



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 2
9-16-10

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mark Pfefferle, Acting Chief, Environmental Planning *MP*

FROM: Josh Penn, Senior Planner, Environmental Planning *JP*

DATE: September 3, 2010

PLAN NAME: 8809 Chalon Drive

PLAN NUMBER: SC2010014

PLAN TYPE: Forest Conservation Variance Request

REVIEW BASIS: Chapter 22A of the County Code

ZONE: R-200

LOCATION: 8809 Chalon Drive 280 feet northeast of Blaisdell Road

APPLICANT: The Barnes Trust

HEARING DATE: September 16, 2010

RECOMMENDATIONS

The Environmental Planning staff has reviewed the forest conservation variance request and Staff recommends Approval.

BACKGROUND

The applicant is requesting to construct a new house at 8809 Chalon Drive. The site is 1.05 acres in size and is almost completely forested. There are no streams, wetlands, or environmental buffers within or immediately adjacent to the site.

The construction of this house requires the applicant to obtain a sediment control permit. Under Chapter 22A of the County code any property that is required to obtain a sediment control permit and is greater than 40,000 square feet is required to comply with the forest conservation law. The property is 1.05 acres or 45,738 square feet in size.

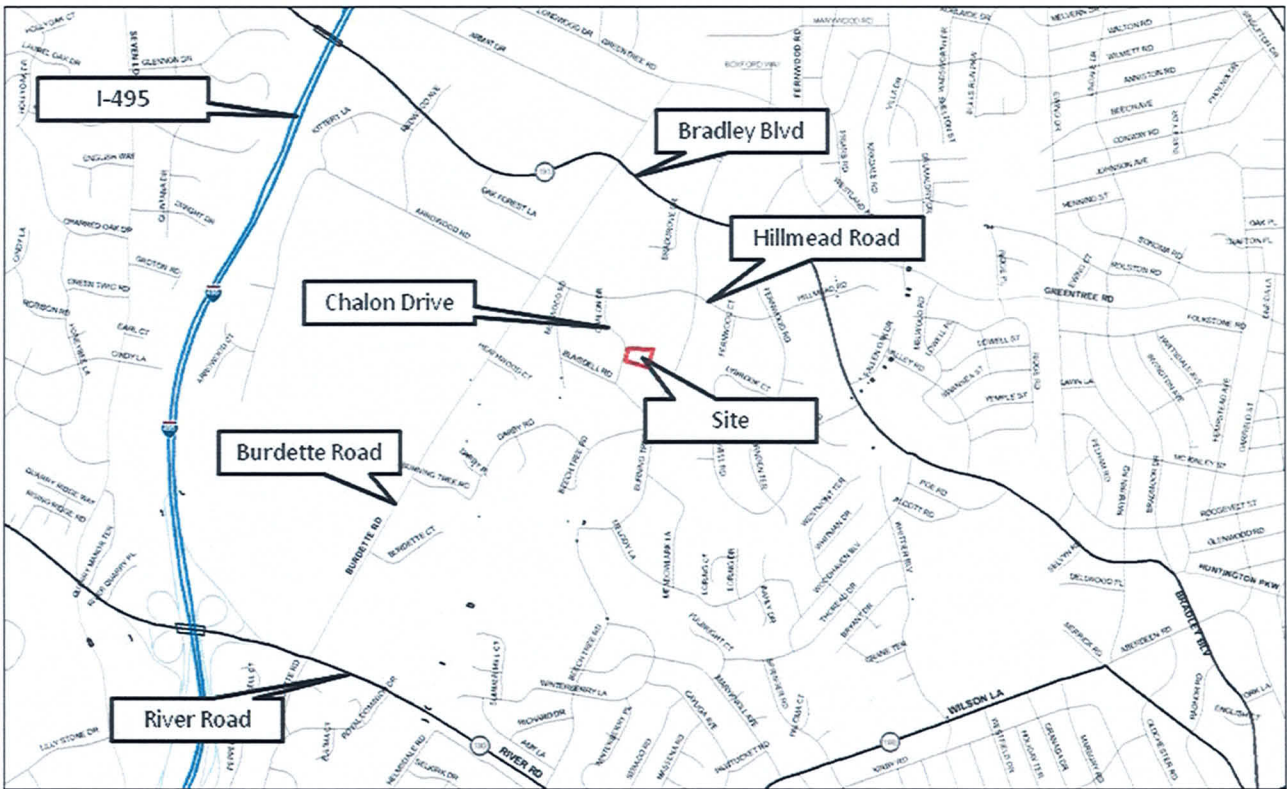


Figure 1: Vicinity Map



Figure 2: 2008 Aerial View

The activity is ineligible for an exemption from submitting a forest conservation plan for the applicant is proposing to remove 43,124 square feet of forest and therefore must submit and obtain

approval of a forest conservation plan before any land disturbing activities occur on the subject property.

Since the property is already single lot recorded in 1943 the forest conservation plan is reviewed and approved by the Planning Director, or designee. Section 22A-11(d) of the County Code gives the Planning Director the authority to approve forest conservation plans associated with sediment control permits.

Since October 1, 2009, Section 1607(c) of the Natural Resources Article, MD Ann. Code went into effect statewide and affects the Montgomery County Forest Conservation law. This section requires an applicant to obtain approval of a variance for the removal or impact of trees 30 inches and greater in diameter at breast height and certain vegetation prior to the forest conservation plan. Section 22A-21 of the county code and indicates that only the Planning Board has the authority to approve a variance to the forest conservation law. Therefore, the Planning Board is only asked to rule on the variance and not the forest conservation plan. Once the variance is approved by the Planning Board the Planning Director, or designee, can act on the forest conservation plan.

VARIANCE REQUIREMENTS

Section 1607(c) of the Natural Resources Article, MD Ann. Code affects the Montgomery County Forest Conservation law by identifying the following trees, shrubs, plants, and specific areas as priority for retention and protection and shall be left in an undisturbed condition unless the applicant qualifies for a variance in accordance. More specifically the vegetation to remain undisturbed includes:

- A. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
 - (1) *The federal Endangered Species Act of 1973,*
 - (2) *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and*
 - (3) *COMAR 08.03.08;*

- B. *Trees that:*
 - (1) *Are part of an historic site,*
 - (2) *Are associated with an historic structure, or*
 - (3) *Have been designated by the State or the Department as a national, State, or county champion tree; and*

- C. *Any tree having a diameter measured at 4.5 feet above the ground of:*
 - (1) *30 inches or more, or*
 - (2) *75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.*

Under Chapter 22A-21 of the County Code a person may request in writing a variance from this Chapter if the person demonstrates that enforcement would result in unwarranted hardship to the person. The applicant for a variance must:

- (1) Describe the special conditions peculiar to the property which would cause the

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

In Montgomery County before considering the variance the Planning Board must refer a copy of each request to the County Arborist within the Montgomery County Department of Environmental Protection for a written recommendation. The County Arborist must make a recommendation on the variance request to the Planning Board within 30 days from the receipt of the request. If there is no recommendation from the County Arborist the response is presumed to be favorable.

VARIANCE REQUEST

On July 27, 2010 the applicant requested a variance for the removal of 6 trees 30-inches and greater and to impact an additional 10-trees 30 inches in diameter and greater (Attachment A). Six (6) on-site trees, (#1, 3, 4, 14, 17, 18) as well as four (4) off-site will be saved and the impact to those trees consists mainly of clearing around the trees in order to plant grass and establish a yard. All of the specimen trees proposed for impact or removal are within existing forest.

On-Site Specimen Tree Data

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
1	White Oak	<i>Quercus alba</i>	30.0 In.	45.0 feet	6,362 s.f.	64.6 %	Good / Save
3	Tulip Poplar	<i>Liriodendron tulipifera</i>	31.0 In.	46.5 feet	6,793 s.f.	97.7 %	Good / Save
4	American Beech	<i>Fagus grandifolia</i>	33.0 In.	49.5 feet	7,698 s.f.	79.3 %	Poor / Save
9	Tulip Poplar	<i>Liriodendron tulipifera</i>	38.0 In.	57.0 feet	10,207 s.f.	100.0 %	Poor / Remove
14	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.5 In.	51.75 feet	8,414 s.f.	62.4 %	Fair / Save
17	Tulip Poplar	<i>Liriodendron tulipifera</i>	31.0 In.	46.5 feet	6,793 s.f.	76.3 %	Good / Save
18	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.0 In.	51.0 feet	8,172 s.f.	100.0 %	Good / Save
20	White Oak	<i>Quercus alba</i>	32.0 In.	48.0 feet	7,239 s.f.	100.0 %	Good / Remove
21	White Oak	<i>Quercus alba</i>	32.5 In.	48.75 feet	7,467 s.f.	100.0 %	Good / Remove
23	White Oak	<i>Quercus alba</i>	33.0 In.	49.5 feet	7,698 s.f.	100.0 %	Good / Remove
28	Tulip Poplar	<i>Liriodendron tulipifera</i>	45.0 In.	67.5 feet	14,314 s.f.	100.0 %	Good / Remove
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	6,362 s.f.	53.3 %	Fair / Remove

Off-Site Specimen Tree Data

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
25	Tulip Poplar	<i>Liriodendron tulipifera</i>	35.0 In.	52.5 feet	8,659 s.f.	7.0 %	Good / Save
26	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.0 In.	51.0 feet	8,172 s.f.	16.9 %	Good / Save
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	40.0 In.	60.0 feet	11,310 s.f.	25.3 %	Good / Save
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	40.0 In.	60.0 feet	11,310 s.f.	6.7 %	Good /Save

In the July 27, 2010 letter the applicant states:

In accordance with Section 22A-21(b) of the Forest Conservation Law, the following is a description of the application requirements:

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

The subject property is located amongst other developed properties of similar size. Since the property was previously owned by an estate and aging owner it was not maintained as similar properties in the neighborhood. As a result the subject property is mostly wooded with twelve (12) specimen trees located on-site and four (4) specimen trees located off-site but near the proposed development. In order to develop the property for the reasonable use and enjoyment of the owner, six (6) specimen trees will need to be removed. However, since the remaining ten (10) trees are impacted (i.e. disturbance to their root zones) and they are not protected by easements, they are also considered to be impacted and thus must be included in the variance request. Steep slopes and an ephemeral channel also present difficulties in developing the subject property. This development is compatible with the surrounding properties in the neighborhood, several of which include tennis courts. The proposed plan will protect the four (4) specimen trees on adjoining properties.

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

Saving these specimen trees (disturbing less than 66% of the critical root zone or placing them into a protective easement) would severely impact the development of this property in accordance with the existing neighborhood character as most properties are improved with large single-family homes, swimming pools and tennis courts.

3. *Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance.*

A Stormwater Management (SWM) Plan will be prepared, reviewed and ultimately approved for this project by the Montgomery County Department of Permitting Services. The approved SWM Plan will ensure that water quality standards will be met in accordance with State and County criteria.

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

All forest conservation requirements resulting from the redevelopment of this site will be met through an off-site forest conservation easement. Six (6) on-site specimen trees will ultimately be retained along with six (6) significant trees. Of the sixteen (16) specimen trees impacted, none are rare, threatened, or endangered, per the Maryland Nongame and Endangered Species Conservation Act. The property is not part of an historic site nor does it contain any historic structures. None of the specimen trees in question are 75% (or more) of the diameter of the current State champion for the subject species.

VARIANCE FINDINGS

The Planning Board must make findings that the applicant has met all requirements of this Chapter 22A-21 before granting the variance. Staff has made the following determination on the required findings:

1. Will confer on the applicant a special privilege that would be denied to other applicants;

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is often necessary and unavoidable in order to develop property for the use and enjoyment of its owner.

2. Is 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 of the applicant. The variance is based upon the R-200 zoning, proposed site development, required stormwater management best management practices, and the need for a useable and enjoyable yard/lawn area. Furthermore, the owner has worked to reduce disturbance / impact to specimen trees by creating tree save areas and minimizing grading in those areas.

3. Is based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The requested variance is a result of the proposed development and not a result of land or building use on a neighboring property.

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Plan will be approved by Montgomery County. Additionally, only six (6) trees will be physically removed from the property.

Staff is not requesting any additional mitigation for the impact and removal of specimen trees for they will be compensated for as part of the Planning Director's, or designee's approval, of the forest conservation plan. For because all of the specimen trees being impacted or removed as part of this plan are within existing forest and the forest be removed and impacted will be compensated for as part of the forest conservation plan in accordance with Chapter 22A of the County code. This project generates a 0.61 acre forest conservation planting requirement which.

On August 19, 2010 the County Arborist provided a written statement indicating that she was electing not to review the variance request for the project (Attachment B).

CONCLUSION

Staff recommends the Planning Board approve the forest conservation variance request.



ENGINEERING

A Division of CAS Enterprises, Inc.

civil engineering • surveying • land planning

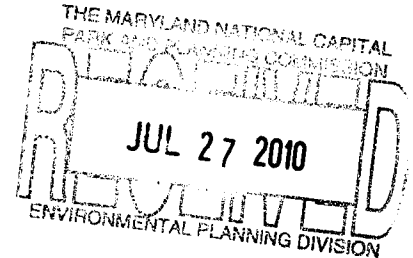
108 West Ridgeville Boulevard, Suite 101 • Mount Airy, Maryland 21771
phone 301/607-8031 • fax 301/607-8045 • www.casengineering.com

May 18, 2010

M-NCP&PC
Environmental Planning
8787 Georgia Avenue
Silver Spring, MD 20910

Attn: Josh Penn

Re: **Forest Conservation Plan – Variance Request - REVISED**
Bradley Hills Grove
Lot 15, Block C
8809 Chalon Drive



Dear Josh:

This letter is to serve as the revised Forest Conservation Variance Request as per our recent discussion. Two updated copies of the Forest Conservation Plan are also attached hereto for your review and comment. Digital copies of this request and Forest Conservation Plan are included on the attached CD. Any effort you might make to expedite the variance process and to obtain a Planning Board Hearing would be greatly appreciated. Please keep us updated as the application proceeds through the process.

Variance Justification

The Barnes Trust (Trustee, Carla Fenves) is the owner of Lot 15, Block C, in the Bradley Hills Grove Subdivision. Lot 15, comprised of 1.05 acres (45,650 square feet) of land, is currently unimproved. The property is currently zoned R-200 and is located along the east side of Chalon Drive, approximately 300' north of the intersection of Blaisdell Road and Chalon Drive. The proposed Sediment Control Plan / Stormwater Management Plan includes the construction of a single-family residence, retaining walls, and a Tennis Court. There are twelve (12) specimen trees located on the subject property and four (4) specimen trees located off-site yet within 50-feet of the limits of disturbance. Per Maryland Senate Bill 666, effective on October 1, 2009, The Barnes Trust is requesting a variance for the impact to 16 specimen trees. However, it should be noted that only six of those trees will be physically removed. Based on the proposed improvements and sequence of construction, all sixteen (16) specimen tree will be impacted. However six (6) on-site trees, (#1, 3, 4, 14, 17, 18) as well as four (4) off-site are intended to be saved as much of the disturbance to these trees consists mainly of clearing around the trees in order to plant grass and establish a yard. Since the remaining six (6) on-site trees will not be placed within a conservation easement, they are considered to be "removed". The property owner will take steps necessary, during construction, to protect the aforementioned six (6) on-site and four (4) off-site trees. The following chart is intended to list the 16 specimen trees and the proposed impact to each of their critical root zones.

On-Site Specimen Tree Data

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
1	White Oak	<i>Quercus alba</i>	30.0 In.	45.0 feet	6,362 s.f.	64.6 %	Good / Save
3	Tulip Poplar	<i>Liriodendron tulipifera</i>	31.0 In.	46.5 feet	6,793 s.f.	97.7 %	Good / Save
4	American Beech	<i>Fagus grandifolia</i>	33.0 In.	49.5 feet	7,698 s.f.	79.3 %	Poor / Save
9	Tulip Poplar	<i>Liriodendron tulipifera</i>	38.0 In.	57.0 feet	10,207 s.f.	100.0 %	Poor /Remove
14	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.5 In.	51.75 feet	8,414 s.f.	62.4 %	Fair / Save
17	Tulip Poplar	<i>Liriodendron tulipifera</i>	31.0 In.	46.5 feet	6,793 s.f.	76.3 %	Good / Save
18	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.0 In.	51.0 feet	8,172 s.f.	100.0 %	Good / Save
20	White Oak	<i>Quercus alba</i>	32.0 In.	48.0 feet	7,239 s.f.	10.0 %	Good / Remove
21	White Oak	<i>Quercus alba</i>	32.5 In.	48.75 feet	7,467 s.f.	100.0 %	Good / Remove
23	White Oak	<i>Quercus alba</i>	33.0 In.	49.5 feet	7,698 s.f.	100.0 %	Good / Remove
28	Tulip Poplar	<i>Liriodendron tulipifera</i>	45.0 In.	67.5 feet	14,314 s.f.	100.0 %	Good /Remove
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	30.0 In.	45.0 feet	6,362 s.f.	53.3 %	Fair /Remove

Off-Site Specimen Tree Data

Tree No.	Common Name	Botanical Name	D.B.H.	C.R.Z. Radius	C.R.Z. Area	% C.R.Z. Area Disturbed	Condition
25	Tulip Poplar	<i>Liriodendron tulipifera</i>	35.0 In.	52.5 feet	8,659 s.f.	7.0 %	Good / Save
26	Tulip Poplar	<i>Liriodendron tulipifera</i>	34.0 In.	51.0 feet	8,172 s.f.	16.9 %	Good / Save
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	40.0 In.	60.0 feet	11,310 s.f.	25.3 %	Good / Save
Un-numbered	Tulip Poplar	<i>Liriodendron tulipifera</i>	40.0 In.	60.0 feet	11,310 s.f.	6.7 %	Good /Remove

The owner hereby requests a variance for the disturbance/impact to the above referenced sixteen (16) specimen trees.

In accordance with Section 22A-21(b) of the Forest Conservation Law, the following is a description of the application requirements:

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

The subject property is located amongst other developed properties of similar size. Since the property was previously owned by an estate and aging owner it was not maintained as similar properties in the neighborhood. As a result the subject property is mostly wooded with twelve (12) specimen trees located on-site and four (4) specimen trees located off-site but near the proposed development. In order to develop the property for the reasonable use and enjoyment of the owner, six (6) specimen trees will need to be removed. However, since the remaining ten (10) trees are impacted (i.e. disturbance to their root zones) and they are not protected by easements, they are also considered to be impacted and thus must be included in the variance request. Steep slopes and an ephemeral channel also present difficulties in developing the subject property. This development is compatible with the surrounding properties in the neighborhood, several of which include tennis courts. The proposed plan will protect the four (4) specimen trees on adjoining properties.

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

Saving these specimen trees (disturbing less than 66% of the critical root zone or placing them into a protective easement) would severely impact the development of this property in accordance with the existing neighborhood character as most properties are improved with large single-family homes, swimming pools and tennis courts.

3. Verify that State water quality standards will not be avoided or that a measurable degradation in water quality will not occur as a result of the granting of the variance.

A Stormwater Management (SWM) Plan will be prepared, reviewed and ultimately approved for this project by the Montgomery County Department of Permitting Services. The approved SWM Plan will ensure that water quality standards will be met in accordance with State and County criteria.

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

All forest conservation requirements resulting from the redevelopment of this site will be met through an off-site forest conservation easement. Six (6) on-site specimen trees will ultimately be retained along with six (6) significant trees. Of the sixteen (16) specimen trees impacted, none are rare, threatened, or endangered, per the Maryland Nongame and Endangered Species Conservation Act. The property is not part of an historic site nor does it contain any historic structures. None of the specimen trees in question are 75% (or more) of the diameter of the current State champion for the subject species.

In accordance with Section 22A-21(e) of the Forest Conservation Law, the following is description of the minimum criteria necessary for granting a variance.

1. Will confer on the applicant a special privilege that would be denied to other applicants;

Granting the variance will not confer a special privilege as the removal and/or disturbance of the specimen trees noted above are the minimum necessary in order to develop the property as illustrated on the plan provided. Furthermore, the loss of certain trees and the need for a variance is often necessary and unavoidable in order to develop property for the use and enjoyment of its owner.

2. Is 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 of the applicant. The variance is based upon the R-200 zoning, proposed site development, required BMP's for stormwater management, and the need for a useable and enjoyable yard/lawn area. Furthermore, the owner has worked to reduce disturbance / impact to specimen trees by creating tree save areas and minimizing grading in those areas.

3. Is based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property

The requested variance is a result of the proposed site development required BMP's for stormwater management, and the need for a useable and enjoyable yard/lawn area on the subject property and not a result of land or building use on a neighboring property.

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

The requested variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed or disturbed are not within a stream buffer, wetland, or a special protection area. A Stormwater Management Plan will be approved by Montgomery County. Additionally, only six (6) trees will be physically removed from the property.

Should you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Jeffrey A. Robertson
Senior Project Manager

cc: *The Barnes Trust*
A. Dynerman



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert G. Hoyt
Director

August 19, 2010

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

RE: 10507 Tulip Lane, SC2010014, Sediment control permit applied for on 7/7/2009
8809 Chalon Drive, SC2010014, NRI/FSD applied for on 4/24/2009

Dear Ms. Carrier:

As stated in a letter to Dr. Hanson from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests are required to comply with Chapter 22A based on a review by the Maryland National Capital Park & Planning Commission (MNCPPC) but were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

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

Sincerely,

Laura Miller
County Arborist

cc: Robert Hoyt, Director
Walter Wilson, Associate County Attorney
Mark Pfefferle, Acting Chief