



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
*County Executive*

Robert G. Hoyt  
*Director*

May 15, 2014

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

RE: Washington Gas Strip #27, MR 2014041, NRI/FSD application accepted on 11/27/2013

Dear Ms. Carrier:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A. Due to the nature of this project and the need for it to continue to move forward, I recommend that you require the applicant to revise the forest conservation plan (FCP) and associated request for variance as a condition of approval as follows.

- Revise the variance request, and all associated tables, to include tree #118 as disturbed.
- Remove trees #186 and 282 from the variance request, and all associated tables, because no measureable disturbance is planned.
- Complete all tables with the correct information for trees # 30, 45, 48, 54, and 118. Specifically, complete columns "Requested for Variance" and "Mitigation".
- Depict trees # 457, 548, and 550 with the correct symbol on the plans.
- Revise the FCP to clearly discern the plantings proposed for installation to mitigate for removal of variance trees (those outside of existing forested areas) from plantings proposed to meet the requirements of the forest conservation worksheet (including variance trees within existing forested areas). Provide the location and number of plants by species and size for each type of mitigation required, including those to be installed off site.

Additionally, I recommend requiring all other revisions and conditions of approval requested by the Environmental Reviewer.

Given completion of these revisions to the satisfaction of the Environmental Reviewer, and that the Montgomery County Planning Department ("Planning Department") has completed

all other reviews required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

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

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

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

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant adequately mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous

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condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

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', written in a cursive style.

Laura Miller  
County Arborist

cc: Josh Penn, Senior Planner  
Walter Wilson, County Attorney