00	0.00
Stream Buffer	0.00	0.00	0.00
Priority Areas	0.00	0.00	0.38

\* Planted Area Includes 0.34 Acres of Tree Save Non-Plant area  
 Only Road or Utility ROWs not to be improved as part of development application.  
 From Section 22A-121(f) of the Forest Conservation Law.  
 Measured from stream edge to buffer edge.

**FOREST CONSERVATION TOTALS TABLE**

FOREST RETENTION AREA	REFERENCE #	AREA
#1A	#1A	.24 Ac.
#1B	#1B	.07 Ac.
TOTAL		.31 Ac.

AFFORESTATION AREA	REFERENCE #	AREA
#2A	#2A	.01 Ac.
#2B	#2B	.06 Ac.
#2C	#2C	.01 Ac.
#2D	#2D	.26 Ac.
#2E	#2E	.56 Ac.
TOTAL		0.90 Ac.

TREE SAVE AREA AFFORESTATION / INV. SP. MGMT	REFERENCE #	AREA
#3A	#3A	.45 Ac.
#3B	#3B	.13 Ac.
#3C	#3C	.22 Ac.
TOTAL		0.80 Ac.

PRELIMINARY FOREST CONSERVATION PLAN PREPARED BY:

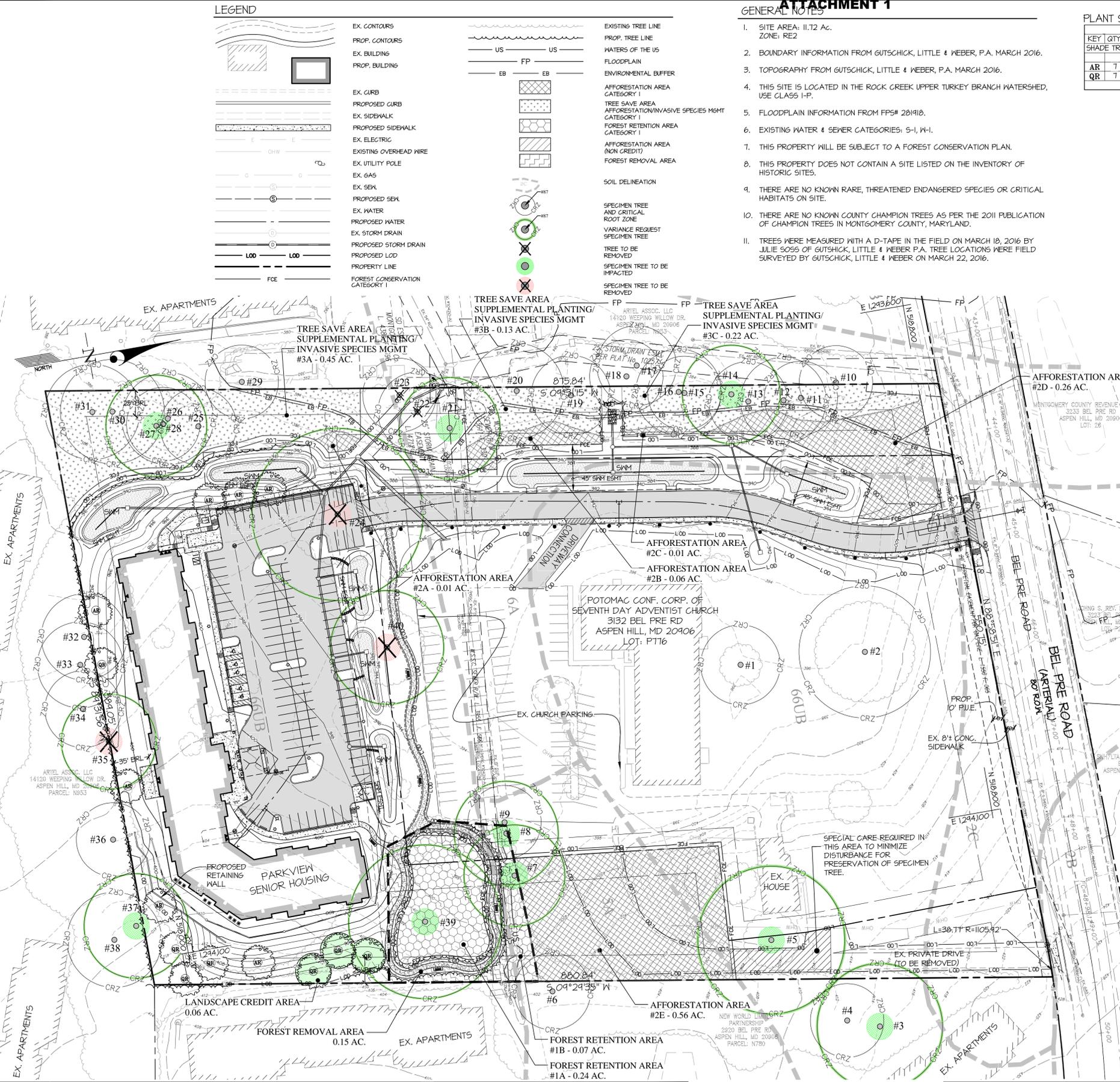
Kevin Foster  
 DATE

Gutschick, Little & Weber, P.A.  
 3409 National Drive, Suite 250  
 Burtonsville, Maryland 20866  
 Ph: (301) 421-4024 Fax: (301) 421-4186  
 Registered Landscape Architect #807

**DEVELOPER'S CERTIFICATE**

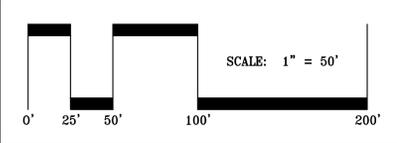
The Undersigned agrees to execute all the features of the Approved Preliminary Forest Conservation Plan No. \_\_\_\_\_ including, financial bonding, forest planting, maintenance and all other applicable agreements.

Developer's Name: Parkview at Aspen Hill, LLP (c/o Penrose Properties LLC)  
 Contact Person or Owner: Ivy Dench-Carter  
 Address: 575 South Charles Street, Suite 140  
 Baltimore, Maryland 21201  
 Phone: 443-423-1172  
 Signature: Ivy Dench-Carter



**GLW GUTSCHICK LITTLE & WEBER, P.A.**  
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS  
 3909 NATIONAL DRIVE - SUITE 250 - BURTONSVILLE OFFICE PARK  
 BURTONSVILLE, MARYLAND 20866  
 TEL: 301-421-4024 BALD: 410-860-1820 DC/VA: 301-889-2524 FAX: 301-421-4186

DATE	REVISION	BY	APP'R.



PREPARED FOR:  
 PENROSE PROPERTIES LLC  
 575 SOUTH CHARLES STREET  
 SUITE 140  
 BALTIMORE, MARYLAND 21201  
 ATTN: IVY DENCH-CARTER, VP  
 443-423-1172

SCALE	ZONING
1" = 50'	RE 2
DATE	TAX MAP - GRID
APRIL, 2016	HR - 53

**PRELIMINARY FOREST CONSERVATION PLAN**  
**PARKVIEW AT ASPEN HILL**  
**PARCEL 776**  
 L. 2994, F. 392  
 WHEATON ELECTION DISTRICT No. 13  
 MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No. 16023  
 SHEET 1 OF 1

## ATTACHMENT 2

# GLW GUTSCHICK, LITTLE, & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

October 25, 2016

Forest Conservation Program Manager  
Maryland National Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Parkview at Aspen Hill - Variance Request

On behalf of our client, Parkview at Aspen Hill, LLP, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

*(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:*

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:
- (i) 30 inches or more; or
  - (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species.

The Subject Property, proposed Lot 1, part of Parcel 776, owned by the Potomac Conference Corporation of Seventh-Day Adventists, is located 250 feet southwest from the intersection of Homecrest Road and Bel Pre Road in Aspen Hill, Maryland. The existing site contains a church, associated surface parking lot, and a single family house on the northern portion of the site adjacent to Bel Pre Road. The rear or southern portion of the property is unused and contains an open grass area and Forest Stand #1 (see NRI/FSD). Existing multi-story apartment building communities surround the Subject Property to the east, west and south. Across Bel Pre Road to the north, there is an existing healthcare facility.

As part of development on the Subject Property, the applicant is requesting a variance to affect the following trees that measures 30" or greater in diameter at breast height (dbh).

Request to impact the critical root zones of nine trees:

- Tree #3 – 41" Tulip Poplar, good condition
- Tree #5 – 48" Willow Oak, good condition
- Tree #7 – 33" White Mulberry, fair/poor condition (crown, limb and trunk damage)
- Tree #8 – 34" Red Maple, good condition
- Tree #14 – 32" Sycamore, good condition
- Tree #21 – 33" & 15" Silver Maple, good condition
- Tree #27 – 33" Tulip Poplar, good condition
- Tree #37 – 34" Tulip Poplar, good condition
- Tree #39 – 30" twin Tulip Poplar, good condition

Request to remove three trees:

- Tree #24 – 56" Red Maple, good condition
- Tree #35 – 31" Tulip Poplar, poor condition (crown, limb and trunk damage)
- Tree #40 – 37" White Mulberry, good condition

<u>TREE #</u>	<u>TREE TYPE</u>	<u>% DISTURBED</u>	<u>REASON</u>	<u>DISPOSITION</u>
3	Tulip Poplar	5%	Driveway removal & afforestation	To be disturbed
5	Willow Oak	47%	Driveway removal & afforestation	To be disturbed
7	White Mulberry	28%	Trail construction, afforestation	To be disturbed
8	Red Maple	25%	Trail construction, afforestation	To be disturbed
14	Sycamore	2%	Stormdrain construction, afforestation	To be disturbed
21	Silver Maple	14%	Stormdrain construction and grading	To be disturbed
24	Red Maple	100%	Parking lot and utility construction	To be removed
27	Tulip Poplar	1%	SWM construction and grading	To be disturbed
35	Tulip Poplar	50%	Building construction and grading	To be removed
37	Tulip Poplar	15%	Stormdrain and retaining wall construction	To be disturbed
39	Tulip Poplar	48%	Building, grading and trail construction	To be disturbed
40	White Mulberry	74%	Trail, grading and SWM construction	To be removed

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

***1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:***

Impacts to Critical Root Zones (CRZ) of Tree #3 & #5

The existing driveway that serves the church will be removed and consolidated with the entry for the senior living facility. This driveway area that includes the root zone of tree #3 & #5 will be removed to reduce imperviousness, reduce stormwater runoff, and increase green area on-site. Removal work will be done by placing a backhoe outside the critical root zone and using the bucket, hoe, or forks to lift and drag the pavement out and away from the critical root zone. Care will be taken to minimize disturbance that could be caused by digging or excavating soil within the critical root zone. The removal of pavement and the seeding of the soil will improve the current condition of the root zone area. Minimal disturbance of the outer area of the root zone of tree #5 will occur to provide afforestation plantings and the associated permanent tree protection fence. Not being allowed to remove the existing driveway would limit the applicants ability to meet the greenspace requirements, provide afforestation plantings on-site, increase safety on Bel Pre Road by reducing access points, and therefore create an unwarranted hardship on the applicant.

### Impacts to Critical Root Zones (CRZ) of Tree #7, 8, 37 & 39

The proposed development of a new senior housing facility on the Subject Property will require new building construction, associated clearing and grading, utility installation, access, parking lot construction and other associated improvements on the property. As part of this construction, Trees #7, #8 and #39 will have limited disturbance to their root zones for construction of a pedestrian asphalt trail. This trail will be constructed as close to on grade as possible to minimize disturbance to the root zones. Trees #7 and #8 will have a portion of their root zones disturbed by afforestation plantings and the associated permanent tree protection fence. Tree #8 will also be slightly impacted by the removal of the existing drive as described above. Building construction, utility installation and site grading will additionally impact the root zone of tree #39. Prior to construction, root pruning, temporary tree protection fencing and signage, and other protective measures deemed necessary by the arborist will be employed to minimize the effects of construction on tree #39. Not being allowed to impact the previously described trees would limit the applicant's ability to provide on-site recreation opportunities for the senior residents, provide on-site afforestation and have sufficient area to develop a viable project. This would be an unwarranted hardship on the applicant.

Tree #37 is located off site and will be impacted on one side of its root zone to clear, grade and construct the building. Prior to construction, root pruning, temporary tree protection fencing and signage, and other protective measures deemed necessary by the arborist will be employed to minimize the effects of construction.

### Impacts to Critical Root Zones (CRZ) of Tree #14, 21 & 26

Trees #14 and #21 will have very minimal impacts to their critical root zones for the construction of storm drains systems, and limited associated grading. Tree #26 will have very minimal impact to its critical root zone for the construction and grading of a stormwater management facility. The trees' CRZ's will also be impacted by supplemental planting/afforestation planting activities required to increase the existing tree density to qualify as forest, and any impacts associated with an invasive species management plan implemented to remove and control the significant number of invasive plants in this area of the site. Not being allowed to impact this area would deny the applicant the ability to provide adequate on-site afforestation, stabilize the existing forest ecosystem, prevent the applicant from enhancing the existing visual buffer between the neighboring apartments and proposed development, and allow the continuation of growth of the invasive plant species that exist on-site and threaten the ecosystem. Not allowing connection to the existing storm drain system as required to provide stormwater management for the site would therefore not comply with the Stormwater Management Concept Plan.

### Removal of Tree #24, 35 and 40

The proposed development of a senior living facility is located on the southern portion of the site, behind the existing church school facility and pastor's residence, and furthest from Bel Pre Road. The existing vehicular access from Bel Pre Road serves the existing facilities. In its current location, this access is inadequate for public safety vehicle circulation and would require significant environmental impacts to the Waters of the US and forested area to access the proposed parking lot for the senior living facility. In order to provide vehicular circulation to both the existing parking lot for the church and pastor's residence and the proposed senior living facility, a new drive will be provided along the western portion of the property. The removal of tree #24 could not be avoided because it is located in the middle of the proposed drive.

The removal of trees #24, #35 and #40 could not be avoided as the trees are located within the only contiguous buildable area of the site given the inherent nature of a senior living building and associated

stormwater management and parking facility. Not being allowed to remove these trees would limit the applicant's ability to build a viable size facility and therefore create an unwarranted hardship on the applicant.

***2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas:***

The subject specimen trees are located mostly on the perimeter of the property except for several trees in the central portion of the site. With the configuration of the existing development on the Subject Property including the church building, parking areas, driveway access and existing forest/tree cover along the perimeter of the property, the remaining potential development area for a senior housing facility was very limited to the rear central portion of the site. The proposed development has been specifically designed to maximize the unused area of the site as possible, including the existing site/driveway access, existing utility lines, and site grading to limit the overall impacts to the site. Great care has been taken to locate development to buffer the development from the surrounding development, and minimize impacts to significant and specimen trees, but as discussed above, impacts to specimen trees were unavoidable. The existing driveway was removed and consolidated to reduce impervious, increase green area and increase safety. Also the project will provide on-site afforestation, additional landscape buffering around the property and implementing an invasive species management plan.

Not granting the variance for construction of the project including removal of the existing driveway would not allow the applicant to fulfill the recommendations of the Master Plan, or the requirement of the Zoning Code and therefore create an undue hardship on the applicant due to denial of subdivision of the property. Not allowing implementation of the Master Plan is also not in the public interest. The inability to impact the specimen trees for removal of the driveway will create an unwarranted hardship and less safe condition for future residents of the community, and therefore creating an unwarranted hardship on the applicant. By enforcement of this chapter, it will deprive the landowner the full rights to build on the property compared to similar properties. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner.

Not granting the variance would cause undue hardship on the applicant because subdivision of the property would not be allowed, development would be very limited or not possible, and therefore will deny the applicant ability to fully use the property. By enforcement of this chapter, it will deprive the landowner the full rights to build on the property. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner.

***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:***

The variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. A Storm Water Management Concept Plan has been submitted to the Montgomery County Department of Permitting Service. The approval of these plans will confirm that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filters and therefore verify that State water quality standard will not be violated or that a measurable degradation in water quality will not occur. In addition to providing state-of-the-art "Environmental Site Design" storm water management for a site that currently has no storm water management and completely uncontrolled runoff, the proposed development will also be reducing the

existing uncontrolled overland flow on adjacent properties, and provide forest cover through additional site afforestation.

***4. Provide any other information appropriate to support the request:***

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant has taken great care to locate development in the buildable area of the site while trying to minimize disturbance to the significant and specimen trees. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to impact the critical root zone of thirteen specimen trees and removal of three specimen trees on the subject property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Kevin Foster, ASLA AICP