



Brightview Grosvenor Preliminary Forest Conservation Plan, CU2016-14



Steve Findley, Planner Coordinator, Area 2 Division, steve.findley@montgomeryplanning.org, 301-495-4727



Khalid Afzal, Supervisor, Area 2 Division, khalid.afzal@montgomeryplanning.org, 301-495-4650

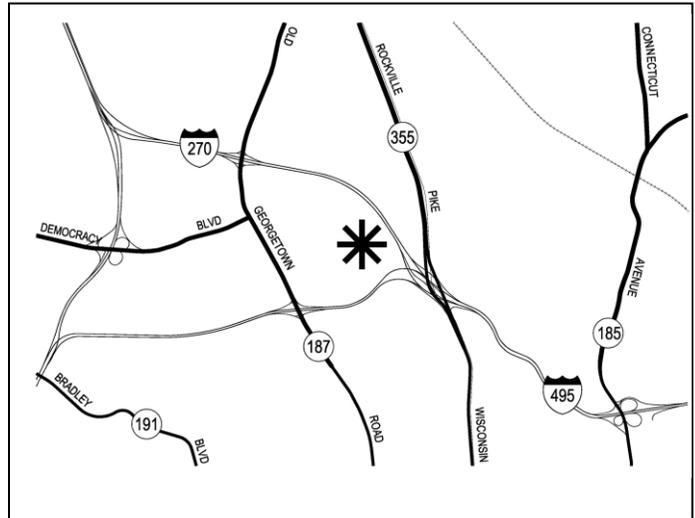


Glenn Kreger, Chief, Area 2 Division, glenn.kreger@montgomeryplanning.org, 301-495-4653

Completed: 08/26/16

Description

- Preliminary Forest Conservation Plan accompanying Conditional Use application for a residential Care Facility with 98 assisted living units (104 beds);
- Located at 5510 Grosvenor Lane, Bethesda;
- R-90 Zone, 1992 *North Bethesda/Garrett Park Master Plan*;
- Lot area: 2.67 acres;
- Applicant: Shelter Development, LLC.;
- Filing Date: June 3, 2016;
- Public Hearing by the Hearing Examiner: September 30, 2016.



Summary

- Staff recommends **approval with conditions**.
- Proposed clearing of 0.65 acres of forest, and retention of 0.33 acres.
- Results in afforestation/reforestation requirement of 0.54 acres.
- Includes a variance request.
- Contingent on approval of Conditional Use CU2016-14.
- Final Forest Conservation Plan will be required.
- A separate staff report for the Conditional Use application will be presented to the Planning Board concurrent with this Preliminary Forest Conservation Plan.

STAFF RECOMMENDATION

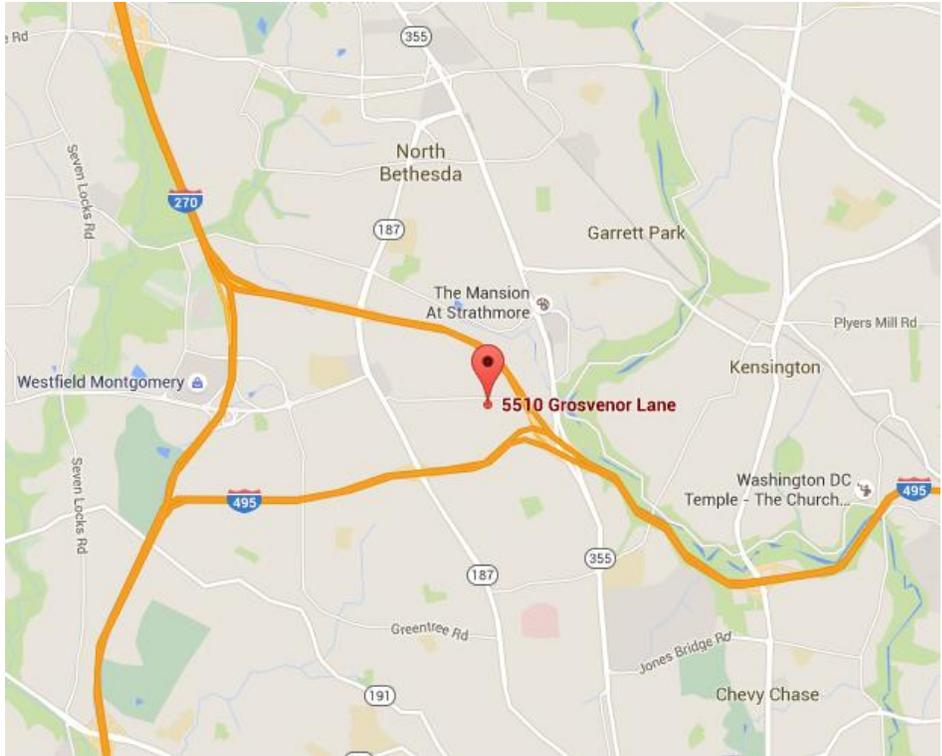
Staff recommends approval of the Preliminary Forest Conservation Plan (PFCP) and associated variance, subject to the following conditions:

1. A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be approved with the Preliminary Plan approval, or with the Site Plan approval if a Site Plan is required.
2. Prior to the start of any clearing, grading, or demolition on the Subject Property, the Applicant must record a Category I Conservation Easement over reforestation/afforestation and retention areas credited toward the forest conservation requirements 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.
3. During the development of the Final Forest Conservation Plan, the Applicant must re-examine, and reduce if possible, impacts to specimen trees, with the goal of saving additional trees.
4. Mitigation must be provided for specimen trees removed at the rate of one inch replaced for every four inches (dbh) removed, using planting stock no smaller than three inches caliper. This equates to 20 three-inch caliper trees. Larger planting stock may be used as long as the planting totals at least 60 caliper-inches of tree planting. These trees must be shown on the Final Forest Conservation Plan, and on the Landscape Plan if one is required.
5. This PFCP approval is contingent on approval by the Hearing Examiner of Conditional Use No. CU2016-14.

BACKGROUND

Site Description

The Property is located at the southeast quadrant of the intersection of Grosvenor Lane and Fleming Avenue in Bethesda, Maryland, and consists of two parcels with a total area of approximately 2.75 acres. A driveway provides access to the Property from Grosvenor Lane. The Property is irregular in shape, and slopes down from west to east, with an elevation change of approximately 15 feet. A 0.98-acre forest stand is located on the north and west sides of the Property, obscuring the view of the existing house from Grosvenor Lane and Fleming Avenue. The property is improved with a driveway and a 2-story, 3,488 square foot detached house that the Applicant proposes to demolish.



Vicinity Map



Aerial view with Property outlined in red.

Proposed Use

The Applicant proposes to redevelop the Property with an 85,000 square foot facility (three stories plus a basement level) assisted living and dementia care facility. The facility will have 98 assisted living units (with a total of 104 beds), and 29 of the units will provide specialized memory care. A 15 passenger shuttle bus will be utilized for daily off-site excursions, including shopping, medical appointments, and

social events. When not in use, the van will be parked on site. Limited personalized health care management will be provided by on-site nurses and visiting health care professionals. A separate Staff presentation on the Conditional Use application is being presented at today's Planning Board hearing.

Analysis

A Natural Resources Inventory/Forest Stand Delineation was approved for this property on December 18, 2015 (NRI/FSD No. 420160670). The site contains no streams or their buffers, wetlands or their buffers, steep slopes associated with a stream buffer, or known habitats of rare, threatened or endangered species. There is an existing forested area of 0.98 acres. The site also contains eight specimen-size trees. The property drains to the Rock Creek watershed, which is not in a Special Protection Area or Primary Management Area. The property adjacent to the east includes a historic resource identified as the Wild Acres/Grosvenor Estate, Resource #30/15. The plan as submitted is in conformance with the *Environmental Guidelines*.

The submitted Preliminary Forest Conservation Plan (PFCP) proposes to clear 0.65 acres of forest and to retain 0.33 acres (Attachment 1). Based on the approved zoning for the site, this results in a planting requirement of 0.54 acres. Final Plans for fulfillment of this requirement will be determined at the time of Final Forest Conservation Plan (FFCP) approval.

Forest Conservation Variance

Section 22A-12(b) (3) of County code identifies certain individual trees and other vegetation as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), or pruning, 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 code. The code requires no impact to trees that: measure 30 inches or greater, dbh; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; 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.

Variance Request

The Applicant submitted a variance request on August 4, 2016 (Attachment 2) because the plan would impact the Critical Root Zone (CRZ) of 18 trees that are considered high priority for retention under Section 22A-12(b) of the County code. The variance request seeks approval to remove six trees on the site, and one tree on the adjacent historic property; and to disturb, but retain, two trees on the site and an additional nine trees on the adjacent historic property. A copy of the variance request letter, specifying the amount of critical root zone disturbance for the trees to be saved, is appended to this letter (Attachment 2).

The site is currently developed with a single-family house. The proposed use will have a considerably larger footprint for both the building and required parking than currently occupied by the existing house. Space for stormwater management facilities also must be provided. The six specimen trees to be removed are within the 0.65 acres of forest proposed for clearing to make room for the building, parking and stormwater management. Grading to create the building site will also impact the CRZ of two specimen trees on the site. In addition, a large stand of invasive bamboo on the Wild Acres historic

site to the east presents a problem for planting and maintaining native trees between the properties. Removal of the bamboo will entail removal of one additional tree and CRZ impacts to 11 other trees on the historic property. One of the 11 trees being impacted will suffer CRZ impacts estimated to be 74% of the Critical Root Zone. While the Applicant proposes to try to save this tree (a 12-inch dbh spruce tree), both Staff and the County Arborist are concerned that saving this tree will be difficult at best. Staff therefore recommends that the variance approval include permission to remove this tree if necessary, with the understanding that the Applicant will try to save the tree. The variance tree mitigation requirement includes mitigation for the removal of this tree.

A residential care facility for more than 16 persons is permitted as a conditional use in the R-90 zone, and the North Bethesda/Garrett Park Master Plan supports conditional uses that contribute to the housing objectives of the plan, including provision of elderly housing and group homes that are compatible with nearby land uses. Such a facility cannot reasonably be constructed on this site without significant disturbance to the Critical Root Zones of the six specimen trees. Staff therefore believes that denial of the variance would constitute an unwarranted hardship to the Applicant. This finding must be met when determining whether or not to consider a variance for the project. Based on this finding, Staff finds that a variance can be considered.

Section 22A-21 of the County code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations, as the Director's designee, that granting the requested variance:

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

The Applicant has worked to preserve as many trees as possible on the site, including specimen trees that are included in the wooded buffer being retained where the site fronts Grosvenor Lane. To minimize additional tree loss through this buffer, the existing entrance drive is being used, but it must be upgraded to standards sufficient for fire and rescue access. Two of the specimen trees are being removed due to unavoidable impacts of the entry drive widening. The remainder of the specimen trees being removed on site are within the forest being cleared to make room for the building, parking, and stormwater management. Two additional trees on the adjacent historic property are being removed because they are too close to the bamboo stand that must be removed. Staff has determined that the impacts to the trees subject to the variance requirement cannot be avoided. Therefore, Staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant, but on environmental, engineering and site constraints.

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

The requested variance is 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 trees being removed will be mitigated by the planting of replacement trees that will, in time, replace the lost water quality functions of the removed trees. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department referred 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. On August 24, 2016, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Attachment 3).

Variance Recommendation

Staff recommends approval of the variance. The Environmental Resources Plan in the 1992 *North Bethesda/Garrett Park Master Plan* recommends that developments retain the maximum number of specimen trees on sites where they occur. Section 22A-12(b) of the Forest Conservation Law makes it clear that reasonable efforts must be made to protect trees deemed to be a priority for retention, including variance trees. Due to the preliminary nature of the plan design at the Conditional Use stage of review, some aspects of the building footprint, site layout, stormwater management concept plan, etc. are also preliminary. The Applicant should re-examine specimen tree impacts at the time of the Final Forest Conservation Plan, and if possible reduce impacts to these trees, with the goal of saving additional trees if feasible. In particular, the Applicant should demonstrate that feasible options for locating stormwater management facilities have been considered to reduce the loss of variance trees.

Conclusion

The Preliminary Forest Conservation Plan conforms with the requirements of Chapter 22A. Staff recommends approval of the Preliminary Forest Conservation Plan and the associated variance, with the conditions specified. A Final Forest Conservation Plan will be required at the time of Preliminary Plan approval, or with the Site Plan approval if a Site Plan is required.

Attachments

1. Preliminary Forest Conservation Plan
2. Variance request
3. County Arborist recommendations

ATTACHMENT 2



ideas that work

Attorneys at Law

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August 19, 2016

BY ELECTRONIC DELIVERY

Mr. Steve Findley
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Brightview Grosvenor - 5510 Grosvenor Lane (the "Property")
Preliminary Forest Conservation Plan # _____
Tree Variance Request and Justification

Dear Mr. Findley:

We are submitting this tree variance request on behalf of Shelter Development, LLC, the Applicant for the above-referenced Preliminary Forest Conservation Plan (the "Application"). Pursuant to Section 22A-21(b) of the Montgomery County Code (the "Code"), we are requesting approval of a variance from the provisions of Maryland Annotated Code, Natural Resources Article, Section 5-1607(c)(2)(iii).

Background

The Applicant is the contract purchaser of approximately 2.74 acres of land (or 119,455 square feet) located in the southeast quadrant of the intersection of Grosvenor Lane and Fleming Avenue, more particularly known as Parcels P963 and P980 on Tax Map HP13. The Property is zoned R-90 and is currently improved with a two-story, 3,488 square foot residential detached dwelling and related site improvements. The Applicant proposes to redevelop the Property to accommodate an assisted living facility.

The Applicant is submitting a variance request for the following: 1) removal of six on-site significant trees with a diameter of 30 inches or more, five of which are located within the forest stand area to be cleared; 2) ability to impact, but retain, two on-site trees located within the forest stand area to be cleared; 3) removal of one 24-inch off-site tree, in poor condition, located on the adjacent historic property; and 4) ability to impact, but retain, 13 significant off-site trees (collectively, the "Subject Trees"). The location and existing condition of the specimen and significant trees on the Property is shown on the Natural Resources Inventory Plan ("NRI"),

approved by the Maryland-National Capital Park and Planning Commission ("M-NCPPC") on December 18, 2015 (NRI#420160670). The Subject Trees are discussed in greater detail below.

The Variance Request

A. The Property

The Applicant requests a variance to allow for the removal of six significant trees on the Property and to impact the two additional trees on the Property (the "On-Site Variance"). Importantly, the impact to the critical root zone of these two trees will be minimal and thus these two trees will be able to be retained. Five of the trees to be removed are located within the forest stand area that is to be cleared. The On-Site Variance trees are identified on the attached Preliminary Forest Conservation Plan (Exhibit "A").

B. The Grosvenor Estate

Located directly to the east of the Property is the Grosvenor mansion house, garage and caretaker's house (collectively, the "Grosvenor Estate"), which is designated as a historic resource with an 8.9-acre environmental setting around the historic resource. The Grosvenor Estate was added to the Master Plan for Historic Preservation on March 31, 2009 and is currently used for philanthropic purposes as the Society of American Foresters' national headquarters. Because the Grosvenor Estate property is a "historic site," a variance under Section 22A-21(b) of the Code is required for the removal of any tree on the Grosvenor Estate property (*see* Section 22A-12(b)), even though the site is not included in the Application for purposes of development.

In connection with the proposed development of the Property, the Applicant is proposing certain improvements in the southeast corner of the Property that will impact the critical root zone ("CRZ") of one of the trees on the Grosvenor Estate property. Due to the location of the tree near the western property boundary of the Grosvenor Estate property, the CRZ of the off-site tree will be impacted such that the tree will need to be removed. Thus, the Applicant requests a variance for the removal of the tree. In addition, the Applicant requests a variance to impact 13 off-sites (collectively, the "Grosvenor Estate Variance"). Critically, the impact to the root zones of these trees will be minimal and thus these 13 trees will be able to be retained. The Grosvenor Estate Variance trees are identified on the attached chart (Exhibit "B").

Justification

As explained more fully below, retention of or avoiding any impact to the Subject Trees would result in undue hardship to the Applicant. The peculiar conditions of the Property and the nature of the proposed improvements justify granting the Variance pursuant to Section 22A-21(b) of the Code because the granting of the variance (i) will not confer a special privilege on

the Applicant that would be denied to others; (ii) is not based on conditions or circumstances which result from the action of the Applicant; (iii) is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property; and (iv) will not violate State water quality standards or cause measurable degradation in water quality.

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

The Property includes a generous 0.98 acres of Forest. The 2.74 acre Property is improved with a two-story, 3,488 square foot residential detached dwelling and related site improvements, which according to the Maryland State Department of Assessments and Taxation records were constructed in 1951. As a result of the age of the residence, and the fact that the large parcel was never redeveloped, several large trees currently exist on-site.

Development of the Property is guided in part by the 1992 Approved and Adopted North Bethesda/Garrett Park Master Plan (the "Master Plan"). The Master Plan emphasizes the need for a variety of housing within the Master Plan area and in particular, recognizes the need for housing for the elderly. The Project will further this recommendation of the Master Plan, as the proposed assisted living facility will introduce a new housing type to the surrounding neighborhood that does not currently exist in the area.

The impact to the Subject Trees as a result of the proposed redevelopment is the minimum necessary. The Project has been specifically designed to minimize impacts to the existing priority vegetation. Two of the Subject Trees are impacted by the proposed entrance road improvements. The location of the entrance road was strategically chosen to be in the approximate location of the existing access point, which is located as far as possible from the intersection of Fleming Avenue and Grosvenor Lane and from the residential neighborhood to the west. The impact to these Subject Trees is unavoidable, as the entrance drive improvements, necessary to service the proposed development, cannot be accommodated without the removal of these two trees. Critically, the proposed assisted living building is located to maximize retention of the existing tree stand on the Property along the northern frontage. As recommended in the Master Plan, the building and entrance drive location will allow for the creation of a .33 acre tree-preservation area along Grosvenor Lane within which three significant trees are located including a 43-inch Red Oak.

As mentioned above, the Property is located adjacent to the historic Grosvenor Estate. Pursuant to Section 22A-12(b), any tree, irrespective of its size, that is part of a historic site or associated with a historic structure must be left in an undisturbed condition unless a variance is approved by the Planning Board. Thus, by virtue of its location adjacent to a historic property, the Applicant must seek a variance for the removal of the one tree located on the Grosvenor Estate and to impact 13 other trees. The off-site tree to be removed is 24 inches and in poor

condition. But for its location on the historic property, its removal would not trigger the need for a variance. Importantly, the effect on the impacted trees will be minimal and thus they will be retained.

The proposed impacts are necessary to allow for the redevelopment of the Property, consistent with the recommendations of the Master Plan. Furthermore, the proposed Project will result in the disturbance of fewer significant trees than would be necessitated by redevelopment of the Property with single-family detached homes under the standard under the Standard Method of Development.

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

Because of the dispersal of trees throughout the Property, and due to the location and extent of the CRZ of the Grosvenor Estate Variance tree, the inability to remove and/or impact the Subject Trees would prevent the Applicant from developing the Property in a manner that is consistent with the Master Plan and the Property's zoning. It would also deprive the Applicant of the opportunities enjoyed by others with similarly zoned properties. Any redevelopment of the Property would likely require the removal of some of the Subject Trees and as noted above, the proposed development results in the removal of significantly less trees than would the development of the Property with single family homes in accordance with the standard method.

- (3) *Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance; and*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Subject Trees are not located within a stream buffer, wetland or special protection area. The Property currently contains no stormwater management on-site. Therefore, the provision of stormwater management facilities in connection with the proposed redevelopment will improve the stormwater quality on the Property. The project will comply with the requirements of Chapter 19 of the Montgomery County Code. Applicable requirements under Chapter 19 are addressed in a Concept Stormwater Management Plan submitted for review by the Montgomery County Department of Permitting Services ("DPS").

The current Maryland Department of the Environment (MDE) Stormwater Management regulations that Montgomery County has adopted require the use of environmental site design (ESD) techniques to treat the runoff from 1 inch of rainfall on all new developments, where stormwater management is required. Per MDE's 2000 Maryland Stormwater Design Manual, "[t]he criteria for sizing ESD practices are based on capturing and retaining enough rainfall so that the runoff leaving the site is reduced to a level equivalent to a wooded site in good

condition[.]” The proposed stormwater management plans for the Property will meet this standard with the removal of and impact to the identified Subject Trees. Therefore, the variance will not affect water quantity standards and no measurable degradation in water quality will be experienced because effective mitigation measures are being provided.

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

All efforts have been made to save the significant trees on the Property, where possible. The nature of the improvements and the location of the existing trees make it impossible to save the Subject Trees. However, to mitigate the loss of the Subject Trees located outside the forest stand area to be removed, the Applicant is proposing to plant 6 trees on-site, each with a minimum 3.0 inch caliper. The exact location and specifications of these plantings are shown in more detail on the Preliminary Forest Conservation Plan. The Project will accommodate all mitigation on-site, at a ratio of one (1) inch for every four (4) inches removed. Accordingly, through mitigation, the redevelopment will provide more trees on site than currently exist. In addition, the Applicant also intends to provide 90 new trees on the Grosvenor Estate property, which will go towards meeting a portion of the afforestation requirements for the Project and expand the existing forest conservation easement on the adjacent site by .45 acres.

In conformance with Section 22A-21(d) of the Code, the Variance will not confer a special privilege on the Applicant that would be denied to others. Rather, as discussed above, the Variance will prevent the deprivation of rights to the Applicant that have been enjoyed by others similarly situated.

Conclusion

We believe the foregoing, as well as the information contained in the Preliminary Forest Conservation Plan and Amendments, clearly demonstrate that the grant of the Variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If you have any questions or require any additional information for your review of this request, please feel free to contact me. We appreciate your consideration of this request.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.



Patricia A. Harris

Attachments

PLUMBA TEETER
 1000 W. 10th St., Suite 100
 Lincoln, NE 68502
 (402) 441-1111
 www.plumba-teeter.com

BRIGHTVIEW - GROSVENOR
 5510 GROSVENOR LANE

PRELIMINARY FOREST
 CONSERVATION PLAN

DATE: 10/18/17
 YEAR: 1 - 30
 SHEET: 2 OF 3



NET TRACT AREA

1. Total tract area
2. Area reserved for the grove (including 5% set-aside)
3. Area reserved for the grove (excluding 5% set-aside)
4. Area reserved for the grove (excluding 5% set-aside, including 5% set-aside)
5. Area reserved for the grove (excluding 5% set-aside, including 5% set-aside, including 5% set-aside)
6. Area reserved for the grove (excluding 5% set-aside, including 5% set-aside, including 5% set-aside, including 5% set-aside)

UNPAVED LOT AREA

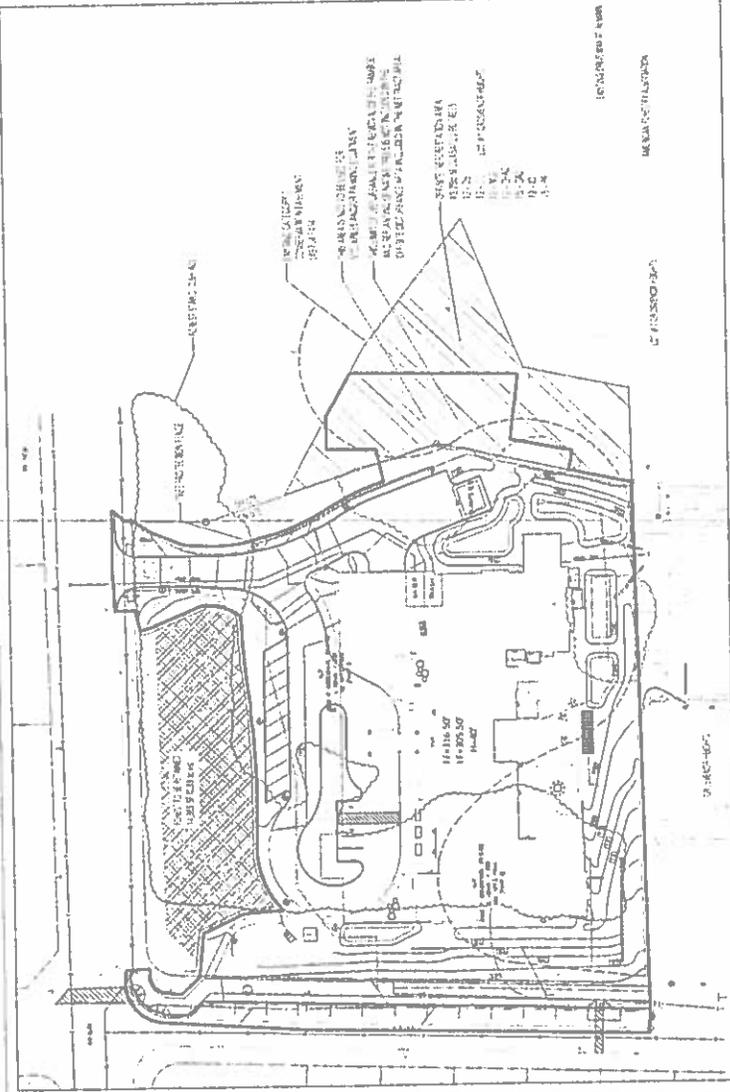
1. Unpaved lot area
2. Unpaved lot area
3. Unpaved lot area
4. Unpaved lot area
5. Unpaved lot area
6. Unpaved lot area

PLANTING REQUIREMENTS

1. Planting density
2. Planting density
3. Planting density
4. Planting density
5. Planting density
6. Planting density

PLANTING REQUIREMENTS

1. Planting density
2. Planting density
3. Planting density
4. Planting density
5. Planting density
6. Planting density



PLANTING REQUIREMENTS

1. PLANTING DENSITY: 100 TREES PER ACRE
2. PLANTING DENSITY: 100 TREES PER ACRE
3. PLANTING DENSITY: 100 TREES PER ACRE
4. PLANTING DENSITY: 100 TREES PER ACRE
5. PLANTING DENSITY: 100 TREES PER ACRE
6. PLANTING DENSITY: 100 TREES PER ACRE

FOREST CONSERVATION NARRATIVE

THE EXISTING FOREST LOCATED ON THE TRACT AREA IS A MIXED STAND OF PINE, OAK, AND BIRCH TREES. THE FOREST IS IN GOOD HEALTH AND IS A VALUABLE RESOURCE FOR THE COMMUNITY. THE FOREST WILL BE MAINTAINED AND ENHANCED TO PROVIDE A HIGH QUALITY FOREST FOR FUTURE GENERATIONS.

LEGEND

- OFF SITE RETENTION AREA
- RETENTION AREA
- LIMIT OF DISTURBANCE
- EXISTING GRADE MAJOR
- EXISTING GRADE MINOR
- SETBACKS
- 15% SHOT GROUND
- EXISTING TREES WITH LIMIT OF DISTURBANCE
- TREES TO BE REMOVED

PLANTING REQUIREMENTS

Plant Species	Quantity	Notes
...

ATTACHMENT 3



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

August 24, 2016

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

RE: Brightview Grosvenor Conditional Use, DAIC CU 201614, Conditional Use application accepted on 6/6/2016

Dear Mr. Anderson:

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

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

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

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

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

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www.montgomerycountymd.gov/dep



montgomerycountymd.gov/311

301-251-4850 TTY

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

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

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

Sincerely,



Laura Miller
County Arborist

cc: Steve Findley, Planner Coordinator