



***A. Preliminary Forest Conservation Plan S-2841: Spring Arbor Olney (Danshes Property)**

MJK Mary Jo Kishter, Senior Planner, Maryjo.Kishter@montgomeryplanning.org, 301.495.4701

RAW Richard Weaver, Supervisor, Richard.Weaver@montgomeryplanning.org, 301.495.4544

JAC John Carter, Chief, John.Carter@montgomeryplanning.org, 301.495.4575

Completed: 09/05/13

Description

***A. Preliminary Forest Conservation Plan No. S-2841: Spring Arbor (Danshes Property)**

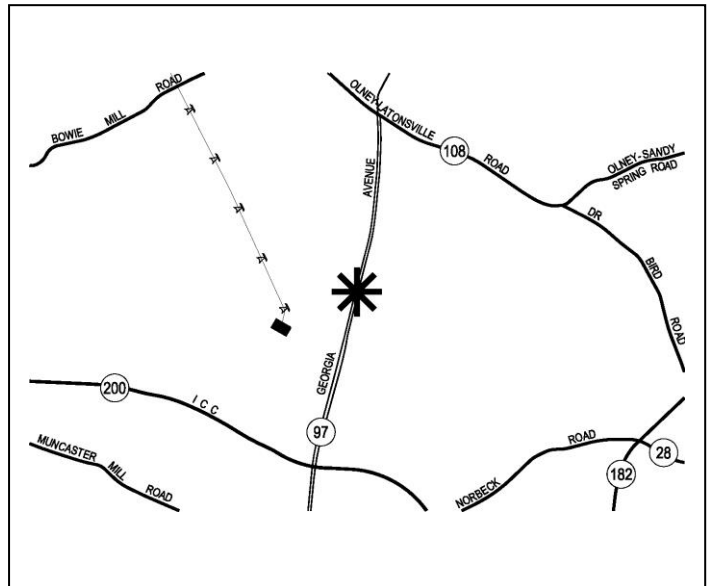
Request for approval of a Preliminary Forest Conservation Plan as part of a Special Exception application for a 107-unit domiciliary care home; located on Parcel P771, Tax Map HT 51, east side of Georgia Avenue (MD 97), approximately 1000 feet south of its intersection with Old Baltimore Road in Olney; 37.68 acres, Zoned RNC, Olney Master Plan

Staff recommendation: *Approval with conditions*

Preliminary FCP Filing Date: April 30, 2012

Special Exception Filing Date: March 26, 2012

Applicant: Sonia Danshes Trust; HHHUNT Corporation



Summary

The Applicant requests approval of a preliminary forest conservation plan as part of the Planning Board’s review of an application for a special exception to construct a 107-unit domiciliary care home on a 37.68-acre undeveloped parcel. The preliminary forest conservation plan proposes the following:

- 7.92 acres forest clearing
- 27.23 acres forest retention to be protected in Category I conservation easement
- No forest planting requirement
- Request for tree variance to remove two specimen trees and impact 19 trees
- The Planning Board’s action on a forest conservation plan is regulatory and binding

PRELIMINARY FOREST CONSERVATION PLAN RECOMMENDATION AND CONDITIONS:

Approval of the Preliminary Forest Conservation Plan, subject to the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan dated August 21, 2013, including:
 - a. Approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
 - b. The Sediment Control Plan must be consistent with final limits of disturbance as approved by the M-NCPPC staff.
 - c. The Applicant must place a Category I conservation easement over all areas of forest retention and environmental buffers as specified on the approved Forest Conservation Plan prior to clearing and grading occurring onsite. Conservation easements must be shown on the record plats.
 - d. The Applicant must install permanent Category I Forest Conservation Easement signage along the perimeter of all forest conservation easements.

SITE DESCRIPTION

The Subject Property, (“Subject Property” “Property”), is identified as Parcel P771 on Tax Map HT 51, and is located on the east side of Georgia Avenue (MD 97), approximately 1,000 feet south of its intersection with Old Baltimore Road in the Olney Master Plan area. The Property zoned RNC, and it is 37.68 acres in size. The Property is currently undeveloped, and has 35.15 acres of forest, with the remainder of the Property along the Georgia Avenue frontage maintained in mowed grass with a few scattered trees.

The Property drains to the Batchellors Forest Tributary of the Northwest Branch, which is classified by the State of Maryland as Use IV waters. The Property contains several stream channels and nontidal wetland areas. Adjacent land uses include single family residences to the east, the Sandy Spring Volunteer Fire Department to the south, and an historic property, known as the Berry Mackall House to the north. A church and an approved Alzheimer’s care facility (unbuilt) are located to the west and across Georgia Avenue.



PROJECT DESCRIPTION

The Preliminary Forest Conservation Plan (PFCP) was prepared as part of Special Exception application No. S-2841 to construct a 107-unit assisted living care home (Attachment A). While the Planning Board is technically advisory on Board of Appeals applications, the Planning Board must make a finding that the pending special exception application complies with Chapter 22A, the forest conservation law.

The Application proposes 7.92 acres of forest clearing, the removal of two specimen trees, and impacts to the critical root zones (CRZ) of nineteen trees subject to the variance provision. The Application proposes to retain 27.23 acres of forest and there is no forest planting requirement for the project. The Applicant has made efforts to minimize impervious surfaces for this project. The proposed impervious area for the project was reduced from approximately 13.2 percent to 10.9 percent.

ANALYSIS AND FINDINGS

Environmental Guidelines

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this 37.68-acre site on December 22, 2011. The Property currently has 35.15 acres of forest, with the remainder of the Property maintained in mowed grass with a few scattered trees.

The Property drains to the Batchellors Forest Tributary of the Northwest Branch, which is classified by the State of Maryland as Use IV waters. The topography slopes to the south and east towards a large wetland and stream system located within the forest. The Property contains several stream channels and nontidal wetland areas. The largest wetland area on the Property is located near its center, at the head of an intermittent stream channel. This stream flows in a southeasterly direction, and there are several smaller wetlands that drain into the channel. Another intermittent stream originates off-site at a small, excavated pond near the northeastern corner of the Property. This stream roughly parallels the eastern property line and eventually merges with the other stream channel in the southeastern corner of the Property, before flowing off-site. There is a 100-year floodplain associated with the two stream channels. There are a few areas of steep slopes, primarily located within the environmental buffer, and there are no highly erodible soils on the Property. This Property is not located within a Special Protection Area (SPA) or the Patuxent River Primary Management Area (PMA).

Impervious Areas

Although this Property is not located in an area that has impervious limits, (i.e., Special Protection Area or Patuxent Primary Management Area), per the recommendations of the Olney Master Plan and the Countywide Stream Protection Strategy, the Applicants have made efforts to minimize impervious surfaces for the project. The building design was revised from a one-story to two-story building in order to reduce the footprint. The amount of surface parking area was reduced. The internal driveway that was originally designed to circle the entire perimeter of the two buildings was revised to that which was determined to be the minimum necessary to allow safe and adequate access to parking and to accommodate fire and rescue vehicles. The development is clustered near Georgia Avenue and away from the streams. The project preserves over 84 percent of the site as open space. Instead of the minimum 13.10 acres of forest, the project preserves 27.23 acres (72 percent of the site area) of forest. The proposed impervious area was reduced from approximately 13.2 percent under the original plan submission to 10.9 percent. Based on Staff's analysis of approved residential developments located in

the RNC Zone in the Olney and Damascus areas, the average amount of impervious area for projects is approximately 9.0 percent. With the use of two stories, the reduction in surface parking spaces, the revision to the circular driveway, the development located away from the streams, large open space area, and extensive forest save areas, Staff finds that the Applicant has made significant strides to reduce impervious coverage to acceptable levels.

Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Preliminary Forest Conservation Plan has been submitted for review. There are approximately 35.15 acres of existing forest on the Property. The forest is dominated by tuliptree (*Liriodendron tulipifera*), red maple (*Acer rubrum*) and black walnut (*Juglans nigra*). There are three hundred and twelve (312) large or specimen trees located on or adjacent to the Property.

The project proposes to clear 7.92 and retain 27.23 acres of forest. Approximately 13.75 acres of the retained forest is located within the environmental buffer and the majority of the remaining 13.48 acres of forest is contiguous upland forest located adjacent to the environmental buffer. There is no forest planting requirement for this project and all of the retained forest and areas within the environmental buffer will be protected in a Category I conservation easement.

The Application is subject to Section 22A-12(f) which requires that on-site forest retention must equal the conservation threshold of 20 percent, or a minimum of 7.59 acres. The plan proposes to retain 27.23 acres of on-site forest, thereby meeting the requirement.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An application for a variance must include certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated June 18, 2013 (Attachments B and C). The Applicant's request proposes to remove two (2) trees that are 30 inches and greater, DBH, and to impact, but not remove, twenty (20) trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law ("Protected Trees"). One of the Protected Trees included in the variance request to be impacted is dead (Tree #139 as shown on the NRI/FSD, therefore, it has been eliminated from the variance request, resulting in nineteen (19) impacted, Protected Trees rather than twenty (20). Eight (8) of the Protected Trees to be impacted are located on the adjacent historic property to the north, known as the Berry-Mackall House. Because these trees are located within the historic setting for the Berry-Mackall House, the County Forest Conservation Law defines them all as subject to the variance provision, regardless of their size.

Trees to be removed

Tree Number	Species	DBH (Inches)	Status
5	Tulip tree	39	Fair condition; SWM; grading parking lot
212	Tulip tree	30	Fair condition; SWM; grading parking lot

Trees to be affected but retained

Tree Number	Species	DBH Inches	CRZ Impact	Status
1	Tulip tree	44	30%	Good condition; parking lot, grading
2	Tulip tree	36	19%	Good condition; parking lot, grading
4	Tulip tree	41	28%	Good condition; parking lot, storm drain
24H	Tulip tree	13	10%	Offsite, historic site; grading
28H	Black walnut	13	14%	Offsite, historic site; grading, storm drain
30H	Mulberry	7	39%	Offsite, historic site; grading
48H	Black walnut	6	11%	Offsite, historic site; grading
50H	Black walnut	14	14%	Offsite, historic site; grading
61H	Green Ash	11	13%	Offsite, historic site; grading
64H	Black walnut	6	3%	Offsite, historic site; grading
65H	Elm	37	7%	Offsite, historic site; grading
136	White oak	31	13%	Good condition; grading
137	White ash	44	28%	Good condition; grading, entrance driveway
208	Tulip tree	39	9%	Good condition; grading, storm drain
209	Red oak	40	27%	Fair condition; grading, storm drain
210	Tulip tree	35	18%	Fair condition; grading
211	Tulip tree	40	12%	Fair condition; grading
215	Tuliptree	39	12%	Poor condition; grading
219	Tulip tree	36	8%	Good condition; grading

Unwarranted Hardship – As per Section 22A-21, a variance may only be considered if the Planning Board finds that avoiding impact to, or removal of, Protected Trees would result in an unwarranted hardship. Development on the Property is constrained by the existing conditions on the site. The majority of the Property is forested and a large portion is encompassed by environmental buffers that protect the headwater streams and associated wetlands onsite. In addition, there are a few large trees

located outside of the forest, along the Property lines and on the adjacent historic property. The Applicant has attempted to minimize the overall footprint of the project by designing the building with two-stories; however, the portion of the Property closest to Georgia Avenue, where the site is accessed is fairly narrow, which limits the area available for development. The majority of the affected trees are located in this area, along the property lines of the adjacent fire station and the historic property. This limitation along with the configuration of the environmental buffer protecting the large onsite wetland, dictates the area available for development. The Applicant has protected a large area of contiguous forest that is in close proximity to the sensitive features on the site, which is in compliance with the Olney Master Plan. Staff has reviewed this Application and based on the amount of forest on the Property, the environmental constraints, the shape of the Property, and applicable development standards, finds that there would be an unwarranted hardship if a variance were not considered. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the removal and disturbance to the Protected Trees are due to the development of the site. The trees and their critical root zones lie within the developable area of the site. The proposed removal of two trees that are in fair condition is due to required grading. The other nineteen Protected Trees that are subject to the variance will be minimally impacted by the proposed construction. Eight of these impacted trees are on the adjacent historic property, and seven of them are less than 15 inches in diameter at breast height (DBH). Granting a variance request to allow land disturbance within the developable portion of the site is not unique to this Applicant. Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The variance is based upon existing site conditions and the applicable development standards for stormwater management and access.

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

The requested variance is a result of the proposed site design and layout on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Granting the variance request will not result in the removal or impact to any trees located within the environmental buffer. The stormwater management concept proposed for the project must meet Environmental Site Design standards and proposes the use of drywells, micro-bioretenion facilities, rain gardens, and pervious pavement to provide water quality treatment throughout the proposed developed area. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision - There are two (2) Protected Trees proposed for removal in this variance request. Both of these trees are located within the existing forest and their loss is accounted for in the forest conservation worksheet and no additional mitigation is recommended. There is some disturbance within the critical root zones of nineteen (19) Protected Trees, but they are candidates for safe retention and will receive adequate tree protection measures. No mitigation is recommended for trees impacted but retained.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on July 11, 2013 with revised plans provided on August 22, 2013. In a letter dated August 28, 2013, the County Arborist issued recommendations on the variance request and recommended the variance be approved with mitigation (Attachment D).

Variance Recommendation - Staff recommends that the variance be granted.

Stormwater Management

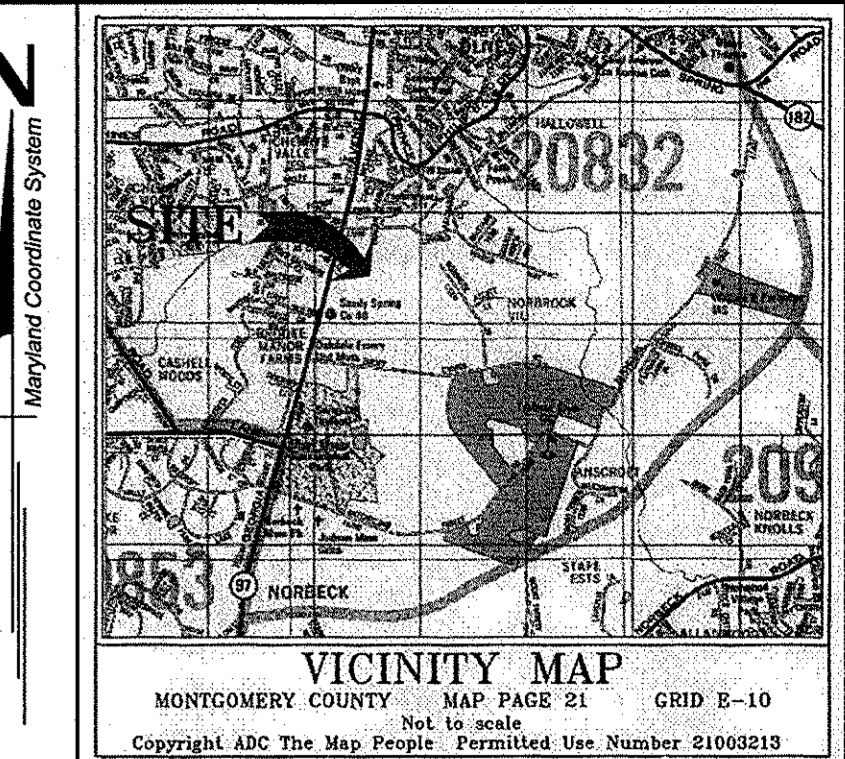
An updated stormwater management concept plan has been resubmitted with a revised plan addressing earlier comments from Montgomery County Department of Permitting Services (MCDPS). The Applicant's engineer anticipates concept plan approval will be granted in the coming few weeks. The stormwater management concept must meet the new Environmental Site Design standards and proposes the use of drywells, micro-bioretenion facilities, rain gardens, and pervious pavement.

CONCLUSION

The Preliminary Forest Conservation Plan meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this staff report. The variance approval is included in the Planning Board's approval of the Preliminary Forest Conservation Plan.

Attachments:

- Attachment A – Preliminary Forest Conservation Plan
- Attachment B – Applicant's Variance Request dated June 18, 2013
- Attachment C – Tree Variance Support Exhibit
- Attachment D – County Arborist Letter dated August 28, 2013



Subject Property Information

Tax Map(s): HT561
Lots / Parcels: P.771, Tax Acct #8-00723142
Property Area: 37.68 Acres +/-
Zone: RNC

General Notes:

1. For additional property information, see NRI/FSD #4-20120150, approved December 22, 2011.
2. This plan is for Forest Conservation purposes only.
3. Boundary information is from a boundary survey conducted by Rodgers Consulting, Inc. in October, 2012.
4. The topography hereon is shown in 2' contour interval and was obtained from aerial photogrammetry.
5. 100-year floodplain as shown is from a study by CPJ, approved 3/16/11 by Montgomery County DPS.
6. Wetlands as shown were delineated by Klebasco Environmental LLC.
7. The site contains two unnamed stream tributaries that drain to Northwest Branch watershed, Class IV.
8. Historic resource "Berry-Mackall House, MHT designated M23-104 is located on adjacent Parcel 638.
9. The site is within the Olney Master Plan area.
10. Tree/Forest to be retained to be protected prior to construction with fencing and signage, to be specified on the FFCP.
11. This plan is not for construction.

Legend

- Site Boundary
- Stream Valley Buffer
- 100 yr Floodplain
- 25' Floodplain BRL
- Non-Tidal Wetlands
- Non-Tidal Wetland Buffer
- Soils Lines and Text
- Significant Tree and Critical Root Zone (CRZ)
- Ex. Significant Tree to be removed
- Historic Property Variance-subject Tree
- Existing Canopy Edge
- Forest Stand Line
- Perennial or Intermittent Stream
- Existing Contours
- Proposed Contours
- Limit of Disturbance
- Super Silt Fence
- Prop. Category 1 Forest Conservation Easement
- Forest Retention
- Forest Clearing
- Slopes 15% - <25%
- Slopes 25%+



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REVISION	DATE	REVISION	DATE	REVISION	DATE
Revised per staff comments dated 8/8/13 - hrm	8/13/13				
Revised per staff comments dated 8/21/13 - hrm	8/21/13				

SPRING ARBOR OLNEY
 APPLICANT:
 HHHUNT
 117 EDINBURG SOUTH
 SUITE 100
 CARY, NC 27511
 PHONE: 919.461.0587
 CONTACT: BO COOK

PRELIMINARY FOREST CONSERVATION PLAN

RODGERS CONSULTING
 Knowledge • Creativity • Enduring Values

19847 Century Boulevard
 Suite 209
 Germantown, Maryland 20874
 Ph: 301.948.6700 (Main)
 Ph: 301.253.6609 (Frederick)
 Fx: 301.948.6256
 www.rodgers.com

BY	DATE
BASE DATA	Oct. 2012
DESIGNED	
DRAWN	
REVIEWED	
RODGERS CONTACT:	
RELEASE FOR	
BY	DATE

Preliminary Forest Conservation Plan

SPRING ARBOR OLNEY

P. 771 L. 22171 F. 555
 OLNEY (8TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=80'
 JOB No. 1133A
 DATE: June 2013
 SHEET No. 1 of 4

FFCP PLAN

PRELIMINARY NOT FOR CONSTRUCTION



Legend

- Site Boundary
- Stream Valley Buffer
- 100 yr Floodplain
- 25' Floodplain BRL
- Non-Tidal Wetlands
- Non-Tidal Wetland Buffer
- Soils Lines and Text
- Significant Tree and Critical Root Zone (CRZ)
- Ex. Tree to be removed
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Revised per staff comments dated 8/20/13 - h.m.	8/21/13				

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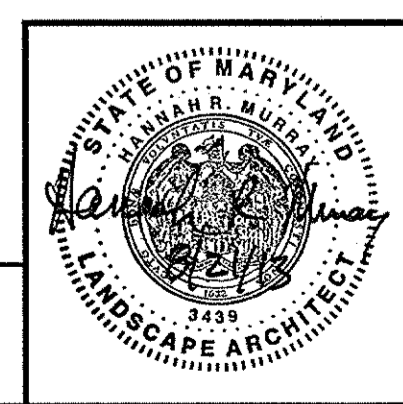
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BY		DATE

Preliminary Forest Conservation Plan

SPRING ARBOR OLNEY

OLNEY (8TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND



SCALE: 1"=50'

JOB No. 1133A

DATE: Oct. 2012

SHEET No. 2 of 4

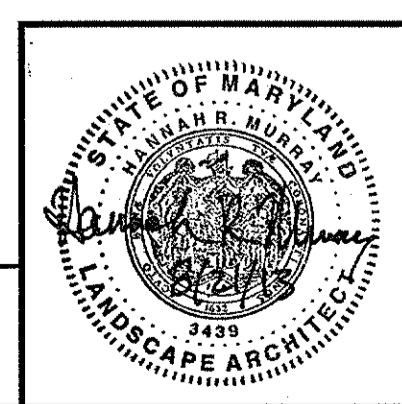
PCP PLAN



Legend

- Site Boundary
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- 100 yr Floodplain
- 25' Floodplain BRL
- Non-Tidal Wetlands
- Non-Tidal Wetland Buffer
- Soils Lines and Text
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Preliminary Forest Conservation Plan

REVISION	DATE	REVISION	DATE	REVISION	DATE
Revised per staff comments dated 8/6/13 - hrm.	8/13/13				
Revised per staff comments dated 8/20/13 - hrm.	8/21/13				

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BASE DATA	BY	DATE
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RODGERS CONTACT:		
RELEASE FOR	<input type="checkbox"/>	
BY _____	DATE _____	

SPRING ARBOR OLNEY

OLNEY (8TH) ELECTION DISTRICT
 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=50'

JOB No. 1133A
 DATE: Oct. 2012
 SHEET No. 3 of 4

PRELIMINARY NOT FOR CONSTRUCTION

Significant Tree List

Table with columns: TAG No., COMMON NAME, SCIENTIFIC NAME, DBH, HEALTH, COMMENTS. Lists trees 1-150 with details on species and status.

Table with columns: TAG No., COMMON NAME, SCIENTIFIC NAME, DBH, HEALTH, COMMENTS. Lists trees 151-312 with details on species and status.

* denotes tree subject to Variance requirements

Variance-Subject Trees on Adjacent Historic Lot

Table with columns: TAG No., COMMON NAME, SCIENTIFIC NAME, DBH. Lists trees 24H, 29H, 30H, 48H, 50H, 61H, 64H, 65H.

Forest Conservation Worksheet

FOREST CONSERVATION WORKSHEET
Spring Arbor

NET TRACT AREA: 5-Aug-02

- A. Total tract area ... 0.00
B. Land dedication for roads or utilities (not being constructed by this plan) ... 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) ... Increase in tract area for offsite improvements -0.28
F. Net Tract Area ... 37.96

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

Table with columns: ARA, MDR, IDA, HDR, MPD, CIA. Values: 0, 0, 1, 0, 0, 0.

G. Afforestation Threshold ... 15% x F = 5.69
H. Conservation Threshold ... 20% x F = 7.59

EXISTING FOREST COVER:

- I. Existing forest cover ... 35.15
J. Area of forest above afforestation threshold ... 29.48
K. Area of forest above conservation threshold ... 27.56

BREAK EVEN POINT:

- L. Forest retention above threshold with no mitigation ... 13.10
M. Retention permitted without mitigation ... 22.05

PROPOSED FOREST CLEARING:

- N. Total area of forest to be cleared ... 7.92
O. Total area of forest to be retained ... 27.23

PLANTING REQUIREMENTS:

- P. Reforestation for clearing above conservation threshold ... 1.98
Q. Reforestation for clearing below conservation threshold ... 0.00
R. Credit for retention above conservation threshold ... 19.84
S. Total reforestation required ... 0.00
T. Total afforestation required (may not exceed 20% of "S") ... 0.00
V. Total reforestation and afforestation required ... 0.00

Forest Conservation Banking

FOREST CONSERVATION BANK: SPRING ARBOR OLNEY

ACREAGE OF TOTAL FOREST RETAINED: 27.23

ACREAGE OF FORESTED STREAM VALLEY BUFFER: 13.75

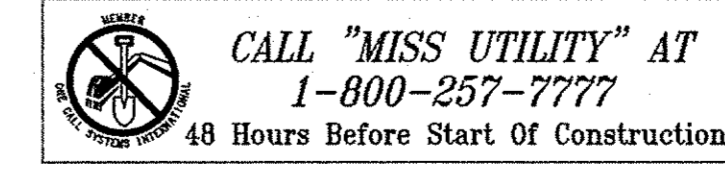
ACREAGE OF BREAK EVEN POINT: 13.10

ACREAGE OF EXISTING FOREST AVAILABLE FOR BANKING: 13.48

* Potential forest bank subject to a separate M-NCPPC approval process.

FOREST CONSERVATION TABLE: DANSHES PROPERTY

Table with columns: Category, Acres, Retained, Cleared, Planted. Rows include: Acreage of tract (gross) 37.68, Acreage of tract remaining in agriculture use 0.00, Acreage of road and utility ROWs which will not be improved as part of the development application 0.00, Acreage of Stream Valley Buffer 13.75, Conservation Threshold 1.5%, Afforestation Threshold 20%, Linear Feet of Stream 1100, Average width of stream buffer 300 feet, One side of stream of both 1, Existing Forest Acreage 35.15, Acreage of Forest 27.23, 7.92, 0.00, Acreage of Forest within Wetlands 1.58, 0.00, 0.00, Acreage of Forest within 100-year Floodplain 1.15, 0.00, 0.00, Acreage of Forest within stream valley buffer 13.75, 0.00, 0.00, Acreage of Forest within priority area 13.75, 0.00, 0.00.



The excavator must notify all public utility companies with underground facilities in the area of proposed excavation and have these facilities located by the utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter



Table with columns: REVISION, DATE, REVISION, DATE. Includes comments like 'Revised per staff comments dated 8/19/13 - h.m.' and 'Revised per staff comments dated 8/20/13 - h.m.'.

SPRING ARBOR OLNEY APPLICANT: HUBBUTT 117 EDENBURG SOUTH SUITE 100 CARY, NC 27511 PHONE: 919 461 0587 CONTACT: BO COOK

RODGERS CONSULTING 19847 Century Boulevard Suite 210 Germantown, Maryland 20874 PH: 301.948.4700 (Main) PH: 301.293.6506 (FAX) www.rodgers.com

Preliminary Forest Conservation Plan SCALE: 1/8" = 1'-0" JOB No. 1133A DATE: June 2013 SHEET No. 4 of 4 N:\MD-Montgomery\Spring Arbor\Olney\autocad\Plot Plans\Fcp\prelim-fcp.dwg 6/17/13 4:32pm

June 18, 2013

MNCPPC
Area 3 Staff
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Spring Arbor Olney Project
Special Exception Case S-2841
Request for Tree Variance
RCI Job No. 1133A

To Whom It May Concern:

On behalf of the applicant, HHHunt, Rodgers Consulting is requesting a variance from the requirement to retain all 30"+ diameter at breast height (DBH) trees and trees associated with a historic structure (subject trees) on a property per Section 22A-12(b)(3) and 22A-21 of the Montgomery County Code.

This variance request is for impacts to 22 subject trees. These trees will be discussed categorically to simplify analysis. See attached spreadsheet and exhibit for further detail on each subject tree.

Below please find the variance criteria followed by justification.

(b)(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship

The 37.68 acre property is currently in use as a manicured lawn in the area near Georgia Avenue, with the remainder of the property forested. The property is zoned RNC, and this application is for a nursing home use (per 59-G-2.37 of the Montgomery County Zoning Ordinance). The project has been designed to protect natural resources, including architectural design to minimize the footprint, protect wetlands, and minimize tree and forest loss. There are 115 trees on or near the property which are 30" DBH or larger. The applicant demonstrates site sensitive design and considerable tree save effort by proposing a development footprint that includes no CRZ impact to 100 of these trees. Of the 15 30"+ trees that are proposed to be impacted, two require removal. The applicant proposes the removal of less than two percent of the 30"+ trees on the property.

On this property, 16.08 acres (43 percent of the property) is outside of the critical root zone (CRZ) of subject trees and outside of regulated buffers (environmental buffer as determined by Montgomery County Environmental Guidelines). Of this 16.08 acres seemingly available for the proposed facility, 14.17 acres is forested, with the remaining 1.91 acres (5 percent of the total property) as open lawn area adjacent to Georgia Avenue. The Olney Master Plan dictates a 100' minimum building setback from Georgia Avenue, making a total of 0.85 acres available for building envelope. This 0.85 acre area is inadequate for a viable assisted living facility. The applicant acknowledges that creating a viable facility will mean some tree and forest impact, and the proposed

layout seeks to balance necessary and unavoidable CRZ and forest impacts, and avoid environmental buffer impacts altogether.

The project has been redesigned since the first submittal in order to have a substantially smaller environmental footprint on the property. The limit of disturbance (LOD) has been reduced over 21 percent from the initial design, from 12.3+/- acres to 9.7+/- acres. The LOD is 25.8 percent of the entire property. Put another way, just over 74 percent of an almost 38 acre property will have no construction impact from the proposed facility. The applicant has made environmental and subject tree stewardship a priority with the design of this facility.

In addition, the configuration of the property necessitates impacts to subject trees. The lawn area at the western edge of the property (adjacent to Georgia Avenue) is the narrowest part of the property. East of the lawn area in the forest is a significant pocket of forested wetlands. The presence of the wetlands and associated buffer skews the area available for development to the north, into a panhandle portion of the property behind the adjacent historic property. The area east and south of the wetlands pocket contains two streams with associated environmental buffer, and additional forest area with a greater concentration of significant trees (24" DBH and larger). The proposed design of the building and site infrastructure is carefully articulated around the wetlands pocket and sited to minimize impacts to the more mature area of forest, and to maximize the distance between grading activity and the streams. This property is subject to stormwater requirements and the proposed design implements Environmental Site Design (ESD) per state law. ESD dictates many small stormwater facilities, and pushes the limits of grading/disturbance out all along the downhill edge of the proposed project, necessitating additional subject tree and forest impacts.

Historic Site

Eight of the subject trees are on the adjacent historic site, the Berry-Mackall House (Site 23/104-00A). These are references as trees numbered 24, 28, 30, 48, 50, 61, 64, and 65. The entire property, 3.26 acres, has been determined to be the historic setting. No grading or disturbance is proposed on the historic site; however trees located along the boundary have CRZs that will be impacted by on-site grading activities. Of these eight subject trees, tree #65 is a 37" elm, which will have very minor CRZ impacts (less than 7 percent) due to unavoidable grading for site access, stormwater management maintenance access, and fire access requirements. The remaining seven trees are 14" DBH or less, and certainly were not present when the historic structure was erected. Of these trees, number 30 (7" mulberry) is proposed to have CRZ impacts of around 40 percent. Though M-NCPPC typically regards 33 percent as a threshold for tree retention, this tree is not proposed to be removed or to have arboricultural measures implemented. Mulberries are considered an invasive/weed tree, and smaller established trees tend to be more resilient to impacts than mature, large diameter trees. The remainder of subject trees on the historic site will have less extensive CRZ impacts. There are many trees between the historic structure and the proposed project, so the visual impact to the historic setting will be negligible. The grading impacts are for site access (required parking, drive aisles, emergency access) or for required stormwater management facilities. Pushing the LOD away from the

subject trees would create impacts within the environmental buffer, which is a less desirable outcome.

Northeast Corner

There are seven subject trees (208-212, 215, 219) in this area, all of which are impacted by grading for a stormwater management facility. Six of these trees are on the adjacent property; however the impacts are unavoidable due to the configuration of the property and the 'pinch point' created by the shape of the property and the environmental buffer. Tree 212 (30" tulip poplar in fair condition) is on the property and proposed to be removed, and the remainder of the trees have lesser CRZ impacts and are proposed to be retained.

Southern Boundary

Four subject trees in this area (1, 2, 4, 5) are impacted by grading for required parking and a stormwater facility and associated infrastructure. Tree 5 (39" tulip poplar, twin trunks and in fair condition), on the boundary line with the adjacent property, is proposed to be removed. Other trees have lesser CRZ impacts and are proposed to be retained. These impacts cannot be pushed north, as the site is graded out from the northern property line to the southern property line in this area.

Northwestern Corner

These three trees (136, 137, 139) are impacted by grading for the entrance drive. The entrance drive cannot be pushed further south, as this area is needed for a stormwater management facility.

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

As referenced in the response to (1), it is not feasible to construct the proposed use without impacts to subject trees. The applicant has worked with MNCPPC staff to minimize the project's construction footprint and impacts to subject trees and other environmental resources. Prohibiting a site with these characteristics from developing due to the presence of subject trees would deprive the landowner of rights commonly enjoyed by others in similar areas, as projects in similar contexts have been granted variances.

(b)(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

As part of the proposed use the property will be subject to State and County sediment control and stormwater management requirements. Construction on the property will be governed by an approved Erosion and Sediment Control Plan, which will only be approved by the Department of Permitting Services upon their satisfaction that water quality and sediment control standards will be met. The granting of the variance will allow the project to proceed - including the implementation of SWM controls - and will not result in measurable degradation in water quality.

(b) (4) provide any other information appropriate to support the request

As the baby boom generation ages, assisted living facilities are in increasingly high demand. The proposed use rounds out housing choices for those at the end of age spectrum and provides this use in an accessible and proximate location to existing neighborhoods to allow interaction with family members. The applicant is aware of and sensitive to the environmental intricacies of this property. The proposed design will result in a facility that has minimized overall footprint, including forest removal, regulated area impact, and subject tree impact. This application represents a balanced approach and should be supported.

Mitigation

All of the trees proposed to be removed are within the forested portion of the property. The property meets and exceeds its forest conservation requirements on site. Any mitigation that would be required for impacts to subject trees is more than satisfied through the applicant's surplus forest conservation.

In addition to meeting the criteria of subsection (a),

(d) Minimum criteria. A variance may only be granted if it meets the criteria is subsection (a). However, 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

As explained in the responses to (b), above, the applicant is requesting the variance in the context of minimizing overall environmental disturbance, and balancing myriad regulatory, environmental, and demographic objectives. This is not a special privilege; applicants in a similar context would also request a variance based on the merits presented, and would also request approval from the Planning Board.

(2) is based on conditions or circumstances which result from the actions by the applicant:

The variance is required based on the unusual configuration of the property, the presence of natural resources, and the regulatory requirements of Montgomery County. The impacts are necessary and unavoidable to implement the plan as proposed.

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

The variance request is based on the unusual configuration of the property, the presence of natural resources, and the regulatory requirements of Montgomery County. These conditions are not related to land or building uses on adjacent properties.

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

The project will not violate water quality standards or cause measurable degradation in water quality. See response to item (b)4) above.

Please do not hesitate to contact us with any questions or comments concerning this variance request. We can be reached at 240-912-2184 or hmurray@rodgers.com

Sincerely,
Rodgers Consulting, Inc.



Hannah R. Murray PLA, LEED AP ND
Senior Environmental Planner

Encl.

Cc: Rebecca Walker, Miles and Stockbridge
Kim McCary, RCI
Dusty Rood, RCI
File

Tree #	DBH	Latin Name	Common Name	CRZ Impact	As % of CRZ	Notes
Historic Site Trees						
24	13	Liriodendron tulipifera	Tulip Poplar	121	10.1%	OS
28	13	Juglans nigra	Black Walnut	165	13.8%	OS
30	7	Morus spp.	Mulberry	137	39.6%	OS
48	6	Juglans nigra	Black Walnut	29	11.4%	OS
50	14	Juglans nigra	Black Walnut	190	13.7%	OS
61	11	Fraxinus pennsylvanica	Green Ash	113	13.2%	OS
64	6	Juglans nigra	Black Walnut	7	2.8%	OS
65	37	Ulmus spp.	Elm	662	6.8%	OS
Other Subject Trees						
1	44	Liriodendron tulipifera	Tulip Poplar	4163	30.4%	Good, Boundary
2	36	Liriodendron tulipifera	Tulip Poplar	1761	19.2%	Good, OS
4	41	Liriodendron tulipifera	Tulip Poplar	3317	27.9%	Good, twin
5	39	Liriodendron tulipifera	Tulip Poplar	4155	38.6%	Fair, twin, Boundary
136	31	Quercus alba	White Oak	856	12.6%	Good
137	44	Fraxinus americana	White Ash	3809	27.8%	Good
139	37	Fraxinus americana	White Ash	1297	13.4%	Dead
208	39	Liriodendron tulipifera	Tulip Poplar	1015	9.4%	Good, OS
209	40	Quercus rubra	Red Oak	3052	27.0%	Fair, OS
210	35	Liriodendron tulipifera	Tulip Poplar	1515	17.5%	Fair, OS
211	40	Liriodendron tulipifera	Tulip Poplar	1361	12.0%	Fair, OS
212	30	Liriodendron tulipifera	Tulip Poplar	6362	100.0%	Fair
215	39	Liriodendron tulipifera	Tulip Poplar	1269	11.8%	Poor, OS
219	36	Liriodendron tulipifera	Tulip Poplar	728	7.9%	Good, Boundary

OS denotes an off-site tree



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

August 28, 2013

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

RE: Spring Arbor, S-2841, NRI/FSD application accepted 8/9/2011

Dear Ms. Carrier:

The County Attorney's Office has advised that Montgomery County Code Section 22A-12(b)(3) applies to any application required under Chapter 22A submitted after October 1, 2009. Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

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

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

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

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

Françoise Carrier
August 28, 2013
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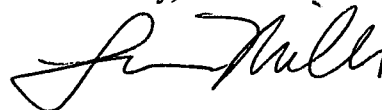
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon 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 revisions to the LOD 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: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Chief