



Norwood School: Preliminary Plan Amendment No. 11998015B for Forest Conservation Plan Purposes

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Completed: 9-16-19

Description

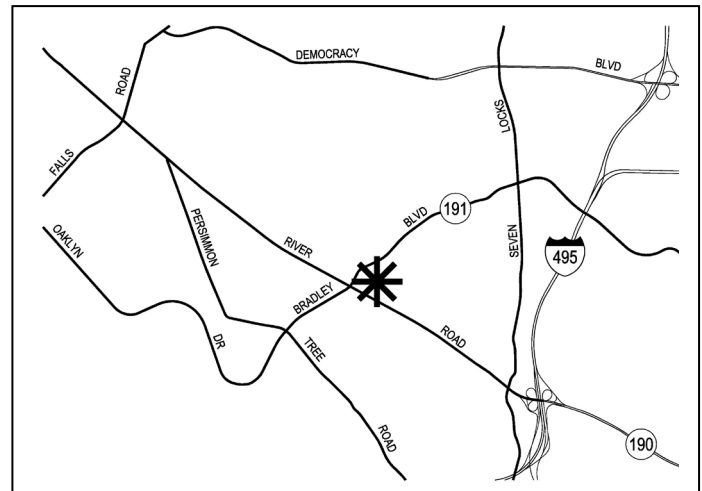
Norwood School: Preliminary Plan Amendment No. 11998015B: Amendment to remove 0.06 acres of a Category II Conservation Easement in order to provide necessary utility connections and site grading for a previously approved building located at the rear of the property; 38.06 acres; RE-2; *Potomac Subregion 2002 Master Plan Area*.

Recommendation – Approval with conditions

Applicant: Norwood School, Inc.

Acceptance Date: 6/4/2019

Review Basis: Chapter 22A



- Staff recommends **Approval with conditions**.
- Applicant requests to remove approximately 2,613.6 sq. ft. (0.06 acre) of an area identified as a Category II Conservation Easement located at the rear of the property in order to install necessary utility connections and site grading for a previously approved classroom connection building.
- Staff has received no community correspondence regarding this Application.

SECTION 1 – RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of the Preliminary Plan Amendment, Plan No. 11998015B for Forest Conservation Plan purposes, with all site development elements shown on the latest electronic version of the drawings as of the date this Staff Report submitted via ePlans to M-NCPPC. All previously approved plans, findings, and conditions of approval remain in full force and effect, except as modified by the following conditions:¹

Final Forest Conservation Plan

1. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank for the purchase of 5,227.2 square feet (0.12 acres) of forest mitigation credit in an off-site forest bank to satisfy the mitigation requirement of a 2:1 replacement rate for the removal of 2,613.6 square feet (0.06 acres) of Category II Conservation Easement.
2. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must record a new Category II Conservation Easement reflecting the easement area that is not authorized to be removed. The new easement agreement must be approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed. The entirety of the existing easement remains in full force and effect until the abandonment document and the revised easement have been approved and recorded in the Montgomery County Land Records.
3. Prior to the start of any demolition, clearing, grading or construction on the Subject Property, the Applicant must abandon the entirety of the original Category II Conservation Easement recorded among the County Land Records in Liber 10728 at Folio 510 and identified on Plat 19170 on Lot 44 in a form approved by M-NCPPC. The abandonment document must be recorded in the Montgomery County Land Records by deed.
4. Within ninety (90) days of the mailing date of the Planning Board Resolution approving the limited amendment to the Final Forest Conservation Plan (FFCP), the Applicant must submit a complete record plat application that delineates the revised conservation easement and references the Book/Page of the recorded deed for the new revised Category II Conservation Easement.
5. The revised Record Plat must be recorded in the Montgomery County Land Records within 365 days of the mailing date of the Planning Board Resolution approving the amendment to the Final Forest Conservation Plan.
6. The Applicant must comply with all required site inspections by M-NCPPC staff per Section 22a.00.01.10 of the Forest Conservation Regulations.
7. The Applicant must comply with all tree protection and tree save measures shown on the approved amended FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector at the pre-construction meeting.
8. The limits of disturbance shown on the Final Sediment Control Plan must be consistent with the LOD shown on the approved amended FFCP.

¹ For the purposes of these conditions, the term “Applicant” shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

SECTION 2 – SITE LOCATION & DESCRIPTION

Site Location and Description

The subject property is located at 8821 River Road (MD 190) on the eastern corner of the intersection of River Road and Bradley Blvd. and is identified on tax map GP121 as Parcel 700 (“Property” or “Subject Property”). The Subject Property is 38.06 acres in size, located in the Potomac Subregion 2002 Master Plan Area and is zoned RE-2. The surrounding properties are single family residential. The Congressional Country Club is located across River Road from this Property (**Figures 1 and 2**).

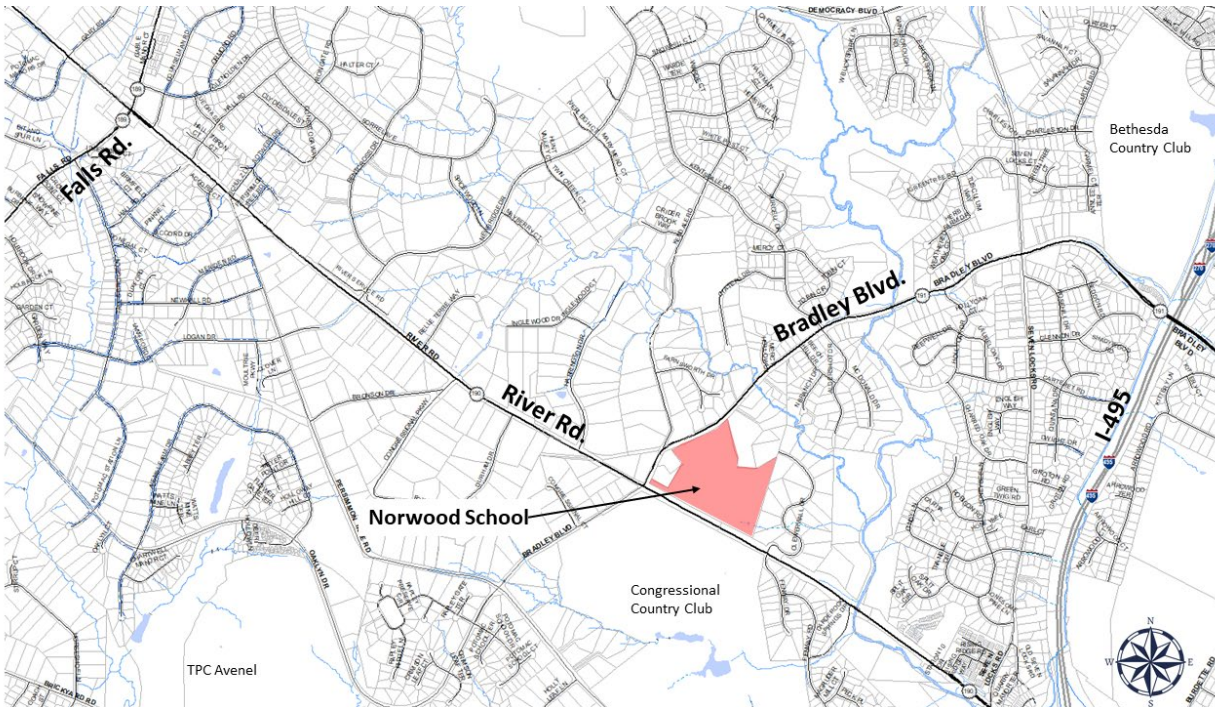


Figure 1 - Vicinity



Figure 2 – Norwood School Site

SECTION 3 – APPLICATIONS AND PROPOSAL

Previous Regulatory Approvals

The Subject Property has operated as the Norwood School since being granted a Special Exception (CBA-2879) by the Montgomery County Board of Appeals (BOA) in 1970. In 1998, the Applicant filed both a Preliminary Plan of Subdivision No. 119980150, and a Preliminary Forest Conservation Plan. Both plans were approved by the Planning Board on February 12, 1998. A Final Forest Conservation Plan (FFCP) was administratively approved by staff on June 25, 1998.

BOA Case No. CBA-2879 (Granted in 1971)

This case was approved by the BOA to establish the Norwood School at 8821 River Road, which permitted up to 150 students on 8.59 acres.

BOA Case No. S-18 (Granted in 1971)

Modifications to CBA-2879 for relocation of the driveway.

BOA Case No. S-285 (Granted in 1974)

This case was approved by the BOA for the construction of a new building which is adjacent to the Steuart Building to accommodate an additional 100 students. In addition, the Applicant was allowed to abandon the use of the driveway.

Preliminary Plan 119891680 (Approved September 28, 1989)

The Planning Board approved the Preliminary Plan for one lot on 20.32 acres of land.

BOA Case No. S-285-A (Granted in 1989)

This amendment was approved for an increase of 60 students (total enrollment of 310 students), increase staff to 50, add summers programs, renovate existing buildings with the addition of air conditioning, construct two additions, provide access to Bradley Boulevard and to expand property boundaries to 21.29 acres.

BOA Administrative Modification (Granted 1994)

Approval to increase enrollment to 330 students and increase staff to 60.

BOA Case No. S-285-B (Granted on July 26, 1996)

The amendment was to increase the property by 16,636 Square feet (0.38 acres), increase staff to 65 people, increase enrollment to 360 students, place two trailers on site to use as temporary classroom space, and create two additional soccer/play fields. The BOA required the Applicant to obtain approval of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the Subject Property prior to the release of grading permits for two playing fields.

Preliminary Plan 119980150 (Approved February 12, 1998)

The Planning Board approved the Preliminary Plan and the Preliminary Forest Conservation Plan for the creation of one lot of 16.60 acres and the inclusion of Lot 6 of 2.00 acres, to the existing 20.13 acre site resulting in an overall total site acreage of 38.73 acres. The FFCP was subsequently approved by staff on June 25, 1998.

BOA Case No. S-285-C (Granted on February 27, 1998)

The amendment was to increase property size to 38.73 acres, increase staff to 120 people, increase enrollment to 560 students to include pre-kindergarten and middle school student, install six temporary classroom units, construct four tennis courts, construct two soccer fields, construct a basketball court, reconfigure the existing driveway, construct an inter-parcel connector, construct three off-street parking facilities, construct a gymnasium/classroom addition, construct a softball/baseball field, expand the summer camp program to a maximum of 560 children and add child daycare for up to 12 children.

BOA Case No. S-285-D (Granted on October 30, 2001)

This amendment approved the construction a 2,700 square foot addition to the Fine Arts Building.

BOA Administrative Modification (Granted 2007)

Approval to permit the Saturday operation of a foreign language school by a third party and installation of two storage units. Saturday hours of operation are 9:15 AM to 4:00 PM.

BOA Case No. S-285-E (Granted on December 16, 2010)

This amendment approved the construction of four new buildings, increase student enrollment by 7 percent, increase summer camp enrollment by 52 percent, increase staff, extend hours and hold four large-scale, non-school related community events, and smaller after-hours auxiliary community enrichment programs over the course of 10 years.

Final Forest Conservation Plan Amendment (under S-285-E)

On July 8, 2010, the Planning Board approved this amendment to revise the existing on-site conservation easements to allow the Norwood School to accomplish their master planned build out of the school and to reduce the potential conflicts between the school configuration and the conservation easements.

Preliminary Plan 11998015A (Approved February 10, 2011)

The Planning Board approved Preliminary Plan Amendment 11998015A to establish Adequate Public Facilities (APF) needed to accommodate the proposed expansion of the Norwood School under Special Exception modification S-285-E.

Current Application

Final Forest Conservation Plan Amendment 11998015B

Final Forest Conservation Plan Amendment No. 11998015B (Application), proposes to remove approximately 2,613.6 square feet (0.06 acre) of Category II Conservation Easement to allow the installation of necessary utility connections and for site grading for a previously approved Classroom Connector Building (**Figures 3 and 4**). The Applicant will mitigate for the removal of this Category II Conservation Easement area by purchasing 0.12 acres of credit in an M-NCPPC approved off-site forest bank.

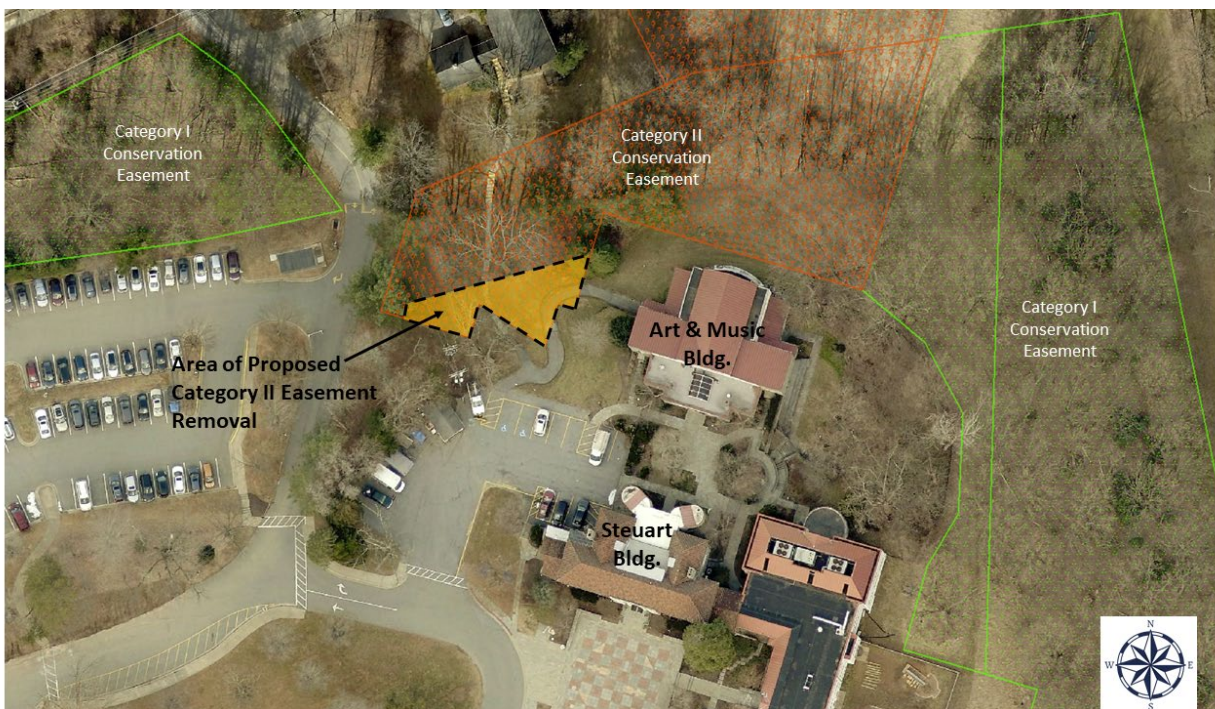


Figure 3 – Area of Proposed Changes to Category II Conservation Easement

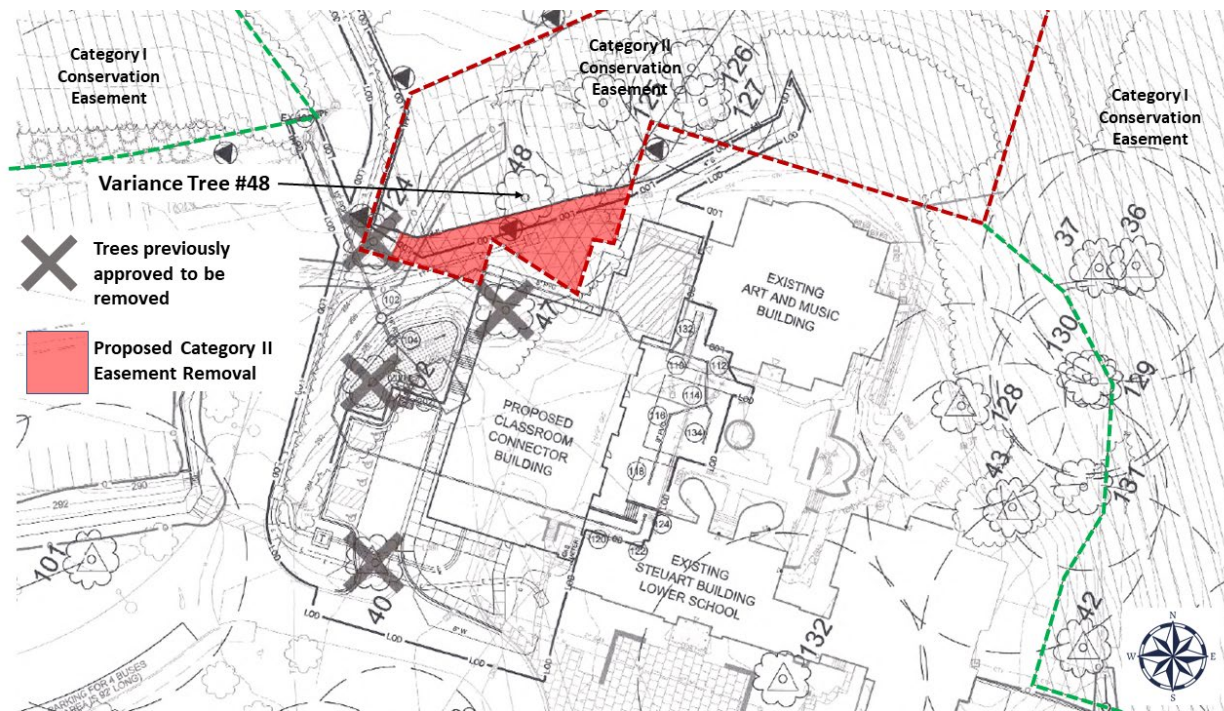


Figure 4 – Proposed Final Forest Conservation Plan Showing Easement Removal & Variance Tree #48

SECTION 4 - ANALYSIS AND FINDINGS

Unless specified below, the Application continues to conform with the findings of Preliminary Plan 11998015A.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

Planning Board Review Authority

The Forest Conservation Regulations require Planning Director or Planning Board action on certain types of modifications to an approved FFCP. COMCOR 22A.00.01.13.A(2), the Forest Conservation Regulations, state:

Minor amendments which do not result in more than a total of 5,000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis.

The Applicant proposes to remove 2,613.6 square feet (0.06 acres) of Category II Conservation Easement on the Property. Although, this submittal is considered a minor amendment under Section 22A.00.01.13.A(1) of the Forest Conservation Regulations it has been Planning Board practice to review and approve all plans that remove or change any conservation easement.

Forest Conservation Plan

The Preliminary Plan Amendment for Forest Conservation Plan purposes meets all applicable requirements and intents of Chapter 22A regarding forest conservation. The original FFCP requirements associated with Preliminary Plan No. 119980150 have been not been altered with this amendment to accommodate the modifications proposed to the Category II Conservation Easement.

The Net Tract Area of the Property is 38.06 acres as shown on the FFCP Worksheet. The Property is zoned RE-2 and is classified as Institutional Development (IDA) as specified in the Trees Technical Manual. The Property contains 6.50 acres of forest. The Applicant had been previously approved to remove 3.30 acres of forest and retain 3.20 acres of forest. This results in a total reforestation requirement of 6.60 acres. The Applicant has previously met this reforestation requirement by protecting both existing and planted forest on-site by placing 7.96 acres into Category I Conservation Easements and 1.95 acres into Category II Conservation Easements for a total of 9.91 acres of protected easements.

Forest Conservation Variance

Section 22A-12(b)(3) of 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 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. 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. Development of the Property requires impact to one tree identified as high priority for retention and protection, therefore, the Applicant has submitted a variance request for these impacts.

Variance Request

The Applicant submitted a variance request in a letter dated July 18, 2019 for the impacts to one specimen tree associated with this amendment (**Table 1**). Tree #48 is located within the Category II Conservation Easement that will remain and approximately 40-ft north of the proposed Classroom Connector Building (**Figure 5**). The impacts to the critical root Zone (CRZ) of Tree #48 are the result of having to relocate an existing primary electrical service line running along the rear of the Classroom Connector Building to a transformer adjacent to the Marsh Building, installing an electrical duct bank for the new electrical service line and to provide additional space around the rear of the Classroom Connector Building for safe and adequate access of construction equipment. The previous FFCP Amendment which approved the location of the Classroom Connector Building did not take these issues into account. As a result, the Applicant is now in a position where the approved LOD must be pushed slightly further away from the Classroom Connector Building to allow for these necessary changes and thereby increasing the amount of impacts to Tree #48.

Tree Number	Species	DBH Inches	Percent Impact to CRZ	Status
48	White Oak (<i>Quercus alba</i>)	31	36%	Impacts to CRZ only, tree to be saved

Table 1 - Variance Tree to be impacted

Unwarranted Hardship Basis

Per Section 22A-21(a), an applicant may request a variance from Chapter 22A if the applicant can demonstrate that enforcement of Chapter 22A would result in an unwarranted hardship. In this case, the Applicant is impacting one specimen tree (**Figure 5**). The Applicant requests that the LOD be expanded behind the proposed Classroom Connector Building in order to address necessary electrical utility connections and to provide safe and adequate construction access to the new building. The existing electrical service line runs along the rear of the proposed Classroom Connector Building, the rear of the

Music and Art Building and terminates at a transformer adjacent to the Marsh Building. A portion of this exiting electrical service line is located beneath the northeast corner of the proposed Classroom Connector Building and needs to be moved. To relocate this line without impacting the Category II Conservation Easement and Tree #48 would require realigning the utility beneath the existing Arts and Music, the Steuart and the Marsh Buildings. In addition, the LOD needs to be extended away from building to provide an adequate and safe movement area for the construction equipment. These requirements have required the Applicant to increase the impacts into the CRZ of Tree #48. Not allowing these impacts would result in a degraded utility service and unsafe working conditions during the construction of the Classroom Connector building.

As a result, not being able to request a variance to impact Tree #48 would constitute an unwarranted hardship on this Applicant to relocate the existing electrical service line and construct the Classroom Connector Building. 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.

Staff has made the following determinations based upon the required findings in the review of the variance request and the Forest Conservation Plan:



Figure 5 – Critical Root Zone Impacts to Tree #48

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 impacts to Tree #48 are due to the location of the trees and necessary site design requirements to provide necessary electrical

utility service to existing school buildings. 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 upon the existing site conditions and the necessity to connect required utilities to the building.

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 is not located within any environmental buffers that would impact protected water resources nor is the tree being removed. The Protected Tree being impacted will remain providing the same level of water quality protection as it currently provides.

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. The request was forwarded to the County Arborist on August 12, 2019. The County Arborist responded by letter on August 27, 2019 with a recommendation to grant the variance request (Attachment 2).

Variance Recommendation:

Staff recommends approval of the variance request.

SECTION 5: CITIZEN CORRESPONDENCE

The Applicant has met all proper signage and noticing requirements for the submitted Application. As of this date of this staff report, Staff has not received correspondence or comment on the FFCP Amendment.

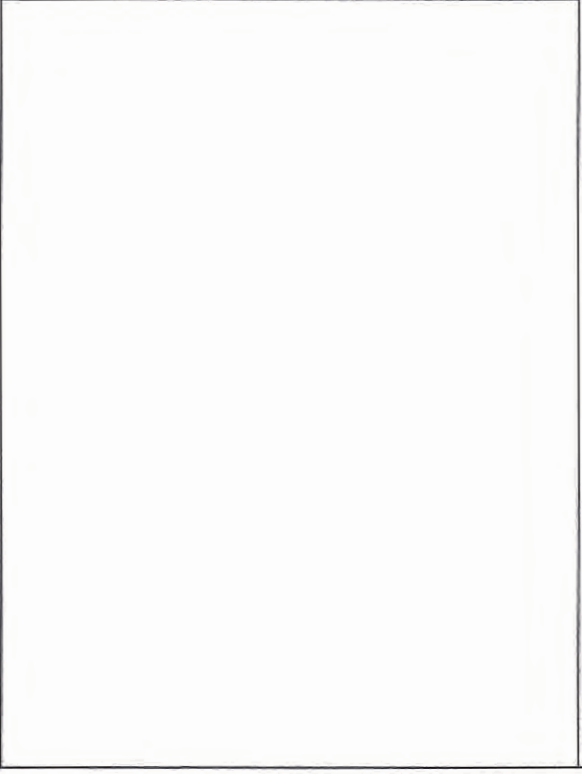
SECTION 6: CONCLUSION

The proposed Final Forest Conservation Plan Amendment meets all requirements established of the Zoning Ordinance, Chapter 22A and continues to substantially conform to the recommendations of the *Potomac Subregion 2002 Master Plan*.

ATTACHMENTS

Attachment 1 – Amended FFCP

Attachment 2 – County Arborist's recommendation letter dated 8/27/2019



FOREST CONSERVATION WORKSHEET
NORWOOD SCHOOL

NET TRACT AREA:

A. Total tract area	38.76
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)	0.70
F. Net Tract Area	38.06

LAND USE CATEGORY (from *Tracts Technical Manual*)

Insert the number "1" under the appropriate land use, limit to only one entry.

AREA	MOR	IDA	HDR	MPD	CIA
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G. Afforestation Threshold ...	0	0	1	0	0
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H. Conservation Threshold ...	15%	x F =
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I. Existing forest cover	20%	x F =
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EXISTING FOREST COVER:

J. Area of forest above afforestation threshold	6.50
---	------

K. Area of forest above conservation threshold	0.79
--	------

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	3.30
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O. Total area of forest to be retained	3.20
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PLANTING REQUIREMENTS:

P. Reforestation for clearing above conservation threshold	0.00
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Q. Credit for retention below conservation threshold	6.60
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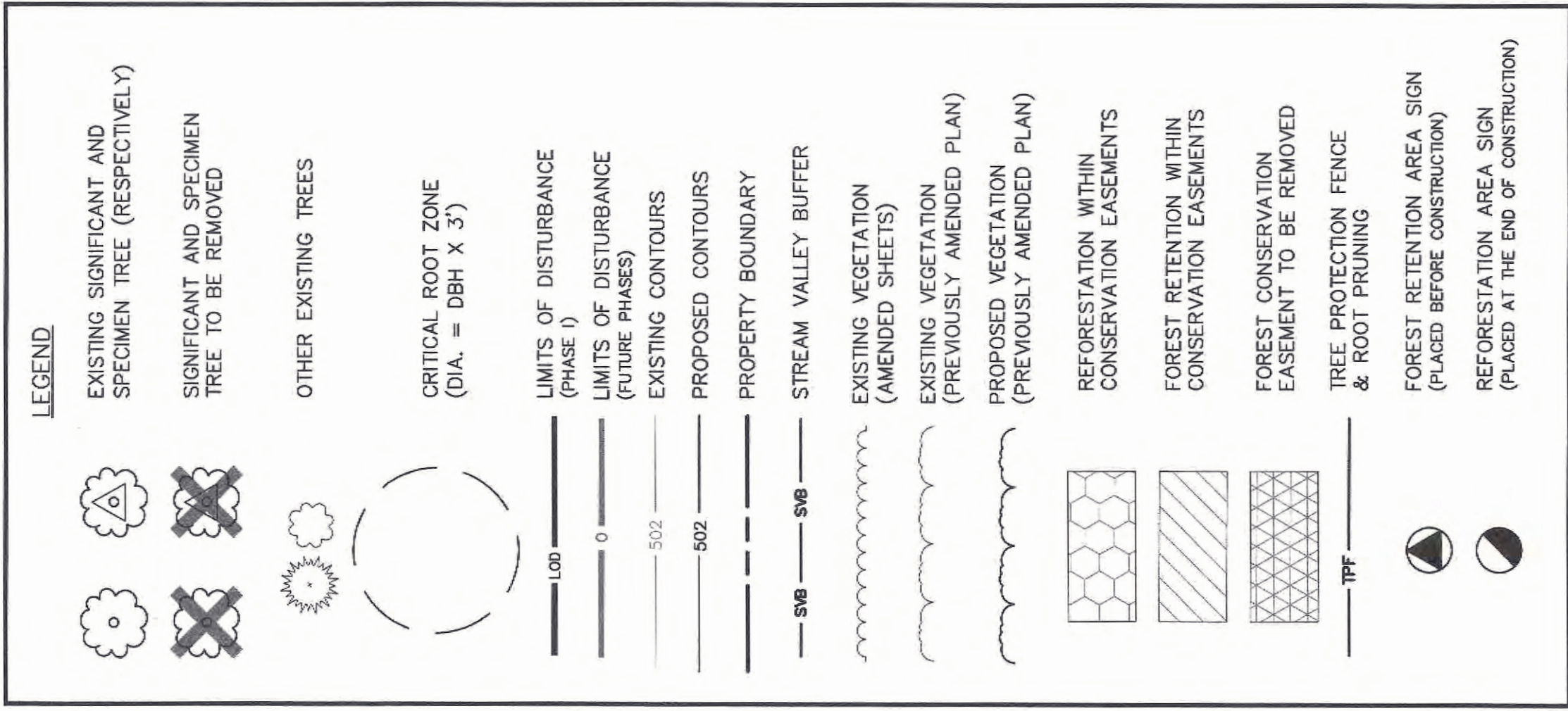
R. Total reforestation required	0.00
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S. Total reforestation required	6.60
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T. Credit for landscaping (may not exceed 20% of "S")	0.00
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U. Total reforestation and afforestation required	6.60
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Worksheet updated 08/20/2022



FOREST CONSERVATION ORDINANCE COMPLIANCE (AMENDED)

REQUIRED:
PREVIOUS EASEMENT AREA
0.06 ACRES REMOVED FROM CATEGORY II EASEMENTS
EASEMENT AREA RETAINED
0.73 ACRES

ADDITIONAL REQUIREMENT FOR 0.06 ACRES OF CATEGORY II EASEMENT REMOVED (2:1 MITIGATION)
TOTAL REQUIREMENT
0.12 ACRES
8.85 ACRES

PROVIDED:
EASEMENT AREAS RETAINED FROM ORIGINAL FFCP (AMENDED)
8.58 ACRES

REFORESTATION AREAS
TOTAL ON-SITE EASEMENT AREAS (AMENDED)
1.15 ACRES
9.73 ACRES

PROPOSED OFF-SITE FOREST BANKING
TOTAL EASEMENT AREA PROVIDED
0.12 ACRES
9.85 ACRES

ON-SITE CATEGORY I EASEMENT:
ON-SITE CATEGORY II EASEMENT:
OFF-SITE FOREST BANKING:
7.84 ACRES
1.89 ACRES
0.12 ACRES

FINAL FOREST CONSERVATION PLAN
AMENDMENT 11998015B
NORWOOD SCHOOL
PARCEL B
POTOMAC (10TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MD



FINAL FOREST CONSERVATION SUMMARY DATA TABLE

Tract	Number of Acres
Remaining in Agricultural Use	38.76
Road & Utility ROWs ¹	-
Total Existing Forest	6.50
Forest Retention	3.20
Forest Cleared	3.30
Land Use & Thresholds ²	
Land Use Category	DA
Conservation Threshold	20% present
Afforestation Threshold	15% present
ADA, MDR, IDA, HDR, MPD, or CIA	

Total Channel Length (ft.)	Average Buffer Width (ft.) ³
1,293	200
Stream(s)	

Acres of Forest In	Retained	Cleared	Planted
100-Year Floodplain	-	-	-
Stream Buffers	-	-	-
Priority Areas	3.03	-	-

¹ Only Road & Utility ROWs are to be improved as part of development application.

² Information from U.S. Land Use Categories & Thresholds document.

³ Measured from stream edge to buffer edge.

SHEET INDEX

- FINAL FOREST CONSERVATION PLAN SHT. 1 - COVER SHEET *
- FINAL FOREST CONSERVATION PLAN SHT. 2 - OVERALL PLAN (100 SCALE) *
- FINAL FOREST CONSERVATION PLAN SHT. 3 - 30 SCALE PLAN *
- FINAL FOREST CONSERVATION PLAN SHT. 4 - 30 SCALE PLAN *
- FINAL FOREST CONSERVATION PLAN SHT. 5 - 30 SCALE PLAN *
- FINAL FOREST CONSERVATION PLAN SHT. 6 - 30 SCALE PLAN *
- FINAL FOREST CONSERVATION PLAN SHT. 7 - 30 SCALE PLAN *
- FINAL FOREST CONSERVATION PLAN SHT. 8 - NOTES AND DETAILS

Note: Plans marked with * have been revised per this amendment

DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 11998015B, including financial bonding, forest planting, maintenance and all other applicable agreements.

Developer's Name: Norwood School Company

Address: 8821 River Road Bethesda, MD 20817

Phone: 301-965-2995

Email: mgsaule@norwoodschool.org

Signature: _____

Contact Person: Matthew Gould

Signature: _____

QUALIFIED PROFESSIONAL CERTIFICATION

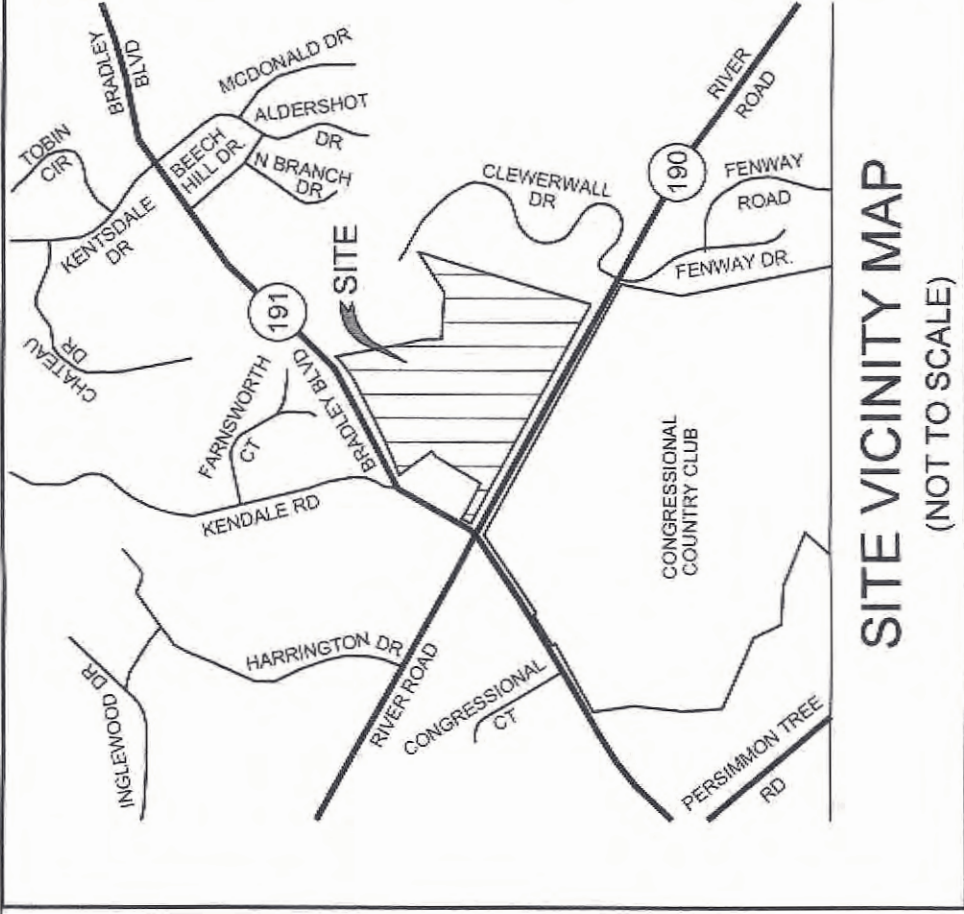
I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT AND THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF EXISTING STATE AND COUNTY FOREST CONSERVATION LEGISLATION.

08/19/19

DATE

FRANK C. JOHNSON

RECOGNIZED AS QUALIFIED PROFESSIONAL
BY MD. DEPT. OF NATURAL RESOURCES
COMAR 08.19.06.01



PROJECT TEAM

OWNER / DEVELOPER
NORWOOD SCHOOL INC.
8821 River Road
Bethesda, Maryland 20817

Attn: Ms. Cathy Voeks
cvoeks@norwoodschool.org
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ATTORNEY

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Bethesda, Maryland, 20814

Attn: Todd Brown

email: tbrown@linowes-law.com

Attn: Yun Yu Cheng

email: ycheng@linowes-law.com

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Washington, DC, 20007

Attn: Arpit Balhara

abalhara@cgsarchitects.com

Tel: 202.965.7070 x339, Fax: 202.965.7144

CIVIL ENGINEER

MACRIS, HENDRICKS & GLASCOCK, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886

Attn: Pat Laviry

email: plaviry@mhga.com

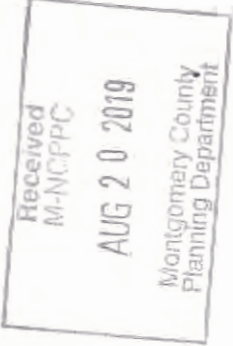
Tel: 301.670.0840 x 1002, Fax: 301.948.0693

LANDSCAPE ARCHITECT

MACRIS, HENDRICKS & GLASCOCK, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886

Attn: David Post

Tel: 301.670.0840 x 1015, Fax: 301.948.0693



NORWOOD SCHOOL, INC.
8821 RIVER ROAD
BETHESDA, MD 20817
CONTACT: CATHERINE VOEKS
PHONE: (301) 841-2203

ATTACHMENT 1

TAX MAP FPMR 07-21 WSEC-211 W000211M006
PLAT 209855

NOT ELECTION DISTRICT
MONTGOMERY COUNTY
MARYLAND

PARCEL B
BRADLEY RIDGE

NORWOOD SCHOOL

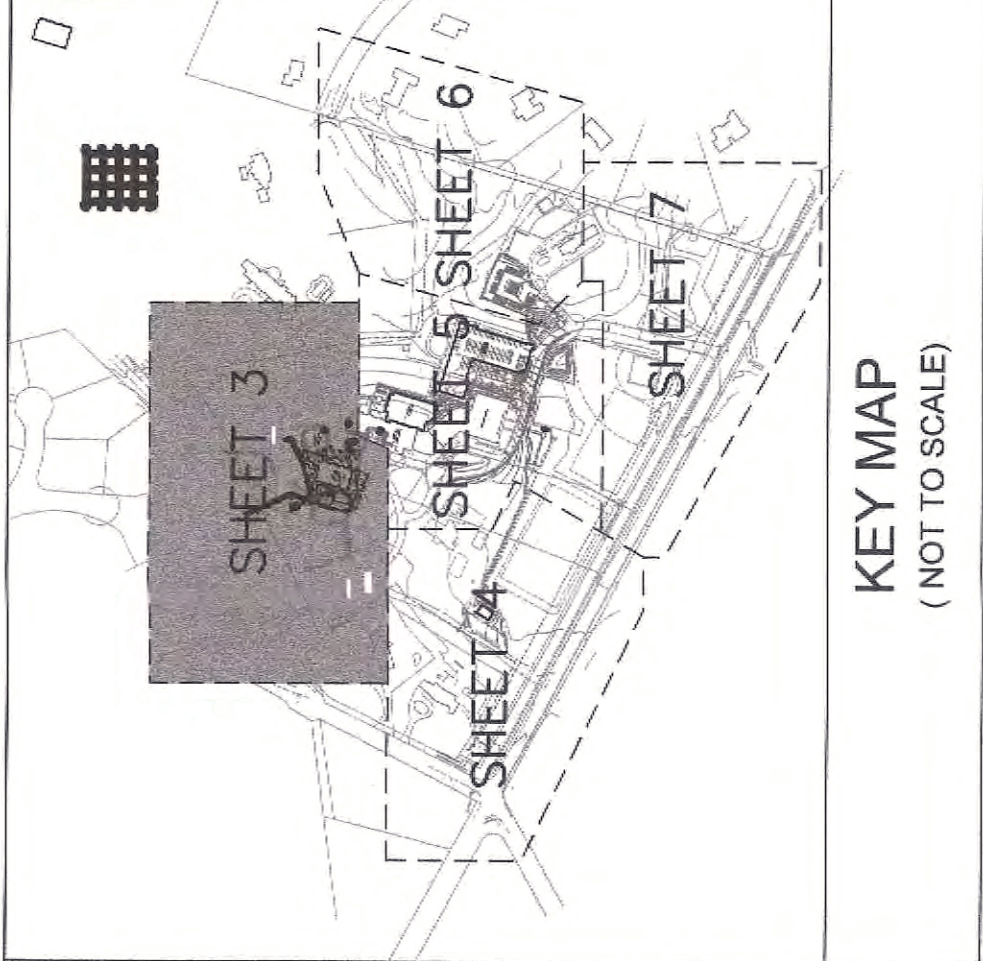
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SCALE AS NOTED
DATE 05.21.2019

FINAL FOREST
CONSERVATION PLAN
AMENDMENT 11998015B

PROJECT NO. 17246.11
SHEET NO. 1 OF 8

FC-01



NORWOOD SCHOOL, INC.
8821 RIVER ROAD
BETHESDA, MD 20817
CONTACT: CATHY DEKES
PHONE: (801) 841-2203

TAX MAP PPR01GP-01 V05C-211MM0011MM0
PLAT 20965
10TH ELECTION DISTRICT
MONTGOMERY COUNTY
MARYLAND

**PARCEL B
BRADLEY RIDGE
NORWOOD SCHOOL**

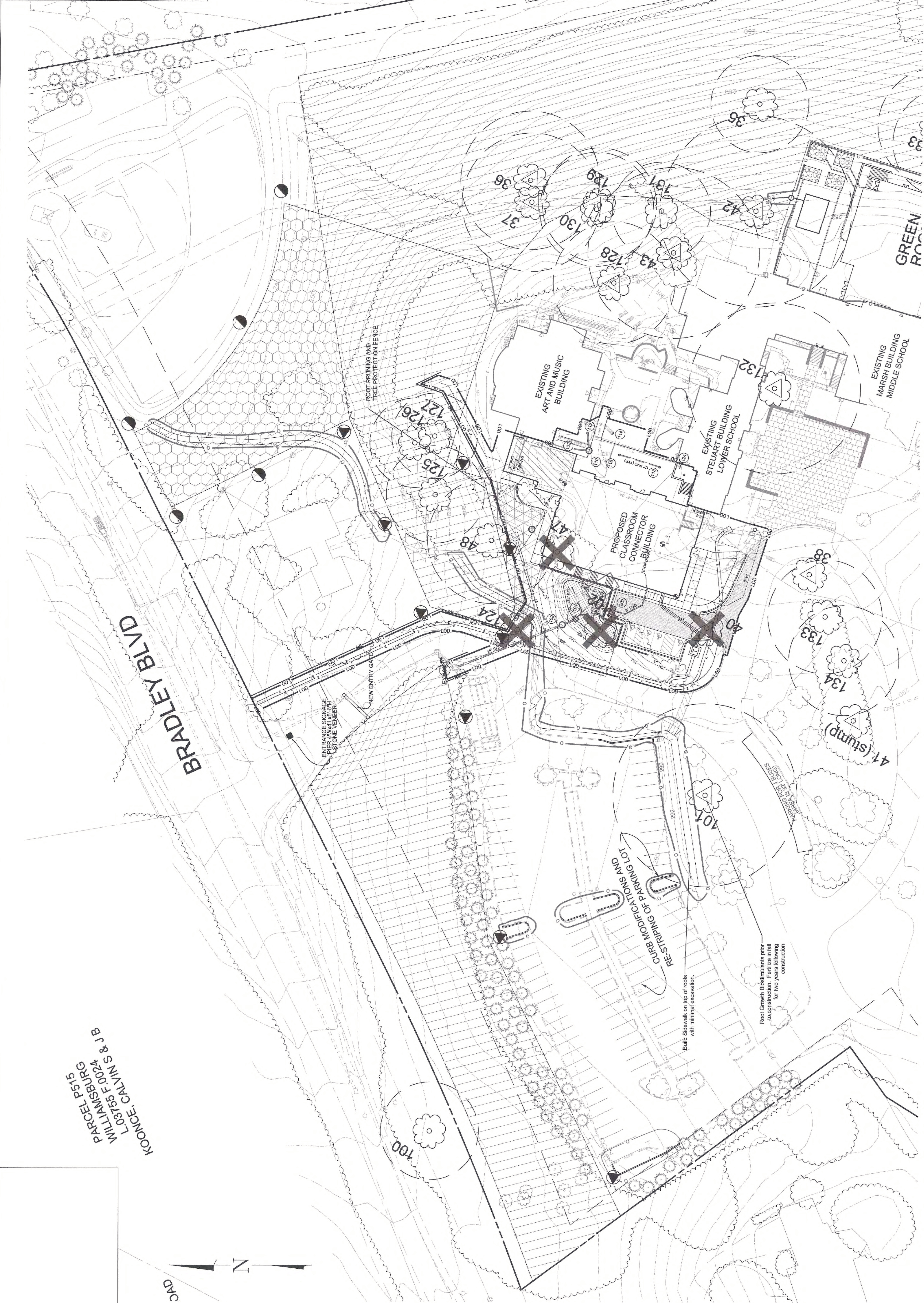
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PGL
GSH
1"=100'
05.21.2019

**FINAL FOREST
CONSERVATION PLAN
AMENDMENT 1198015B**

FC-03

PROJECT NO. 17246.11
SHEET NO. 3 OF 8



ATTACHMENT 2



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Adam Ortiz
Director

August 27, 2019

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

RE: Norwood School – 11998015B

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 the revised request for a variance.

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

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

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

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

variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

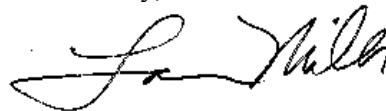
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation,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

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon meeting all '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,

A handwritten signature in black ink, appearing to read 'Laura Miller', written over a horizontal line.

Laura Miller
County Arborist

cc: Douglas Johnsen, Planner Coordinator