Montgomery Knolls Elementary School, Forest Conservation Plan Amendment, MR2009743

Tina Schneider, Area 1 Division, Tina.schneider@montgomeryplanning.org, 301.495.2101
Mark Pfefferle, Interim Chief, Area 1 Division, Mark.pfefferle@montgomeryplanning.org, 301.495.4730

Description

- Amendment to an existing Forest Conservation Plan associated with Montgomery Knolls Elementary School;
- Located at 807 Daleview Drive, Silver Spring, Maryland;
- 10.33-acre site zoned R-60 in the East Silver Spring Master Plan (2000) area;
- Applicant: Montgomery County Public Schools;
- Acceptance Date: March 27, 2019.

Completed: 6/27/19

Summary

Request to amend the Forest Conservation Plan for the Montgomery Knolls Elementary School at 807 Daleview Drive, Silver Spring by:

1. Removing approximately 0.08 acres (3,485 square feet) of Category I Conservation Easement for the construction of stormwater drainage lines associated with the proposed bioretention facilities.
2. Impact the critical root zones of 10-specimen trees.
STAFF RECOMMENDATION AND CONDITIONS
Staff recommends approval of the amendment to Forest Conservation Plan MR2009743 with the conditions listed below:

1. Within 60 days of the mailing date of the Planning Board resolution approving the Amendment, the property owners must submit an executed Certificate of Compliance to the Planning Department that provides 0.16 acres of mitigation credit for the removal of 0.08 acres of Category I Conservation Easement.
2. Within 7 days of the Planning Department’s approval of the Certificate of Compliance, the Certificate of Compliance must be recorded in the Montgomery County Land Records.
3. Within 100 days of the mailing date of the Planning Board’s resolution approving the amendment, the property owners must submit a Deed of Release, in a form approved by the M-NCPPC Office of the General Counsel, for the release of 0.08 acres of conservation easement.
4. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the approved Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector.
5. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.

SITE DESCRIPTION
Montgomery Knolls Elementary School is situated on a 10.33-acre property located at 807 Daleview Drive, Silver Spring, Maryland (Exhibit 1). The site is bounded to the east by Northwest Branch Stream Valley Park owned by the Maryland National Capital Park and Planning Commission. To the south and west by R-60 residential development, and to the north by Daleview Drive. The site contains an existing school, associated parking lots, athletic fields, play areas, and a contiguous forest connecting to Northwest Branch Stream Valley Park.

There is a tree-lined border along the eastern and western sides of the property. A few trees are scattered throughout the present parking lot. Most of the property runoff flows into Northwest Branch Park and its associated tributaries. The site is located in the Anacostia River watershed with a Use I Water Category.

The site contains a 2.53-acre Category I Conservation Easement along the southeastern, south, and southwestern portion of the site.
Background

A Forest Conservation Plan (MR2009743) was originally approved on February 12, 2010 (Attachment 1) and was associated with a previously expansion for the school reviewed by the Planning Board in 2009. The forest conservation plan included the removal of 0.79 acres of forest, the preservation of 1.45 acres of forest, 1.08 acres of onsite forest planting, and 0.20 acres of credit for on-site landscaping. The preserved forest and onsite forest plantings were then put into a 2.53-acre Category I Conservation Easement (Exhibit 2) and was recorded on August 17, 2010 (Attachment 2).

Proposed Project and Amendment

On March 27, 2019 Montgomery County Public Schools (MCPS) submitted a mandatory referral for renovations to the existing bus loop, a new student drop off, additional parking, new playgrounds, and necessary stormwater management facilities. The renovations will impact the critical root zones of 10-specimen trees along the southwestern property line and requires the removal of 0.08 acres of the existing 2.53-acre Category 1 Conservation Easement for the construction of an outfall associated with the stormwater management systems. The total easement reductions will be 0.08 acres. The remaining Category I Conservation Easement will be 2.45 acres. An amended Forest Conservation Plan has been submitted (Attachment 3) with the changes indicated above.

Forest Conservation Variance

Section 22A-21 Variance of Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The law requires a variance to impact trees that: measure 30 inches or greater diameter at breast height (DBH); are part of a historic site or designated with a 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 these trees, including removal or disturbance within the tree’s critical root zone (CRZ), requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

Variance Request

Pursuant to Section 22A-21 Variance provisions of the Montgomery County Forest Conservation Ordinance the Applicant submitted a variance request on May 31, 2019 (Attachment 4) for the impact to the critical root zones of 10 specimen trees: 1, 2, 6, 7, 8, 13, 17, 20, 24 and 25.

Unwarranted Hardship for Variance Tree Impacts

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. The requested variance is necessary due to the construction needs of the proposed elementary school.
expansion. The landscape grading will be minimized around the school to reduce impacts to the critical root zone of as many specimen trees as possible without inhibiting the project intentions. Leaving the requested trees in an undisturbed state would result in an unwarranted hardship because the applicant would not be able to expand the school and associated parking lot.

**Figure 1: Variance Tree Impacts**

![Variance Tree Impacts](image)

**Table 1: Variance Tree Table**

<table>
<thead>
<tr>
<th>Tree Id</th>
<th>Species</th>
<th>Size</th>
<th>Condition</th>
<th>Intent</th>
<th>Critical Root Zone Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Black cherry</td>
<td>40</td>
<td>Good</td>
<td>Impacts only</td>
<td>35%</td>
</tr>
<tr>
<td>2</td>
<td>White mulberry</td>
<td>42</td>
<td>Good</td>
<td>Impacts only</td>
<td>40%</td>
</tr>
<tr>
<td>6</td>
<td>Yellow poplar</td>
<td>33</td>
<td>Good</td>
<td>Impacts only</td>
<td>23%</td>
</tr>
<tr>
<td>7</td>
<td>Yellow poplar</td>
<td>30</td>
<td>Good</td>
<td>Impacts only</td>
<td>10%</td>
</tr>
<tr>
<td>8</td>
<td>Black cherry</td>
<td>35</td>
<td>Good</td>
<td>Impacts only</td>
<td>1%</td>
</tr>
<tr>
<td>13</td>
<td>Red oak</td>
<td>37</td>
<td>Good</td>
<td>Impacts only</td>
<td>31%</td>
</tr>
<tr>
<td>17</td>
<td>Red oak</td>
<td>36”</td>
<td>Good</td>
<td>Impacts only</td>
<td>17%</td>
</tr>
<tr>
<td>20</td>
<td>Yellow poplar</td>
<td>33”</td>
<td>Good</td>
<td>Impacts only</td>
<td>4%</td>
</tr>
</tbody>
</table>
### Variance Findings

Based on the review of the variance request and the proposed amended Forest Conservation Plan, staff makes the following findings:

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

   Granting this variance will not confer a special privilege on the Applicant as disturbance of the specimen trees is a result of the need to expand parking and driveway circulation improvements associated with the mandatory referral school expansion in 2019. The size and configuration of the lot, the location of the existing school, and parking lots preclude alternative site designs. The impacts to the critical root zones indicated above are based on the limit of disturbance shown on the plan. However, it is possible that reductions to the critical root zones of specimen trees may occur in the field when the MNCPPC Forest Conservation inspector conducts the pre-construction field meeting.

2. **The need for the variance is not based on conditions or circumstances which are the result of the actions by the applicant.**

   The requested variance is not based on conditions or circumstances that are the result of actions by the Applicant. The variance is necessary due to objectives of the project to meet the needs of a growing student population. The Applicant has designed the school to minimize tree impacts and forest clearing to the degree possible given the project intentions.

3. **The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.**

   The requested variance is a result of the impacts by the proposed layout of the school facility and not a result of land or building use on a neighboring property. The impact to the trees have been minimized and reflect the critical root zone disturbance necessary to construct the proposed building addition and associated upgrades to meet the needs of the intended student population.

4. **Granting the variance will not violate State water quality standards or cause measurable degradation in water quality.**

   According the Stormwater Management Concept Report submitted by the applicant in April 2019, the “required environmental site design (ESD) volume of 17,438 cubic feet cannot be met due to the lack of space on site”. However, the applicant proposes the construction of (9) micro-bioretention facilities on site primarily along the south and west
side of the parking lots. Since there are no ESD facilities onsite presently, the proposed facilities should improve the quality of stormwater runoff and therefore the State water quality standards will not be violated. In addition, the specimen trees are not be removed and will retain their capacity to slow and absorb runoff.

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 County Arborist has not commented on this variance as of the date of this staff report.

Variance Recommendation
Staff recommends that the variance be granted.

PLANNING BOARD REVIEW AUTHORITY
The Planning Board has authority under the Forest Conservation Law (Chapter 22A of the Montgomery County Code) to review amendments to approved plans. In addition, the Planning Board has directed Staff to bring all requests for modifications to conservation easements to be considered in a public forum before them.

STAFF REVIEW AND RECOMMENDATION
The Property Owner proposes to remove 0.08 acres of Category I Conservation Easement area from the Montgomery Knolls Elementary School located on 807 Daleview Drive, Silver Spring. The property owner will mitigate for the removal of the conservation easement offsite in a forest mitigation bank. As a result, the property owner will need to acquire 0.16 acres of forest mitigation bank credits to mitigate for the onsite removal of the conservation easement. The proposal is consistent with the Planning Board’s policy of requiring 2 square feet of offsite forest planting for every 1 square foot of conservation easement released and is consistent with the settlement agreement. Staff recommends approval of the amendment to Forest Conservation Plan MR2009743 with the conditions identified on page 2 of this staff report.

CONCLUSION
Staff concludes that the proposed Amendment to the Forest Conservation Plan meets the requirements of Chapter 22A Forest Conservation Law. Staff recommends that the Planning Board approve the Amended Forest Conservation Plan and associated variance, with the above conditions.
Attachments
1. Approved 2010 Forest Conservation Plan
2. Approved 2010 Forest Conservation Easement
3. Amended Forest Conservation Plan
4. Variance request
Montgomery County Public Schools
c/o James Song
2096 Gaither Road
Rockville, MD 20850

Re: Final Forest Conservation Plan
   Property Name: Montgomery Knolls Elementary School
   Plan Number: MR2009743
   Tract size/Zone: 10.34 acres/R60

Dear Mr. Song:

Based on the review by Environmental Planning staff of the Montgomery County Planning Department, the final forest conservation plan mentioned above is approved. The final forest conservation plan consists of 1.45-acres of forest saved, 0.79-acres of forest removed, 0.20-acres credit for on-site landscaping, and 1.08-acres of forest planted on-site.

The plan is subject to the following conditions:

1. All areas of forest retention and planting will be covered by a Category I conservation easement. Conservation easements to be recorded in the land records. Agreements must be acceptable to M-NCPPC prior to recordation.
2. Inspections consistent with Section 110 of the Forest Conservation Regulation.
3. A two year maintenance and management agreement must be approved prior to MNCPPC accepting any on-site planting. The maintenance and management agreement must include invasive management control measures for the areas shown on the plan.
   a. A copy of the maintenance and management agreement must be kept on-site and given to MCPS maintenance staff to ensure compliance with conditions of the forest conservation plan.

This letter must be attached to all reproduced copies of the approved final forest conservation plan. Any changes from the approved final forest conservation may constitute grounds to rescind or amend any approval actions taken, and to re-evaluate the site for additional or amended plantings. If there are any subsequent additions or modification planned for this development, a separate amendment must be submitted to M-NCPPC for review and approval prior to those changes occurring. If you have any questions regarding these actions, please feel free to contact Amy Lindsey at (301) 495-2189.

Sincerely,

Mark Pfefferle, Acting Division Chief
Environmental Planning Division

CC: Norton Land Design
CONSERVATION EASEMENT AGREEMENT
Category I
DEFINITIONS

**Grantee:** Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Commission").

**Property:** Parcel P437 on tax assessment grid JP61 and recorded among the Land Records of Montgomery County, Maryland at Liber 1549 folio294.

**Planning Board:** Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

**Planning Director:** Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission, Montgomery County, or the Director's designee.

**Plan:** Mandatory referral reviewed pursuant to Article 28 of Maryland State Code Annotated. Plan Number MR2009743

**Forest Conservation Plan ("FCP"):** Forest Conservation Plan approved by the Planning Board or Planning Director pursuant to Chapter 22A, Montgomery County Code.

**Exhibit A:**
FCP approved as a condition of receiving any of the Plan approval noted above.

**Exhibit B:**
Description and sketch of the easement over and across property to be developed.

WITNESSETH

The Agreement reflects a grant of easement by Grantor to the Grantee.

WHEREAS Grantor has obtained authority to develop pursuant to a Plan in accordance with Montgomery County, Maryland laws; and

WHEREAS, the Planning Board or other approving authority approved Grantor's Plan conditioned upon a requirement that development occur in strict accordance with an FCP approved by
the Planning Board after full review of the FCP pursuant to the provisions of Montgomery County Code Chapter 22A (Forest Conservation); Chapter 50 (Subdivision Regulations); and/or Chapter 59 (Zoning Ordinance); and/or

THE Planning Board approved Grantor's Plan conditioned upon Grantor subjecting the property to be developed ("Property") or a portion of the Property to a conservation easement pursuant to the provisions of Montgomery County Code Chapter 50 (Subdivision Regulations), and/or Chapter 59 (Zoning Ordinance); and

WHEREAS, the location of this easement ("Easement") is as shown on Exhibit A attached hereto and incorporated by reference into the terms of this Agreement; and

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas, wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the Property subject to the easement and prevention of any alteration, construction or destruction that will tend to mar or detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement which efforts are consistent with the terms and conditions of the approved Plan and applicable law; and

WHEREAS, the Grantor and Grantee (collectively referred to as the "Parties") intend for the conditions and covenants contained in this Agreement to run with the land in perpetuity and to be binding on all subsequent owners and occupants of the Property; and

WHEREAS, the Parties intend that a servitude be placed upon the Property to create a conservation benefit in favor of the Planning Board.

NOW, THEREFORE, the Grantor has executed this Agreement for no monetary consideration but for the purpose of ensuring compliance with development standards imposed in accordance with Montgomery County law as a condition of development approval. The Grantor does hereby grant and convey unto the Planning Board, in perpetuity, an easement on the Property of the size and location described in Exhibit B attached hereto and incorporated by reference into the terms of this Agreement, of the nature and character described herein. This easement agreement constitutes a covenant real running with the title of the land, and is granted to preserve, protect and maintain the general topography and natural character of the land. The Grantor does hereby waive any challenge to the validity of the easement due to its not being shown on a record plat. Grantor, its heirs, successors and assigns covenant to abide by the following restrictions within the Easement:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon
the Parties.

2. No living trees or shrubs (of any size or type) shall be cut down, removed or destroyed without prior written consent from the Planning Board. Diseased or hazardous trees or limbs may be removed to prevent personal injury or property damage after reasonable notice to the Planning Board, unless such notice is not practical in an emergency situation or removal of trees is undertaken pursuant to a forest management plan approved by the Planning Director.

3. No plant materials (including, but not limited to brush, saplings, undergrowth, or non-woody vegetation) shall be mowed or cut down, dug up, removed or destroyed unless removed pursuant to the terms and conditions of an approved forest management plan. Noxious weeds (limited to those weeds defined as "noxious" under Maryland State or Montgomery County laws or regulations and "exotic or invasive plants" in the Montgomery County Trees Technical Manual) may be removed as required by law, but the method of removal must be consistent with the limitations contained within this Agreement. Vegetation removal shall be limited to noxious weeds only, exotic and invasive weeds only, and protective measures must be taken to protect nearby trees and shrubs.

4. No mowing, agricultural activities, or cultivation shall occur. Grantor may replace dead trees or undergrowth provided that new plantings are characteristic of trees or undergrowth native to Maryland.

5. Nothing in this Agreement precludes activities necessary to implement an afforestation or reforestation efforts pursued pursuant to an approved forest conservation plan or maintenance agreement implemented under Chapters 19 or 22A of the Montgomery County Code.

6. The following activities may not occur at any time within the Easement area:

a. Construction, excavation or grading (except for afforestation and reforestation efforts conducted in compliance with an approved forest conservation plan).

b. Erection of any building or structural improvements on or above ground, including (but not limited to) sheds, dog pens, play equipment and retaining walls.

c. Construction of any roadway or private drive.

d. Activities which in any way could alter or interfere with the natural ground cover or drainage (including alteration of stream channels, stream currents or stream flow).

e. Industrial or commercial activities.

f. Timber cutting, unless conducted pursuant to an approved forest management
plan approved by the Planning Director and DNR.

g. Location of any component of a septic system or wells.

h. Excavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials.

i. Diking, dredging, filling or removal of wetlands.

j. Pasturing of livestock (including horses) and storage of manure or any other suit.

k. Alteration of stream.

7. Nothing in this Agreement shall prevent construction or maintenance of stormwater structures and/or facilities or other utilities, including, but not limited to water and sewer lines, on, over, or under the easement area, if said structures, facilities or utilities are (i) required to implement the Plan, (ii) shown on the approved FCP, and (iii) approved by the appropriate governing bodies or agencies in accordance with applicable laws and regulations.

8. No dumping of unsightly or offensive material, including trash, ashes, sawdust or grass clippings shall occur. Natural biodegradable materials may be allowed in a properly located, designed, managed and maintained compost pile, provided the activity does not damage adjacent trees. Upon prior written approval of the Planning Director, suitable heavy fill and other stabilization measures may be placed to control and prevent erosion, provided that the fill is covered by arable soil or humus and properly stabilized.

9. Fences consistent with the purposes of the Easement may be erected with the Easement area if shown on the FCP or only after written approval from the Planning Director.

10. Unpaved paths or trails consistent with the purposes of the Easement may be created only after written approval from the Planning Director.

11. All rights reserved by or not prohibited to Grantor shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the land within the Easement.

12. Grantor authorizes Planning Board representatives to enter the Property and easement at their own risk and at reasonable hours for the purpose of making periodic inspections to ascertain whether the Grantor, its heirs, successors or assigns have complied with the restrictions, conditions, and easements established herein. Prior to entry, authorized representatives must check in at the main office of the school and display identification at all times. This easement does not convey to the general public the right to enter the Property or easement for any purpose. The easement does not
restrict or enlarge access to the general public in common open space held under community or homeowner association control beyond any access rights created by applicable community or homeowner association covenants and by-laws.

13. Grantor agrees to make specific reference to this Easement in a separate paragraph of any subsequent deed, sales contract, mortgage, lease or other legal instrument by which any possessor or equitable interest in the Property is conveyed.

14. No failure on the part of the Planning Board to enforce any covenant or provision herein shall waive the Planning Board's right to enforce any covenant within this Agreement.

15. Upon finding a violation of any of the restrictions, conditions, covenants and easements established by this easement agreement, the Planning Board shall notify the Grantor in writing of the nature of the violation and subsequent thereto, have the right to enforce such provisions in accordance with any statutory authority (including, if applicable, the imposition of civil monetary fines or penalties in amounts and by such means as may be promulgated from time to time). The Planning Board also may seek injunctive or other appropriate relief in any court of competent jurisdiction, including the right to recover damages in an amount sufficient to restore the property to its original natural state, and Grantor agrees to pay for court costs and reasonable attorney fees if the Planning Board successfully seeks judicial relief.

16. All written notices required by this easement agreement shall be sent as follows:

Planning Director, M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Board of Education of Montgomery County
850 Hungerford Drive
Rockville, Maryland 20850
Attention: Director of Facilities Management

TO HAVE AND TO HOLD unto the Planning Board, its successors and assigns forever, this Grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the title of the Property.

IN WITNESS WHEREOF, each of the Parties has caused to be executed this Agreement to be signed by its duly authorized officer as of this __ day of July __, 20__.
WITNESS:  

[Signature]

Jerry D. Weast, Secretary

GRANTOR:

The Board of Education  
of Montgomery County, Maryland

[Signature]

Patricia B. O’Neill, President

Approved by the Board of Education of Montgomery County

[Signature]

Jerry D. Weast, Superintendent of Schools

STATE OF MARYLAND

COUNTY OF Montgomery  
to wit:

I HEREBY CERTIFY that on this 22nd day of April, 2010, before me, a Notary Public in and for the State and County aforesaid, personally appeared Patricia B. O’Neill, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: 8/1/10

[Notarial Seal]

ATTEST:

[Signature]

Barbara Walsh  
Acting Secretary-Treasurer

GRANTEE:

[Signature]

[Name]
Patricia Colihan Barney  
Executive Director  
Maryland-National Capital Park and  
Planning Commission

Approved for legal sufficiency  
M-NCPPC Office of General Counsel
STATE OF MARYLAND

COUNTY OF Montgomery to wit:

I HEREBY CERTIFY that on this ___12___ day of July, 2010, before me, a Notary Public in and for the State and County aforesaid, personally appeared Patricia Colihan Barney, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: 1/14/2012

[Signature]

ATTORNEY CERTIFICATION

I certify that this instrument was prepared under the supervision of the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland.
Attachment 2

SCHEDULE A
CATEGORY 1 CONSERVATION EASEMENT
OVER AND ACROSS THE PROPERTY
OF
MONTGOMERY COUNTY BOARD OF EDUCATION
(MONTGOMERY KNOLLS ELEMENTARY SCHOOL)
LIBER 1549 FOLIO 294
ELECTION DISTRICT NO. 13
MONTGOMERY COUNTY, MARYLAND

Being a piece or parcel of land lying, situate and being in Election District No. 13, Montgomery County, Maryland, said piece or parcel of land being part of that parcel of land received by the owners by that certain deed dated July 1, 1952, as recorded among the Land Records of said county in Liber 1549 at Folio 294, being more particularly described as follows in the meridian of the Maryland State Coordinate System (NAD83):

Beginning for aforesaid piece or parcel of land at a point on the 5th or North 31° 27’40” West 232.56 foot line, said point being 63.45 feet from the beginning thereof, said point also lying on the South 31° 28’10” East 232.56 foot line of Block 1, Section 2, Montgomery Knolls, according to the plat of subdivision recorded among said Land Records in Plat book 47 at Plat No. 3562, thence leaving said plat line and said 5th deed line and running over and across said Liber 1549 at Folio 294 the following 14 courses and distances:

1. North 59° 04’15” East 49.79 feet to a point, thence
2. South 43° 13’34” East 54.77 feet to a point, thence
3. South 60° 40’ 14” East 180.11 feet to a point, thence
4. North 46° 47’47” East 233.36 feet to a point, thence
5. South 51° 06’22” East 28.66 feet to a point, thence
6. North 20° 05’12” East 10.93 feet to a point, thence
7. North 00° 30’30” East 50.60 feet to a point, thence
8. North 44° 54’ 42” East 87.46 feet to a point, thence
9. North 51° 57’18” West 144.50 feet to a point, thence
10. North 04° 15’26” East 46.48 feet to a point, thence
11. North 42° 20’59” West 19.41 feet to a point, thence
12. North 01° 10’23” East 27.24 feet to a point, thence
13. North 43° 07’18” West 165.83 feet to a point, thence
14. North 51° 42’49” East 18.99 feet to a point on the 2nd or South 43° 59’59” East 1019.03 foot line of aforesaid Liber 1549 at Folio 294, said point also being on the North 42° 08’02’West 1415.20 foot line of the plat of subdivision entitled “Division of Martha A. Salter Property Near Clifton Park” as recorded among aforesaid Land Records in Plat Book 13 at Plat No. 867, thence running reversely with said plat line and with part of said 2nd deed line
15. South 43° 59'59" East 634.03 feet to a point at the beginning of
the 3rd line of aforesaid Liber 1549 at Folio 294, thence running
with said 3rd deed line and reversely with part of the North 67°
49'30" East 719.25 foot line of that plat of subdivision entitled
"Block K, Montgomery Knolls" as recorded among aforesaid
Land Records in Plat Book 34 at Plat No. 2251
16. South 67° 54'15" West 592.46 feet to a point at the beginning of
the 4th line of said Liber 1529 at Folio 294, thence running with
said 4th deed line and with part of the 5th deed line of aforesaid
Liber 1529 at Folio 294 and with the outline of said Plat Book 47
at Folio 3562
17. North 40° 55'35" West 202.53
18. North 31° 27'40" West 63.45 feet to the point of beginning,
containing 110,525 square feet of land or 2.53730 acres of land.
SCHEDULE B
CATEGORY I CONSERVATION EASEMENT
OVER AND ACROSS THE PROPERTY OF
MONTGOMERY COUNTY BOARD OF EDUCATION
(MONTGOMERY KNOLLS ELEMENTARY SCHOOL)
LIBER 1549 FOLIO 294
ELECTION DISTRICT NO. 13
MONTGOMERY COUNTY, MARYLAND
SCALE 1"=100' FEBRUARY, 2010

OWNERS:
MONTGOMERY COUNTY
BOARD OF EDUCATION
L.1549 F.294

PREPARED BY:
MERIDIAN SURVEYS, INC.
811 RUSSELL AVENUE
SUITE 303
GAITHERSBURG, MARYLAND 20879
(301) 721-9400
(301) 840-0334 FAX
E-MAIL: surveyor@meridiansurveys.com
MSI# 10-1170
May 31, 2019

Maryland National Capital Park and Planning Commission (M-NCPDC)
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Montgomery Knolls Elementary School
Request for Specimen Tree Variance
MR# - Norton# 18-038

Dear Intake Division,

On behalf of the Montgomery County Public Schools and pursuant to Section 22A-21 Variance provisions of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow impacts to or the removal of the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named County construction project:

Project Description:

The existing Montgomery Knolls Elementary School is located at 807 Daleview Dr in Silver Spring, Montgomery County, Maryland. This is a 10.34-acre site that owned by the Montgomery County Board of Education. The site currently hosts the existing school, associated parking, athletic fields and play areas. The site is bordered by residential properties on North, West, and South. The site has vehicle access from Daleview Dr.

Proposed construction consists of a new building addition, new play surfaces, improved pedestrian & vehicle circulation, parking, stormwater management and updates for ADA accessibility.

Requirements for Justification of Variance:

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

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and

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

**Justification of Variance:**

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

Response: As part of the program, the task is to provide the community with an updated safe access to school facility to separate parent & bus drop off.

This work will require disturbance of the root zones of a total of ten (10) specimen trees. None of the ten (10) impacted trees will be required to be removed.

If MCPS is not allowed to impact the trees, the school will not be able to be updated due to the close proximity of specimen trees to the school parking, amenities and stormwater facilities. As such, this would cause an *unwarranted hardship* to the community that it serves.

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

Response: If the County were required to keep all improvements outside the root zones of the specimen trees, the building, safe access drive aisles, and parking would fail to be rebuilt due to the close proximity of specimen trees.

(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance;

Response: Tree removals have been minimized by compact design of the layout ensuring the preservation of as many specimen trees as possible. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes limiting the impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Additional improvements to the property include control of erosion and outfall stabilization. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality.*
(4) Provide any other information appropriate to support the request.

Response: Presently there is previously approved existing category 1 conservation easement along the east portion of the property that will be retained. Additional canopy planting will serve to create greater ecological quality while establishing further buffering of adjacent land uses (residential).

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) Minimum criteria, which 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;

Response: The school addition is in conformance with the County’s General plan. As such, this is not a special privilege to be conferred on the applicant.

(2) Is based on conditions or circumstances which are the result of the actions by the applicant;

Response: Montgomery County Public Schools has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

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

Response: The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

Response: Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

*Contractor to work with inspector in the field to adjust LOD in the critical rootzone area of offsite specimen trees to save. If trees show signs of decline or are in poor condition at the time of the pre-construction meeting. Owner will reach out to neighbors for removal of trees.
Conclusion:

For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact/remove the specimen trees in order to allow the construction of this vital project.

The recommendations in this report are based on tree conditions noted at the time the NRI/FSD field work was conducted. Tree condition can be influenced by many environmental factors, such as wind, ice and heavy snow, drought conditions, heavy rainfall, rapid or prolonged freezing temperatures, and insect/disease infestation. Therefore, tree conditions are subject to change without notice.

The site plans and plotting of tree locations were furnished for the purpose of creating a detailed Tree Protection Plan. All information is true and accurate to the best of my knowledge and experience. All conclusions are based on professional opinion and were not influenced by any other party.

Sincerely,

Michael Norton