



Cheng Property, Preliminary Forest Conservation Plan H-134

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Staff Report Date: 09/06/19

Description

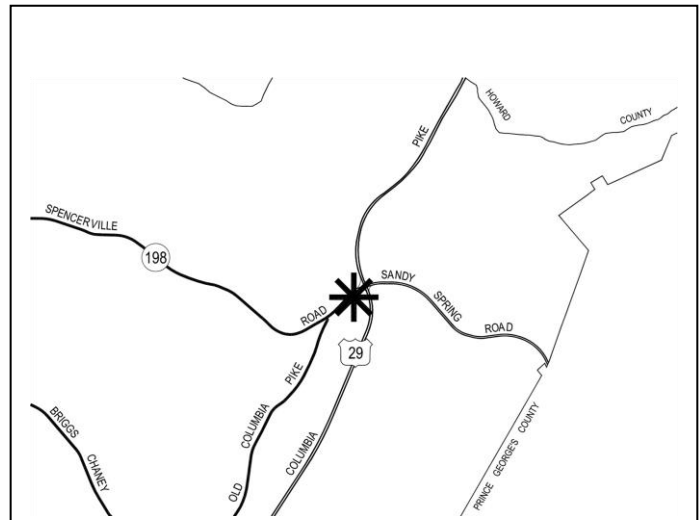
Preliminary Forest Conservation Plan in conjunction with Local Map Amendment H-134; located at 15585 and 15595 Old Columbia Road, Burtonsville in the 2012 Burtonsville Crossroads Neighborhood Master Plan.

Submittal Date: May 8, 2019

Applicant: HONG CHENG, LLC & DONG YA, LLC.

Review Basis: Chapter 22A

Staff Recommendation: Approval of the Final Forest Conservation Plan Amendment



Summary

Preliminary Forest Conservation Plan for a Local Map Amendment (LMA) to apply a floating zone to two properties at 15585 and 15595 Old Columbia Pike converting them from CRN to CRTF. This plan is required under Chapter 22A.

Conditions:

1. Forest Conservation & Tree Save

The Applicant must comply with the conditions of the approved Preliminary Forest Conservation Plan No. H-134.

- a) The Applicant must submit and obtain Staff approval of a Final Forest Conservation Plan.
- b) The Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Forest Conservation Plan. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed prior to the start of any demolition, clearing, or grading on the Subject Property, and the Liber Folio for the easement must be referenced on the record plat.
- c) The Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.31 acres of new forest planting prior to the start of any demolition, clearing, or grading on the Property.
- d) The Applicant must submit a two-year Maintenance and Management Agreement approved by the M-NCPPC Office of General Counsel prior to the start of any demolition, clearing or grading on the Property.
- e) The Applicant must install permanent Category I Conservation Easement signage along the perimeter of the conservation easements.
- f) Afforestation plantings that are located outside the limits of disturbance must occur within the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance must occur in the first planting season following the stabilization of the applicable disturbed area.
- g) The Final Sediment Control Plan must be consistent with the limits of disturbance shown on the approved Final Forest Conservation Plan.
- h) 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 Final Forest Conservation Plan may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.

SITE DESCRIPTION

The 3.58-acre property consists of two parcels: N913 and N924 in the "Parcel C & Parcel D Subdivision." The plat of subdivision is recorded among the land Records of Montgomery County in plat book 111 at plat no. 12953. The site is on the south side of Old Columbia Pike (MD 198), at Columbia Pike (Business US 29) in Burtonsville. The property is currently developed with a four pump (8 filling locations) gas filling station and 2,500 square foot convenience store on Parcel N913 and a retail/commercial building on Parcel N924. See Figure 1.

The topography is relatively flat, with elevations between 484 feet and 492 feet. There are no streams, wetlands, floodplains, or environmental buffers on the site. There is a 0.38-acre forest stand on site in the southwest corner of the Property.

Environmental

Natural Resource Inventory/Forest Stand Delineation

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420190900 for this Property was approved in January of 2019. The NRI/FSD identifies 0.38 acres as forested. There are no other environmental features on the Property or adjacent to the Property. There are no rare, threatened, or endangered species within the boundaries of the proposed project.

Forest Conservation Plan

A Preliminary Forest Conservation Plan (PFCP) H-134 for the Application was submitted as part of the Application (Attachment A).

This Applicant is requesting to be reclassified to the CRTF Zone, which is assigned a Land Use Category of Mixed-Use Development Areas (MDP) in the Land Use Table of the Environmental Guidelines. This gives the Property an afforestation requirement of 15 percent of the net tract and a conservation threshold of 15 percent.

The PFCP shows 0.38 acre of forest within the net tract area and proposes 0.06 acre of forest removal and 0.32 acre of forest retention. Accordingly, the Forest Conservation Worksheet results in a 0.28-acre afforestation/reforestation requirement. This requirement will be met onsite with new forest plantings adjacent to the existing forest area. All retained and planted forest on the Property will be placed in Category I conservation easement.

Forest Conservation Variance

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request - The Applicant submitted a variance request in a letter dated August 2, 2019 (Attachment B). The Applicant proposes to impact one (1) tree that is 30 inches or greater DBH, that is considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law.

Trees to be impacted:

Tree Number	Species	DBH Inches	Status
1	White Oak (Quercus alba)	52"	To construct a shared bike/pedestrian path in the right-of-way along Old Columbia Pike, and add a private sidewalk as recommended in the Plan. Construction will impact 24.0% of the critical root zone (CRZ).

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the Master Plan recommendation, to improve the subject property with the addition of a shared bike/pedestrian path along the northern edge of the property (along Old Columbia Pike) that connects to the existing shared bike/pedestrian path along the Columbia Pike onramp. Therefore, Staff concurs that the Applicant has a sufficient unwarranted hardship to justify a variance request.

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.

Variance Findings - Staff has made the following determination based on the required findings that granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the impact to the tree is due to necessary improvements within the public right-of-way to construct a shared use path. The Applicant is proposing a 24 percent impact to the critical root zone of a white oak tree. White oaks have good resilience to construction impacts, so if the tree is in good condition it should be able to overcome the impacts. Therefore, Staff believes that the granting of this variance is not a special privilege that would be denied to other applicants.

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

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions and the need to build a shared use path in the public right-of-way.

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

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree will be retained and the canopy is not proposed for pruning. Therefore, Staff concurs that the Project will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provision -No Variance trees are proposed for removal, therefore no mitigation is being requested.

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 August 20, 2019. The County Arborist, in a written response, concurs with Staff's recommendation to grant the variance.

Variance Recommendation - Staff recommends approval of the variance request.

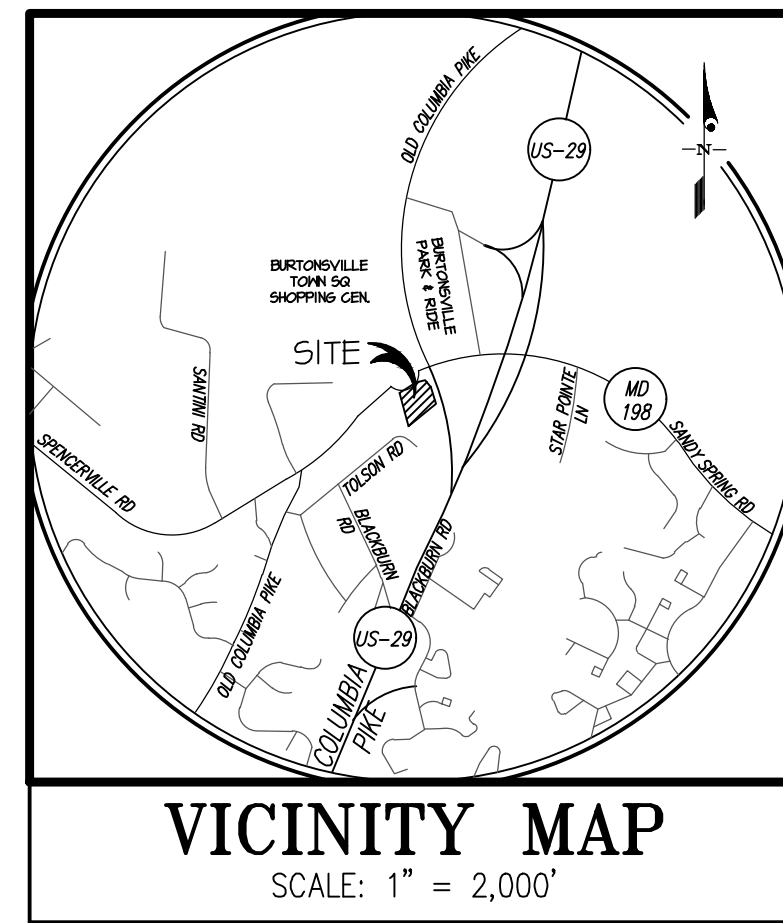
CONCLUSION

The PFCP meets all applicable requirements of Chapter 22A of the County Code. Therefore, Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this Staff Report.

Attachments

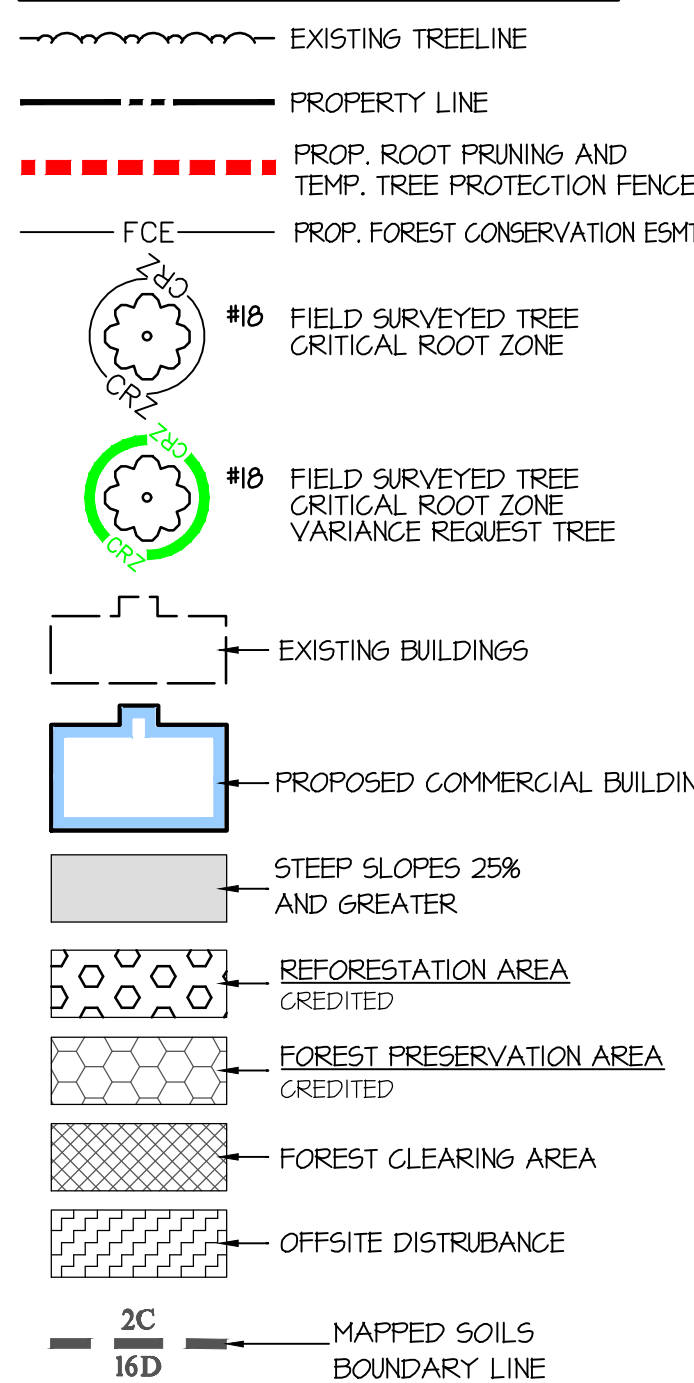
Attachment A – Preliminary Forest Conservation Plan

Attachment B – Tree Variance Request Letter



MSSC GRID: 22NE04 - TAX MAP: KS-562

LEGEND



Forest Conservation Data Table

	Number of Acres
Tract	3.58
Remaining in Agricultural Use	0.00
Road & Utility ROWs	0.00
Total Existing Forest	0.38
Forest Retention	0.33
Forest Cleared	0.05

Land Use & Thresholds	Land Use Category	Conservation Threshold	Afforestation Threshold
	MDP	20	15
	AAA, MDR, IDA, HDR, MDP, or CIA	percent	percent

Total Channel Length (ft.)	Average Buffer Width (ft.)
0	0

Acres of Forest in	Retained	Cleared	Planted
Wetlands	0.00	0.00	0.00
100-Year Floodplain	0.00	0.00	0.00
Stream Buffers	0.00	0.00	0.00
Priority Areas	0.00	0.00	0.00

DEVELOPER'S CERTIFICATE
The undersigned agrees to execute all the features of the Approved Preliminary Forest Conservation Plan No. XXXXXXXX, including financial, bonding, forest planning, maintenance and all other applicable agreements.
Developer's Name: Kuo-Chien Cheng
Contact Person or Owner: Kuo-Chien Cheng
Address: 4106 Shad Lane, Potomac, MD 20854
Phone: (301) 426-2429
Signature: Kuo-Chien Cheng

GENERAL NOTES

- Owner/Applicant: Kuo-Chien Cheng, 4106 Shad Lane, Potomac, MD 20854
- Boundary survey by: Gutschick, Little, & Heber, P.A., August 6, 2018
- Topography by: Gutschick, Little, & Heber, P.A., August 6, 2018
- Master Plan: Burtonsville Groceries Neighborhood Master Plan, 2012
- NR/FSO by: Gutschick, Little, & Heber, P.A., NR/FSO Plan No. 420140400, Approved: January 17, 2019
- Watershed 4 Use Class: Little Point Branch (I)
- There are no known Special Protection Areas (SPA) or PMA Areas on site.
- There is no floodplain on site per FEMA Map #24031C0305SD.
- There are no wetlands on site.
- There are no known Rare, Threatened or Endangered Species on site.
- The property is not listed on the Locational Atlas and Index of Historic Sites.
- Parcel N1815 & N1824
Existing Water Category: H-1
Existing Sewer Category: S-1
- Parcel N1815 & N1824
Proposed Water Category: H-1
Proposed Sewer Category: S-1
- Utility Companies: Gas - Washington Gas Electric - BGE Water & Sewer - WESG Telephone/Internet/Cable - Verizon, Comcast
- There are no trees listed in the 2017-2018 Register of Champion Trees, Montgomery County, Maryland.
- The field survey was performed on October 30, 2018 by Lee Eubank of Gutschick, Little & Heber P.A. Trees were measured with a D-Tape.

SITE DATA

Existing Site Area:	3.46 Ac.
Parcel N1815 (Parcel 'C'):	0.65 Ac.
Parcel N1824 (Parcel 'D'):	2.72 Ac.
Previous dedications:	0.04 Ac.
Existing Zoning:	CRN-15 (C-1.0, R-0.5, H-45) Commercial Residential Neighborhood
Existing Use:	Parcel C - Commercial - Vehicle Service Filling Station, Retail/ Service Parcel D - Commercial - Retail Sales & Services
Proposed Zone:	CRTF (Commercial Residential Town - Floating) CRTF, C-1.0, R-0.5, H-45
Proposed Use:	Parcel C - Commercial - Vehicle Service Filling Station, Retail/ Service Parcel D - Commercial - Vehicle Service - Repair (Minor)
Proposed Development Type:	Standard Method
Development Program:	Any redevelopment of the gas station and convenience store will occur in one phase. In connection with the re-use of the Retail/ Commercial building, depending on the ultimate use of that structure, Site Plan approval may be required. It is likely that the redevelopment of the gas station and convenience store and the re-tenancing of the Retail/ Commercial building would occur at different times.

FOREST CONSERVATION WORKSHEET

NET TRACT AREA:

A. Total tract area ...	3.41 Ac. Ex. Site Area + 0.01 Ac. Offsite Disturbance	3.58
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		3.58

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	0	0	0	0	0

G. Afforestation Threshold ...	15%	x F =	0.54
H. Conservation Threshold ...	20%	x F =	0.72

EXISTING FOREST COVER:

I. Existing forest cover	0.38
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	0.05
O. Total area of forest to be retained	0.33

PLANTING REQUIREMENTS:

P. Reforestation for clearing above conservation threshold	0.00
Q. Reforestation for clearing below conservation threshold	0.10
R. Credit for retention above conservation threshold	0.00
S. Total reforestation required	0.10
T. Total afforestation required	0.16
U. Credit for landscaping (may not exceed 20% of "S")	0.00
V. Total reforestation and afforestation required	0.26
Total reforestation and afforestation provided	0.31

AFFORESTATION	AREA	CREATED	NON CREDITED
ESMT No. 1	A-1	0.04	
	A-2	0.27	
	SUBTOTAL	0.31	0.00

FOREST RETENTION	AREA	CREATED	NON CREDITED
ESMT No. 1	B-1	0.33	
	SUBTOTAL	0.33	0.00

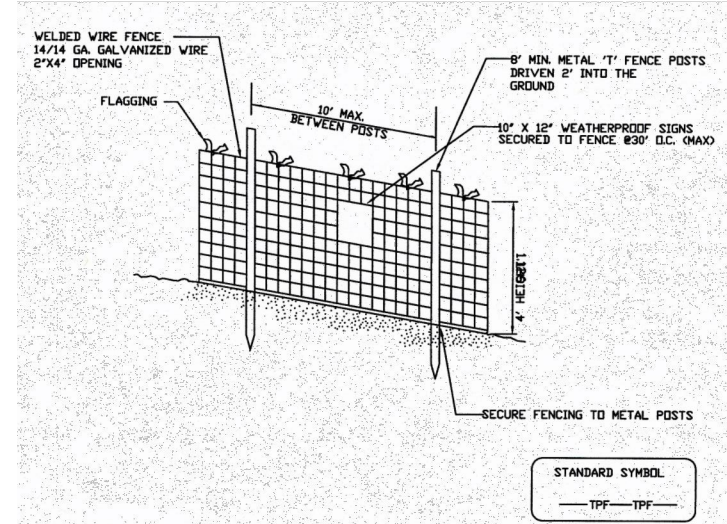
FOREST PROVIDED	AREA	ACREAGE
AFFORESTATION	0.31	
RETENTION	0.33	
SUBTOTAL	0.64	

FOREST CLEARING	AREA	ACREAGE
C-1	0.05	
SUBTOTAL	0.05	

OFFSITE DISTURBANCE	AREA	ACREAGE
D-1	0.10	
D-2	0.01	
SUBTOTAL	0.11	

Tree Protection Fence Detail

Not to scale

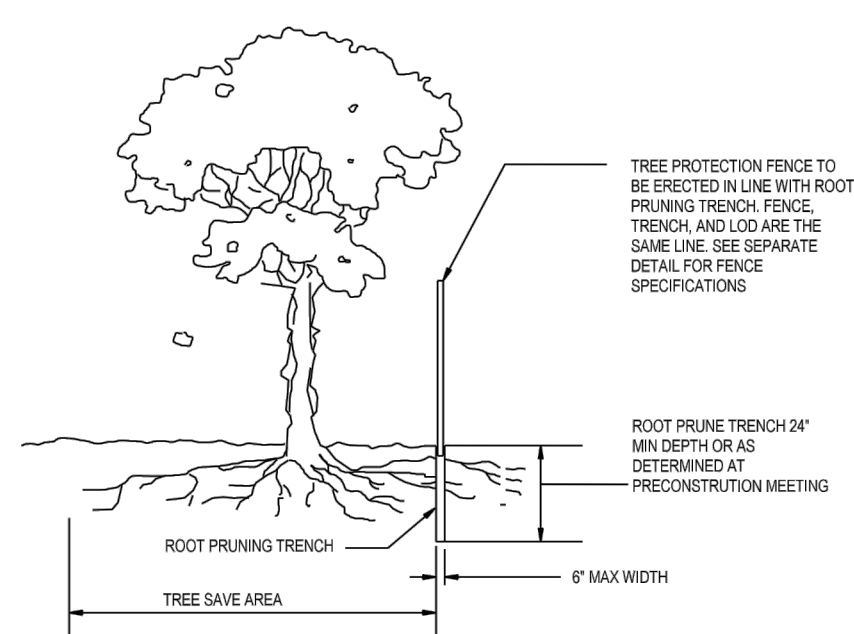


NOTES

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

1 TEMPORARY TREE PROTECTION FENCE

NT5.



NOTES

- RETENTION AREAS WILL BE SET AS PART OF THE REVIEW PROCESS AND PRECONSTRUCTION MEETING.
- BOUNDARIES OF RETENTION AREAS MUST BE STAKED AT THE PRECONSTRUCTION MEETING AND FLAGGED PRIOR TO TRENCHING.
- EXACT LOCATION OF TRENCH SHALL BE DETERMINED IN THE FIELD IN COORDINATION WITH THE FOREST CONSERVATION (FC) INSPECTOR.
- TRENCH SHOULD BE IMMEDIATELY BACKFILLED WITH EXCAVATED SOIL OR OTHER ORGANIC SOIL AS SPECIFIED PER PLAN OR BY THE FC INSPECTOR.
- ROOTS SHALL BE CLEANLY CUT USING VIBRATORY KNIFE OR OTHER ACCEPTABLE EQUIPMENT.
- ALL PRUNING MUST BE EXECUTED WITH LOD SHOWN ON PLANS OR AS AUTHORIZED IN WRITING BY THE FC INSPECTOR.

2 ROOT PRUNING

NT5.

MAPPED SOIL TYPES

MAP UNIT	DESCRIPTION	HIGHLY ERODIBLE	HYDRIC	PRIME FARMLAND
5TB	Chillum silt loam, 3 to 8% Slopes	NO	NO	YES
400	Urban Land	NO	YES	NO
5TD*	Chillum silt loam, 15 to 25 % slopes	YES	NO	NO

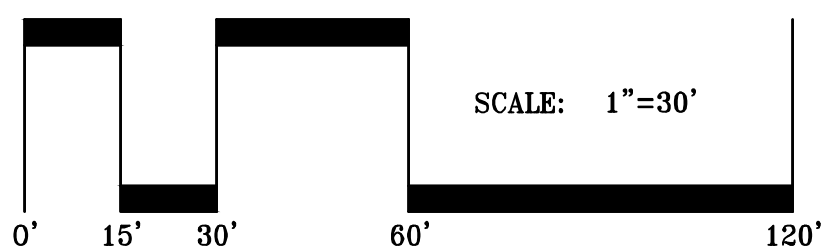
*5TD not found on subject property but along part of east property line in the Right-of-Way and Columbia Pike.

ACCORDING TO USDA - WEB SOIL SURVEY
Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at: <http://websoilsurvey.sc.egov.usda.gov/> accessed Nov. 1, 2018.
Soil classification follows 1985 Soil Survey of Montgomery County, MD

SIGNIFICANT AND SPECIMEN TREE LIST

NO.	COMMON NAME	SPECIES NAME	DBH	CONDITION	COMMENTS	DISPOSITION	% IMPACTED
1.	WHITE OAK	QUERCUS ALBA	52"	FAIR	OFFSITE, GROWING AT ANGLE, HOLE IN TRUNK BASE	SAVE	24.0%
2.	CHESTNUT OAK	QUERCUS MONTANA	28"	FAIR	OFFSITE, LOWER DEAD & BROKEN BRANCHES	SAVE	0%
3.	WHITE OAK	QUERCUS ALBA	35"	FAIR	OFFSET, LOWER DEAD & BROKEN BRANCHES	SAVE	0%

DESIGNED BY	KAF				
DRAWN BY	KAB				
CHECKED BY	KAF	3/1/19	Revised layout	LME	KAF
DATE				BY	APPR.
				REVISION	



PREPARED FOR:
Kuo-Chien Cheng
9106 Shad Lane
Potomac, MD 20854
301-928-2429

SCALE	1"=30'
ZONING	SEE SITE PLAN NOTES
DATE	APRIL 2019
TAX MAP	KS-562

PRELIMINARY FOREST CONSERVATION PLAN

BURTONSVILLE - CHENG PROPERTY
PARCELS 'C' & 'D'
PLAT No. 12853
15585 & 15595 OLD COLUMBIA PIKE BURTONSVILLE, MD 20866

COLESVILLE ELECTION DISTRICT No. 5

MONTGOMERY COUNTY, MARYLAND

G. L. W. FILE No.	18060
SHEET	1 OF 1



August 2, 2019

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

Re: Burtonsville-Cheng Property - Variance Request
 Local Map Amendment H-134
 Preliminary Forest Conservation Plan

On behalf of the applicant, Hong Chen, LLC and Dong Ya, LLC, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:*
- (i) 30 inches or more; or*
 - (ii) 75% or more of the diameter, measured at 4.5' above ground of the current State champion tree of that species.*

This Variance request is submitted in concurrence with a Local Map Amendment that requests approval to apply a Floating Zone to the Subject Property, to rezone the Property from the CNR-1.5, C-1.0, R-0.5, H-45 Zone to the CRTF-1.5, C-1.0, R-0.5, H-45 Zone.

The Subject Property, or the site, is located within the Main Street MD 198 Neighborhood of the 2012 Burtonsville Crossing Neighborhood Plan. The Master Plan recommends rezoning in this neighborhood from C-2 and I-1 to Commercial Residential Town (CRT) and Commercial Residential Neighborhood (CRN) Zones. While this Property is currently zoned CRN, the Commercial Residential Town Floating Zone (CRTF) request is due to the Property's location and the adjacent property uses. The Property is prominently located at the Eastern Gateway (p. 18 of the Plan) to Main Street. The proposed improvements and developments which support CRTF rezoning include a shared bike/pedestrian path, adaptive reuse of existing buildings, inclusion of public space, and adding Forest Conservation. Further, the property owner can respond more flexibly to current market conditions with regard to tenant uses of buildings.

The Subject Property contains a net lot area of approximately 3.37 acres (Ac) and is located in the Southeast quadrant, intersection of Old Columbia Pike and the Columbia Pike southbound on-ramp. To the north of the site are the Old Columbia Pike MD 198 (which transitions into Spencerville Road to the west and Sandy Spring Road to the east) and the Burtonsville Town Square Shopping Center. To the east is the southbound on-ramp to Columbia Pike (US Route 29). To the south is a residential property on Parcel P60 (the house recently had a fire), and vacant land on Parcel P47 (owned by the Subject Property's owner). To the west is a McDonald's restaurant on Parcels N922 and P69. The Subject Property is comprised of two parcels: a "7-Eleven" vehicle filling service station and convenience store on Parcel N913, and a retail store on Parcel N924.

The property has 0.38 Ac. of forest on the south portion of the site. There are no specimen trees on the property, however there is one specimen tree located within 50 feet of the subject property at the northwest property corner and two specimen trees located within 50 feet of the subject property near the southwest property line. There is an existing stormwater management facility located on the east side of the site.

Pursuant to the applicable provisions of Chapter 59 of the Montgomery County Code, the Local Map Amendment submitted with this variance request seeks approval for the proposed rezoning of the Property to provide a total of 13,200 square feet (SF) of commercial use. Currently there is 10,700 SF of existing retail; 2,500 SF is for a proposed building addition.

As part of rezoning of the Subject Property, the applicant requests a variance to affect the one specimen tree measuring 30" or greater in diameter at breast height (dbh).

Request to impact the following tree:

<u>Tree #</u>	<u>Tree type</u>	<u>Dbh (In.)</u>	<u>Condition</u>	<u>Reason</u>
1	White Oak	52"	Fair, in declining condition.	To construct a shared bike/pedestrian path in the right-of-way along Old Columbia Pike, and add a private sidewalk as recommended in the Plan. Construction will impact 24.0% of the critical root zone (CRZ).

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

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

The proposed rezoning for commercial development on the Subject Property includes new building construction (an addition to the 7-Eleven store), grading, utility relocation, a shared use path, access and road frontage improvements, parking lot improvements, on-site stormwater management and other associated improvements on the property. The proposed development utilizes the existing segment of Old Columbia Pike street frontage. The new shared use path and stormwater management improvements will be implemented to meet goals of the Master Plan. The proposed development preserves 0.32 Ac of the total 0.38 Ac of existing forest. The existing forest is found along the south portion of the site. The proposed 0.26 Ac of afforestation/reforestation area increases the total forest to 0.58 Ac.

By way of background, the Master Plan recommends design and development at a neighborhood center scale. Of the three neighborhood districts discussed in the Plan, the subject property is found within the Main Street MD 198 district. This district is intended to serve as a Main Street for Burtonsville with recommendations to improve landscaping, sidewalks, and bikeways. The subject property sits at the Eastern Gateway of the intended main street.

In accordance with the Master Plan recommendations mentioned above, the proposed development will include improving the subject property with the addition of a shared bike/pedestrian path along the northern edge of the property (along Old Columbia Pike) that connects to the existing shared bike/pedestrian path along the Columbia Pike onramp. Currently there is no sidewalk or bike path along this frontage.

Critical Root Zone of Tree #1

- Tree #1 is a white oak in fair to declining health that is growing in the right-of-way (ROW) of adjacent Parcel 'F' – N922. The tree has a dbh of 52 in and a CRZ of 78 ft. Of the proposed development discussed above, only 4.3% of the entire CRZ is impacted.

Not being allowed to impact the CRZ of this tree and obtain a Specimen Tree Variance would prevent the Applicant from meeting the recommendations called for in the Master Plan. Tree #1 is located on an adjacent parcel to the Subject property on the northwestern edge. Less than 5% of the tree's CRZ is impacted by the proposed path construction. As recommended in the Master Plan, this path, where currently no sidewalk or bike path exists, would help create a Main Street "feel" along Old Columbia Pike. The proposed path would be situated in the Right of Way and would cross two existing access drives to the site. If a Variance were to be denied the Applicant would be deprived from developing the Property for a reasonable and significant use enjoyed by virtually all others similar property owners in the community. Additionally, the safety and welfare of foot and bicycle traffic would continue to be dangerous, since there is no existing sidewalk. Not allowing disturbance in this area would deny the Applicant the ability to meet the goals of the Plan. It should be noted that the previously approved site plan for the McDonalds to the west of the subject property (820150020) shows removal of Tree #1.

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

Tree #1 is located on an adjacent parcel (McDonald's restaurant, Parcel 'F' – N922) at the northwest corner of the Subject property. Tree #1 grows in the Right of Way along this segment Old Columbia Pike approximately 30 ft from the 7-Eleven entrance drive. There are no alternative path locations due to the tree's location in the Right of Way, its large 78 ft CRZ, and the existing entrance drive to the 7-Eleven store and the fueling positions. The proposed path location is designed for safe bicycling and pedestrian activities within the Right of Way, with clear site lines and no sharp turns or elbows. There are no reasonable alternative path locations that do not affect the CRZ of Tree#1. The proposed shared bike/pedestrian path would allow safe passage along Old Columbia Pike and increase access to local businesses.

Granting of the Variance will ultimately allow the property to be developed in a safe and efficient manner consistent with recommendations by the Burtonsville Crossing Neighborhood Plan. Denial of the Variance for this tree would keep the applicant from fulfilling the county's goal of supporting small businesses, providing safe multimodal access to local services, and improving pedestrian and bikeway connectivity. It would cause undue hardship on the applicant because development would be very limited or not possible, and therefore will deny the applicant their ability to fully use the property. By granting the Variance, the landowner would realize significant and reasonable use on the property, and meet recommendations as shown in the Master Plan.

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

The Variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. A Storm Water Management Concept Plan will be approved by the Montgomery County Department of Permitting Service. The approval of these plans confirms that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filters and other similar treatment features and therefore verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. In addition to providing state-of-the-art "Environmental Site Design" storm water management for a site that currently has no stormwater management facilities, the proposed development will add significant stormwater management, reduce the existing uncontrolled overland flow on adjacent properties, and provide forest cover through additional site afforestation.

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

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant has taken great care to locate development in the buildable area of the site while trying to maximize usage of existing utility lines and minimize disturbance to the significant and specimen trees. The Applicant intends to implement tree preservation measures, potentially including standard tree protection fencing, signage, root pruning, vertical mulching and fertilization to further aid in mitigating disturbance and protecting the forest line. This will be explored and identified as part of the Preliminary Forest Conservation Plan included with the Local Map Amendment Application and a Final Forest Conservation Plan to be included with the upcoming Site Plan. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to impact one (1) specimen tree critical root zone on neighboring parcel N922 of the Subject Property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. The Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.
2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Kevin Foster, PLA, ASLA, AICP