

Special Exception S-2761 Pacano Property

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Elsabett Tesfaye, Planner Coordinator Elsabett.Tesfaye@montgomeryplanning.org (301) 495-1301

Richard Weaver, Supervisor Richard.Weaver@montgomeryplanning.org (301) 495-4544

John Carter, Chief, Area3

Staff Report Date: 05/30/2014

Description

B. Special Exception S-2761: Pacano Property

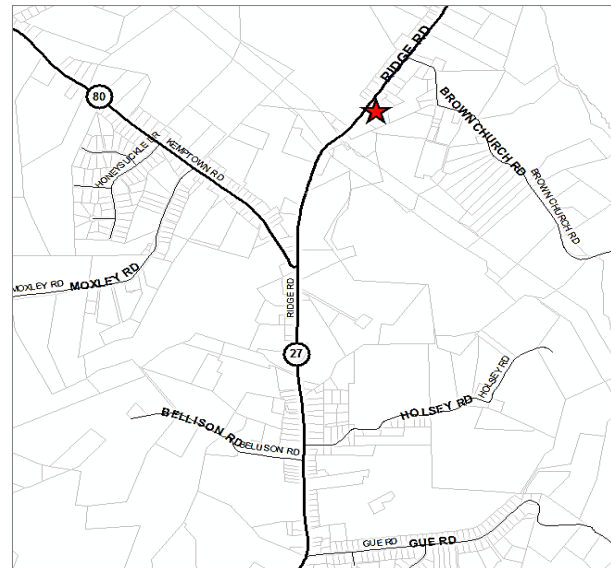
Request for a Special Exception to operate landscape contractor business, located at 28621 Ridge Road, 4.5 acres, identified as Parcel P233 on Tax Map FY-53, on the east side of Ridge Road (MD 27) approximately 2.5 miles north of its intersection with Kemptown Road (MD 80), RDT Zone, Damascus Master Plan Area.

Staff Recommendation: *Approval with conditions*

Application Filed: October 27, 2009

Public Hearing: June 27, 2014

Applicant: Robert Pacano/D/B/A Woodstone Group, LLC



Summary

- With the recommended conditions, the subject use conforms to all applicable requirements and regulations for approval of a landscape contractor business Special Exception (Section 59-G-2.30.00 of Montgomery County Zoning Ordinance) and the Development Standards under the RDT Zone.
- The subject use is consistent with the recommendations of the Damascus Master Plan and is compatible with the rural characteristic of the surrounding area.
- Approval of the Special Exception is not likely to substantially change the nature, character, scope or intensity of the current use that has been operated on the Property for the past eight years by the Applicant.
- There are no notable traffic, circulation, noise or environmental issues associated with the Application provided that the recommended conditions are satisfied.
- The Application requests permission to allow existing structures and impervious surfaces to remain within the stream buffer and transition area of the Patuxent PMA and to omit a portion of the stream buffer from the conservation easement. To offset the existing impervious area within the stream buffer the Applicant will plant 0.80 acres of additional forest, and create 0.70 acres of native meadow habitat within the stream buffer onsite.
- The overall impervious area for the project is reduced from approximately 12.9 percent to 8.6 percent. The impervious surface remaining is the minimum necessary for the operation of the business.
- The proposal does not clear any of the existing forest.
- The use does not conflict with the Forest Conservation Plan.

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I. RECOMMENDATION

Staff recommends APPROVAL of Special Exception S-2761 with the following conditions:

1. The maximum number of employees on the site, including the Applicant and his wife who are operating out of the office, must be limited to eight (8)
2. Hours of operation for the landscape contractor business are limited to 7:00 a.m. through 7:00 p.m. Monday through Friday and 8:00 a.m. through 5:00 p.m. on Saturdays.
3. The Applicant must remove approximately 8,300 square feet of impervious surfaces as specified on the Impervious Area Exhibit dated April 8, 2014.
4. The Applicant must enter into an agreement with the Board of Appeals to limit impervious surfaces to no more than 8.7 percent.
5. The use must comply with the conditions of the Final Forest Conservation Plan.
6. The landscape contractor business must not have more than five trucks and three trailers.
7. The existing single-family detached structure must be used only as an office for the landscape contractor business. It must not be used as a residence.
8. Eight parking spaces shall be located in the gravel area on the north side of the barn and four parallel parking spaces shall be located in the gravel area along the edge of the pond west of the barn. The existing two driveway parking spaces in front of the single-family detached structure must not be modified for additional parking.
9. Vehicles servicing the landscape contractor business may use only the parking spaces at the rear portion of the Property. Trucks, trailers, or other equipment associated with the operation must not use the two driveway parking spaces in front of the existing single-family detached structure.
10. There must be no sign identifying the property as a landscape contractor on the Property. Existing wall sign on the side of the small barn must be removed.
11. No wholesale or retail horticultural nursery, or mulch/compost manufacturing operation, shall be conducted on the Property.
12. Plants, mulch and topsoil are to be stored on site in bags on the designated area on the east side of the barn. There shall be no storage of chemicals, pesticides, manures or debris on site.
13. Landscaping and lighting on the site must be in accordance to the Landscape & Lighting plans submitted to MNCPPC-MC Development Review Division on May 19, 2014.
14. No debris from customers' homes or properties maybe stored on site.
15. The Applicant must submit the approved amended Consent Agreement into the record of this application within 30 days of the effective date of the Board of Appeals decision.

II. STATEMENT OF THE CASE

The Applicant, Robert Pacano/D/B/A Woodstone Group, LLC (“Applicant”) seeks a Special Exception identified as S-2761 (“Application” or “Special Exception”) to allow the continuation of a landscape contractor business that has been in operation on the Property for the past eight years. The subject property is located at 28621 Ridge Road on the east side of the road (MD 27) approximately 2.5 miles north of its intersection with Kempton Road (MD 80) in the Damascus Master Plan area (“Property” or “Subject Property”). The Property consists of approximately 4.5 acres of land identified on Parcel P233 on Tax Map FY-53. The Property is zoned Rural Density Transfer (RDT).

FIGURE 1: Vicinity Map



The Board of Appeals has issued a notice scheduling a public hearing of this Application for June 27, 2014 before the Hearing Examiner. The Application was originally filed on October 27 2009 with a Public Hearing date of April 5, 2010. The Applicant requested and obtained a postponement of the hearing indefinitely because various environmental issues needed to be addressed due to the fact that the Property is located entirely within the Patuxent River Watershed Primary Management Area, the majority of the Property is located within the stream buffer, and the Property is bisected by a stream and wetlands. The Applicant revised the Special Exception site, landscape /lighting, and Forest Conservation plans to address issues and concerns that were raised by Staff and requested to restart the review process.

The landscape contractor business has five trucks and three trailers. The five trucks include two five-ton dump trucks, one one-ton and two two-ton work trucks. The Special Exception proposes a total of 14 spaces including 12 parking spaces located in a gravel area at the rear of the property and two existing spaces located in the front of the existing dwelling.

Hours of operation for the landscape contractor business are limited to 7:00 a.m. through 7:00 p.m. Monday through Friday and 8:00 a.m. through 5:00 p.m. on Saturdays. At the time of this writing, no letters or other communications have been received from members of the community either in support or in opposition to the Application.

FIGURE-2: Existing improvements



III. APPLICATION

A. The Subject Property

FIGURE-3: Subject Site



The Subject Property is irregularly shaped and consists of 4.5 acres of land. The topography slopes to the east (front to back) rising up at the eastern most (rear) portion of the Property where the forested area is located. The Property contains 0.95-acre of forest and is currently utilized as a landscape contractor business. Existing improvements include a two-story frame house that serves as an office for the business, a two-story barn (30.5'X 40") that is used to store three trailers, an equipment storage shade (18'X12') and a smaller shed also used for storage purposes, gravel parking areas, and driveways.

The Property also contains an existing farm-pond. An unnamed stream enters the site along the north central Property line and flows in a southerly direction to the farm pond. The existing house on the Property is served by well and septic. The extent of the use of the existing septic system is among the issues that are addressed as part of the review of this Application.

The Property is accessed from Ridge Road by an 83-foot wide gravel driveway apron that is connected to the two parking spaces in front of the two-story house (located 50 feet from the street). The driveway apron narrows to a 24-foot wide driveway that extends to the rear of the property and widens again as it approaches the area where most of the business activities are conducted. A gravel parking area for trucks, trailers and employee vehicles is located in this area. The large barn, the equipment storage, and the farm-pond are also located in the same area.

B. Neighborhood and Its Character

For purposes of this Application, Staff defines the surrounding neighborhood as farmland and residential uses located within a 1,500 feet radius of the Subject Property.

The neighborhood is predominantly agricultural with single-family detached residential homes on large estate type lots and unimproved parcels, all in the RDT Zone. The Subject Property is surrounded with residential properties to the north, south, and east. To the west, across Ridge Road, are located a 137 acre farm and residential homes.

FIGURE 4: Surrounding Neighborhood



C. Planning and Zoning History

The Property was placed in the R-R (renamed R-200 in 1973) Zone with the 1956 comprehensive rezoning and was placed in the RDT Zone in 1980. The 2006 Damascus Master Plan and Sectional Map Amendment retained the Property in the RDT Zone.

IV. ANALYSIS AND FINDINGS

A. Consistency with the Master Plan

Staff finds the proposed Special Exception to be consistent with the approved Master Plan for the area. The Property is within the Damascus Master Plan (2006) area. According to the Master Plan, it is located in the “rural area” and the Master Plan reconfirmed the RDT zoning for the Property. The Master Plan does not have specific recommendations regarding special exceptions for landscape contractors in the Master Plan area; however, it provides the following recommendations with respect to Special Exceptions in general within the rural areas (p 37):

- Endorse and support criteria for evaluation of agriculturally related Special Exceptions.

- When evaluating compatibility with surrounding land uses the impact of agricultural related Special Exceptions in agricultural zones do not necessarily need to be controlled as stringently as the impact of similar Special Exceptions in a residential zone.
- Establish Special Exception guidelines for rural vista protection in the Rural Area of Damascus.

Rural Vista Protection

The Master Plan encourages the protection of rural vistas that are “intrinsic to the character of the Damascus Vicinity”. In the implementation chapter, the Master Plan includes a language to guide reviews of Special Exception uses in the rural area:

“...when Special Exceptions are proposed in Transition and Rural Areas within the Damascus Master Plan area, their review should take into special consideration the preservation of these long vistas that are part of the unique character of the community. Any proposed land use that would impede those vistas should be discouraged unless it serves an important public purpose.” p.103

There is no proposed development on the Subject Property and therefore, there is no new disturbance proposed by the subject Special Exception. The proposed use is located at the rear of the Property at an elevation lower than the surrounding residential uses backed into a heavily forested area of the Property. The possibility of viewing a long vista from the road is already restricted due to topographical nature of the Property and existing forest. The use is buffered from the very few adjacent residences by substantial distance, natural topography and wooded areas.

Upper Patuxent River Watershed/ Impervious Surface

The Property is located within the upper Patuxent River Watershed. The Master Plan makes references to Patuxent River Watershed Functional Master Plan, which delineates a primary management area (PMA) limiting uses within ¼ mile from the mainstream and ⅓ mile from all tributaries of the Patuxent and restricting imperviousness to 10 percent in low-density zones (please see detailed discussion on the watershed and impervious areas below)

B. Environment

Consistency with 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 4.5-acre site on August 13, 2011. The Property currently has 0.95 acres of forest of which 0.90 acres is one contiguous stand that encompasses steep slopes on highly erodible soils, and is located along the eastern property boundary. Approximately 0.05 acres of forest which is contiguous to larger off-site forest, is located along the southern Property boundary, south of the pond. Six large trees were identified outside of the existing forest, including two specimen trees (see attached Forest Conservation report).

The Property drains to the Patuxent River, which is classified by the State of Maryland as Use III-P waters. The entire Property is located within the Patuxent River PMA and approximately 90 percent of the Property is located within a stream valley buffer (please refer to the attached FCP report for further discussion regarding encroachment into the stream buffer and mitigation). A perennial stream enters the site along the north-central property line and flows in a southerly direction, under the gravel driveway, to an existing in-stream farm pond. The stream and pond bisect the Property. Emergent wetlands line the stream channel, upstream of the pond. The land surrounding the pond and along the stream channel are maintained as a mowed lawn, with a few scattered trees. There is no mapped 100-year floodplain on the Property.

Impervious Area Limits and Stream Buffer Impacts

This Property is located entirely within the Patuxent River PMA. The PMA is an area of land located within ¼ mile (1,320 feet) of the Patuxent River and Hawlings River mainstems, and ⅛ mile (660 feet) of all tributaries of the Patuxent and Hawlings Rivers. The PMA consists of the stream valley buffer and the transition area. There are specific requirements outlined in the Environmental Guidelines for properties located within the PMA. The stream valley buffer is delineated based on the normal criteria outlined in the Environmental Guidelines, which for this Property is a minimum of 150 feet from the stream and expanded to include environmentally sensitive features such as steep slopes and highly erodible soils. The remaining area within the PMA is the transition area. The Environmental Guidelines for the PMA note that the stream buffer must be left undisturbed and in its natural state and any disturbance of the stream buffer requires M-NCPPC Staff review. The Environmental Guidelines note that overall imperviousness within the transition area should not exceed ten percent.

The Property is currently developed and no additional construction is proposed. The Property is located entirely within the PMA and approximately 90% of the site is located within the stream buffer, which severely limits the use of the Property. Currently, the Property contains approximately 25,200 square feet of impervious surfaces. Approximately 19,500 square feet of this impervious area is located within the stream buffer and includes a barn, two sheds, gravel parking area and the majority of the gravel driveway. Approximately 5,700 square feet of impervious area is located outside the stream buffer, within the transition area and includes a house, gravel parking area, and the remainder of the gravel driveway.

The Applicant has made efforts to reduce the amount of impervious surfaces for the project by proposing to remove approximately 8,300 square feet of existing impervious area, including 7,039 square feet of gravel parking area from within the stream buffer and 1,262 square feet of gravel parking area from the transition area. The remaining 16,900 square feet of impervious area is necessary for the continued operation of the landscape contractor business. The remaining features include the existing house to be used as the business office, the gravel driveway, the barn and two sheds for equipment and material storage, and gravel parking area for employees and vehicles necessary for the business. The impervious area for the project was reduced from approximately 12.9 percent to 8.6 percent. Staff finds that the Applicant has made significant strides to reduce impervious coverage given the constraints of the Property.

The Application proposes to offset the existing features to remain within the stream valley buffer and transition area by providing 0.70 acres of reforestation and 0.70 acres of native meadow plantings within the stream buffer. These plantings are in addition to the requirements being met for the forest conservation law which include 0.90 acres of forest retention and 0.10 acres of reforestation within the stream buffer. The Application proposes to protect the portion of the stream buffer that contains the stream, pond, existing forest to be retained, planted forest and planted meadow in a Category I conservation easement. The area proposed as a meadow habitat will be protected in a modified easement to allow for annual mowing necessary for the success of this habitat. The remaining stream buffer area will not be protected in a conservation easement and includes the existing impervious features to remain for the landscape contractor business to operate, the area of the embankment for the existing pond, and an area maintained in grass near the house/office along Ridge Road. The area maintained in grass includes the existing well.

The septic system serving the Property has limitations. The existing septic system is not built to current standards; however, the Montgomery County Department of Permitting Services, by concept agreement, has allowed the system to continue to serve the existing house provided that the use of the house is limited to serving as an office to the landscape contractor business. Residential use would not be allowed while the house is being used as an office for the business since the septic system does not have the capacity to serve both uses. The Applicant has submitted a revised concept agreement to DPS agreeing to the restriction placed on the use of the house. By e-mail dated May 20, 2014, DPS has stated that the amended agreement is acceptable pending any revisions made necessary by the Hearing Examiner's decision. Staff recommends that the Applicant should submit the approved Concept Agreement to the Board of Appeals 45 days after the effective date of the Board's decision.

In the event that the septic system must be relocated in the future, land is being made available outside of the conservation easement and the well arc to allow for this to happen. For these reasons, Staff finds that the area proposed for protection in a conservation easement and the proposed amount of impervious surfaces is acceptable.

Forest Conservation

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Final Forest Conservation Plan has been submitted for review and is recommended for approval as a separate action by the Planning Board as part of this Special Exception Application (see attached Forest Conservation report).

Forest Conversation Variance Request

The Applicant submitted a variance request in a letter dated April 9, 2014 (Attachment C). The Applicant proposes to remove one (1) specimen tree that is 30 inches and greater, diameter at breast height (DBH), which is considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Note: *For a complete analysis of conformance with Chapter 22A, please refer to the Final Forest Conservation Plan Staff report being considered concurrently with this Special Exception review.*

Stormwater Management

The Applicant must obtain a sediment control permit because land disturbance will exceed 5,000 square feet. However, DPS has indicated that stormwater management is not required for this Application because the proposed disturbance is for the sole purpose of removal of impervious surfaces.

V. SPECIAL EXCEPTION FINDINGS

A. Standard For Evaluation (59-G-1.2.1)

Special Exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a Special Exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a Special Exception.

As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment. What must be determined is whether these effects are acceptable or would create adverse impacts sufficient to result in denial. The inherent, generic physical and operational characteristics associated with a landscape contractor business are (1) buildings, structures, outdoor areas for the storage of plants and gardening-related equipment (2) outdoor storage of mulch, soil and landscaping materials in bulk and in containers (3) on-site storage of business vehicles and equipment including small trucks and landscaping trailers (4) traffic associated with the trips to the site by employees, suppliers and customers; trips to and from the site by employees engaged in off-site landscaping activities, (5) adequate parking areas to accommodate customers and Staff, (6) dust and noise associated with the movement of landscaping products and the loading and unloading of landscaping equipment, and (7) long hours of operation.

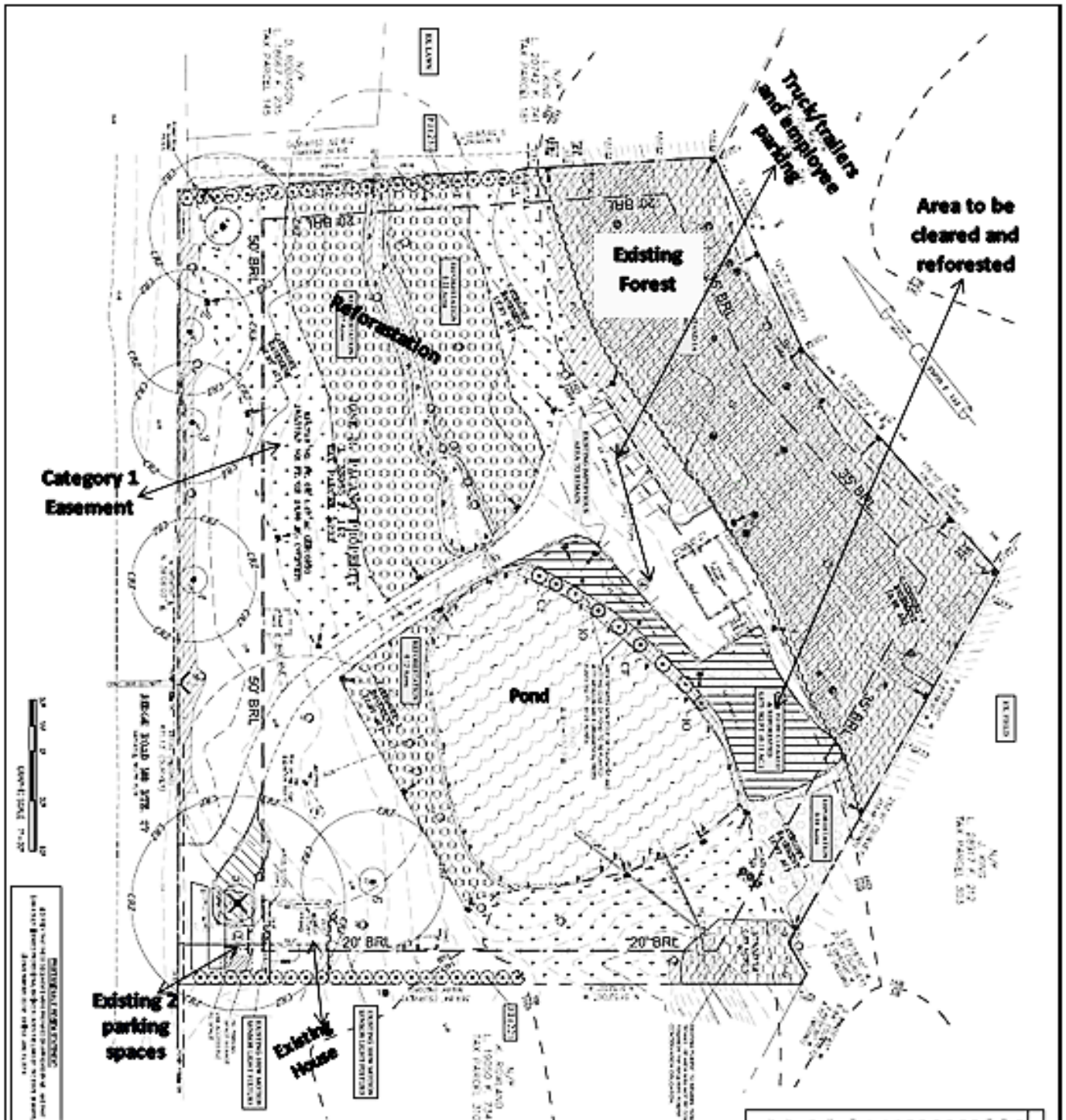
The proposed landscape contractor is small in scale and does not have many of the characteristics that might produce adverse effects on adjoining neighbors or the surrounding area. Vehicular traffic is limited to those generated by employee of the operation. With the exception of the existing dwelling which will be utilized as an office, most of the activities related to the operation of the business are conducted about 300 feet from the road behind a farm pond and surrounded with existing trees and areas that will be reforested as part of this Application. Most of the business is conducted off-site and there will be no customers coming to the site. The site is strictly used for storage of equipment, few bagged mulch items, and vehicles associated with the business. The business will generate minimal noise

since mulch is not manufactured on site. Many of the characteristics of the Special Exception are inherent. The scale of the existing structures, the internal vehicular circulation system, and the on-site parking areas shown on the Special Exception site plan are operational characteristics typically associated with a landscape contractor business.

Staff, however, considers that the restrictive condition under which the existing septic facility is utilized and the associated Consent Agreement that the Applicant has filed in the Montgomery County Land Records, a non-inherent characteristic but one of a nature that does not rise to a level to warrant a denial. The Applicant has filed a revised Consent Agreement with the County, which specifies that as long as the Applicant is operating the subject landscape contractor business on the site, the existing dwelling will not be used for residential purposes. The dwelling will be used only as an office in connection with the operation of the landscape contractor business. The Consent Agreement was required by the Department of Permitting Services (DPS) as part of the Sewage Disposal Permit issued in 1999 to the owner of the Property at that time. The Applicant has amended the agreement to ensure that the existing septic facility is not overwhelmed by use of the site as a landscape contracting business. The Well and Septic Section of DPS has found the revised Consent Agreement, pending the Hearing Examiners decision.

With the recommended conditions of approval, the inherent and non-inherent impacts associated with the proposed use do not rise to a level sufficient to warrant a denial of the Application.

FIGURE-5: Special Exception Site, Landscape and Lighting Plan



B. General Development Standards (59-G-1.23)

(a). Development Standards-59-G-1.23 (a): Special Exceptions are subject to the development standards of the applicable zone where the Special Exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

The following table summarizes the relevant RDT Zone development standards:

Development Standards			
RDT-	Required		Proposed/Existing
	59-C-9.4	59-G-2-30.00	
Minimum Lot Area	40,000 SF	87,120 SF (2AC)	196,020 SF (4.5 AC)
Minimum Lot width:			
▪ at street line	25ft		461 ft
▪ at building line	125 ft		461 ft
Maximum Building Height	50 ft		20± ft
Maximum Building Coverage	10%		1.28% total
Minimum Building Setback:			
a. From street	50 ft		54.2+
b. From Adjoining lot			
Side yard:			
▪ One side	20 ft		23.5 ft
▪ Sum of both	40 ft		435.70 ft
sides	50 ft		273 ft
c. Rear yard			
Minimum Setback for parking and loading		50 ft	50+ft(excluding parking for the existing dwelling)
Yard Requirement-Accessory building			
a. Front lot line	50 ft		315ft-Barn and shade; 50 small shade
b. From side lot line	15ft		226 ft min
c. Rear lot line	10 ft		150 ft min

(b) Parking requirements: Special Exceptions are subject to all relevant requirements of Article 59-E.

In general, the Application meets the applicable requirements of Article 59-E, including 59-E-2-21: Arrangement and Marking, 59-E-2-22: Size of spaces, 59-E-2-23: Space for Handicapped, 59-E-2-4: Access and circulation, 59-E-2-6: Lighting and 59-E-2-7: landscaping. Because the Subject Property is in an agricultural zone and surrounded with properties also within the agricultural zone, Sections 59-E.2-8: Parking facilities within or adjoining zone Section 59-E-2-83: Parking and Loading facilities for special exception uses in residential zones and Screening from land in a residential zone or institutional property do not apply to the Subject Application. However, the specific special exception requirement of Section **59-G-2.30.00 : Landscape Contractor** contains the following two requirements under which

parking and loading, adequacy of parking, impacts on adjoining neighbors, and screening and buffering would be addressed.

Section 59-G-2.30.00 (2) Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

See below.

Section 59-G-2.30.00 (3) states that the number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.

Please see Staff's findings for specific Special Exception requirement, page 20 of this report under V.D (2) and (3)– Standards and Requirements (59-G-2) where both of the above two subsections are addressed.

(c) Minimum frontage (waiver)

The Subject Property has 461 feet of frontage on Ridge Road and meets the minimum frontage requirement of 25 feet.

(d) Forest conservation. If a Special Exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the Special Exception application and must not approve a Special Exception that conflicts with the preliminary forest conservation plan.

The Application is subject to Chapter 22A, the Montgomery County Forest Conservation Law. Final Forest Conservation Plan recommendations are reviewed by the Planning Board as a regulatory item, separate from the review of the Special Exception Application. Staff is recommending approval of the FCP, with conditions. This Application is also subject to Chapter 22A-21, which requires that a variance be granted by the Planning Board for the proposed removal of one specimen tree. Staff recommends approval of the Forest Conservation Plan and the requested variance.

Note: Please refer to the Forest Conservation Plan Staff report being reviewed concurrently with this Special Exception for a complete analysis of Chapter 22A.

(e) Water Quality Plan

Not applicable

(f) Signs. The display of a sign must comply with Article 59-F.

The Applicants indicated that no identification sign would be placed on the Property. The applicant has indicated that the existing wall sign that is on the small shades located north of the existing detached house will be removed.

C. General Conditions (59-G-1.21)

(a) A Special Exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible Special Exception in the zone.

The proposed use is permitted by Special Exception in the RDT Zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a Special Exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a Special Exception to be granted.

With Staff's recommended conditions of approval, the proposal satisfies the specific Special Exception standards and requirements of Section 59.G-2.30.00 for granting of a Special Exception for a landscape contractor business.

(3) Will be consistent with the General Plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a Special Exception must be consistent with any recommendation in a master plan regarding the appropriateness of a Special Exception at a particular location. If the Planning Board or the Board's technical Staff in its report on a Special Exception concludes that granting a particular Special Exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the Special Exception must include specific findings as to master plan consistency.

The Property is located in the area covered by the Damascus Master Plan, which reconfirmed the RDT zoning for the Subject Property. The Plan states that, in agricultural zones, the evaluation of compatibility of agricultural related Special Exception uses with surrounding land uses, their impacts do not necessarily need to be controlled as stringently as the impacts of similar Special Exceptions in a residential zone.

The Master Plan also stresses (p. 103) the importance of protecting the rural vistas in the Rural Areas of Damascus. The proposed use is an agriculturally related use (Agriculture-Commercial) and as such is appropriate in the RDT Zone. The Master Plan supports agriculturally related uses as a means to support the existing agricultural economy and to continue the protection of the Agricultural Reserve. With regard to protecting the

vistas, as discussed earlier in Section IV (A) of this report, the proposed use would have no negative impact on the vistas.

The requested Special Exception is consistent with the policies and recommendations contained in the Damascus Master Plan.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.**

The proposed use will be in harmony with the general character of the neighborhood and satisfies this requirement.

The landscape contractor use on the site was established prior to the Applicant acquisition of the Property in 2006. The use would not generate a level of traffic that would raise concern for congestion on the streets. The access point is adequate to accommodate the site-generated traffic. The proposal provides for safe, sufficient and orderly internal traffic. Adequate off-street parking spaces are provided to satisfy the needs of the use. The parking areas for the trucks and trailers are adequately distanced and well screened from the adjoining properties and the adjacent road.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

For the reasons stated in the previous section, the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood. Moreover, the subject Application does not propose to increase or expand the existing improvements on the Property. Rather, the Applicant proposes to retain 0.90 acres of existing forest, and plant 0.80 acres of additional forest. The Applicant also proposes to create 0.70 acres of native meadow habitat within the stream buffer onsite. The forest conservation plan indicates that these areas as well as the stream and inline pond will be protected in a Category I conservation easement.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

The proposed use is not expected to cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site.

The Applicant has indicated that the business operation consists of “providing landscaping services to off-site locations and the site is strictly used for the storage of equipment and vehicles associated with said business”. No sale of plant material or garden supplies will be conducted on the Property. A small space for the storage of

bagged mulch and topsoil will be located on the northeastern portion of the Property near the barn. No mulch will be manufactured and no composting of debris will be conducted on site.

There will be no light spillage to the adjacent properties. Outdoor lighting is limited to two motion sensor lights—one mounted (existing) on the existing dwelling to provide lighting for the parking area and another (proposed) to be mounted on the barn structure to provide lighting for the parking area at the rear portion of the Property.

Any debris which is removed from customers' homes or properties will be taken directly to the County Transfer Station, and will not be allowed to be brought back to the site or stored on site.

- (7) Will not, when evaluated in conjunction with existing and approved Special Exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of Special Exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special Exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.**

There are no other approved Special Exceptions within the immediate vicinity of the Property. Although there are some residential uses within the neighborhood boundaries (as defined by Staff), the site is located within an agricultural zone, not residential zone, with notable presence of agricultural uses in the area. The subject Special Exception is consistent with the recommendation of the Master Plan and does not alter the nature of the area.

- (8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

The proposed Special Exception will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area. The landscape contractor use has been established on the Property prior to the Applicant's acquisition of the Property. There is no indication of negative impacts on the record from the existing landscape contractor use. The current Application does not propose any changes to the existing operation or improvements on the site. The Application, if approved, will allow the use to continue operation. It also provides for preservation of existing forest and reforestation; it will lower existing impervious surface levels and will provide for an improved stream valley protection on the Property.

- (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.**

- A. If the Special Exception use requires approval of a Preliminary Plan of Subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a Preliminary Plan of Subdivision must be a condition of granting the Special Exception.**

The subject Special Exception is not subject to approval of a Preliminary Plan of Subdivision because no building permits are required for this Application or requested by the Applicant.

- B. If the Special Exception:**

- (i) does not require approval of a new Preliminary Plan of Subdivision; and**
- (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the Special Exception's impact; Then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the Special Exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.**

The Special Exception does not require approval of a new Preliminary Plan of Subdivision. The Application does not propose for the construction of any new structures. Existing public facilities—public roads, storm drainage, fire and police protection are adequate to serve the proposed use. The Application is exempt from the Local Area Transportation Review because it generates less than 30 peak hour trips. As an application in the Damascus Policy Area, it is not subject to Policy Area Mobility Review or Transportation Policy Area Mobility Review according to current Subdivision Staging Polices. The Applicant must obtain a sediment control permit. In addition, the Applicant must submit the approved amended concept agreement into the record of this Application. The Application meets all requirements under the Adequate Public Facilities test.

(i) Water and Sewer Service

The Property is in Water Category W-6 and Sewer Category S-6 indicating that there is no planned community water and sewer service is available or planned. The previous owner of the Property had installed a septic system in 1998 without a proper permit. The system was installed on the neighboring property without an easement. Inspection of the system indicated a malfunction that required a repair of the system based on a Consent Agreement between the owner and the Department of Permitting Services (DPS). In January of 2000, DPS issued a Certification of Sewage Disposal System to allow replacement of the malfunctioning system installed on the adjoining property. The certificate contains the following comments:

“Due to substandard percolation rates and inadequate septic reserve area, the septic system installed under this permit does not meet all current county and state standards. Although this is the best repair possible, there is a greater than normal risk of premature failure of this system. Use of this system and the dwelling it serves is governed by the terms of conditions of a Consent Agreement recorded in the Montgomery County Land Record at Liber 17523, Folio 195 et seq....”

The Application does not propose any exterior changes to the existing dwelling. The dwelling will be used exclusively as an office for the landscape contractor business. The Applicant has stated that the dwelling will not be rented or used as a residence while it is used as office for the business since the house does not have adequate septic service to serve both a landscape contractor’s office and a residential use. A revised Consent Agreement has been submitted to DPS for approval. The Applicant has indicated that the amended Consent Agreement is intended to ensure that the existing septic field is not overwhelmed by the landscape contractor use. The septic field has been allowed to be 75 feet from the existing well by the Consent Agreement. The well is located in the north side yard approximately 70 feet from the existing dwelling. By e-mail dated May 20, 2014 the Well and Septic Section of DPS has indicated that the amended agreement is acceptable to the DPS, pending any revisions made necessary by the Hearing Examiner’s decision.

(ii) Transportation

The Local Area Transportation Review (LATR)

The guidelines require a traffic study to be performed if the development generates 30 or more peak-hour trips. Based on information submitted by the Applicant, the Facility would generate a maximum of four peak-hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and a maximum eight peak-hour trips during the weekday evening (4:00 p.m. to 7:00 p.m.) peak periods, respectively. Therefore, no traffic study is required to satisfy the Local Area Transportation Review test.

Transportation Policy Area Review (TPAR)/ Policy Area Mobility Report (PAMR)

According to the 2012-2016 Subdivision Staging Policy (SSP), this Application was submitted before January 1, 2013 and is subject to either Policy Area Mobility Report (PAMR) or Transportation Policy Area Review (TPAR). According to the current SSP, the application may meet its requirement under TPAR by complying with all applicable requirements of either TPAR or PAMR that were in force immediately before the County Council's SSP resolution, Resolution No. 17-601, was amended in 2012. Since this Application is located in the Damascus Policy Area, there are no PAMR or TPAR mitigation requirements.

Site Access and Vehicular/Pedestrian Circulation

Access to the landscape contractor business will be via an individual driveway from Ridge Road (MD 27). Ridge Road is classified as a two-lane Country Arterial

with a right-of-way of 100 feet and Road is designated as a proposed shared roadway (SR-39) also known as an on-road bikeway per the 2006 Damascus Master Plan. There are no sidewalks in the vicinity of the Subject Property and no sidewalks are proposed along this section of Ridge Road.

Staff finds that the proposed access points and internal traffic/pedestrian circulation system shown on the Special Exception site plan to be adequate. The requested Special Exception will not have an adverse effect on the nearby road system provided that the following conditions are met:

(iii) Fire and Police

The Damascus Volunteer Fire Department is located at 26334 Ridge Road in Damascus, approximately three miles south of the subject property. The closest Police Station, Montgomery County Police Department District 5, is located at 20000 Aircraft Road in German town approximately 12 miles south of the subject site.

- C. With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.**

The proposed use will be adequately served by existing public facilities. The Local Area Transportation Review (LATR) Guidelines require that a traffic study be performed if the use generates 30 or more peak hour trips. As noted, the use would generate a maximum of eight trips during the weekday morning peak period and a maximum of seven trips during the weekday evening peak period. Therefore, a traffic study is not needed to satisfy LATR requirements. The subject Special Exception is not likely to negatively impact the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an Applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.**

No finding is required.

- (c) The Applicant for a Special Exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.**

The Application satisfies all applicable general and specific standards. The Applicant has met the burden of proof under the specific requirements of Section 59-G-2.30.00 Landscape contractor and the general conditions under Section 59-G-1.21.

D. Standards and Requirements (59-G-2)

Section 59-G-2.30.00: Landscape contractor

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.

The Applicant has indicated that the use will provide landscaping services at various locations within the County and that the site is strictly used for storage of bagged planting materials (mulch, fertilizers, etc.) and equipment and vehicles associated with the business. All business arrangements are conducted off-site. No wholesale or retail horticultural nursery, or mulch/compost manufacturing operation exist on or are proposed for the Property. The only other use on the Property is a residential structure, which will be used strictly as an office for the operation.

- (1) **The minimum area of the lot must be 2 acres if there are any on-site operations, including parking or loading of trucks or equipment.**

The proposal complies with this requirement. The Subject Property comprises 4.5 acres of land.

- (2) **Areas for parking and loading of trucks and equipment as well as other on site operations must be located a minimum of 50 feet from any property line. Adequate screening and buffering to protect adjoining uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.**

Figur-6 Existing House and parking

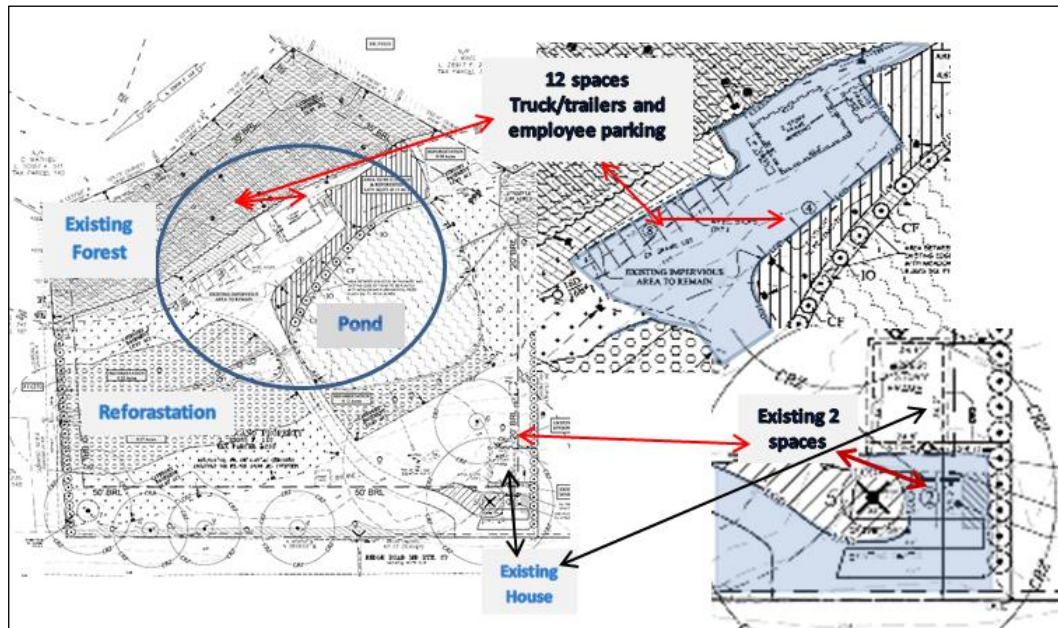


Areas for parking and loading of trucks and equipment as well as other on-site operations are located a minimum of 50 feet from any property line. With the exception of the existing dwelling that serves as an office for the business, most of business related activities including the parking areas are located deep into the interior of the Property removed from the views of passing motorists and adjoining properties.

The existing two-car space is part of the existing detached single family structure and will not be altered or changed except for a handicapped parking delineation of one of

the spaces. The driveway access used by the trucks and trailers that leads to the parking area at the rear of the property is distanced from adjoining properties by over 50 feet. Adequate buffering and screening is provided in the form of existing forest, proposed reforestation, slopes, landscaping and substantial distance from nearest residential homes and roads.

Figure 7: Parking Spaces



Staff recommends that trucks and trailers associated with the operation of the business must not be parked on the two parking spaces located in front of the single family detached structure. All trucks, trailers, and employees' (other than the two working in the office) vehicles should be parked only at the parking areas on the north side of the barn and west of the barn along the edge of the farm pond.

- (3) **The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted.**

Adequate parking is provided for the proposed landscape contractor business. The business has eight staff, two of whom will work out of the house that is converted to an office for the business. The business also uses a total of five trucks and three trailers. The Special Exception proposes a total of 14 parking spaces. Eight parking spaces are provided in the gravel area on the north side of the barn and four parallel parking spaces are located in the gravel area along the edge of the pond, west of the barn. In addition, the existing two driveway parking spaces in front of the dwelling are retained for the exclusive use of the office.

- (4) **No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse.**

There will be no sale of plant materials or garden supplies on the site.

- (5) **The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses.**

The hours of operation for the landscaping contractor business are from 7:00 a.m. to 7:00 p.m., Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturdays. Employees arrive in the morning to pick-up company vehicles, materials and equipment, and return in the evening to retrieve their private automobiles. These operating hours are not likely to be disruptive to the adjacent properties or the general neighborhood.

- (6) **In evaluating the compatibility of this Special Exception with surrounding land uses, the Board must consider that the impact of an agricultural Special Exception on surrounding land uses in the agricultural zones does not necessary need to be controlled as stringently as the impact of a Special Exception in the residential zones.**

The Property is located within the Agricultural Reserve and classified in the RDT Zone. The proposal meets all specific and general Special Exception requirements and is in conformance with the recommendations of the Master Plan. The Applicant has operated the subject Special Exception use on the Property, albeit without permission, for the past eight years without any incident. The proposed use will not intensify or exacerbate existing traffic and parking noise or adversely affect the immediate rural neighborhood.

Figur-9 Areal View of Subject Property



VI. COMMUNITY OUTREACH

At the time of this writing, no communication has been received from the community either in support or in opposition of the proposed Special Exception.

VII CONCLUSION

The proposed Special Exception satisfies all applicable requirements for approval of a Special Exception as specified in the Montgomery County Zoning Ordinance. Moreover, the proposed development is consistent with the recommendations of the 2006 Damascus Master Plan. There are no unacceptable traffic, circulation, noise or environmental impacts associated with the Application provided that the recommended conditions are satisfied.

Based on the foregoing analysis, Staff recommends Approval of Special Exception S-2761, subject to the conditions found in Page 3 of this report.

VIII. ATTACHMENTS

- A Plans and drawings
- B. Supplemental information
- C. Final Forest Conservation Plan Recommendation

ET/S-2761/05302014

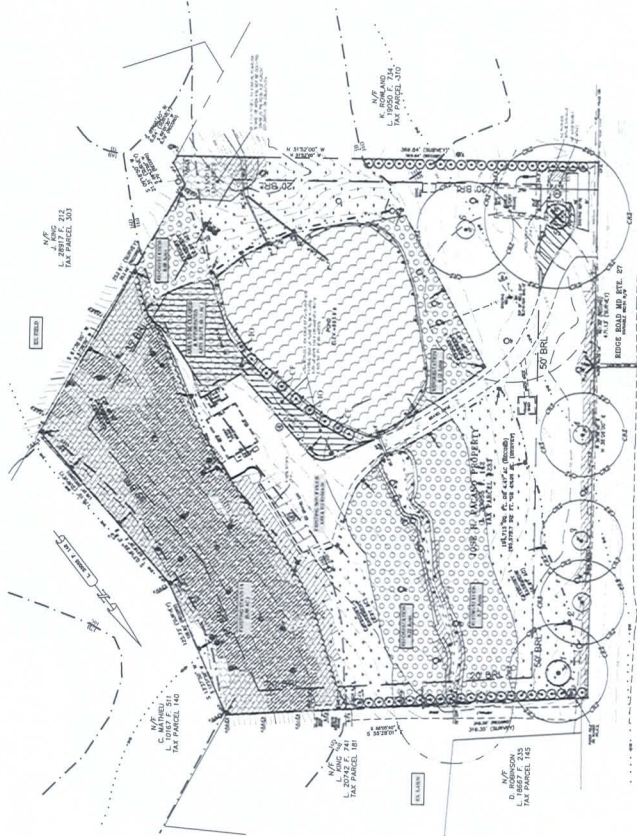
PLANS AND DRAWINGS

Attachment-A





PACANO PROPERTY 28621 RIDGE ROAD SPECIAL EXCEPTION PLAN



DEVELOPMENT STANDARDS	
REQUIRED/ALLOWED	PROHIBITED
Minimum Net Lot Area: 40,000 Square Feet	495,576 Square Feet (4.5 Acres)
Building Height: 50'	20' to 25'
Maximum Building Coverage: 10%	4 Buildings: 1,247 S.F. 2 Buildings: 2,120 S.F. 1 Building: 1,247 S.F. 4 Signs: 2,240 S.F. 7600' 2513 S.F.
Minimum Lot Width: 125' L	468' L
Minimum Front Setback: 15' Fronting L.S.	CHIT
Minimum Side Setback: 20' 1 Side: 40' 2 Sides: 35'	5'
Minimum Rear Setback: 35'	35'
Front on Street Line: 50' over 1/2 acre; 25' setback	315' (Bldg), 26' (Sign) 1-97' (Sign) 2;
Minimum Lot Area: 40,000 Sq. Ft.	25' 276'
Minimum Lot Area: 40,000 Sq. Ft.	10'

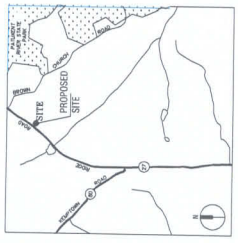
NOTES:
1. The development standards shown apply to both existing buildings.
2. Accessory building standards are applied to existing shed.

GENERAL NOTES:

- Parcel 233 Address: 28621 Ridge Road, Mt. Airy, MD, 21771
- Deed Reference: L. 33855, P. 142
- Zoning: RDT
- Proposed Use: Landscape Contractor
- Existing Site Area: 4.50 Acres (193,578 Square Feet)
- Election District: 12B
- Tax Map: PY53
- WSSC 200 Map: 240 NW 09
- Watercourse: Potomac River
- Water Category: R-6
- Soil: Category: 2-6
- Bedrock: Spent material 14' (1 not accessible) (C) (see sheet 1) (detached from the front for office, 1.2 in the rear for truck)

SPECIAL EXCEPTION NOTE:

A SPECIAL EXCEPTION APPLICATION IS BEING FILED FOR THE USE OF THIS PROPERTY AS A LANDSCAPE CONTRACTOR'S BUSINESS. THE PROPOSED USE IS ALLOWED AS A SPECIAL EXCEPTION UNDER THE ZONING REGULATIONS OF THE MONTGOMERY COUNTY ZONING UNIFORM APPROVAL BY THE MONTGOMERY COUNTY BOARD OF APPEALS.



VICINITY MAP

SCALE: 1"=200'

SHEET INDEX:

- COVER SHEET
- SPECIAL EXCEPTION APPLICATION SITE LANDSCAPE AND LIGHTING PLAN

PROFESSIONAL REVIEW STATEMENT:
I CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A duly LICENSED PROFESSIONAL ENGINEER IN THE STATE OF MARYLAND. LICENSE NUMBER: 2712 EXPIRES: JAN. 15, 2014

SEAL

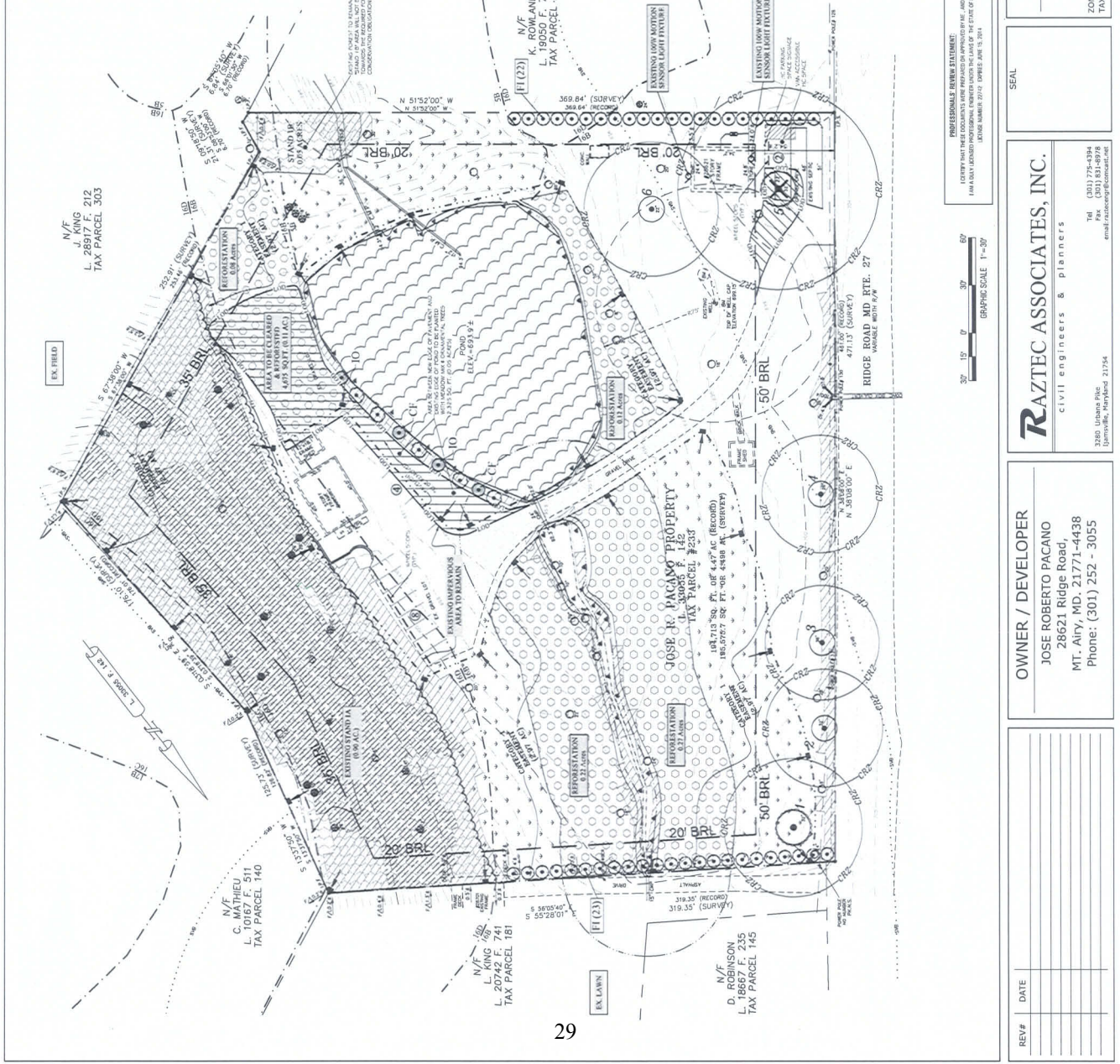
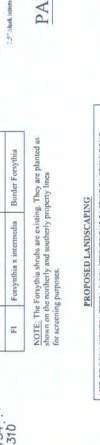
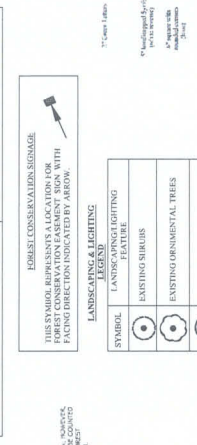
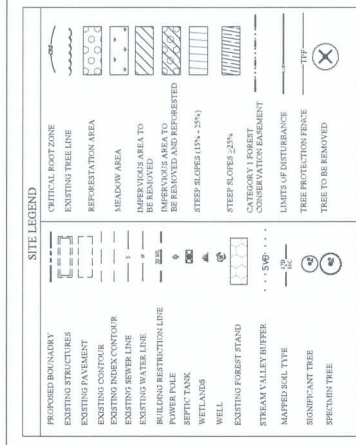
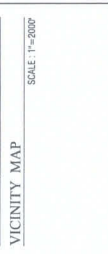
RAZTEC ASSOCIATES, INC.
civil engineers & planners
3280 Urbans Pike
Baltimore, Maryland 21254
Tel: (301) 775-4394
Fax: (301) 931-8978
email: raztec@raztecinc.com

OWNER / DEVELOPER
JOSE ROBERTO PACANO
28621 Ridge Road,
MT. Airy, MD, 21771-4438
Phone: (301) 252 - 3055

REV#	DATE

SCALE: 1" = 50'
CHECKED BY: MR
DRAWN BY: SL
DATE: APRIL, 2014
SHEET NUMBER: 1 of 2

COVER SHEET
28621 RIDGE ROAD, DAMASCUS
MONTGOMERY COUNTY, MARYLAND
12B ELECTION DISTRICT
ZONE: RDT
TAX MAP: PY53



PROFESSIONAL REVIEW STATEMENT:
I HEREBY STATE THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A LICENSED PROFESSIONAL LANDSCAPE ARCHITECT IN THE STATE OF MARYLAND.
DATE: 04/14/2014

SEAL

RAZTEC ASSOCIATES, INC.
civil engineers & planners
3380 Urbana Pike
Baltimore, Maryland 21284
Tel: (301) 774-0294
Fax: (301) 831-8978
email: raztec@raztec.com

OWNER / DEVELOPER
JOSE ROBERTO PACANO
28621 Ridge Road,
MT. Airy, MD. 21771-4438
Phone: (301) 252 - 3055

**SPECIAL EXEMPTION APPLICATION
SITE, LANDSCAPING & LIGHTING PLAN**
28621 RIDGE ROAD, DAMASCUS
MONTGOMERY COUNTY, MARYLAND

DATE: APRIL, 2014
SCALE: 1" = 30'
CHECKED BY: MR
DRAWN BY: SL
SHEET NUMBER: 2 of 2
ZONE: RDT
TAX MAP: 1153
12th ELECTION DISTRICT

SUPPLEMENTAL INFORMATION

Attachment-B



Tesfaye, Elsabett

From: von Gunten, Gene <Gene.vonGunten@montgomerycountymd.gov>
Sent: Tuesday, May 20, 2014 12:33 PM
To: David C. Gardner
Cc: Tesfaye, Elsabett; pacanowoodstone@hotmail.com
Subject: RE: Amended Consent Agreement for Woodstone Landscaping Special Exception

Mr. Gardner:

The amended agreement is acceptable to the Department of Permitting Services, pending any revisions made necessary by the Hearing Examiner's decision.

Thanks,

Gene von Gunten
 Manager, Well & Septic Section

From: David C. Gardner [<mailto:dgardner@davidgardnerlaw.com>]
Sent: Monday, May 19, 2014 10:50 AM
To: von Gunten, Gene
Cc: elsabett.tesfaye@montgomeryplanning.org; pacanowoodstone@hotmail.com
Subject: Amended Consent Agreement for Woodstone Landscaping Special Exception

Dear Gene:

Attached is a final revised Amended Consent Agreement with the changes that were requested by the County Attorney.

I understand that changes to the 4th and 5th whereas paragraphs may still be needed depending on the outcome of the Special Exception Hearing before the Hearing Examiner. However, these are the conditions that we expect to be imposed. I just want to know that they are acceptable to you. If so, we intend to inform the Hearing Examiner of that fact. If he or she decide to impose more conditions, we will certainly add them to the Consent Agreement.

Please confirm that this language is otherwise acceptable to you so that we can inform the Hearing Examiner of that fact. Thank you very much for your assistance in working with my client to draft acceptable language to Amend the existing Consent Agreement.

Very truly yours,

David C. Gardner
 Gardner Law Firm, PC
 600 Jefferson Plaza, Suite 308
 Rockville, MD 20852
 (301) 762-8475
 Fax: (301) 762-1180
 E-Mail: dgardner@davidgardnerlaw.com
www.davidgardnerlaw.com

This message contains information from the Gardner Law Firm, PC that may be privileged, confidential or otherwise protected from disclosure. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message.

From: biz13r3ai@verizon.net [<mailto:biz13r3ai@verizon.net>]
Sent: Monday, May 19, 2014 10:58 AM

Tesfaye, Elsabett

From: Kishter, Mary Jo
Sent: Tuesday, May 20, 2014 2:07 PM
To: Tesfaye, Elsabett
Subject: FW: Pacano Property/Woodstone Group Special Exception Application S-2761

Here is the email from DPS regarding the sediment control and swm requirements for this project. Perhaps we should reference the date of email in the staff report.

Mary Jo

From: Etheridge, Mark [<mailto:Mark.Etheridge@montgomerycountymd.gov>]
Sent: Tuesday, May 06, 2014 10:27 AM
To: Kishter, Mary Jo
Cc: Tesfaye, Elsabett
Subject: RE: Pacano Property/Woodstone Group Special Exception Application S-2761

Hi Mary Jo –

Any land disturbance of 5,000 square feet or more requires a sediment control permit. That's state and county law. If the disturbance is solely for removal of impervious area they probably do not need to address stormwater management.

Mark C. Etheridge
 Manager
 Water Resources Section
 Department of Permitting Services
 255 Rockville Pike, 2nd Fl.
 Rockville, MD 20850
 240-777-6338
 249-777-6339 (fax)

From: Kishter, Mary Jo [<mailto:maryjo.kishter@montgomeryplanning.org>]
Sent: Tuesday, May 06, 2014 9:29 AM
To: Etheridge, Mark
Cc: Tesfaye, Elsabett
Subject: Pacano Property/Woodstone Group Special Exception Application S-2761
Importance: High

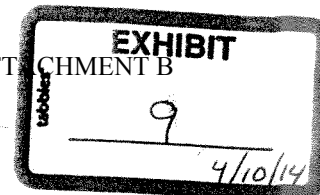
Mark,

We are finalizing our staff reports for a Planning Board hearing on the above application. The property is an existing landscape contractor operating without a special exception located at 28621 Ridge Road in Damascus (approx.. 2,160 feet north of the intersection of Ridge Road (MD 27) and Kempton Road (MD 80)). The only proposed disturbance is the removal of approximately 8,300 s.f. of existing impervious area (gravel parking area). The applicant's team has said that no SWM or sediment control permit is required, but I'd like confirmation from your office before I put that in my memo to the Planning Board.

Thanks in advance for your help. Let me know if you have any questions.

Mary Jo

ATTACHMENT B



Dave Gardner

From: David C. Gardner [dgardner@davidgardnerlaw.com]
Sent: Tuesday, August 24, 2010 5:28 PM
To: 'Kishter, Mary Jo'
Cc: 'woodstonegroup6@comcast.net'; 'Raztec Associates, Inc.'
Subject: FW: Pacano Property/S-2761

Ms. Kishter:

Following is an email from Gene Von Gunten, who is the septic and well expert for the County who approved the original consent order. As you can see, he would not object to a modification of the consent order prior to the beginning of use of the property as a landscape operation, provided that the clothes washer is removed from the structure at that time. He also has no objection to the trenches being constructed under the gravel driveway, as that is the way it was designed.

Our engineer, Mike Razavi, is in the process of preparing a rough draft of the modifications that we have agreed to make to the application. I will forward them to you shortly for your comments before it is finalized.

Very truly,
 David C. Gardner
 Law Offices of David C. Gardner
 600 Jefferson Plaza, Suite 308
 Rockville, MD 20852
 (301) 762-8475
 Fax: (301) 762-1180
 E-Mail: dgardner@davidgardner.com
www.davidgardnerlaw.com

From: von Gunten, Gene [mailto:Gene.vonGunten@montgomerycountymd.gov]
Sent: Monday, August 23, 2010 8:35 AM
To: Dave Gardner
Subject: RE: Pacano Property/S-2761

Mr. Gardner:

The proposed use, as you have described, would have a lower projected sewage flow than the single-family house (use) at present. As such, this office would not object to a modification of the consent agreement prior to the beginning of use as a landscape operation.

We will require that and clothes washing machine be removed from the structure when the conversion takes place.

The septic trenches were designed to be under the gravel driveway; and that is permitted.

Gene von Gunten
 Manager, Well & Septic Section
 MCDPS

-----Original Message-----

From: David C. Gardner [mailto:dgardner@davidgardnerlaw.com]
Sent: Friday, August 20, 2010 12:34 PM
To: von Gunten, Gene

AMENDMENT TO CONSENT AGREEMENT

By this Agreement, Montgomery County, Maryland (hereinafter the "County"), by and through its lawful agent, the Montgomery County Department of Permitting Services (hereinafter the "Department") and Jose Robert Pacano, (hereinafter the "Owner") do hereby consent and agree to amend the Consent Agreement (hereinafter the "Agreement") previously recorded in the Land Records for Montgomery County at Liber 17523, Folio 195 et. seq, which Agreement restricts the use of the property located at 28621 Ridge Road, Mt. Airy, Maryland 21771 (hereinafter the "Property").

Whereas, the Agreement was recorded on September 27, 1999, to enable the previous owner of the property to replace a failing septic system, which was located partially on an adjoining property, with a new septic system which is located entirely on the subject property; and

Whereas, due to the experimental nature of the septic system and the lack of future septic repair areas, the Agreement placed limitation on the future development of the property ; and

Whereas, these limitations on development included an agreement that any future expansion of the occupancy or buildings on the Property will require an upgraded septic system in compliance with all regulations then current or completion of the public sewer connection to the Property prior to use or permit approval; and

Whereas, the Owner intends to use the Property for a Landscape Contracting Business, and the County has issued a Special Exception for use of the Property as a Landscaping Contracting Business with a maximum of eight employees; and

Whereas, as a condition of the approval of said Special Exception (Case No. S-2761), the Property cannot be used as a single family residence for so long as it is being used as a Landscape Contracting Business due to the impact that the use of the property for both uses would have on the septic system; and

Whereas, the Owner has agreed to this condition and intends to memorialize this agreement by recording this Agreement.

Now, Therefore, the parties agree as follows:

1) The Owner will continue to maintain the septic system on the property in accordance with the terms of the Consent Agreement recorded at Liber 17523, Folio 195, et seq., which agreement will remain in full effect except as modified by this Amendment.

2) That for so long as the Property is being used in connection with a Landscape Contracting Operation, the plumbing in the house may be used by a maximum of eight employees of the business; and

3) That for so long as the Property is being used in connection with a Landscaping Contracting Operation, the house may not be used as a residence and no washing machine will be connected to the plumbing in the house; and

4) That for so long as the Property is being used in connection with a Landscape Contracting Operation, the Owner will comply with the terms of the Special Exception issued to the Owner is Case No. S-2761; and

5) That if the Special Exception is abandoned and the Property is no longer used in connection with a Landscape Contracting Operation, the Owner may resume use of the home as a residence.

6) That the Consent Agreement and this Amendment to Consent Agreement will become null and void if and when the building on the Property is connected to the public sewer system.

7) The Owner, for himself, his heirs, agents, legal representatives, successors and assigns, releases Montgomery County, Maryland, its agencies and officers, agents and employees, from any and all claims for liability or loss from injury or property damage they may now have or that might subsequently arise out of or be connected with the terms of this Amendment to Consent Agreement, any well contamination resulting from the use of the new septic system, or the approval or use of the septic system described herein for the Property. This release includes, but is not limited to, a release and covenant not to sue the aforementioned persons in any administrative forum, State or Federal Court upon any claims, liabilities, losses, or damages arising out of or connected with the terms of this Amendment to Consent Agreement, any well contamination resulting from the use of the new septic system, or the approval or use of the septic system described herein for the Property.

In Witness Whereof, this Amendment to Consent Agreement is executed upon signature of all parties.

Jose Roberto Pacano

Diane S. Jones, Director, Montgomery
County Department
Of Permitting Services

Date: _____

Date: _____

Approved as to form and legality
Office of the County Attorney

By: _____

STATE OF MARYLAND ss:
COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____ before me, the subscriber,
a Notary Public in and for the State and County aforesaid, personally appeared Jose
Roberto. Pacano, who executed the foregoing Amendment to Consent Agreement as his
act and deed..

WITNESS my hand and seal the date and year aforesaid.

Notary Public

My Commission Expires:

STATE OF MARYLAND ss:
COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____ before me, the subscriber,
a Notary Public in and for the State and County aforesaid, personally appeared Diane S.
Jones, who executed the foregoing Amendment to Consent Agreement as Director of the
Montgomery County Department of Permitting Services.

WITNESS my hand and seal the date and year aforesaid.

Notary Public

My Commission Expires:

***FINAL FOREST CONSERVATION PLAN
RECOMMENDATION***

Attachment-C



MCPB
Item No.
Date: 6-12-14

***Pacano Property: Final Forest Conservation Plan No. S-2761**

WJK
RAW
JAC

Mary Jo Kishter, Senior Planner, Area 3 maryjo.kishter@montgomeryplanning.org, (301) 495.4701
Richard A. Weaver, Supervisor, Area 3, richard.weaver@montgomeryplanning.org, (301) 495-4544
John Carter, Chief, Area 3

Staff Report Date: May 30, 2014

Description

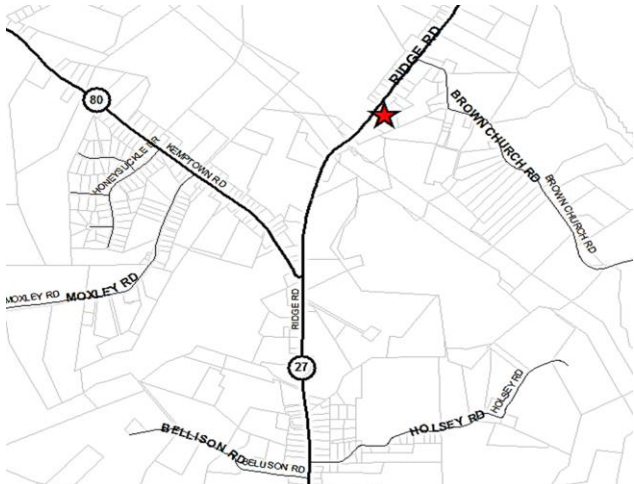
***A. Pacano Property**

Final Forest Conservation Plan S-2761

Request for approval of a Final Forest Conservation Plan as part of a Special Exception application to operate a landscape contractor business; located at 28621 Ridge Road (MD 27), approximately 2.5 miles north of its intersection with Kemptown Road (MD 80); 4.50 acres; RDT Zone; Damascus Master Plan; Patuxent River Primary Management Area (PMA).

Staff Recommendation: Approval with conditions

Applicant: Jose Pacano, d/b/a Woodstone Group, LLC
Application Filed: October 27, 2009



Summary

- The Application does not propose any new construction and the only disturbance is for the removal of existing impervious surfaces.
- The Application proposes to retain 0.90 acres of existing forest, plant 0.80 acres of additional forest, and create 0.70 acres of native meadow habitat within the stream buffer onsite.
- A request for a variance to remove one (1) specimen tree is included in this Application.

FOREST CONSERVATION PLAN RECOMMENDATION: Approval, subject to the following conditions:

1. Within one month of the date of the M-NCPPC Planning Board hearing for the Special Exception Application S-2761, the Applicant must submit a revised Final Forest Conservation Plan S-2761 to M-NCPPC Staff for review and approval. The revised Final FCP (FFCP) must address the following.
 - a. The FFCP must include a revised Data Table that accurately reflects the forest data.
 - b. The FFCP must accurately note on Sheet 1 that the plan proposes to remove one tree greater than 30 inches in diameter.
2. Within six months of the date of the Board of Appeals Resolution for the Special Exception Application S-2761, the Applicant must comply with the conditions of approval for the Final Forest Conservation Plan S-2761 including:
 - a. The Applicant must plant 0.80 acres of reforestation within the stream buffer as specified on the approved Final Forest Conservation Plan.
 - b. The Applicant must plant 0.70 acres of native meadow vegetation as specified on the approved Final Forest Conservation Plan.
 - c. The Applicant must place a Category I conservation easement over all areas of forest retention, forest planting, and portions of the stream valley buffer as specified on the approved Final Forest Conservation Plan. Conservation easements must be recorded in the Montgomery County land records.
 - d. The Applicant must place a modified Category I conservation easement over all areas of meadow planting as specified on the approved Forest Conservation Plan that allows for annual mowing of the meadow areas. Conservation easements must be recorded in the Montgomery County land records.
 - e. The Applicant must submit financial surety for planting 0.80 acres of forest and creating 0.70 acres of native meadow habitat prior to the start of the maintenance period.
 - f. The Applicant must obtain M-NCPPC approval of a two-year maintenance and management agreement for the forest planting and meadow creation areas.
3. The Applicant must install permanent split rail fencing and signs along the perimeter of the conservation easement where it abuts the gravel parking area in the rear of the Property, as determined by the M-NCPPC forest conservation inspector at the time of forest planting.
4. The Applicant must install permanent forest conservation easement signage along the perimeter of the conservation easement in all areas where permanent fencing is not required, as determined by the M-NCPPC forest conservation inspector at the time of forest planting.
5. The Applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Additional or adjustments to the tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.
6. The final sediment control plan, if required by Montgomery County Department of Permitting Services, must be consistent with the final limits of disturbance shown on the approved FFCP.

SITE DESCRIPTION

The subject property is identified as Parcel P233 on Tax Map FY 53, and is located at 28621 Ridge Road (MD 27), approximately 2,160 feet north of its intersection with Kemptown Road (MD 80) in the Damascus Master Plan area ("Subject Property" "Property"). The Property is zoned RDT, and it is 4.50 acres in size. The front of the Property, along MD 27 is developed with a house that is used as an office for the landscape contracting business, a shed, and a gravel parking area. There is a gravel driveway

that leads from the gravel parking area across a stream to a two-story barn, shed, and larger gravel parking area.

The Property drains to the Patuxent River, which is classified by the State of Maryland as Use III-P waters. The entire Property is located within the Patuxent River PMA and approximately ninety percent of the Property is located within the stream valley buffer. A perennial stream enters the Property through an existing culvert under a driveway just beyond the north-central Property line, and flows in a southerly direction, under the on-site gravel driveway, to an existing instream farm pond. The pond discharges at an existing concrete headwall into the natural stream channel that flows off the southeastern corner of the property. The stream and pond bisect the Property. Emergent wetlands line the stream channel, upstream of the pond. The land surrounding the pond and along the stream channel is maintained as a mowed lawn, with a few scattered trees. There is no mapped 100-year floodplain on the Property. The Property contains approximately 0.95 acres of forest, of which 0.90 acres is one contiguous stand that encompasses steep slopes on highly erodible soils, and is located along the eastern Property boundary at the rear of the Property. Approximately 0.05 acres of forest is located along the southern Property boundary, south of the pond. Six large trees were identified outside of the existing forest, including two specimen trees (≥ 30 inches Diameter at Breast Height (DBH)) and four significant trees (≥ 24 inches DBH). Neighboring land uses include single-family residential on large estate lots and unimproved parcels. The Property abuts residential properties and undeveloped land to the north, south and east, and farm land to the west across Ridge Road. An historic property known as “Brown’s Log Tobacco House” borders the Property to the south.



Vicinity Map



Site Aerial View

PROJECT DESCRIPTION

The Final Forest Conservation Plan (FCP) was prepared as part of Special Exception application No. S-2761, to operate a landscape contractor business (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 does not propose any new construction; however, it does retain some of the existing manmade features within the stream valley buffer and PMA. The Application does not propose to clear any forest but will require the removal of one specimen tree.

ANALYSIS AND FINDINGS

Forest Conservation

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 the Property on August 13, 2009. A Final Forest Conservation Plan has been submitted for review. There is approximately 0.95 acres of existing forest on the property. The forest is an immature, mixed-hardwood forest dominated by early successional species including black cherry (*Prunus serotina*), tree-of-heaven (*Ailanthus altissima*), eastern red cedar (*Juniperus virginiana*), and black locust (*Robinia pseudo-acacia*). Six large trees, including two specimen trees and four significant trees were identified on the Property.

The project does not propose to clear any of the existing forest; however, 0.05 acres of the forest is located on or below the embankment of the existing farm pond and will not be placed into a conservation easement in case of future maintenance requirements that may require disturbance. There is a 0.10 acre forest planting requirement on the Property that will be met onsite within the stream buffer. The Applicant proposes to retain 0.90 acres of existing forest, plant 0.80 acres of additional forest, and create 0.70 acres of native meadow habitat within the stream buffer onsite. These areas as well as the stream and inline pond will be protected in a Category I conservation easement. The additional forest and meadow plantings, in excess of the forest conservation requirements are proposed to offset the existing stream buffer encroachments and proposal to not protect the entire stream buffer in a conservation easement, and comply with the recommendations and goals of the Patuxent River PMA. Split rail fence will be placed along the perimeter of the conservation easement where it abuts the gravel parking area in the rear of the Property and permanent signs will be provided in all other areas to delineate the limits of the conservation easement.

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 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 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.

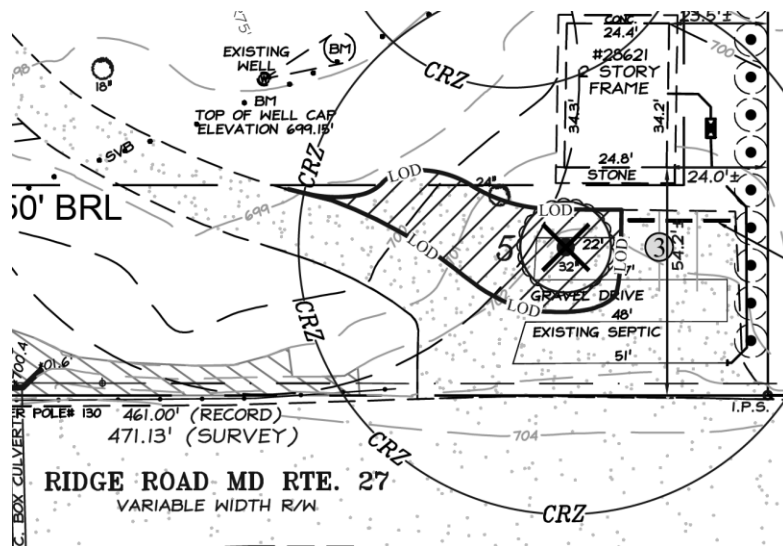
Variance Request - The Applicant submitted a variance request in a letter dated April 9, 2014 (Attachment B). The Applicant proposes to remove one (1) specimen tree that is 30 inches and greater, diameter at breast height (DBH), that is considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law.

Tree to be removed

Tree Number	Species	DBH Inches	Status
5	Red Maple	42	Poor condition, root compaction. Gravel will be removed from parking area to reduce impervious area and tree may be a hazard to existing office building

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the existing development on the Property, the poor condition of the subject tree, and the goal to minimize impervious surfaces within the Patuxent PMA. The tree is a 42" DBH red maple that is in poor condition and suffering from root compaction due to the existing gravel driveway and parking area that surrounds the tree and covers a large portion its root system. The Applicant proposes to disturb the critical root zone of the tree in order to remove existing but unnecessary impervious area within the parking lot, as recommended in the Patuxent River PMA. This disturbance to the critical root zone initially triggered the variance requirement; however, given the existing condition of the tree, and its proximity to the office building and parking area that will remain, it was determined that this tree poses a hazard and should be removed. The Application does not propose any new construction on the Property and the only disturbance onsite will be for the removal of existing impervious surfaces that are not necessary for the landscape contracting operation to continue. Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to justify a variance request.



Tree #5 to be removed – all features are existing; LOD is for removal of existing impervious surface

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed forest conservation plan:

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 of the one tree is due to its current poor condition and the potential hazard that results from allowing it to remain. The Applicant proposed disturbance to the CRZ of the tree in order to remove existing, excess impervious area within the parking lot, but the removal of the tree is based on its existing poor health and proximity to the existing house/office building to remain. Therefore, 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 requested variance is based upon the existing poor condition of the tree and the existing site conditions.

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 existing conditions 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.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree being removed is not located within a stream buffer; however it is located within the transition area of the Patuxent River PMA. The Application proposes 0.80 acres of forest planting within the stream buffer which will ultimately replace any water quality benefits lost by the removal of this tree. Therefore, Staff concurs that 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 is one (1) tree proposed for removal in this variance request. This tree is in poor condition and is a potential hazard to the nearby home/office and parking area. Staff does not typically recommend mitigation for trees in poor condition or hazards; however, it should be noted that the 0.70 acres of forest planting proposed within the stream buffer onsite is in excess of that required by the forest conservation law and will ultimately mitigate any benefits lost by the removal of this tree.

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 April 17, 2014. On April 23, 2014, the County Arborist issued a letter stating that she would not provide a recommendation pertaining to the variance request because the Application was submitted before October 1, 2009 (Attachment C).

Variance Recommendation - Staff recommends that the variance be granted.

CONCLUSION

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

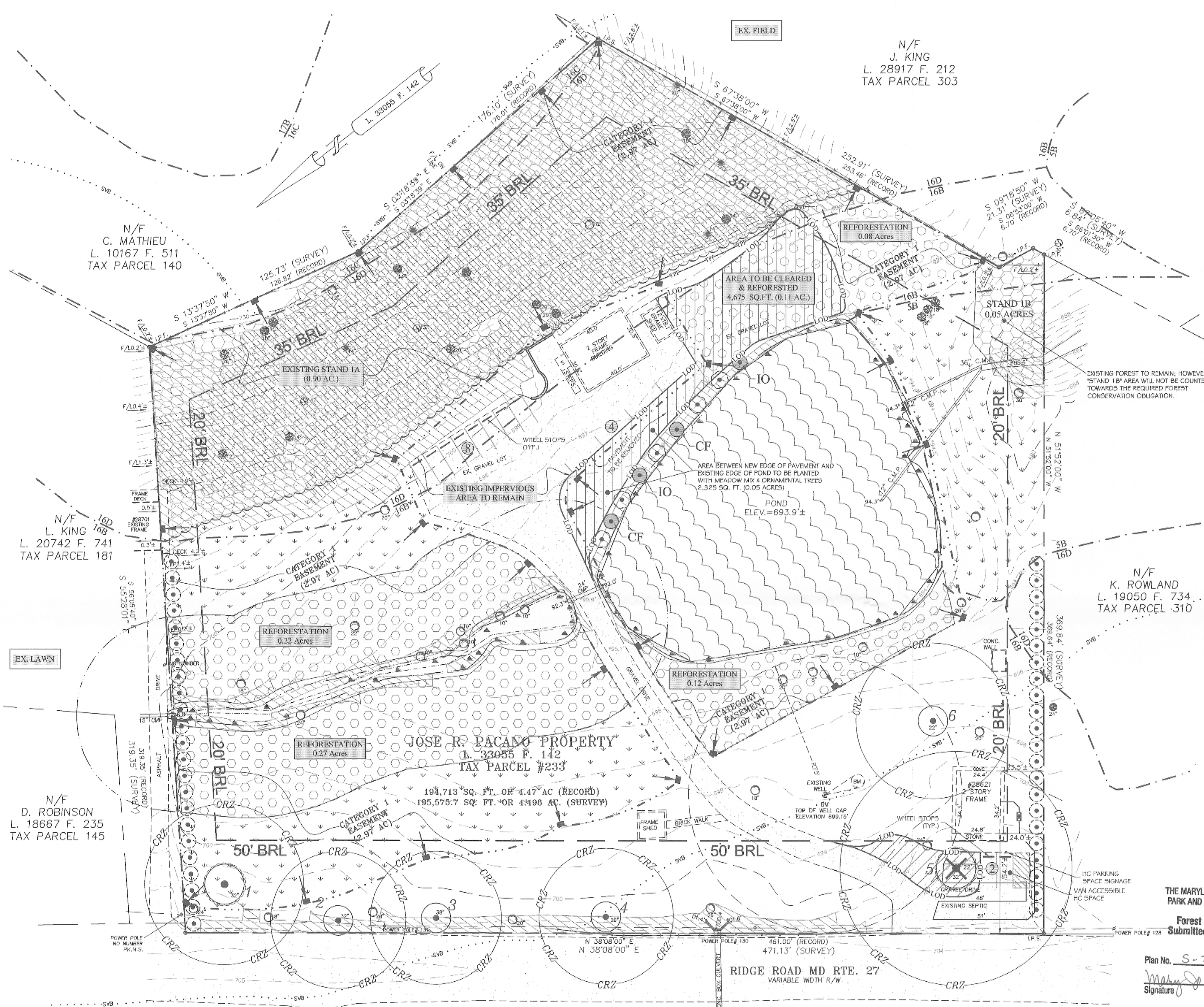
Attachments

Attachment A – Final Forest Conservation Plan

Attachment B – Applicant's Variance Request dated April 9, 2014

Attachment C - County Arborist Letter dated April 23, 2014

O:\AREA_3\REGULATORY PLANNING\Pacano\Environmental\REV PR_S2761_DRAFT Staff Report_FCP_05202014.docx



ON-SITE SIGNIFICANT/SPECIMEN TREE LIST

ID	COMMON NAME	SPECIES NAME	DBH	CONDITION
1@	Box Elder	Acer negundo	30	Good
2#	Box Elder	Acer negundo	26	Poor-Power line pruning
3#	Box Elder	Acer negundo	24	Fair-Power line pruning
4#	Box Elder	Acer negundo	75	Fair-Power line pruning
5@	Red Maple	Acer rubrum	42	Poor-root compaction
6#	Silver Maple	Acer saacharinum	28	Good

LIST OF ORNAMENTAL TREES /LOCATED TO THE EAST OF EXISTING POND

COMMON NAME	SPECIES NAME	Count	Symbol
Dogwood, Flowering	Cornus florida	2	CF
Holly, American	Ilex opaca	2	IO

REFORESTATION/AFFORESTATION PLANTING SCHEDULE

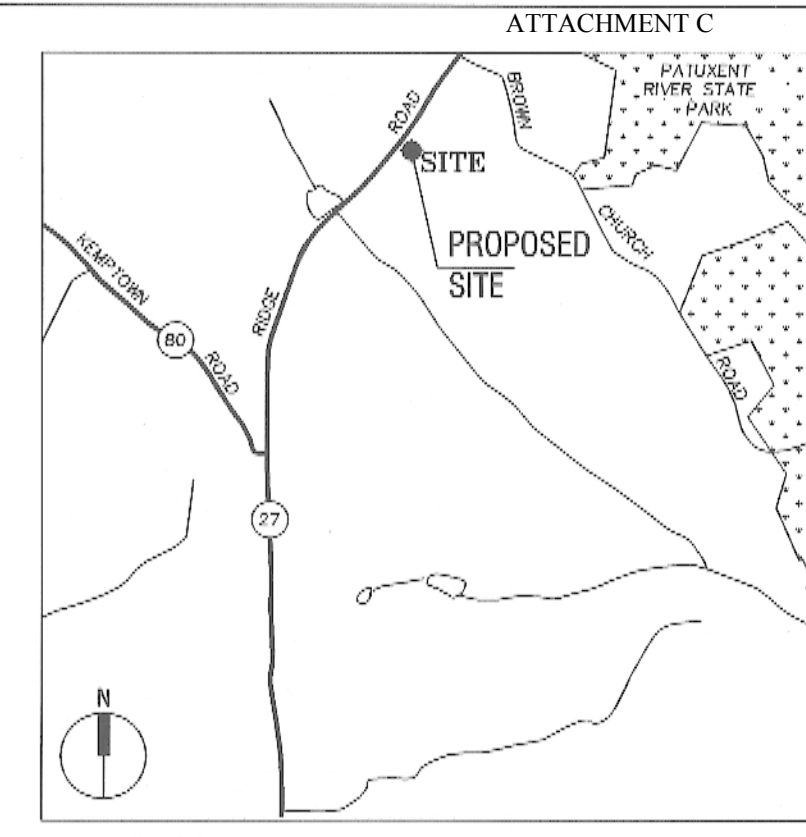
BOTANICAL NAME	COMMON NAME	SHRUB QUANTITY (18"±-24" TL)	1" CAL. STOCK	TOTAL 1" CAL. STOCK EQUIVALENCY
Acer rubrum	Red Maple	33		33
Liriodendron tulipifera	Tulip Poplar	33		33
Quercus rubrum	Red Oak	33		33
Platanus occidentalis	Sycamore	33		33
Cornus florida	Dogwood	30		30
TOTAL		160		160
SHRUBS				
Viburnum Dentatum	Arrowwood, Southern	18		CONTAINER
Amelanchier sp.	Servicberry	18		CONTAINER
Hamelis virginiana	Witch Hazel	18		CONTAINER
TOTAL		54		
REFORESTATION CREDIT AREAS		0.80 Ac.		0.80 Ac.

TOTAL REFORESTATION ACRES = 0.80 AC.
 SHRUBS PROVIDED AT A RATE OF 1/3 OF THE AMOUNT OF TREES.
 NOTE: 1" STOCK CREDIT AT 200 PER ACRE. STOCK PLANTED IN RANDOM DISTRIBUTION PATTERN IN RELATION TO EXISTING STOCK & SAPLINGS (SEE DETAIL)

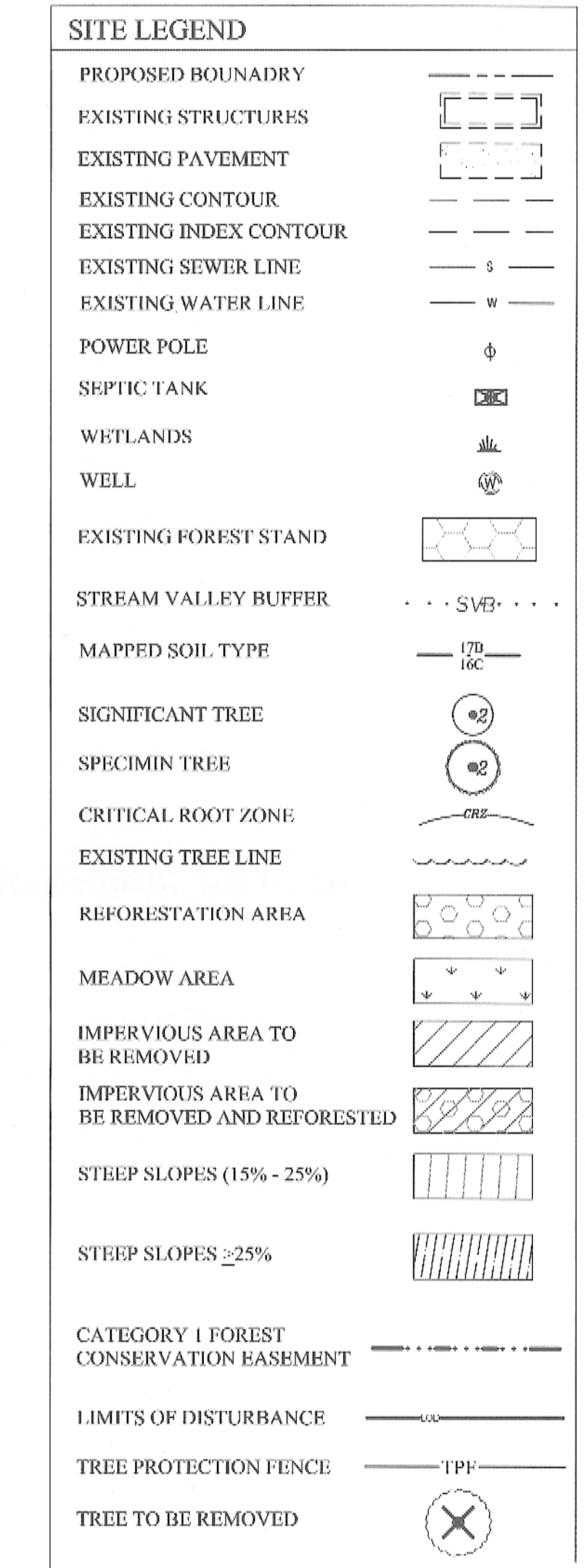
SCHEDULE FOR MEADOW MIX MEADOW AREA - 0.70 ACRES

SUPPLIER	Name of Mix/Mix Content	Seeding Rate
Ernst Conservation Seeds	MD Mountain UPL Meadow Mix: 54% Little Bluestem (Schizachyrium scoparium) 10% Virginia Wildrye (Elymus virginicus) 10% Indiangras (Sorghastrum nutans) 5% Big Bluestem (Andropogon gerardii) 5% Purpletop (Tridens flavus) 5% Green Headed (Rudbeckia laciniata) 5% Partridge Pea (Chamaecrista fasciculata) 3% Wild Senna (Senna hebecarpa) 2% Wild Bergamot (Monarda fistulosa) 1% White (Silver Rod) Goldenrod (Solidago bicolor) 1% Culler's Root (Veronicastrum virginicum) 1% Common Milkweed (Asclepias syriaca)	15 lbs per acre x 0.70 Acres

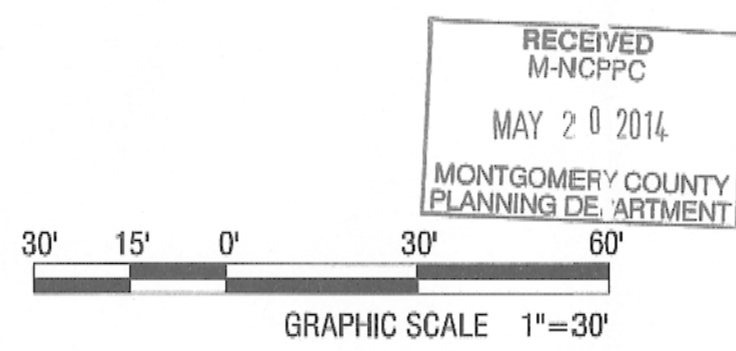
TOTAL AMOUNT OF SEED REQUIRED - 10.5 lbs



VICINITY MAP SCALE: 1"=200'



TOTAL SITE AREA = 4.50 ACRES		
	AREA (AC.)	PERCENT OF TOTAL AREA (%)
EXISTING IMPERVIOUS AREA	0.57	12.67
PROPOSED IMPERVIOUS AREA	0.39	8.64



FOREST CONSERVATION SIGNAGE
 THIS SYMBOL REPRESENTS A LOCATION FOR FOREST CONSERVATION EASEMENT SIGN WITH FACING DIRECTION INDICATED BY ARROW.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 Forest Conservation Plan
 Submitted for Planning Board Approval
 Plan No. S-27101
 Signature: Mary Jo Vinkhwa
 Date: 5/21/14

DEVELOPER'S CERTIFICATE
 The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. S-27101 including, financial bonding, forest planting, maintenance, and all other applicable agreements.
 Developer's Name: JOSE ROBERTO PACANO
 Contact Person or Owner: JOSE ROBERTO PACANO
 Address: 28621 Ridge Road, MT. Airy, MD. 21771-4438
 Phone: (301) 252-3055
 eMail:
 Signature:

Klebasko Environmental, LLC
 8737 Pincy Orchard Parkway, Suite 207
 Odenton, Maryland 21113
 (410) 672-5990 (office)
 (410) 672-5993 (fax)

FOREST CONSERVATION PLAN PREPARED BY:
 Signature: Michael J. Klebasko
 DATE: 5/16/14
 MICHAEL J. KLEBASKO
 OF KLEBASKO ENVIRONMENTAL, LLC
 (QUALIFIED PROFESSIONAL PER COMAR 08.19.06.01)

REV#	DATE

OWNER / DEVELOPER
 JOSE ROBERTO PACANO
 28621 Ridge Road,
 MT. Airy, MD. 21771-4438
 Phone: (301) 252 - 3055

RAZTEC ASSOCIATES, INC.
 civil engineers & planners
 3280 Urbana Pike
 Ijamsville, Maryland 21754
 Tel (301) 775-4394
 Fax (301) 831-8978
 email:raztecengr@comcast.net

SEAL

FINAL FOREST CONSERVATION PLAN
 28621 RIDGE ROAD, DAMASCUS
 MONTGOMERY COUNTY, MARYLAND
 ZONE: RDT
 TAX MAP: FY53
 12th ELECTION DISTRICT

SCALE
 1" = 30'
 CHECKED BY:
 MR
 DRAWN BY:
 SL

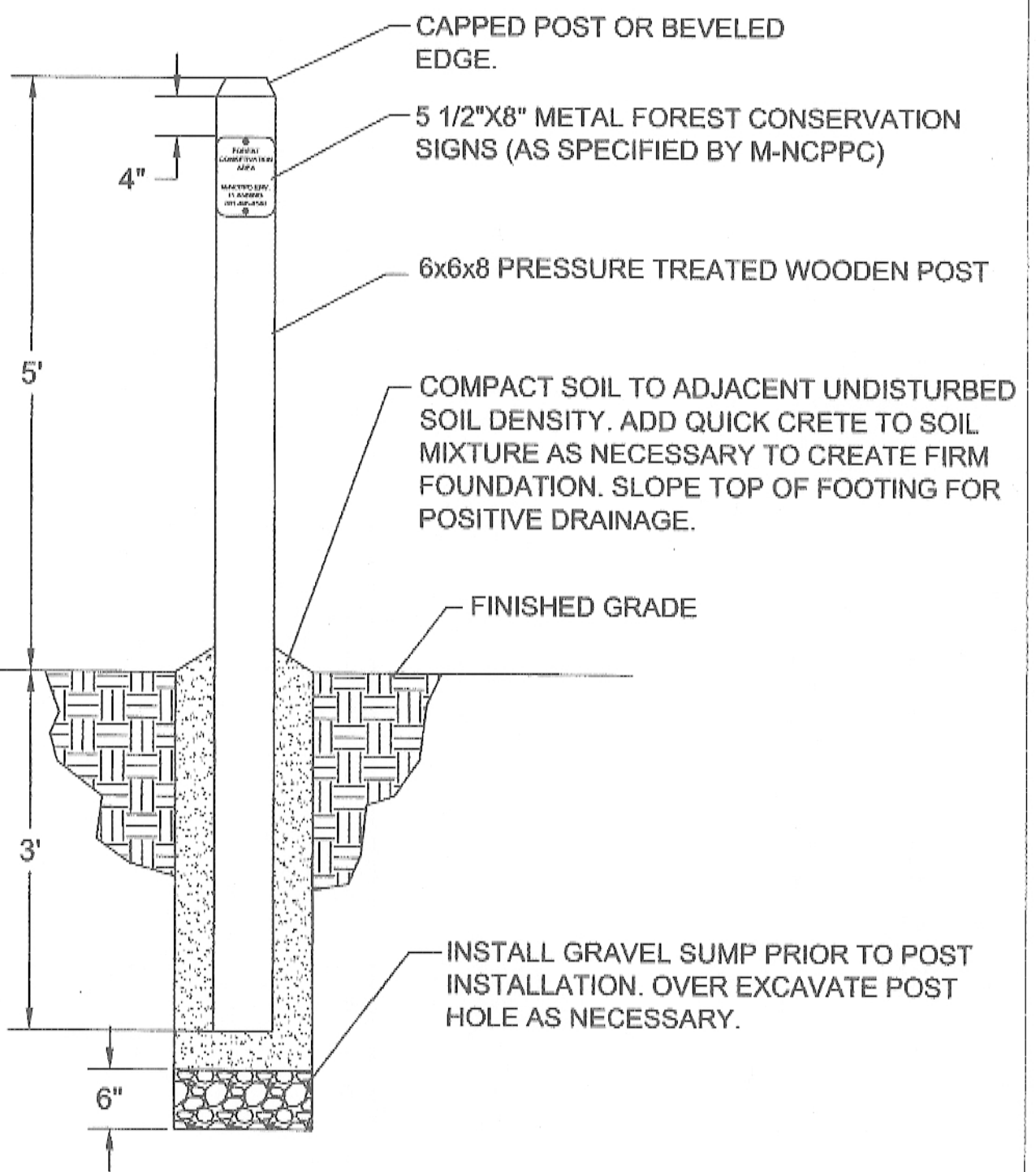
DATE
 NOVEMBER, 2013
 SHEET NUMBER
 2 of 3

PERMANENT FOREST CONSERVATION EASEMENT SIGNAGE

NOTE:
ALL WOOD SHALL BE PRESSURE TREATED SOUTHERN YELLOW PINE OR CEDAR.

ALL FASTENERS SHALL BE STAINLESS STEEL 1/2" IN LENGTH.

ALL POSTS TO BE INSTALLED ALONG FOREST CONSERVATION EASEMENT LINE AS SPECIFIED PER APPROVED FINAL FOREST CONSERVATION PLAN OR M-NCPPC FIELD INSPECTOR'S INSTRUCTIONS.



MONTGOMERY COUNTY PLANNING DEPT. JULY 2008

TASKS	MONTHS											
	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
TRANSPLANT OF 2" DIA OR GREATER												
PLANTING SEEDINGS, WHIPS												
MINIMUM MONITORING		*				*					*	
FERTILIZER (IF NEEDED)												
WATER --												
PRUNING												

KEY

- * ACTIVITIES DURING THESE MONTHS ARE DEPENDANT UPON GROUND CONDITIONS
- GREATLY RECOMMENDED
- RECOMMENDED WITH ADDITIONAL CARE
- RECOMMENDED
- DEPENDANT UPON SITE CONDITIONS
- DEPENDANT UPON SITE CONDITIONS; WEEKLY WATERING IS GREATLY RECOMMENDED FROM MAY THROUGH OCTOBER UNLESS WEEKLY RAINFALL EQUALS 1"

NOTE:
The planting and care of trees is most successful when coordinated with the local climatic conditions. This calendar summarizes some of the recommended time frames for basic reforestation and stress reduction activities.

SOURCE: Adapted from Maryland State FOREST CONSERVATION MANUAL

TREE PLANTING AND MAINTENANCE CALENDAR

PLANTING PROCEDURES FOR AFFORESTATION, REFORESTATION AREAS (LANDSCAPE AND SEEDLING STOCK)

All tree planting for woodland replacement, Afforestation will be completed within 6 months of the completion of final grading provided that it can be done within the specified planting window. An additional 6 months may be necessary in order to plant during the planting window.

Prior to the issuance of any permits the contractor responsible for soil preparation, site preparation, tree planting and tree maintenance must be identified

- Planting window for landscape stock - March 1st - December 30th. No planting will occur while the ground is frozen.
- Species List - Based on the native forest of the Montgomery County Area. (See *Reforestation Plants Lists")
- Landscape stock 1" caliper.
- Spacing and Quantity - See "Reforestation Plant Lists"
- Layout - For landscape stock see "Planting Layout" detail.
- Each landscape tree should be mulched with 2"-3" of composted shredded hardwood mulch unless they are in a planting bed where mulch will be spread throughout.

SITE PREPARATION (EXPOSED AND NEWLY GRADED SOILS)

- Contractor is to perform soil tests in proposed planting areas prior to site preparation, to identify potential nutrient and pH deficiencies.
- Soils shall be free of contaminants (oil products, concentrated soluble salts, ferrous iron, soluble aluminum and soluble manganese).
- Apply soil amendments, if specified, prior to tilling, discing, raking, final grading, etc. Soil amendments are to be determined by the University of Maryland Cooperative Extension service and/or a qualified Ecologist based on soil test results.
- Flat areas and slopes up to 3:1 shall be loose and finable to a depth of at least 6 inches. The top layer of soil shall be loosened by raking, discing or other acceptable means before seeding.
- Herbicide applications for the control of invasive species after planting will be done as part of the maintenance agreement

PLANT INSTALLATION METHODS

- Auger planting method is preferred for level areas, as it creates better soil porosity by drilling a hole much larger than the root system and producing tilled backfill, see "Method for Auger Tree Planting" detail.
- Hand digging is acceptable in situations where the auger cannot be applied (slopes, wet areas, confined spaces, etc.) See "Planting Methods" detail.

PLANT CRITERIA FOR AFFORESTATION AREAS

- Plants supplied shall conform in all respects to the current edition of the American Standard for Nursery Stock (ANSI Z60.1). They shall be nursery grown in accordance with good horticultural practice and grown under climatic conditions similar to those in the locality of the project. Plant names shall be given in the edition of Standard Plant Names, American Joint Committee on Horticultural Nomenclature.
- Prior to planting, protect plants at all times from the sun and drying winds. Plants that cannot be planted immediately shall be kept in the shade, and kept well watered. Plants shall not remain unplanted for more than three (3) calendar days unless adequate irrigation and protection from the elements is provided on site.
- Plants shall not be bound with wire or rope at any time so as to damage the bark or break branches or twigs.
- Plants shall be sound, vigorous, and healthy. They shall be free of disease and insect pests and shall have healthy, well developed root systems. Trunks and branches shall be free of cuts and abrasions over one inch (1") in any dimensions.
- Container-grown plants shall not have roots that encircle the rootball.
- All plants shall be certified pest-free by the Department of Agriculture of the State of origin.

STATE BILL 666 - NO NET LOSS OF FORESTRY POLICY - FOREST CONSERVATION NOTE:

The plan does not propose to remove:

- Any tree greater than 30 inches in diameter at breast height (dbh)
- Any tree with a dbh equal to or greater than 75% of the current state champion.
- Trees that are part of a historic site or associated with a historic structure.
- Any tree designated as the county champion tree.
- Any tree shrub or plant identified on the list of rare, threatened and endangered list of the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources.

The critical root zone of all trees greater than 30" are shown on this plan. All critical root zones are outside of the proposed limits of disturbance.

NO. 14-GAUGE WIRE FABRIC WITH 2" x 4" OPENINGS. CREATE 1-FOOT DIAMETER CAGE AROUND TREE AND FASTEN TO STAKE.

6" HARDWOOD CULLING STAKE (2' INTO GROUND). (1 STAKE PER TREE)

NOTES:
1. HEIGHT OF CAGE SHALL BE 4- FEET (MIN.)
2. CAGE SHALL BE FASTENED TO STAKE WITH TWO (MIN.) 11-INCH RELEASABLE CABLE TIES (ONE AT TOP AND ONE 6" (MIN.) ABOVE THE GROUND.
3. DO NOT DAMAGE TREE DURING INSTALLATION.
4. SUBSTITUTIONS MUST BE APPROVED BY FOREST ECOLOGIST.
5. CAGES TO BE REMOVED AT DIRECTION OF FOREST ECOLOGIST.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Department of Park and Planning, Montgomery County, Maryland

PARK PLANNING & DEVELOPMENT DIVISION	DATE APPROVED	REVISION	DATE	STANDARD NO.
3800 BRIDGET AVENUE, SUITE 200	CHEF ENGINEER			
DIRECTOR OF PARKS				

DEER PROTECTION CAGE

PRUNE ONLY DEAD, DECAYED, BROKEN, CROSSING AND INWARD GROWING BRANCHES (NEVER PRUNE LEADER)

REINFORCED RUBBER HOSE (BLACK)

DOUBLE STRAND NO. 12 GAUGE WIRE, TWISTED

SURVEYORS FLAGGING (WHITE)

6" HARDWOOD STAKE AT 90° ANGLE TO WIRE (2 INTO UNDISTURBED EARTH), 3 STAKES PER TREE

3" SHREDDED MULCH TAPERED TO 0" AT THE TRUNK

EXISTING GRADE / UNDISTURBED SOIL

CUT BURLAP ROPE AND WIREBASKET FROM TOP 1/2 OF BALL

NATIVE SOIL WITH INOCULANT

WIDTH = 2 x ROOTBALL OR CONTAINER DIA.

NOTES:
1. STAKES AND WIRES MUST BE REMOVED NO LATER THAN 12 MONTHS AFTER PLANTING.
2. PLANTING HOLE SHALL BE DUG BY A BACKHOE OR OTHER MACHINE AND FINISHED BY HAND.
3. IF SURROUNDING SOIL IS COMPACTED AS DETERMINED BY M-NCPPC PLANNING DEPT INSPECTOR OR PARKS DEPT FOREST ECOLOGIST, AN AREA UP TO 3 TIMES THE DIA. OF THE ROOT MASS SHALL BE EXCAVATED OR ROTOTILLED TO A 1" DEPTH AND THE SOIL SHALL BE AMENDED.
4. DO NOT DAMAGE OR CUT LEADER.
5. ROOT FLAIR EVEN WITH LEVEL OF UNDISTURBED GROUND.

DECIDUOUS PLANTS - (2 1/2" Caliper or Larger)

The Maryland-National Capital Park and Planning Commission
Montgomery County Department of Parks

DECEMBER 2007

Tree Protection Fence Detail

Not to scale

NOTES:
1. Practice may be combined with sediment control fencing.
2. Location and limits of fencing should be coordinated in field with arborist.
3. Boundaries of protection area should be staked prior to installing protective device.
4. Root damage should be avoided.
5. Protection signage is required.
6. Fencing shall be maintained throughout construction.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Forest Conservation Plan Submitted for Planning Board Approval

Plan No. S-27101

Signature: Mary Jo Kiebaso Date: 5/21/14

Montgomery County Planning Department • M-NCPPC
MontgomeryPlanning.org

PLANTING LAYOUT (AGGREGATE DISTRIBUTION ORBIT THEORY)

NOTES:
1. Retention Areas to be established as part of the forest conservation plan review process.
2. Boundaries of Retention Areas to be staked, flagged and/or fenced prior to trenching.
3. Exact location of trench should be identified.
4. Trench should be immediately backfilled with soil removed or organic soil.
5. Roots should be cleanly cut using vibratory knife or other acceptable equipment.

Source: Adapted from Steve Clark & Associates/ACRT, Inc. and Forest Conservation Manual, 1991.

NO SCALE

DETAIL - ROOT PRUNING

NOTES:
1. Retention Areas to be established as part of the forest conservation plan review process.
2. Boundaries of Retention Areas to be staked, flagged and/or fenced prior to trenching.
3. Exact location of trench should be identified.
4. Trench should be immediately backfilled with soil removed or organic soil.
5. Roots should be cleanly cut using vibratory knife or other acceptable equipment.

Source: Adapted from Steve Clark & Associates/ACRT, Inc. and Forest Conservation Manual, 1991.

NO SCALE

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. S-27101 including, financial bonding, forest planning, maintenance, and all other applicable agreements.

Developer's Name: JOSE ROBERTO PACANO

Contact Person or Owner: JOSE ROBERTO PACANO
Address: 28621 Ridge Road, MT. Airy, MD. 21771-4438
Phone: (301) 252-3055
eMail:

Signature: [Signature]

Kiebaso Environmental, LLC

8373 Pincy Orchard Parkway, Suite 207
Odenton, Maryland 21113
(410) 672-5990 (office)
(410) 672-5993 (fax)

FOREST CONSERVATION PLAN PREPARED BY:
Michael J. Kiebaso 5/16/14
MICHAEL J. KIEBASO DATE
OF KIEBASO ENVIRONMENTAL, LLC
(QUALIFIED PROFESSIONAL PER
COMAR 08.19.06.01)

REV#	DATE

OWNER / DEVELOPER

JOSE ROBERTO PACANO
28621 Ridge Road,
MT. Airy, MD. 21771-4438
Phone: (301) 252 - 3055

RAZTEC ASSOCIATES, INC.

civil engineers & planners

3280 Urbana Pike
Ijamsville, Maryland 21754

Tel (301) 775-4394
Fax (301) 831-8978
Email: raztecengr@comcast.net

SEAL

FOREST CONSERVATION NOTES & DETAILS

28621 RIDGE ROAD, DAMASCUS
MONTGOMERY COUNTY, MARYLAND

ZONE: RDT
TAX MAP: FY53

12th ELECTION DISTRICT

SCALE
N/A

DATE
NOVEMBER, 2013

CHECKED BY:
MR

DRAWN BY:
SL

SHEET NUMBER
3 of 3

April 9, 2014

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

Re: Jose Pacano, d/b/a Woodstone Group, LLC
Petition for a Special Exception for a Landscape Contractor Business
Variance Request
Case No. S2761

On behalf of our client, Jose Pacano, d/b/a Woodstone Group, LLC, we are requesting a variance from Section 5-1607(c)(2)(III) of the Natural Resources Article of the Maryland Annotated Code. This section states:

5-1607(c) (2) The following trees, shrubs, plants and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the state or local authority, that the applicant qualifies for a variance under Section 5-1611 of this subsection.

- (III) Trees having a diameter measured 4.5 feet above the ground of*
- (1) 30 inches, or*
 - (2) 75 % of the diameter measured 4.5' above the ground, of the current state champion tree of that species as designated by the Department.*

Section 5-1611 of the Natural Resources Article of the Maryland Annotated Code grants authority to Montgomery County (the local authority) to approve variances from these requirements, “where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant.” And Section 22A-21, entitled “Variance”, of the Montgomery County Code establishes the criteria to grant a variance.

The subject property, 2861 Ridge Road, Mt. Airy, Maryland, is located on Md. Route 27

(Ridge Road) approximately ½ mile north of the intersection of Md. Route 80 (Kempton Road) and Md. Route 27, in Mt. Airy, Montgomery County, Maryland. The property contains 4.5 acres, with a mature .90 acre forest in the rear, a small home in the front right-hand corner of the property, and a stream that runs through the center of the property. A pond has been formed in the middle of the property, surrounded by gently rolling, open land. There is a 30' x 40' barn behind the pond and in front of the forest, which has been used for many years as the base for a landscape contracting business, and the applicant seeks to obtain a special exception to allow him to continue using the property for that purpose. The home in the front right hand corner has been used as an office for this business, and is no longer used as a residence. The neighborhood surrounding the property contains a smattering of large lot single family homes and farms.

The applicant is requesting a variance to remove one tree that measures 30" or greater in diameter at breast height (dbh). In particular, the applicant would like to remove the following tree:

Tree #5 – Red Maple, 42", **poor condition, root compaction.**

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:

The property has been used as a landscape contracting business for over 10 years. It was being used as such when the applicant purchased the property in 2006. The applicant has made no changes to the property, but will be reforesting much of the property when the special exception is granted.

Removal of Tree #5

The home located in the front right hand corner of the property, where Tree #5 is located, has been used as the office for the landscaping business, and was used for that purpose when the applicant purchased the property. The previous owner installed gravel in the area in front of the home, creating five parking spaces and surrounding the tree with gravel and impacting the critical root zone of the tree. The tree is diseased and dying, and is located approximately 20 feet from the front of the home. A large part of the tree overhangs the home, and if the tree falls it will damage the home.

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

Not granting this variance would cause undue hardship on the applicant because based on the existing zoning and subdivision requirements only limited areas are available to build on the property. Indeed, because the property is located in the Patuxent River Management Area, nothing can be built within 100' of the stream that runs through the property, and the home in the front right corner of the property is located in the only area of the property that can be built on. This home is placed in danger by the tree, which is diseased and dying, and the owner should be allowed to remove it so that it no longer endangers the home. Granting the variance will remove the danger to the only home on the property.

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. The tree is located outside the 100' stream buffer on the property, and after the tree is removed, the applicant intends to remove a large portion of the gravel surrounding the tree and plant grass in this area. This will improve the water quality on the site.

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

As mentioned above, the tree is diseased and dying. There is currently gravel surrounding its roots, and after it has been removed the applicant intends to remove a large portion of the gravel, so that the five parking spaces in front of the home are reduced to three. This will improve the quality of any water runoff on the site.

The Applicant believes that the information set forth above is adequate to justify the requested variance to remove one of the six significant/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, the placement of gravel under the tree in question, or the diseased condition of the tree.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property. All of the conditions discussed above exist on 28621 Ridge Road, Mt. Airy, Md.
4. Loss of the requested tree 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,

David C. Gardner
Attorney for the Applicant



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

April 23, 2014

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

RE: Pacano, S-2761, NRI/FSD application accepted on 5/27/2009

Dear Ms. Carrier:

Based on a review by the Montgomery Planning Department, the application for the above referenced request is required to comply with Chapter 22A of the Montgomery County Code. As stated in a letter to Royce Hanson from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the specific provisions pertaining to certain trees in the Maryland Forest Conservation Act, and therefore any subsequent changes to the County Code based on those provisions, do not apply to any application that was submitted before October 1, 2009. Since this application was submitted before this date, I will not provide a recommendation pertaining to the approval of this request for a variance.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Miller".

Laura Miller
County Arborist

cc: Mary Jo Kishter, Senior Planner