



Preliminary/Final Water Quality Plan S-2290 and Final Forest Conservation Plan Amendment S-2290
1220 Briggs Chaney Road; Pampas Garden Landscaping

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Staff Report Date: 12/08/17

Description

A. 1220 Briggs Chaney Road, Preliminary/Final Water Quality Plan No. S-2290: Relocation of a driveway and parking area, and reconstruction of a garage/storage building with total amount of impervious surfaces not to exceed 14,812 square feet, as previously authorized as part of the original Special Exception approval for the landscape contractor use; located on 1220 Briggs Chaney Road, on the north side of Briggs Chaney Road, approximately 1,700 feet west of its intersection with Good Hope Road; 2.46 acres; RE-1 zone; Upper Paint Branch Overlay Zone; Upper Paint Branch Special Protection Area; 1997 Cloverly Master Plan.

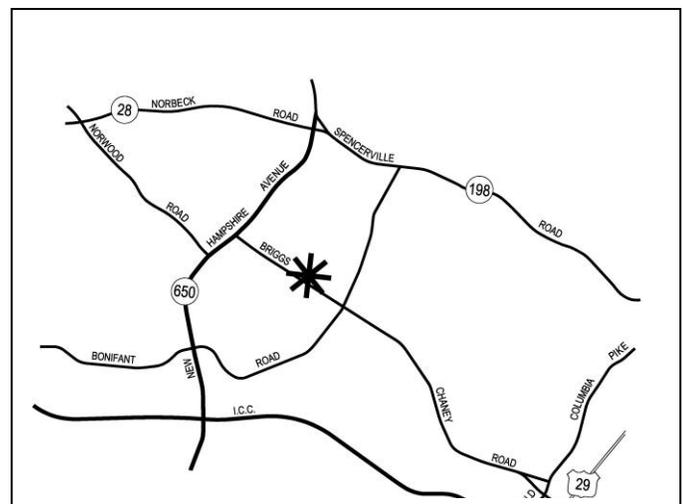
Staff recommendation: Approval with conditions

B. Final Forest Conservation Plan Amendment No. S-2290: Relocation of a driveway and parking area, and reconstruction of a garage/storage building for the landscape contractor use; located on 1220 Briggs Chaney Road, on the north side of Briggs Chaney Road, approximately 1,700 feet west of its intersection with Good Hope Road; 2.46 acres; RE-1 zone; Upper Paint Branch Overlay Zone; Upper Paint Branch Special Protection Area; 1997 Cloverly Master Plan.

Staff recommendation: Approval with conditions

Applicant: Pampas Garden Landscaping, LLC

Submittal Date: May 16, 2017



Summary

The Application requests approval of a Preliminary/Final Water Quality Plan and approval of an amendment to the approved Final Forest Conservation Plan S-2290 to relocate the existing driveway access from Briggs Chaney Road approximately 35 feet to the west, reconfigure the existing parking lot, and demolish and replace the garage/storage building. The property is an existing landscape contractor operation located within the Upper Paint Branch Special Protection Area and the Upper Paint Branch Overlay Zone that will continue to operate under an approved Conditional Use S-2290. There will be no net increase in impervious surfaces on the Property. The Application is in response to a sediment control violation.

RECOMMENDATIONS AND CONDITIONS

A. PRELIMINARY/FINAL WATER QUALITY PLAN NO. S-2290: Staff recommends approval, with the following conditions.

1. The impervious surfaces on the Property are limited to no more than 14,812 square feet as shown on the Impervious Surfaces Plan portion of the Preliminary/Final Water Quality Plan.
2. Prior to the pre-construction meeting, the Applicant must enter into an agreement with the Planning Board to limit impervious surfaces to no more than 14,812 square feet, or 13.8 percent of the 2.46-acre Property and demonstrate conformance to the impervious surface limits.
3. Within 150 days of the pre-construction meeting, the Applicant must restore all areas on the Property identified on the Impervious Surfaces Exhibit Plan portion of the Preliminary/Final Water Quality Plan as impervious surfaces to be removed, per the "Guidelines for Converting Paved Areas into Pervious Greenspace", as outlined on the approved Forest Conservation Plan S-2290. The Applicant must contact a Planning Department Staff inspector to conduct a post-work inspection to verify the removal and restoration of all impervious surfaces to be removed in accordance with the guidelines outlined on the approved Forest Conservation Plan S-2290.
4. The Applicant must conform to the conditions as stated in the Montgomery County Department of Permitting Services ("MCDPS") Preliminary/Final Water Quality Plan for the 1220 Briggs Chaney Road letter dated November 3, 2017, unless otherwise amended by MCDPS, provided the amendments do not conflict with other conditions of the approval.

B. FINAL FOREST CONSERVATION PLAN AMENDMENT NO. S-2290: Staff recommends approval, subject to the following conditions:

1. The Applicant must plant twenty-four native canopy trees on the Property to satisfy the 0.49-acre afforestation requirement as shown on the approved Forest Conservation Plan. The planting locations of these trees and any substitution of species from what is shown on the approved Forest Conservation Plan are subject to the approval of the M-NCPPC forest conservation inspector.
2. Prior to the start of any clearing, grading, or demolition on the Property, the Applicant must provide financial surety to the M-NCPPC Planning Department for the trees proposed to meet the 0.49-acre afforestation requirement.
3. Prior to the start of any clearing, grading, or demolition on the Property, the Applicant must provide a Maintenance and Management Agreement to the M-NCPPC Planning Department for the trees proposed to meet the 0.49-acre reforestation planting requirement.
4. Mitigation must be provided on the Property for the removal of one variance tree. Mitigation must be provided in the form of planting four native canopy trees with a minimum planting stock size of three caliper inches as shown on the approved Forest Conservation Plan. The planting locations of these trees and any substitution of species from what is shown on the approved Forest Conservation Plan are subject to the approval of the M-NCPPC forest conservation inspector.
5. The Applicant must complete all afforestation planting and tree variance mitigation planting within 150 days of the pre-construction meeting.

6. The Applicant must comply with all tree protection and tree save measures shown on the approved Forest Conservation Plan. Tree save measures not specified on the approved Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
7. The limits of disturbance on the Final Sediment and Erosion Control Plan must be consistent with the limits of disturbance on the approved Forest Conservation Plan.

SITE LOCATION AND DESCRIPTION

The property is a 2.46-acre parcel, located at 1220 Briggs Chaney Road, approximately 300 feet northwest of Lear Lane (“Property” or “Subject Property”) (Figure 1). The Property is zoned RE-1, located in the *Cloverly Master Plan* (“Master Plan”), and identified as Parcel 380 on Tax Map KS121.

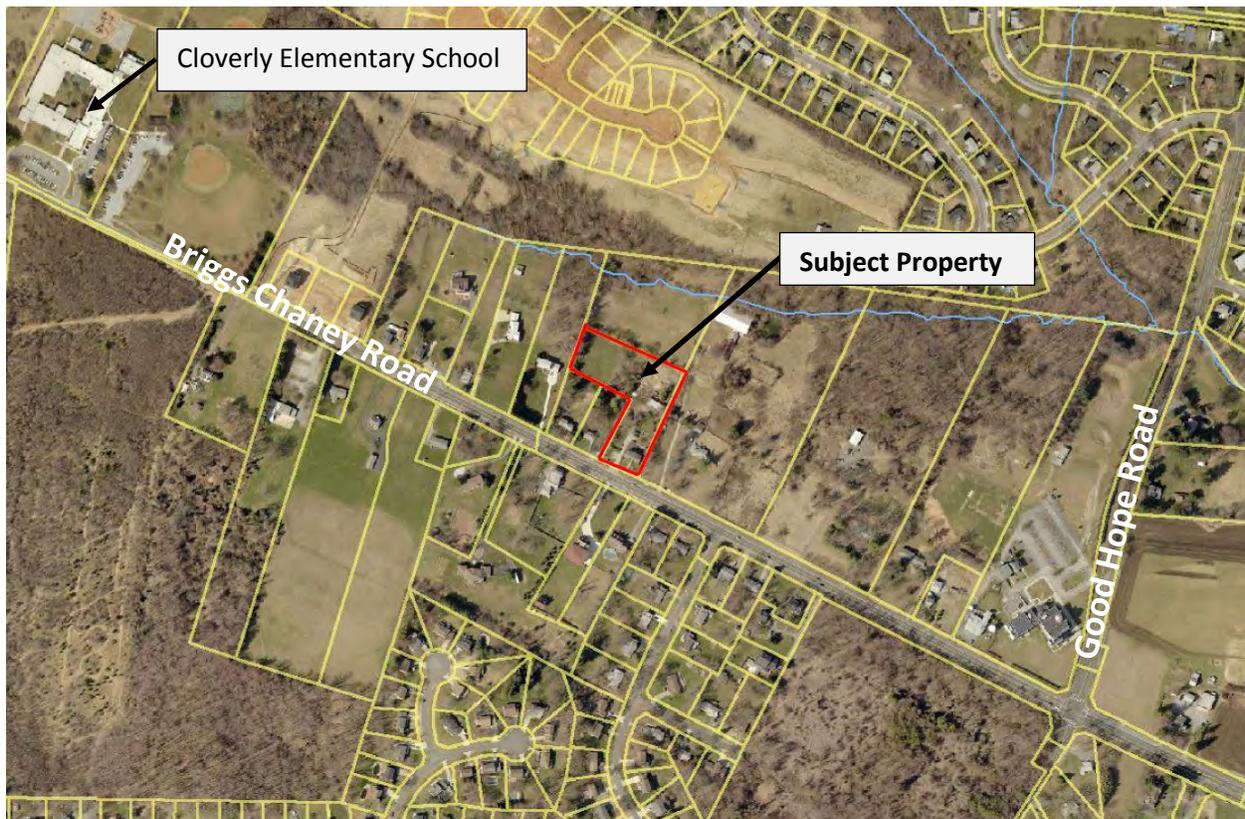


Figure 1 - Vicinity Map (2015 photograph)

The Subject Property is accessed from Briggs Chaney Road, and is currently improved with a single family residential house, storage garage, asphalt driveway, and gravel parking area. The Property is operating as a landscape contractor under Special Exception S-2290, originally approved in January 1998 and recently modified by the Board of Appeals on August 9, 2017 to reflect the proposed changes. The remainder of the Property is undeveloped with existing tree cover and maintained grass (Figure 2). The entire Property is covered by a Category II conservation easement as part of a previous forest conservation plan approval associated with the original Special Exception Approval.

The Property is in the Upper Paint Branch watershed, which is classified by the State of Maryland as Use Class III waters. It is also located within the Upper Paint Branch Special Protection Area (SPA) and the Upper Paint Branch Overlay Zone. There is no forest on the Property, but there are three large trees

located on-site and four located immediately adjacent to the site. There are no streams, wetlands, stream buffers, 100-year floodplain, steep slopes, or highly erodible soils on the Property.



Figure 2 – Aerial Map (2015 photograph)

PREVIOUS APPROVALS

The Property, under different ownership, was granted Special Exception S-2290 for a landscape contractor use in January 1998. A Forest Conservation Plan, S-2290 was approved in May 1998. The Montgomery County Department of Permitting Services and the Board of Appeals determined that the Special Protection Area requirements did not apply due to the limited land disturbing activities proposed at that time. The plans approved at the time of the Special Exception approval permitted approximately 14,812 square feet of impervious surfaces to be maintained on the Property. The Board of Appeals granted a transfer of the Special Exception to the Applicant (current owner) in a Resolution dated September 26, 2016, and a modification to the Special Exception to allow the proposed changes included in this Application to the site in a Resolution dated August 9, 2017 (Attachments A and B).

CURRENT APPLICATION

Proposal

In response to a Stop Work Order issued in November 2016, the Applicant, Pampas Garden Landscaping, LLC, has requested approval for a new Preliminary/Final Water Quality Plan and an amendment to the Final Forest Conservation Plan ("Application"). The Applicant purchased the Property and had the Special Exception transferred to allow the continued operation of a landscape contracting operation on the Property. The Applicant had begun renovations to the existing gravel parking lot in the rear of the Property without obtaining appropriate approvals. The Application proposes to relocate the existing driveway access from Briggs Chaney Road approximately 35 feet to the west, reconfigure the existing parking lot, and demolish and replace the garage/storage building.

1. Preliminary/Final Water Quality Plan S2290

An Impervious Surface Exhibit was submitted as part of the Water Quality Plan Application (Attachment C). The Application proposes to relocate the existing driveway, reconfigure the parking area, and demolish and replace the existing garage/storage building. The Impervious Surface Exhibit demonstrates that the Property will maintain and not exceed 14,812 square feet of impervious surfaces, as approved as part of the original Special Exception application. The resulting impervious surfaces comprises approximately 13.8 percent of the Property.

2. Final Forest Conservation Plan Amendment S2290

A Final Forest Conservation Plan Amendment (FCP) S2290 was submitted for review on March 23, 2017 (Attachment D). The Property does not contain any forest; however, there is a Category II conservation easement recorded over the entire Property, as a condition of the previous FCP approval. The 0.49-acre afforestation requirement was originally satisfied via credits for retaining existing individual tree canopy and planting new trees for canopy credit. These trees were protected in the Category II conservation easement. Some of the trees for which credits were obtained have been removed and the Applicant proposes to plant new trees for canopy credit to meet the 0.49-acre afforestation requirement. The new construction will impact trees greater than 30 inches in diameter, so the Applicant has submitted a tree variance request with this Application.

ANALYSIS AND FINDINGS

- 1. The Application satisfies all the applicable requirements of the Montgomery County Code Chapter 19 for Water Quality Reviews in Special Protection Areas and Montgomery County Code Chapter 59 for the Upper Paint Branch Overlay Zone.*

Special Protection Area Preliminary/Final Water Quality Plan

As part of the requirements of the Special Protection Area Law, a Special Protection Area Water Quality Plan must be reviewed in conjunction with this project's request for a sediment control permit. Under the provision of the law, the Montgomery County Department of Permitting Services (MCDPS), the Planning Board, and the Montgomery County Department of Environmental Protection (MCDEP) have different responsibilities in the review of a Water Quality Plan. MCDPS has reviewed and approved the elements of the Preliminary/Final Water Quality Plan under its purview as outlined in a letter dated November 3, 2017 (Attachment E). As part of this Application, the Planning Board's responsibility is to determine if stream buffer protection, SPA forest conservation and planting requirements, and site imperviousness limits have been satisfied.

Planning Board Special Protection Area Review Elements

Stream Buffer Protection

There is no area on the Property located within a stream buffer, so no stream buffer disturbance is proposed by this Application.

Forest Conservation and Planting Requirements

This Property meets all applicable requirements of Chapter 22A of the County Code (Forest Conservation Law). The Forest Conservation Plan will be amended as part of this Application. The Application proposes to satisfy the 0.49-acre planting requirement by planting new trees and taking full credit for the projected 20-year canopy. These trees will be protected via the existing Category II conservation easement on the Property.

Imperviousness

Impervious surface restrictions for development projects in the Upper Paint Branch Special Protection Area (SPA) are set forth in the Overlay Zone for the Upper Paint Branch SPA. As per Chapter 59, Section 4.9.18, the imperviousness for the Application may not exceed 8.0 percent; however, 14,812 square feet of impervious surfaces on the site are considered legally existing as they were approved at the time of the previous approval for this Property in 1998, and the Property was not required to conform to the 10 percent impervious surface limit of the Upper Paint Branch Overlay Zone in place at the time. Therefore, the Application is limited to 14,812 square feet of impervious surfaces, or 13.8 percent of the Property.

The Application proposes to reconfigure some of the impervious surfaces by relocating the driveway, reconfiguring the parking area, and demolishing and rebuilding the garage/storage building. The Impervious Surface Exhibit submitted as part of this Application demonstrates that the Property will not exceed 14,812 square feet, or 13.8 percent of the 2.46-acre Property. (Attachment C).

Montgomery County Department of Permitting Service Special Protection Area Review Elements

MCDPS has reviewed and approved the elements of the SPA Final Water Quality Plan under its purview (Attachment E). These elements include site performance goals, stormwater management, sediment and erosion control, and monitoring of Best Management Practices.

- *Site Performance Goals*

As part of the Water Quality Plan, the following performance goals were established for the site: minimize storm flow runoff increases and minimize sediment loading.

- *Stormwater Management Concept*
The required goals will be met via drywells and landscape infiltration.
- *Sediment and Erosion Control*
An engineered sediment control plan will be required.
- *Monitoring of Best Management Practices*
A stream monitoring fee for the site area and a BMP monitoring fee for the disturbed area is required.

Staff finds that the Preliminary/Final Water Quality Plan S-2290 satisfies the SPA forest conservation and planting requirements, and meets the imperviousness limits required of the Application.

2. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

Forest Conservation

Final Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by the County Forest Conservation Law (Chapter 22A of the County Code), a Forest Conservation Plan (Attachment D) was submitted as part of the review process. This FCP is an amendment to previously approved FCP S-2290, which was approved as part of the original special exception application for the landscape contractor use. The Property does not contain any forest; however, there are six trees greater than or equal to 24 inches in diameter at breast height (DBH) located on or immediately adjacent to the Property. Three of these trees are located on the Property, and of these, two are greater than 30" DBH. The FCP results in an afforestation requirement of 0.49 acres. This requirement was satisfied on the previously approved FCP through retention of existing tree canopy and credit for the projected canopy of newly planted trees. A Category II conservation easement was recorded over the entire Property as a means of protecting these trees. Some of the trees for which credits were obtained have been removed over the past several years, and one tree (ST-3), which is subject to the tree variance provision, is proposed to be removed as part of this Application. The Application proposes to plant twenty-four, 2-3-inch caliper, native, canopy trees on the Property, for a total credit of 0.49 acres of projected canopy at 20-years, to satisfy the 0.49-acre planting requirement. The existing Category II conservation easement will remain.

Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees and other vegetation as high priority for retention and protection. The law requires that there be 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 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. Any impact to high priority vegetation, including disturbance to the 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 proposed disturbance on the Property requires impact to trees identified as

high priority for retention and protection (Protected Trees), therefore, the Applicant has submitted a variance request for these impacts. Staff recommends that a variance be granted, and mitigation be required.

Variance Request

The Applicant submitted a variance request in October 2017, for the impacts/removal of trees (Attachment F). The Applicant proposes to remove one (1) Protected Tree that is 30 inches or greater, DBH, and considered a high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. This tree, noted as ST-3 on the FCP, is a 44" DBH silver maple (*Acer saccharinum*) in moderate - poor condition. It is located outside of forest, adjacent to the existing driveway. The Application proposes to remove the existing driveway and construct a new driveway on the other side of this tree. The current condition of the tree combined with the proposed disturbance and impacts to its roots necessitates the removal of this tree. Some of the disturbance to the root zone is for the relocation of the driveway but some is also for the installation of an infiltration device used for stormwater management. Details of the Protected Tree to be removed are listed in Table 1 and highlighted graphically in Figure 3.

The Applicant also proposes to impact, but not remove, two (2) off-site Protected Trees that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. The critical root zones of these trees will be impacted during the relocation of the existing driveway and construction of required stormwater management features. Details of the Protected Trees to be affected but retained are listed in Table 1 and highlighted graphically in Figure 3.

Table 1 – Protected Trees to be removed or affected but retained

Tree No.	Common Name	Botanical Name	Size (DBH)	CRZ Impact	Tree Condition	Location
ST-3	Silver Maple	<i>Acer saccharinum</i>	44"	Remove	Moderate - Poor	On-site; Driveway, SWM
ST-4	Silver Maple	<i>Acer saccharinum</i>	45"	26% (Retain)	Moderate	Off-site; Driveway, SWM
ST-6	Silver Maple	<i>Acer saccharinum</i>	31"	27% (Retain)	Moderate	Off-site; SWM

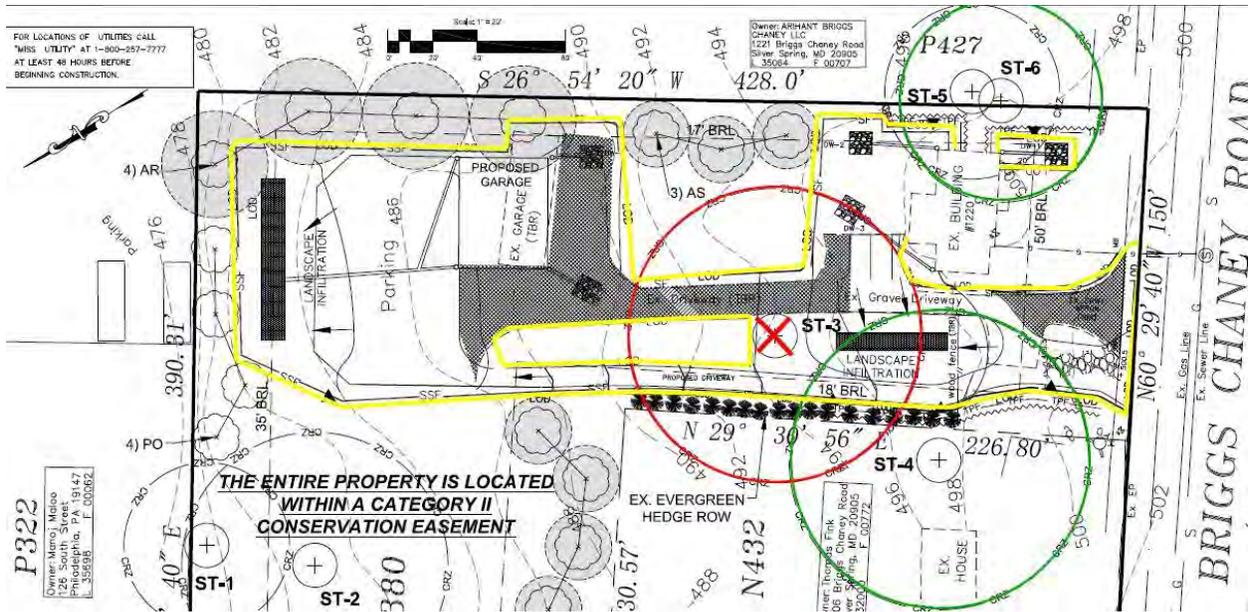


Figure 3 – Tree Variance

Unwarranted Hardship Basis – Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Tree in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of the Property. The Applicant contends that an unwarranted hardship would be created due to the requirement to implement stormwater management measures for the existing and proposed conditions on the Property.

The Application includes four trees subject to the variance provision, one of which will be removed and two will have some impact to their critical root zones by the proposed disturbance. The tree to be removed, a 44" DBH silver maple in moderate/poor condition, is located adjacent to the west side of the existing driveway. The Applicant proposes to relocate the existing driveway further west, on the other side of this tree. Some of the disturbance to the root zone is for the relocation of the driveway but some is also for the installation of an infiltration device used for stormwater management. The proposed disturbance so close to this tree will result in its removal. The two trees proposed to be impacted, but retained, include a 45" DBH and 31" DBH silver maple in moderate condition. These trees are located off-site but their critical root zones extend onto the Property and will be impacted by the disturbance associated with relocating the driveway and installation of required stormwater management features. The Applicant proposes to demolish and rebuild a garage/storage building and reconfigure the parking lot in the rear of the Property to serve the existing business and continue to adhere to the impervious surface limitations of the Upper Paint Branch Overlay Zone. These activities require that a stormwater management plan be implemented for the Property and this creates an unwarranted hardship. Whether or not the driveway is relocated, the required stormwater management features will be required, and the impacts to the Protected Trees are a result of the construction of these required features. Staff has reviewed the Application and finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings – 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, for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the Forest Conservation Plan.

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 disturbance to the Protected Trees is due to reasonable modifications to the existing features on the Property to better serve the operation of the existing landscape contractor business and to implement required stormwater management measures to treat the impervious surfaces in this sensitive watershed. The Protected Trees are located adjacent to existing impervious surfaces that require stormwater management measures in close proximity. Any re-development or modifications considered for this Property, would be faced with the same considerations of needing to provide stormwater management measures. But more important, impact to the Protected Trees provides much needed implementation of stormwater management measures to treat the impervious surfaces in this sensitive watershed. Granting a variance to allow land disturbance within the Property is not unique to this Applicant. Staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon existing conditions on the Property, including the location of the Protected Trees within the area of the Property that stormwater management measures need to be provided to treat the impervious surfaces on this Property in this sensitive watershed.

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

The need for a variance is a result of the existing conditions and the desire for the Applicant to reconfigure existing features to better serve the existing business, and satisfy stormwater management requirements and the requirements of the Upper Paint Branch Overlay Zone.

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. No trees located within a stream buffer or wetland will be impacted or removed as part of this Application. One tree is proposed to be removed and two trees will be impacted. The tree that will be removed will be mitigated for by planting trees on the site to replace the functions lost by the removal of this tree. The two trees that will be impacted, but not removed will continue to provide their existing functions. In addition, MCDPS will require a detailed sediment and erosion control plan for the land disturbance and a stormwater management plan to treat all runoff from impervious surfaces on the Property prior to discharging into the receiving waterway.

Mitigation for Protected Trees – Mitigation for the removal of one Protected Tree is recommended at a rate that approximates the form and function of the tree removed. Therefore, Staff is recommending that replacement occur at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. This Application proposes to remove 44 inches in DBH resulting in a mitigation requirement of 11 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. The FCP includes the planting of four native, canopy trees as mitigation for the removal of one Protected Tree. Although these trees will not be as large as the tree lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of this tree. Staff does not recommend mitigation for trees impacted, but not removed. The affected root systems will regenerate and the functions provided restored.

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 October 27, 2017, the County Arborist provided a letter recommending that a variance be granted with mitigation (Attachment G).

Variance Recommendation – Staff recommends that the variance be granted with mitigation for the loss of one tree as described above.

CONCLUSION

The proposed Preliminary/Final Water Quality Plan and Final Forest Conservation Plan Amendment meet all requirements established in the Montgomery County Code. Staff has not received any correspondence on the Application as of the date of this report. Therefore, approval of the Applications with the conditions specified herein is recommended.

ATTACHMENTS

Attachment A – Board of Appeals Resolution dated September 26, 2016

Attachment B – Board of Appeals Resolution dated August 9, 2017

Attachment C – Impervious Surface Exhibit – Preliminary/Final WQP

Attachment D - Final Forest Conservation Plan Amendment

Attachment E - MCDPS Preliminary/Final WQP Approval Memo

Attachment F – Tree Variance Request

Attachment G – County Arborist Tree Variance Recommendation

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

Case No. S-2290

**PETITION OF KUHN TREE SERVICE (by Laura C. Hultz)
[NEW HOLDER: PAMPAS GARDEN LANDSCAPING LLC]**

RESOLUTION TO TRANSFER SPECIAL EXCEPTION

(Worksession Date: September 21, 2016)

(Effective Date of Resolution: September 26, 2016)

Case No. S-2290 is a special exception for a Landscape Contractor which the Board of Appeals granted on January 16, 1998, to Laura C. Hultz, pursuant to Section 59-G-2.30(c) of the Zoning Ordinance. On July 22, 2010, the special exception was modified following a show cause hearing to change the hours of operation, limit the number of employees who may be on-site at any one time, permit log splitting once a week, allow changes to the required landscaping, and require submission of a revised Lighting and Landscaping Plan.

The subject property is Parcel 380 (comprising approximately 2.463 acres), Bealls Manor Subdivision, located at 1220 Briggs Chaney Road, Silver Spring, Maryland, 20905, in the RE-1 Zone.

The Board of Appeals has received a letter, dated August 19, 2016, from Marcie Freitas, Manager-Owner of Pampas Garden Landscaping LLC. Mr. Freitas requests that the special exception be transferred to Pampas Garden Landscaping LLC. He includes a letter from Laura C. Hultz consenting to the transfer, as well as a copy of the deed transferring the property to Pampas Garden Landscaping LLC.

The Board of Appeals considered the transfer request at its Worksession on September 21, 2016. Because Case No. S-2290 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant requests review under the current Zoning Ordinance. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section

59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of the Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted or modified by the Board of Appeals, will not substantially change the nature, character, or intensity of the use, and will not substantially change its impact on the immediate neighborhood or on traffic. Therefore, on a motion by John H. Pentecost, Vice-Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2290 is re-opened to receive Mr. Freitas's letter dated August 19, 2016, with attachments; and

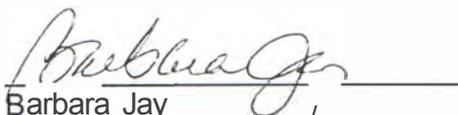
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to transfer the special exception to Pampas Garden Landscaping LLC is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of September, 2016.



Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850
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(240) 777-6600

**Case No. S-2290
PETITION OF PAMPAS GARDEN LANDSCAPING LLC**

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Worksession Date: July 26, 2017)

(Effective Date of Resolution: August 9, 2017)

Case No. S-2290 is a special exception for a Landscape Contractor which the Board of Appeals granted on January 16, 1998, to Laura C. Hultz, pursuant to Section 59-G-2.30(c) of the Zoning Ordinance. On July 22, 2010, the special exception was modified following a show cause hearing to change the hours of operation, limit the number of employees who may be on-site at any one time, permit log splitting once a week, allow changes to the required landscaping, and require submission of a revised Lighting and Landscaping Plan. Effective September 26, 2016, the special exception was transferred to Pampas Garden Landscaping LLC.

The Board of Appeals has received a letter, dated July 17, 2017, from Marcio Freitas, Manager-Owner of Pampas Garden Landscaping LLC. Mr. Freitas requests that the special exception be modified to allow the relocation of the driveway to accommodate proposed storm water management facilities which are needed to bring the property into compliance with the applicable storm water regulations of Montgomery County and the State of Maryland. Mr. Freitas' letter indicates that "[t]he new driveway is planned along the west-south-western limits of the site near Briggs Chaney Road. The existing driveway which runs through the middle of the site, is planned to be removed." Mr. Freitas has included a revised site plan showing the proposed changes with his request. See Exhibits 62 and 62(a).

The subject property is Parcel 380 (comprising approximately 2.463 acres), Bealls Manor Subdivision, located at 1220 Briggs Chaney Road, Silver Spring, Maryland, 20905, in the RE-1 Zone.

The Board of Appeals considered the modification request at its Worksession on July 26, 2017. Mr. Freitas appeared at the Worksession, and, using Exhibit 62(a), explained to the Board where the existing driveway was, and where the new driveway would be. He explained that the new driveway will be asphalt to the house and millings/gravel the rest of the way. He stated

Case No. S-2290

Page 2

that he had planted a row of trees to give his abutting neighbor to the west more privacy, and that he would also be applying for a 6 foot fence permit.

Because Case No. S-2290 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

Based on the record before it, the Board finds that the request to relocate the driveway within the property to accommodate a compliant storm water management system, as described and depicted by Exhibits 62 and 62(a), will not substantially change the nature, character or intensity of this landscape contracting use or its effect on traffic or on the immediate neighborhood. The Board notes in support of this that Mr. Freitas has indicated that he has and will be taking steps to minimize the impact of this modification on his immediate neighbor.

On a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, and Edwin S. Rosado in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2290 is re-opened to receive Mr. Freitas's letter dated August 19, 2016, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

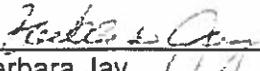
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for

Montgomery County, Maryland
this 9th day of August, 2017.



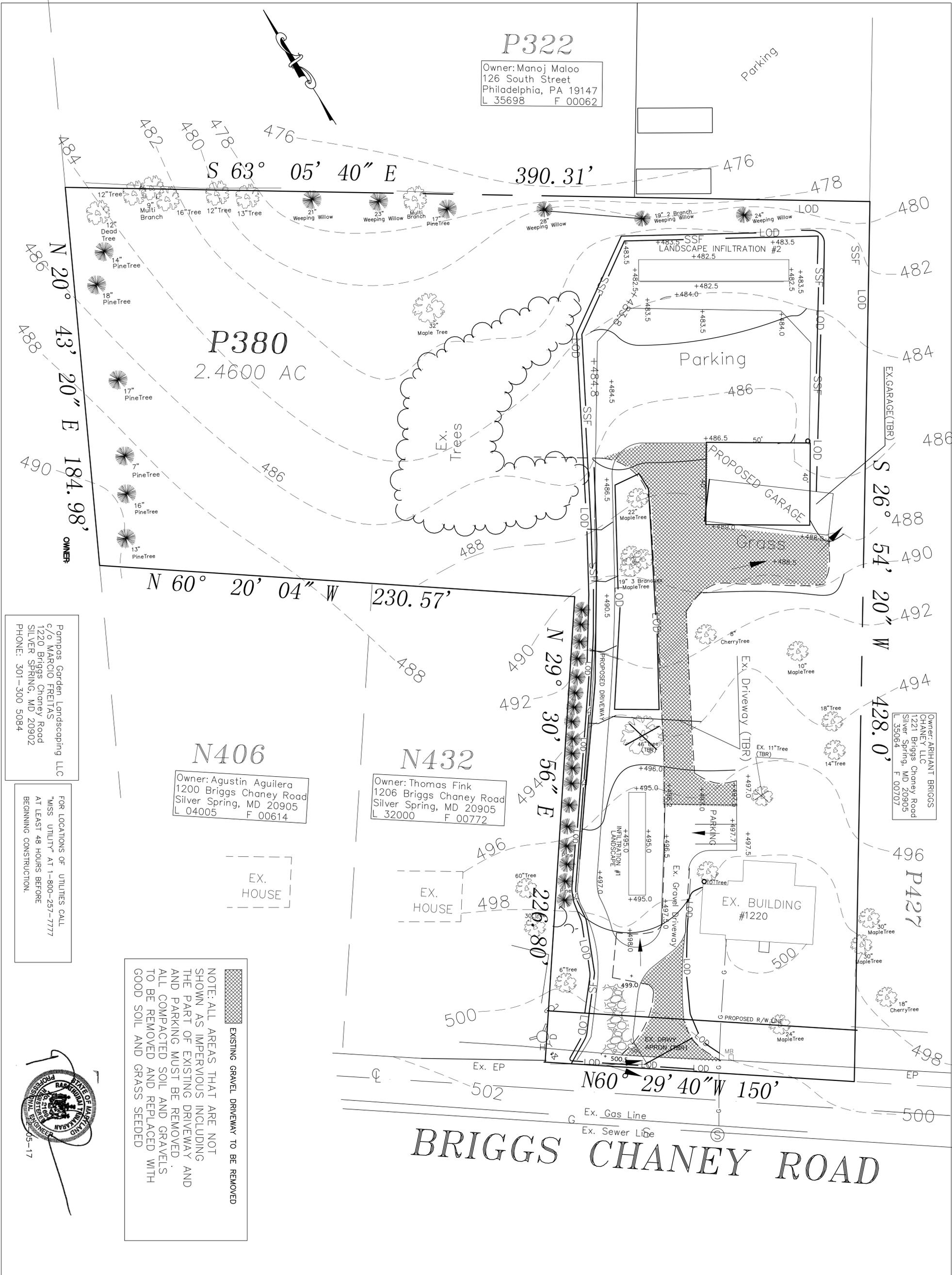
Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.



Owner: Manoj Maloo
126 South Street
Philadelphia, PA 19147
L 35698 F 00062

P380
2.4600 AC

N406

N432

Owner: ARIHANT BRIGGS
CHANLEY LLC
1221 Briggs Chaney Road
Silver Spring, MD 20905
L 35064 F 00707

Owner: Agustin Aguilera
1200 Briggs Chaney Road
Silver Spring, MD 20905
L 04005 F 00614

Owner: Thomas Fink
1206 Briggs Chaney Road
Silver Spring, MD 20905
L 32000 F 00772

Pompos Garden Landscaping LLC
c/o MARCIO FRETAS
1220 Briggs Chaney Road
SILVER SPRING, MD 20902
PHONE: 301-300 5084

FOR LOCATIONS OF UTILITIES CALL
"MISS UTILITY" AT 1-800-257-7777
AT LEAST 48 HOURS BEFORE
BEGINNING CONSTRUCTION.

EXISTING GRAVEL DRIVEWAY TO BE REMOVED

NOTE: ALL AREAS THAT ARE NOT SHOWN AS IMPERVIOUS INCLUDING THE PART OF EXISTING DRIVEWAY AND AND PARKING MUST BE REMOVED. ALL COMPACTED SOIL AND GRAVELS TO BE REMOVED AND REPLACED WITH GOOD SOIL AND GRASS SEEDS



BRIGGS CHANEY ROAD

<p>REVISION :</p>		 <p>TOTAL ENGINEERING SERVICES PLANNERS, ENGINEERS, SURVEYORS P.O. BOX 10123 SILVER SPRING, MD 20914 TEL:(301) 515 1514 FAX:(301) 515 5589</p>
<p>PROJECT NAME 1220 BRIGGS CHANEY RD. SILVER SPRING PARCEL 360 BEALLS MANOR MONTGOMERY COUNTY, MARYLAND</p>		
<p>DRAWING TITLE : IMPERVIOUS SURFACE EXHIBIT PLAN</p>		
<p>Drawn : _____</p>	<p>Approved : _____</p>	<p>Job No. : _____</p>
<p>In Charge : _____</p>	<p>Project Manager : _____</p>	<p>Project Address : _____</p>
<p>Scale : 1" = 20'</p>	<p>Drawing No. : _____</p>	<p>Date : 09-22-17</p>
<p>12-05-17</p>		<p>1 OF 2 ISE</p>

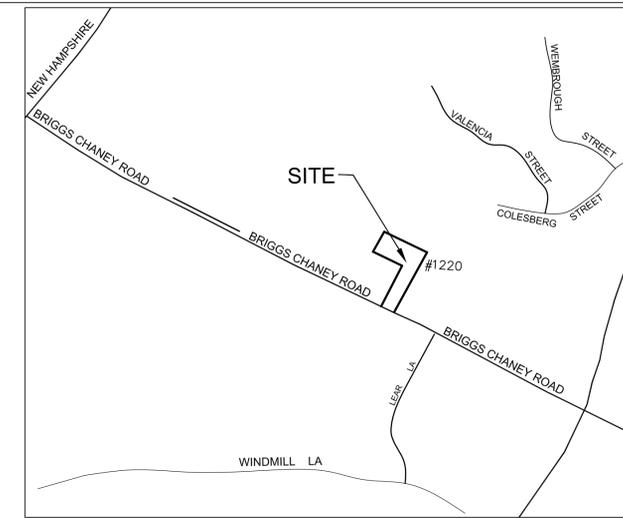
Guidelines for Converting Paved Areas into Pervious Greenspace

These guidelines provide typical practices for the removal of pavements and deconsolidation of underlying soils to promote vegetative growth and infiltration of stormwater. Please note that these procedures may be varied to better match particular conditions at individual sites. For example, areas of soil deconsolidation may be reduced where tree roots extend under pavements in order to prevent impacting roots. Conversely, the area of soil deconsolidation may be expanded to include significantly impacted soils in areas adjacent to pavement. Where uncertainty exists about how to treat a particular condition, please consult with an appropriate professional with experience in this type of construction activity.

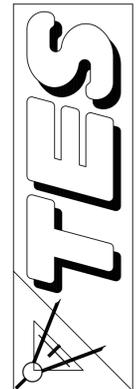
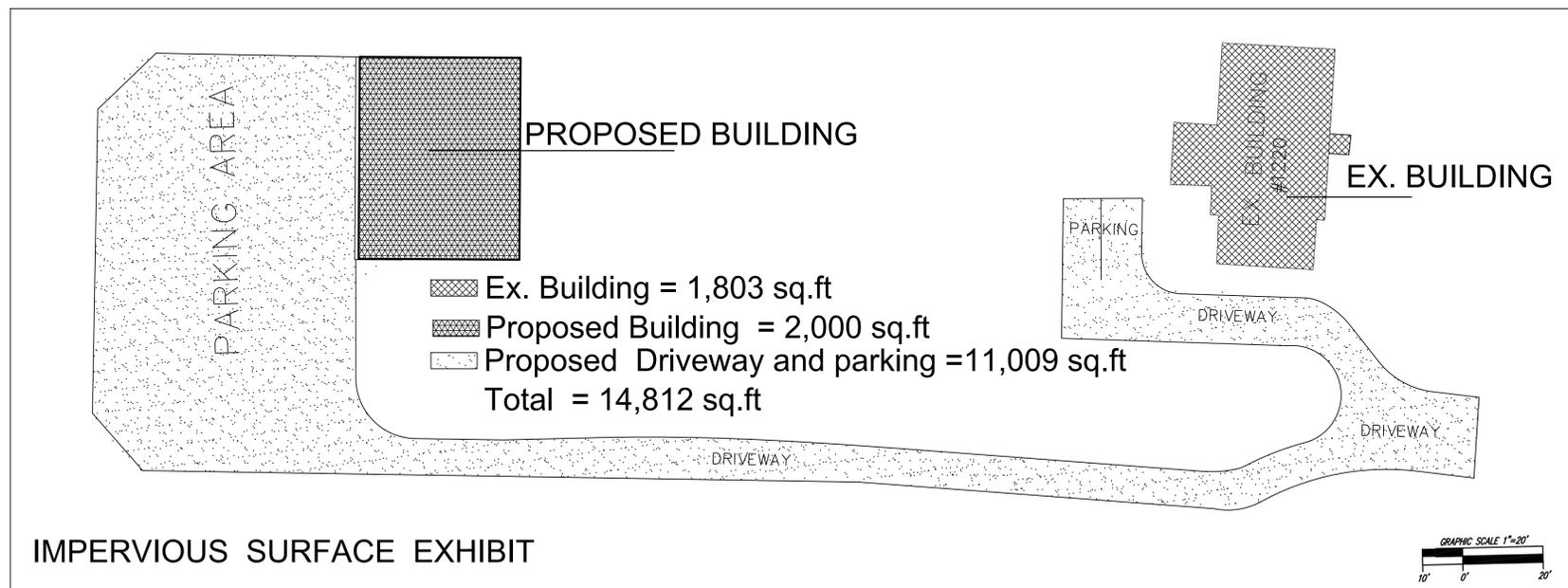
1. Prior to starting construction, contact Miss Utility to clear all existing utilities within work area. Please note that a private utility location firm may be required to locate private utilities not marked by Miss Utility. Coordinate any utility disconnections and/or abandonments with appropriate utility company.
2. If SPA imperviousness removal credits are being sought for the project, establish area of pavement to be removed using field measurements. Areas should be certified by a Land Surveyor or Professional Engineer registered in the State of Maryland and submitted to the Department of Planning of M-NCPPC. Note that documentation of soil deconsolidation efforts (i.e., photographs, inspection reports, etc.) may be required for confirmation of completed work.
3. Prior to beginning, ensure all required permits have been obtained. If the disturbed area exceeds 5,000 square feet (SF) or earth movement exceeds 100 cubic yards (CY), a Sediment Control Permit will be required from the Montgomery County Department of Permitting Services (MCDPS). Additional approvals may be required from the Department of Planning of M-NCPPC and/or the Maryland Department of the Environment (MDE), depending on the location of the project relative to streams, wetlands, and other natural resources. Please note, that even when the project does not require formal permitting, standard sediment control and tree protection practices should be used.
4. Conduct a pre-construction meeting with appropriate personnel from the contracting company, owner, and any agency having jurisdiction over the proposed construction activities, including the M-NCPPC inspector. The limit of disturbance (LOD) and access route should be identified, and a final set of approved plans should be available for review and discussion. The LOD may be field adjusted with the approval of the M-NCPPC inspector to minimize impacts to adjacent natural resources.
5. Field-locate and install Tree Protection Measures and perimeter sediment controls around work area per the approved plans. Schedule work when favorable weather conditions are forecasted over the anticipated period of construction. In the event that poor weather conditions develop or if work is suspended for more than 2-3 days, the work area should be covered or otherwise stabilized with a temporary seed and straw mulching.
6. Remove existing pavements (and subbase), buildings, foundations, and other impervious materials in accordance with the approved plans, the project intent, and field direction by owner's representative and inspectors. Where deep foundations or footings exist, they should be removed to a minimum depth of 24 inches below proposed finished grade.

7. Rough grade site to proposed grades and smooth transitions into adjacent grades and facilities to remain. Remove all rocky material (stones greater than 2 inches in any direction) from soils within top 12-inches of finished grade. In the case of removing spread gravel or similar surfaces, crusher-run the area. Remove material and replace with soils similar to native soils.
8. Deconsolidate soils throughout areas of former imperviousness extending 2-feet beyond previous limits where feasible. Use equipment-mounted metal tines (or other approved soil ripping/tilling equipment) spaced at approximately 2 feet and extending a minimum of 12 inches below mounting element to break up upper 12 inches of soil layer. Soil should be ripped with a minimum of three passes of equipment in one direction and three additional passes in an approximately perpendicular direction to ensure soil is thoroughly mixed and friable. Additional passes and other measures may be required if soils fail to break apart. Remove any large chunks of soil/rock that cannot be broken down to pieces less than 2 inches in any direction.
9. Once soil is deconsolidated and approved by owner's representative and inspectors, apply 2 inches of certified compost (i.e., Leafgro, or equal) across entire disturbed area. Mechanically mix compost into top 4 inches of soil to ensure thorough distribution of organic matter. Blade off and/or rake finished materials to reestablish proposed grades taking precautions not to recompact soils.
10. Once planting bed is prepared, apply approved native seed mix over disturbed area and install/tack straw mulching. Thoroughly water seeded area to establish good stand of vegetation. Note that if project is on M-NCPPC property (or area to be dedicated to M-NCPPC), establishment of vegetation shall be in accordance with Planting Requirements for Land-Disturbing Activities and Related Mitigation on M-NCPPC Montgomery County Parkland and latest standards of M-NCPPC.
11. Once vegetation is established (and with approval of inspectors) remove sediment controls, tree protection fencing, and any miscellaneous debris throughout site.
12. If SPA imperviousness removal credits are being sought for project, confirm total area of imperviousness removed using field measurements. Areas should be certified by a Land Surveyor or Professional Engineer registered in the State of Maryland and submitted to the Planning Department staff of M-NCPPC. Please note that a field visit by M-NCPPC staff may be required to confirm finished conditions of created greenspace.
13. Additional native plantings may be installed at direction of owner depending on ultimate desired conditions of greenspace.

Adopted/Amended (Sept 2017) from M-NCPPC Department of Parks document dated 10/2/2009



VICINITY MAP



TOTAL ENGINEERING SERVICES
PLANNERS, ENGINEERS, SURVEYORS
 P.O. BOX 10123
 SILVER SPRING, MD 20914
 TEL:(301) 515 1514 FAX:(301) 515 5589

REVISION :

PROJECT NAME
1220 BRIGGS CHANEY RD.
 SILVER SPRING
PARCEL 380
BEALLS MANOR
 MONTGOMERY COUNTY, MARYLAND

DRAWING TITLE :

IMPERVIOUS SURFACE EXHIBIT PLAN

Drawn :	Approved :	Job No. :
In Charge :	Project Manager :	Project Architect :
Scale :	Drawing No. :	
1" = 20'	2 OF 2 ISE	
Date :		
09-22-17		
12-05-17		

FOR LOCATIONS OF UTILITIES CALL "MISS UTILITY" AT 1-800-257-7777 AT LEAST 48 HOURS BEFORE BEGINNING CONSTRUCTION.

Scale: 1" = 20'

Owner: ARIHANT BRIGGS CHANEY LLC
1221 Briggs Chaney Road
Silver Spring, MD 20905
L 35064 F 00707

P322

Owner: Manoj Maloo
126 South Street
Philadelphia, PA 19147
L 35698 F 00062

- LEGEND:**
- AFFORESTATION AREA
 - CANOPY COVERAGE
 - CRITICAL ROOT ZONE
 - DRYWELL
 - EXISTING BUILDING
 - LIMITS-OF-DISTURBANCE
 - PROPOSED TREE PLANTING
 - PROPERTY LINE
 - PROPOSED CONTOUR
 - ROOT PRUNING
 - SIGNIFICANT / SPECIMEN TREE
 - SIGNIFICANT / SPECIMEN TREE TO BE REMOVED
 - SILT FENCE
 - SUPER SILT FENCE
 - TREE PROTECTION FENCE
 - TREE PROTECTION SIGN
 - 20-YEAR CANOPY

THE ENTIRE PROPERTY IS LOCATED WITHIN A CATEGORY II CONSERVATION EASEMENT

NOTES:

1. AREA OF PROPERTY - 2.46 ACRES
2. EXISTING ZONING : RE-1
3. DEVELOPMENT STANDARDS:
Setback from street - 50'
Sideyard setbacks - 35', 17' minimum
Rearyard setback - 35'
4. LOTS TO BE SERVED BY PUBLIC WATER AND SEWER
5. EXISTING SEWER & WATER SERVICE CATEGORIES: S-1,W-1
6. LOCATED IN THE UPPER PAINT BRANCH SPECIAL PROTECTION AREA
7. LOCATED IN THE PAINT BRANCH WATER SHED USE III
8. THERE WERE NO WETLANDS IDENTIFIED DURING THE SITE VISIT AND THE NATIONAL WETLAND INVENTORY MAPS FOR MONTGOMERY COUNTY DOES NOT IDENTIFY ANY EXISTING WETLANDS.
9. PER FEMA FLOODMAP PANEL 24031C0380D FOR MONTGOMERY COUNTY, THERE ARE NO FLOODPLAINS EXISTING ON THE PROPERTY
10. THERE ARE NO STREAMS AND/OR STREAM BUFFERS ON THE PROPERTY PER M-NCPPC TOPOGRAPHY AND FIELD OBSERVATIONS
11. PROPERTY LOCATED ON WSSC GRID SHEET 220NE02, TAX MAP KS11
12. THE ENTIRE PROPERTY IS LOCATED WITHIN A CATEGORY II CONSERVATION EASEMENT.

DEVELOPER'S CERTIFICATE - 1220 Briggs Chaney Road

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. S-2280 including, financial bonding, forest planting, maintenance and all other application agreements.

Developer's Name: Pampas Garden Landscaping LLC
Print Company Name

Contact Person or Owner: Marcio Fretas
Print Name

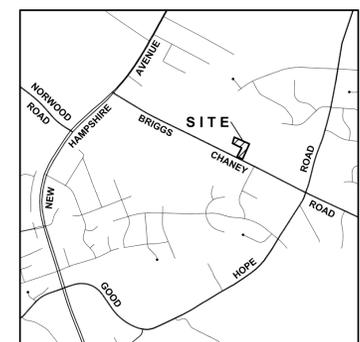
Address: 1220 Briggs Chaney Road

Phone # and Email: 301-300-5084

Signature: _____

Prepared for:
Pampas Landscaping
c/o Marcio Fretas
1220 Briggs Chaney Road
Silver Spring, Maryland 20905
(301) 300-5084

VICINITY MAP
1" = 2000'



Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240



ATLES

TOTAL ENGINEERING SERVICES
PLANNERS, ENGINEERS, SURVEYORS
P.O. BOX 10123
SILVER SPRING, MD 20914
TEL: (301) 515 1514 FAX: (301) 515 5589

REVISION :

PROJECT NAME

1220 BRIGGS CHANEY RD.
SILVER SPRING
PARCEL 380

BEALLS MANOR

MONTGOMERY COUNTY, MARYLAND

DRAWING TITLE :

AMENDMENT TO THE FINAL FOREST CONSERVATION PLAN

Drawn :	Approved :	Job No. :
In Charge :	Project Manager :	Project Architect :
Scale :	Drawing No. :	
1" = 20'	1 OF 3 AMENDMENT FFCP	
Date :	03-22-17	

Sequence of Events for Properties Required to Comply with Forest Conservation Plans, Exemptions from Submitting Forest Conservation Plans, and Tree Save Plans

The property owner is responsible for ensuring all tree protection measures are performed in accordance with the approved Final Forest Conservation Plan or Tree Save Plan, and as modified in the field by a Planning Department Forest Conservation Inspector. The measures must meet or exceed the most recent standards published by the American Nation Standards Institute (ANSI A300).

Pre-Construction

- An on-site pre-construction meeting is required after the limits of disturbance have been staked and flagged and before any land disturbance.
- The property owner must arrange for the meeting and the following people must participate at the pre-construction meeting: the property owner or their representative, construction superintendent, International Society of Arboriculture (ISA) certified arborist / Maryland licensed tree expert (representing owner) that will implement the tree protection measures, The Planning Department Forest Conservation Inspector, and Montgomery County Department of Permitting Services (DPS) Sediment Control Inspector. The purpose of this meeting is verify the limits of disturbance and discuss specific tree protection and tree care measures show on the approved plan. No land disturbance shall begin before tree protection and tree-reduction measures have been implemented and approved by the Planning Department's Forest Conservation Inspector.
 - Typical Tree Protection devices include:
 - Chain link fence (four feet high)
 - Super silt fence with wire strung between the support poles (minimum 4 feet high) with high visibility flagging.
 - 14 gauge 2 inch x 4 inch welded wire fencing supported by steel T-bar posts (minimum 4 feet high) with high visibility flagging.
 - Typical stress reduction measures may include, but are not limited to:
 - Root Pruning with a root cutter or vibratory plow designed for that purpose. Trenchers are not allowed, unless approved by the Forest Conservation Inspector.
 - Crown reduction or pruning
 - Watering
 - Fertilizing
 - Vertical mulching
 - Root aeration matting
- Measures not specified on the plan may be required as determined by the Forest Conservation Inspector in coordination with the property owner's arborist.
- A Maryland licensed tree expert must perform, or directly supervise the implementation of all stress reduction measures. Documentation of the process (including photographs) may be required by the Forest Conservation Inspector, and will be determined at the pre-construction meeting.
- Temporary tree protection devices must be installed per the approved Forest Conservation Plan, Exemption Plan, or Tree Save Plan and prior to any land disturbance. The Forest Conservation Inspector, in coordination with the DPS Sediment Control Inspector, may make field adjustments to increase the survivability of the trees and forest as saved on the approved plan.
- Tree protection fencing must be installed and maintained by the property owner for the duration of the construction project and must not be altered without prior approval from the Forest Conservation Inspector. All construction activity within protected tree and forest area is prohibited. This includes the following activities:
 - Parking or driving of equipment, machinery or vehicles of any type.
 - Storage of any construction materials, equipment, stockpiling, fill, debris, etc.
 - Dumping of any chemicals (i.e., paint thinner), mortar or concrete remainders, trash, garbage, or debris of any kind.
 - Felling of trees into a protected area.
 - Trenching or grading for utilities, irrigation, drainage, etc.
- Forest and tree protection signs must be installed as required by the Forest Conservation Inspector. The signs must be waterproof and wording provided in both English and Spanish.

During Construction

- Periodic inspections will be made by the Forest Conservation Inspector. Corrections and repairs to tree protection devices must be completed within the timeframe given by the Inspector.
- The property owner must immediately notify the Forest Conservation Inspector of any damage to trees, forests, understory, ground cover, and any other undisturbed areas shown on the approved plan. Remedial actions, and the relative time frames to restore these areas will be determined by the Forest Conservation Inspector.

Post-Construction

- After construction is completed, but before tree protection devices have been removed, the property owner must request a final inspection with the Forest Conservation Inspector. At the final inspection, the Forest Conservation Inspector may require additional corrective measures, which may include:
 - Removal, and possible replacement of dead, dying, or hazard trees
 - Pruning of dead or declining limbs
 - Soil aeration
 - Fertilization
 - Watering
 - Wound repair
 - Clean up of retention areas including trash removal
- After the final inspection and completion of all corrective measures the Forest Conservation Inspector will request all temporary tree and forest protection devices be removed from the site. Removal of tree protection devices that also operate for erosion and sediment control must be coordinated with both DPS and the Forest Conservation Inspector and cannot be removed without permission of the Forest Conservation Inspector. No additional grading, sodding, or burial may take place after the tree protection fencing is removed.
- Long-term protection measures, including permanent signage, must be installed per the approved plan. Installation will occur at the appropriate time during the construction project. Refer to the approved plan drawing for the long-term protection measures to be installed.

Inspections:

All field inspections must be requested by the applicant. Inspections must be conducted as follows:

Tree Save Plans and Forest Conservation Plans without Planting Requirements

- After the limits of disturbance have been staked and flagged, but before any clearing or grading begins.
- After necessary stress reduction measures have been completed and protection measures have been installed, but before any clearing or grading begins and before release of the building permit.
- After completion of all construction activities, but before removal of tree protection fencing, to determine the level of compliance with the provision of the forest conservation.

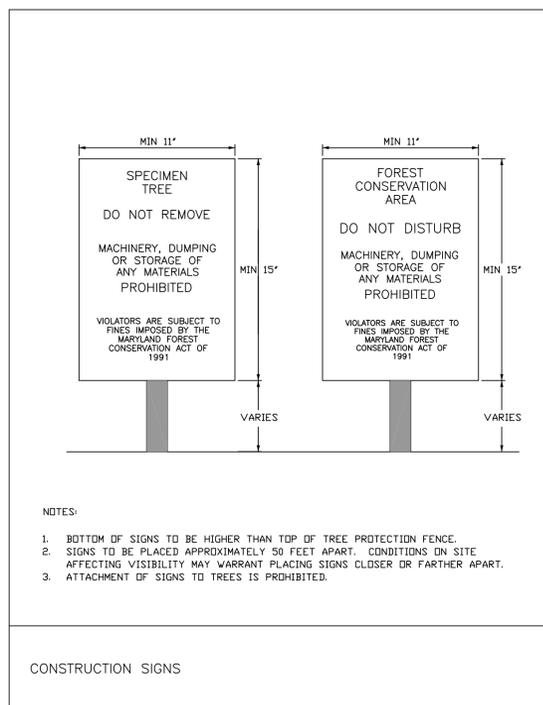
Additional Requirements for Plans with Planting Requirements

- Before the start of any required reforestation and afforestation planting.
- After required reforestation and afforestation planting has been completed to verify that the planting is acceptable and prior to the start of the maintenance period.
- At the end of the maintenance period to determine the level of compliance with the provisions of the planting plan, and if appropriate, release of the performance bond.

FOR LOCATIONS OF UTILITIES CALL "MISS UTILITY" AT 1-800-257-7777 AT LEAST 48 HOURS BEFORE BEGINNING CONSTRUCTION.

SIGNIFICANT TREE CHART							
TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	COMMENTS	STATUS	STRESS REDUCTION MEASURES
ST-1	<i>Salix alba</i>	White Willow	24.9"	Poor	Large scaffold limb removed, wooden utility poles piles on trunk and in CRZ, there is also new fill dirt in the CRZ, co-dominant leaders, broken dead limbs in the canopy, adventitious limbs, multiple conks on broken leader	To be retained	Monitor for hazard potential
ST-2*	<i>Acer rubrum</i>	Red Maple	40.0"	Poor	Multiple spots of decay on trunk and root collar, large second wound on trunk at root collar going up trunk with decay and bore damage, response wood growth at branch union, co-dominant leaders, adventitious limbs, broken dead limbs with decay in canopy, tree is in decline and is a hazard tree with a target	To be retained	Tree protection sign, super silt fence to serve as tree protection fence, monitor for hazard potential
ST-3*	<i>Acer saccharinum</i>	Silver Maple	44.3"	Moderate - Poor	English Ivy removed from trunk, multiple wounds on trunk, co-dominant leaders, cavity in a leader, tree has been pruned, adventitious limbs, broken dead limbs with decay in canopy, hangers in canopy, hazard can be mitigated	To be removed	
ST-4*	<i>Acer saccharinum</i>	Silver Maple	45.0" (Estimate)	Moderate	Off-site, co-dominant leaders, adventitious limbs, tree has been pruned	To be retained (Off-Site)	Tree protection fence, tree protection sign and root prune
ST-5	<i>Acer saccharinum</i>	Silver Maple	26.3"	Moderate	Off-site, adventitious limbs, co-dominant leaders, broken dead limbs with decay in the canopy, hangers in canopy are a hazard to the existing fence and people under the tree, this hazard can be mitigated	To be retained (Off-Site)	Tree protection fence, tree protection sign and root prune
ST-6*	<i>Acer saccharinum</i>	Silver Maple	30.6"	Moderate	Off-site, co-dominant leaders, adventitious limbs, broken dead limbs with decay in the canopy	To be retained (Off-Site)	Tree protection fence, tree protection sign and root prune

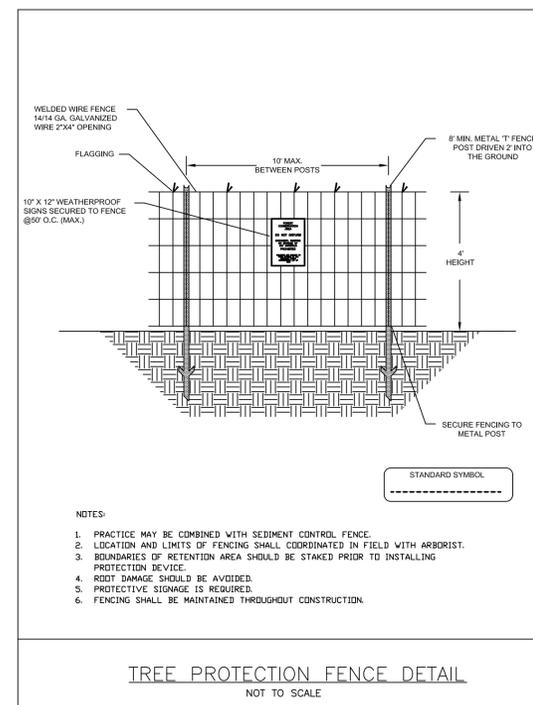
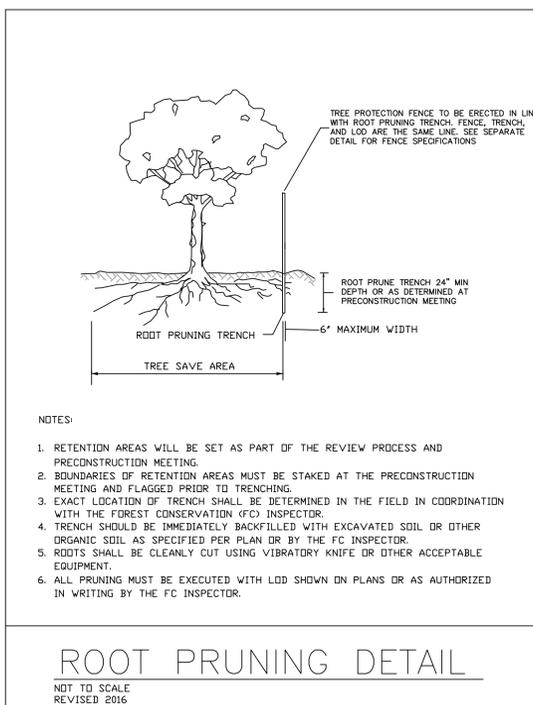
*SPECIMEN TREE



Guidelines for Converting Paved Areas into Pervious Greenspace

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- Remove existing pavements (and subbase), buildings, foundations, and other impervious materials in accordance with the approved plans, the project intent, and field direction by owner's representative and inspectors. Where deep foundations or footings exist, they should be removed to a minimum depth of 24 inches below proposed finished grade.
- Rough grade site to proposed grades and smooth transitions into adjacent grades and facilities to remain. Remove all rocky material (stones greater than 2 inches in any direction) from soils within top 12-inches of finished grade. In the case of removing spread gravel or similar surfaces, crusher-run the area. Remove material and replace with soils similar to native soils.



DEVELOPER'S CERTIFICATE - 1220 Briggs Chaney Road

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 35-2290 including, financial bonding, forest planting, maintenance and all other application agreements.

Developer's Name: Pampas Garden Landscaping LLC
Print Company Name

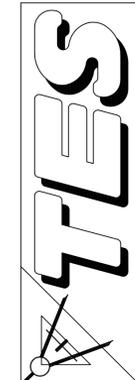
Contact Person or Owner: Marcio Freitas
Print Name

Address: 1220 Briggs Chaney Road

Phone # and Email: 301-300-5084

Signature: _____

Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301) 948-0240



TOTAL ENGINEERING SERVICES
PLANNERS, ENGINEERS, SURVEYORS
P.O. BOX 10123
SILVER SPRING, MD 20914
TEL: (301) 515 1514 FAX: (301) 515 5589

REVISION :

PROJECT NAME

1220 BRIGGS CHANEY RD.

SILVER SPRING
PARCEL 380

BEALLS MANOR

MONTGOMERY COUNTY, MARYLAND

DRAWING TITLE :

AMENDMENT TO THE FINAL FOREST CONSERVATION PLAN

Drawn :	Approved	Job No.
In Charge	Project Manager	Project Architect
Scale	Drawing No.	
1" = 20'		
Date		
03-22-17	2 OF 3 AMENDMENT FFCP	

FOREST CONSERVATION WORKSHEET
1220 Briggs Chaney Road

NET TRACT AREA:

A. Total tract area ...	2.46
B. Land dedication acres (parks, county facility, etc.) ...	0.00
C. Land dedication for roads or utilities (not being constructed by this plan) ...	0.00
D. Area to remain in commercial agricultural production/use ...	0.00
E. Other deductions (specify)	0.00
F. Net Tract Area	2.46

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

ARA	MDR	IDA	HDR	MPD	CIA
0.00	1.00	0.00	0.00	0.00	0.00

G. Afforestation Threshold ...	0.20 x F =	0.49
H. Conservation Threshold ...	0.25 x F =	0.62

EXISTING FOREST COVER:

I. Existing forest cover	=	0.00
J. Area of forest above afforestation threshold	=	0.00
K. Area of forest above conservation threshold	=	0.00

BREAK EVEN POINT:

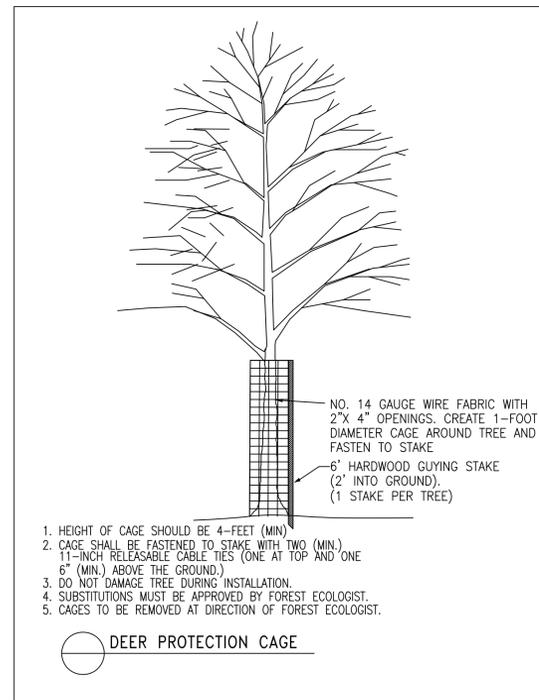
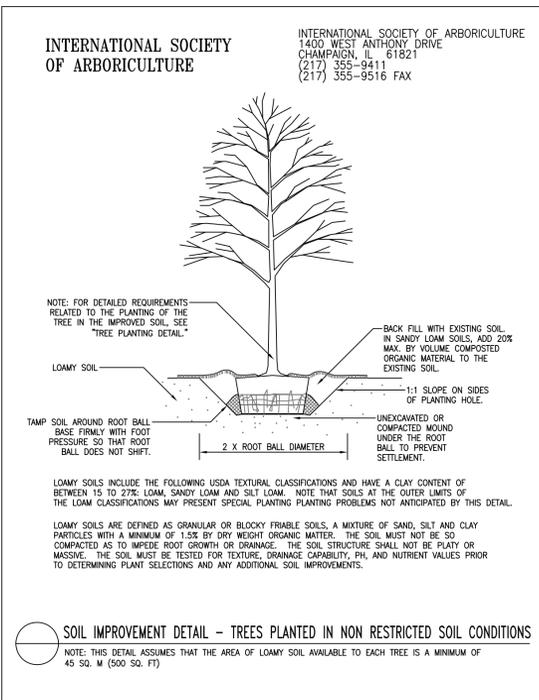
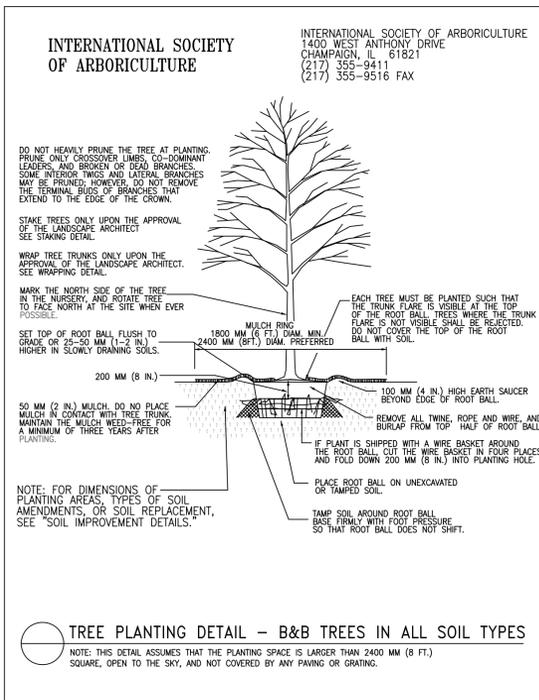
L. Forest retention above threshold with no mitigation	=	0.00
M. Clearing permitted without mitigation	=	0.00

PROPOSED FOREST CLEARING:

N. Total area of forest to be cleared	=	0.00
O. Total area of forest to be retained	=	0.00

PLANTING REQUIREMENTS:

P. Reforestation for clearing above conservation threshold	=	0.00
Q. Reforestation for clearing below conservation threshold	=	0.00
R. Credit for retention above conservation threshold	=	0.00
S. Total reforestation required	=	0.00
T. Total afforestation required	=	0.49
U. Credit for landscaping (may not exceed 20% of "S")	=	0.00
V. Total reforestation and afforestation required	=	0.49



Benning & Associates, Inc.
Land Planning Consultants
8933 Shady Grove Court
Gaithersburg, MD 20877
(301)948-0240



B&B

TLES

TOTAL ENGINEERING SERVICES
PLANNERS, ENGINEERS, SURVEYORS
P.O. BOX 10123
SILVER SPRING, MD 20914
TEL:(301) 515 1514 FAX:(301) 515 5589

FINAL FOREST CONSERVATION PLAN																						
ACREAGE OF TRACT	ACREAGE OF TRACT REMAINING IN AGRICULTURAL USE	ACREAGE OS ROAD AND UTILITY R.O.W NOT TO BE IMPROVED	ACREAGE OF EXISTING FOREST	ACREAGE OF EXISTING FOREST RETENTION	ACREAGE OF TOTAL FOREST CLEARED	LAND USE CATEGORY	CONSERVATION THRESHOLD	AFFORESTATION THRESHOLD	FOREST WITHIN WETLANDS TO BE RETAINED	FOREST WITHIN WETLANDS TO BE CLEARED	FOREST WITHIN WETLANDS TO BE PLANTED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE RETAINED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE CLEARED	FOREST WITHIN 100-YEAR FLOODPLAIN TO BE PLANTED	FOREST WITHIN STREAM BUFFER TO BE RETAINED	FOREST WITHIN STREAM BUFFER TO BE CLEARED	FOREST WITHIN STREAM BUFFER TO BE PLANTED	FOREST WITHIN PRIORITY AREAS TO BE RETAINED	FOREST WITHIN PRIORITY AREAS TO BE CLEARED	FOREST WITHIN PRIORITY AREAS TO BE PLANTED	STREAM BUFFER - LINEAR FEET	STREAM BUFFER - AVERAGE WIDTH
2.46 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	MEDIUM DENSITY RESIDENTIAL	0.62 AC	0.49 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0.00 AC	0	0

FINAL FOREST CONSERVATION PLAN NOTES:

- The Limits-of-Disturbance may be adjusted in the field to save adjacent trees.
- All tree protection and stress reduction measures are intended to be completed within the limits of the property. Locations of symbols shown on plan for graphic and legibility reasons only.
- Area of forest to be cleared is 0.0 acres.
- Tree planting to be planted pursuant to the ANSI planting standards.
- M-NCP&PC Inspector is to be contacted for an inspection of tree planting prior to completion of the project.
- The proposed tree planting locations and species shown on this plan can be revised with approval from the forest conservation inspector.
- Protection from deer damage is required to be installed on each tree before M-NCPPC acceptance of tree planting. See Sheet 3 of 3 for detail.
- Tree sizes were obtained by measuring diameter-at-breast-height with a diameter tape. Sizes for off-site trees are by ocular estimates.
- On-site tree locations from a field survey by:
Total Engineering Services
P.O. Box 10123
Silver Spring, Maryland 20914
301-515-1514
- Afforestation required- 0.49 acres
- Proposed afforestation
Proposed Tree Planting (20 Year Canopy) - 0.51 acres
Total Afforestation - 0.51 acres
- THE ENTIRE PROPERTY IS LOCATED IN AN EXISTING CATEGORY I CONSERVATION EASEMENT.

MITIGATION TABLE FOR REMOVAL OF SPECIMEN TREES

TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)
ST-3	<i>Acer saccharinum</i>	Silver Maple	44.3"

Total Caliper of Trees to Be Removed -44.3"
Mitigation Required @ 1/4 of Total = 11"
Proposed Mitigation - 4 Trees @ 3" Caliper

PLANT LIST FOR MITIGATION PLANTING ON-SITE

QUANTITY	SIZE	BOTANICAL NAME	COMMON NAME	SPACING	COMMENTS
4	3" Caliper	<i>Platanus occidentalis</i>	Sycamore	20' o.c.	B&B

- Total Caliper of Proposed Mitigation On-Site Planting - 12.0"
- Mitigation tree planting to be planted pursuant to the ANSI planting standards.
- M-NCP&PC Inspector is to be contacted for an inspection of mitigation tree planting prior to completion of the project.
- The proposed tree planting locations and species shown on this plan can be revised with approval from the forest conservation inspector.



ANALYSIS OF SUITABILITY FOR THE SUITABILITY FOR THE PLANTING SITE AND PRE-PLANTING MEASURES:

Analysis of suitability for the suitability for the planting site
1. The entire property is located in the Upper Paint Branch Special Protection Area
2. The soils existing on the property are 1C and 2B, both soil types are suited to cultivate crops

- Pre-planting measures
- Afforestation / Reforestation tree planting to be planted pursuant to the ANSI planting standards.
 - Protection from deer damage is required to be installed on each tree and shrub before M-NCPPC acceptance of tree planting. Shrubs may be placed in groupings of 3 to 5 with deer protection around the group planting.
 - Prior to any planting on the site, a pre-planting meeting with the M-NCPPC Inspector must be arranged.
 - The contractor shall locate and verify the existence of all utilities prior to any excavation work.
 - All plants shall bear the same relationship to finished grade as the plant's original grade.
 - All plants shall be balled & burlapped or container grown as specified. Container grown stock that is root bound will not be acceptable.
 - With container grown stock, the container shall be removed and the ball shall be cut through the surface in two vertical locations.
 - All plants shall be installed as per details.
 - Prior to planting, inspect planting stock. Plants not conforming to the American Standard for Nursery Stock specifications for size, form, vigor or roots, or due to trunk wounds, insects and disease should be replaced.
 - Soil tests are to be performed by contractor in all areas proposed for planting to determine deficiencies.
 - Soil amendments, if necessary, should be applied before planting.
 - All existing trash must be removed prior to planting.
 - Plants shall be inspected by the contractor and any material that is either damaged or which has root ball compaction, j-rooted or kinked root systems will be replaced. No plants will be stored on site. Plants will be planted immediately once received from the nursery.
 - The area will be mowed before planting and invasive species should be treated with herbicide at this time to inhibit their comeback.

LONG-TERM MAINTENANCE PLAN:

1. The owner's must submit a Maintenance and Management Agreement Maintenance for approval prior to any land disturbance. This property is located within a Special Protection Area and requires a 5-year maintenance period.

FOR LOCATIONS OF UTILITIES CALL "MISS UTILITY" AT 1-800-257-7777 AT LEAST 48 HOURS BEFORE BEGINNING CONSTRUCTION.

DEVELOPER'S CERTIFICATE - 1220 Briggs Chaney Road

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No.S-2290 including, financial bonding, forest planting, maintenance and all other application agreements.

Developer's Name: Pampas Garden Landscaping LLC
Print Company Name

Contact Person or Owner: Marcio Freltas
Print Name

Address: 1220 Briggs Chaney Road

Phone # and Email: 301-300-5064

Signature: _____

REVISION :

PROJECT NAME
1220 BRIGGS CHANEY RD.
SILVER SPRING
PARCEL 380
BEALLS MANOR
MONTGOMERY COUNTY, MARYLAND

DRAWING TITLE :
AMENDMENT TO THE FINAL FOREST CONSERVATION PLAN

Drawn :	Approved	Job No.
In Charge	Project Manager	Project Architect
Scale 1" = 20'	Drawing No.	
Date 03-22-17	3 OF 3 AMENDMENT FFCP	



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

November 3, 2017

Mr. Heshmat Eskandari
TES Consulting, LLC
P.O. Box 10123
Silver Spring, Maryland 20914

Re: **COMBINED PRELIMINARY/FINAL WATER QUALITY PLAN AND SITE DEVELOPMENT STORMWATER MANAGEMENT PLAN** for
1220 Briggs Chaney Road
Preliminary Plan #: N/A
SM File #: 282780
Tract Size/Zone: 2.46 acres
Total Concept Area: 2.26 acres
Lots/Block: N/A
Parcel: 380
Watershed: Upper Paint Branch
Special Protection Area

Dear Mr Eskandari:

Based on a review by the Department of Permitting Services Review Staff, the Preliminary/Final Water Quality Plan for the above-mentioned site is **acceptable**. The Preliminary/Final Water Quality Plan proposes to meet required stormwater management goals via dry wells and landscape infiltration. This approval is for the elements of the Preliminary/Final Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or buffer encroachments.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. Landscaping shown on the approved Landscape Plan as part of the approved Site Plan are illustrative purpose only and may be changed at the time of detailed plan review of the Sediment Control/Storm Water Management plans by the Mont. Co. Department of Permitting Services, Water Resources Section.

This list may not be all-inclusive and may change based on available information at the time.

The performance goals that were established at the pre-application meeting are to be met through the implementation of the Water Quality Plan. They are as follows:

1. Minimize storm flow run off increases.
2. Minimize sediment loading.



255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850 | 240-777-0311
www.montgomerycountymd.gov/permittingservices

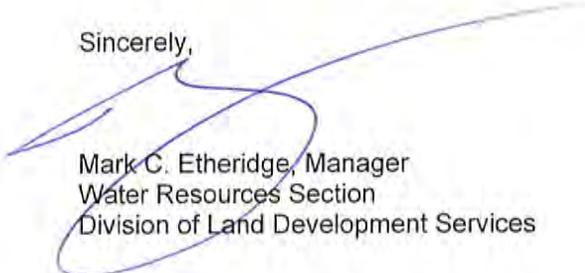
Heshmat Eskandari
November 3, 2017
Page 2

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not required**. A stream monitoring fee for the site area and a BMP monitoring fee for the disturbed area is required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The Water Quality Plan approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Leo Galanko at 240-777-6242.

Sincerely,



Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: lmg

cc: N. Braunstein
SM File # 282780

ESD: Required/Provided 2,283 cf / 2,626 cf
PE: Target/Achieved: 1.8"/1.9"
STRUCTURAL: N/A
WAIVED: 0.0 ac.

Benning & Associates, Inc.

LAND PLANNING CONSULTANTS
 8933 Shady Grove Court
 Gaithersburg, MD 20877
 Phone: 301-948-0240
 Fax: 301-948-0241
 E-mail: jmaisel@benninglandplan.com

To: Mr. Richard Weaver, Chief of Area 3 / M-NCPPC
 From: David W. McKee
 Date: September 1, 2017
 Re: 1220 Briggs Chaney Road (S-2290)

Dear Mr. Weaver,

In accordance with the requirements of Section 22A-21 of the County Code and on behalf of the applicant for this project, I am writing to request a variance from provisions of Chapter 22 as it applies to this project. Specifically, a variance is required in order to impact or remove several trees which are 30 inches or greater in diameter.

The trees proposed to be impacted or removed are shown on the pending Preliminary / Final Forest Conservation Plan (P/FFCP) for the subject project. A total of 3 trees which measure 30 inches or greater are proposed to be removed or impacted. The trees requiring a variance are as follows:

SPECIMEN TREE CHART						
TREE NUMBER	BOTANICAL NAME	COMMON NAME	SIZE (D.B.H.)	TREE CONDITION	%CRZ IMPACTED	Status
ST-3	Acer saccharinum	Silver Maple	44.3"	Moderate - Poor	67.0%	Remove
ST-4	Acer saccharinum	Silver Maple	45.0" (Estimate)	Moderate	26.2%	Retain (Off-site)
ST-6	Acer saccharinum	Silver Maple	30.6"	Moderate	26.9%	Retain (Off-site)

The purpose of this application and variance request is to amend a previously approved plan from 1998. A Special Exception which allowed a landscape contractor to operate at the site was originally approved. The current owner wishes to make certain changes to the plan in order to conduct operations in an efficient and safe manner.

Earlier plans proposed to utilize an existing driveway for access to the area reserved for parking of commercial vehicles. The existing driveway is also used to access the existing home on the property and the driveway is very close to the house. The applicant proposes to change the location of the portion of driveway used to access the parking area so that it is separate and away from the single-family residence. By doing this, the commercial and residential portions of the property are made more separate. The appearance of the property from Briggs Chaney Road with more green space around the home will be more residential in appearance. And, by keeping trucks traveling to and from the site away from the home, the setting of the home will be safer and more private. This proposed revision was recently presented to the Board of Appeals to amend the previous Special Exception approval and the Board agreed with the changes.

Relocating the driveway results in impacts to specimen trees which require a variance. In addition, proposed stormwater management features to bring the property into compliance with current stormwater management practices also impacts certain specimen trees.

Specific impacts the each of the 3 trees included in this variance request are as follows:

ST-3, a 44.3" Silver Maple, is located on-site. The tree will be impacted by removal of the existing driveway, installation of a new driveway, and installation of stormwater management. Impacts to this tree cannot be avoided if the site is to be developed as shown on plans due to the severity of impacts and the current condition of the tree. The tree is proposed to removed.

ST-4, a 45.0" (estimate) Silver Maple, is located offsite on an adjoining property. The tree will be impacted by the installation of the new driveway, grading, and installation a stormwater management device. This tree is proposed to be retained due to limited impacts and the fact that the tree is located off-site.

ST-6, a 30.6" Silver Maple, is located off-site. The tree will be impacted by the installation of drywells for the existing home to bring the property into compliance with stormwater management requirements. The tree is proposed to be retained due to limited impacts and the fact that the tree is located off-site.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states the applicant must:

1. Describe the special conditions peculiar to the property which would cause 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 violated or that a measurable degradation in water quality will not occur as a result of granting of the variance; and
4. Provide any other information appropriate to support the request.

There are special conditions peculiar to the property which would cause unwarranted hardships should the variance not be approved. The original approvals for this project allowed for certain activities and uses to occur on this site which are still being proposed. However, when the original plans were approved, impacts to specimen trees did not require a

variance. The project is now required to provide stormwater management utilizing environmental site design techniques. Drywells and landscape infiltration areas are proposed in available areas of the site. In some cases, the proposed stormwater management devices result in impacts to certain specimen trees which require a variance. Denial of the variance would result in a hardship since stormwater management requirements would not be able to be met. In addition, plans prepared for a previous owner did not account for the need to separate the residential and commercial aspects of the property for safety and privacy. The proposal to relocate a portion of driveway for these reasons results in impacts to certain specimen trees. Denial of the variance would result in less privacy and security in the area of the single-family residence.

Should this variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. Approval of the requested variance will allow the property owner to utilize the property in accordance with previous plan approvals with changes to the site to enhance control of stormwater runoff, safety, and privacy.

The granting of a variance to remove specimen trees will not result in a violation of State water quality standards or any measurable degradation in water quality. The variance will allow the site to be utilized as originally approved with the addition of new stormwater management measures to maintain water quality standards.

In addition to the above, Section 22A-21(d) indicates 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.

This request for a variance will not confer a special privilege that would be denied to other applicants. Approval of the requested variance will allow the property owner to utilize the property in accordance zoning regulations and a recent re-approval by the Board of Appeals for a landscape contractor use.

This variance request is not based on conditions and circumstances which are the result of actions by the applicant. The property was originally approved for a landscape contractor use and approval of the variance allows for that activity to continue within the parameters of the original approval and proposed plan updates.

The request for a variance does not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

Granting this variance request will not violate State water quality standards or cause measureable degradation in water quality. The variance will allow the site to be utilized as

originally approved with the addition of new stormwater management measures to maintain water quality standards.

For the above reasons, we respectfully request approval of this request for a variance from provisions of Section 22A-21 of the Montgomery County Code. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

Joshua O. Maisel



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Lisa Feldt
Director

October 27, 2017

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

RE: 1220 Briggs Chaney Road, DAIC S-2290, application for special exception accepted on 5/16/2017

Dear Mr. Anderson:

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

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

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

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

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

255 Rockville Pike, Suite 120 • Rockville, Maryland 20850 • 240-777-0311 • 240-777-7715 FAX
www.montgomerycountymd.gov/dep

Casey Anderson
October 27, 2017
Page 2

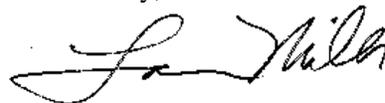
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation,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

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

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

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

Sincerely,



Laura Miller
County Arborist

cc: Mary Jo Kishter, Senior Planner