



PSSM at Brookeville, Preliminary/Final Forest Conservation Plan, MR2020012

Joshua Penn, Planner Coordinator, Area 3 Joshua.Penn@montgomeryplanning.org, 301-495-4546

Richard Weaver, Chief, Area 3 Richard.Weaver@montgomeryplanning.org

Completed: 02-14-20

Description

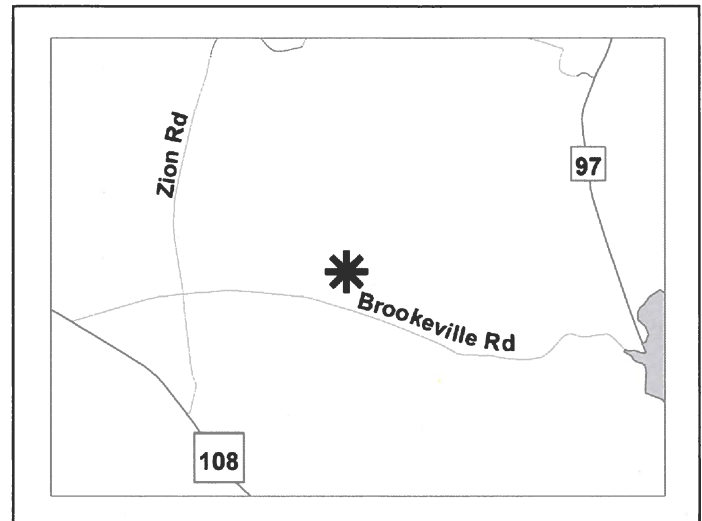
PSSM at Brookeville: MR2020012

- Forest Conservation Plan associated with a request to construct a Public Safety System Modernization (PSSM) radio communications tower
 - 4301 Brookeville Road nr. Brookeville
 - Zone: AR
 - Property Size: 166.83 Ac
 - Master Plan: *2005 Olney Master Plan*
 - Part A - Forest Conservation Plan
- Review Basis:** Chapter 22A

Applicant: Montgomery County Department of Technology Services (DTS)

Acceptance Date: January 31, 2020

Staff Recommendation: Approval with conditions



- The review of this Mandatory Referral is in two parts:
 - Part A – Preliminary/Final Forest Conservation Plan MR2020012, and**
 - Part B - Mandatory Referral MR2020012, discussed in a separate staff report.**
- Construction of a new 230 foot public safety tower.
- The forest conservation requirement will be met through an offsite forest conservation mitigation bank.

Recommendation: **Approval with conditions** of the Preliminary/Final Forest Conservation Plan and variance request

1. The Applicant must record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved forest bank for the total afforestation/reforestation requirement prior to any clearing, grading or demolition on the project site.
2. The Applicant must install permanent Conservation Easement signage along the perimeter of the conservation easements.
3. The Final Sediment Control Plan must depict the limits of disturbance (LOD) identical to the LOD on the approved Final Forest Conservation Plan.
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.

SITE DESCRIPTION

The Property is surrounded by larger farm parcels and zoned Agriculture Reserve (AR) zoned. Further away from the site to the south and west there are a number of historic sites. The larger vicinity has AR zoning to the north, Rural Cluster (RC) zoning east of Georgia Avenue (MD 97), and RE-1 and R-200 zoning to the south.

The Property is hilly and generally sloping from the northwest to the southeast. There are some large pockets of forest in the corners of the Property. There is a stream that begins in the middle of the Property flowing to the southeast. The Property is a large active piece of farmland generally undeveloped with the exception of one house (not designated as historic) and some agricultural outbuildings. The main farmhouse and majority of the farm buildings are on a separate smaller parcel (parcel 147 and 4.4 acres) at the southwestern edge of the Property. In the southeast corner of the Property is an existing 183 foot telecommunications monopole approved by Special Exception No. S-2156.



Figure 1: Aerial Photograph of the Vicinity



Figure 2: Aerial Photograph of the Site

PROJECT DESCRIPTION

The Applicant proposes to build a 230 foot tall Class III lattice tower with a 10' lightning rod totaling 240 feet in height and adjacent to an existing 183 foot tower currently onsite. The industry standard, red and white strobes will be installed as a beacon on the tower.

The tower will be built to Structure Class III standards, which has a "return period" of 1700 years. This means the observed wind speed is statistically likely to meet or exceed the design wind load that occurs only once every 1700 years. According to the applicant, Class III structures are capable of withstanding storms that would otherwise devastate nearby structures, and according to the applicant, these structures are frequently among the last structures standing after a catastrophic weather event.

The tower will be contained within a 52' x 64' pad site area in the southeast area of the Property. A 11'8" x 30' shelter with an internal generator will be next to the tower.

FOREST CONSERVATION PLAN ANALYSIS AND FINDINGS

The Forest Conservation Plan Application meets all applicable requirements of Chapter 22A of the Montgomery County Forest Conservation Law.

Review for Conformance to the Forest Conservation Law

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(d) as a project by “a government entity subject to a mandatory referral on a tract of land 40,000 square feet or larger...” The Site included in the Application is 166.83 acres in size, Parcel 900 on Tax Map HU343.

Environmental Guidelines

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) #420200990 was approved by Staff on January 27, 2020 (Attachment A). The Site is within the Hawlings River watershed, a Use IV-P designation. The Countywide Stream Protection Strategy rates the water quality in this watershed as good.

The Property is hilly and generally sloping from the northwest to the southeast. There are some large pockets of forest in the corners of the Property. There is a stream that begins in the middle of the Property flowing to the southeast. The Property is a large active piece of farmland generally undeveloped except for one house (not designated as historic) and some agricultural outbuildings. In the southeast corner of the Property is an existing 183 foot telecommunications monopole approved by Special Exception No. S-2156.

This Application has no impacts on any environmentally sensitive areas.

Primary Management Area

The Property is located within the Patuxent River, Primary Management Area (PMA). The purpose of the PMA guidelines is to provide strategies to protect, preserve, and restore the Patuxent River and its drinking water supply reservoirs. Montgomery County’s PMA protection measures are consistent with the PMA protection measures recommended in the State’s, Patuxent River Policy Plan. The PMA establishes certain widths along both main stem and tributary streams in the watershed as follows: ¼ mile (1320 feet) strips of land running along both sides of the Patuxent mainstem and 1/8 mile (660 feet) strips of land running along both sides of all tributaries. Additionally, Montgomery County recommends a PMA width of ¼ mile for the mainstem of the Hawlings River, which is a tributary to the Patuxent River and its watershed lies almost entirely within Montgomery County. The transition area is the area within the PMA strips (1/4 mile or 1/8 mile) that is outside of the delineated stream buffer. Properties that are submitted to the M-NCPPC for subdivision and site plan review are subject to PMA requirements, as outlined in the *Guidelines for Environmental Management of Development in Montgomery County* (Environmental Guidelines).

The Environmental Guidelines recommend stream buffer widths for the PMA that are consistent all County streams. The PMA consists of both the stream valley buffer and the transition area. The Environmental Guidelines note that overall imperviousness within the transition area should not exceed ten percent. The Application proposes about 2,000 square feet of new imperviousness in addition to the existing 12,000 square feet of imperviousness for approximately 16,000 square feet of total impervious surfaces within the PMA transition area. Since an actual impervious surface plan was not included in the package, staff rounded all numbers up to show a worst case analysis. With a tract acreage of 166.83 acres this would result in an impervious percentage of approximately 0.24 percent. This is well below the recommended 10 percent.

Forest Conservation Plan

A Forest Conservation Plan ("FCP") for the Site was submitted as part of the Mandatory Referral Application (Attachment B).

The FCP proposes .08 acres of forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A is 0.11 acres, 166.72 acres will remain in agriculture and is exempt from forest conservation. The proposed development on the Site generates a 0.12-acre planting requirement. The Applicant proposes to meet the planting requirement through Mitigation Credit in an offsite forest conservation bank.

Forest Conservation Variance

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

Variance Request – The Applicant submitted a variance request in a letter dated February 5, 2020, for the impact of one variance tree (Attachment C). The Applicant proposes to impact one protected tree that is 30 inches or greater, DBH, and is considered a high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Details of the protected tree to be impacted are provided in Table 1 and shown graphically in Figure 3.

Tree ID	Species	Size	CRZ Disturbance	Recommendation
SP-3	Northern Red Oak	37" DBH	5%	Save, Root Prune

Table 1: Impacted Variance Tree Table

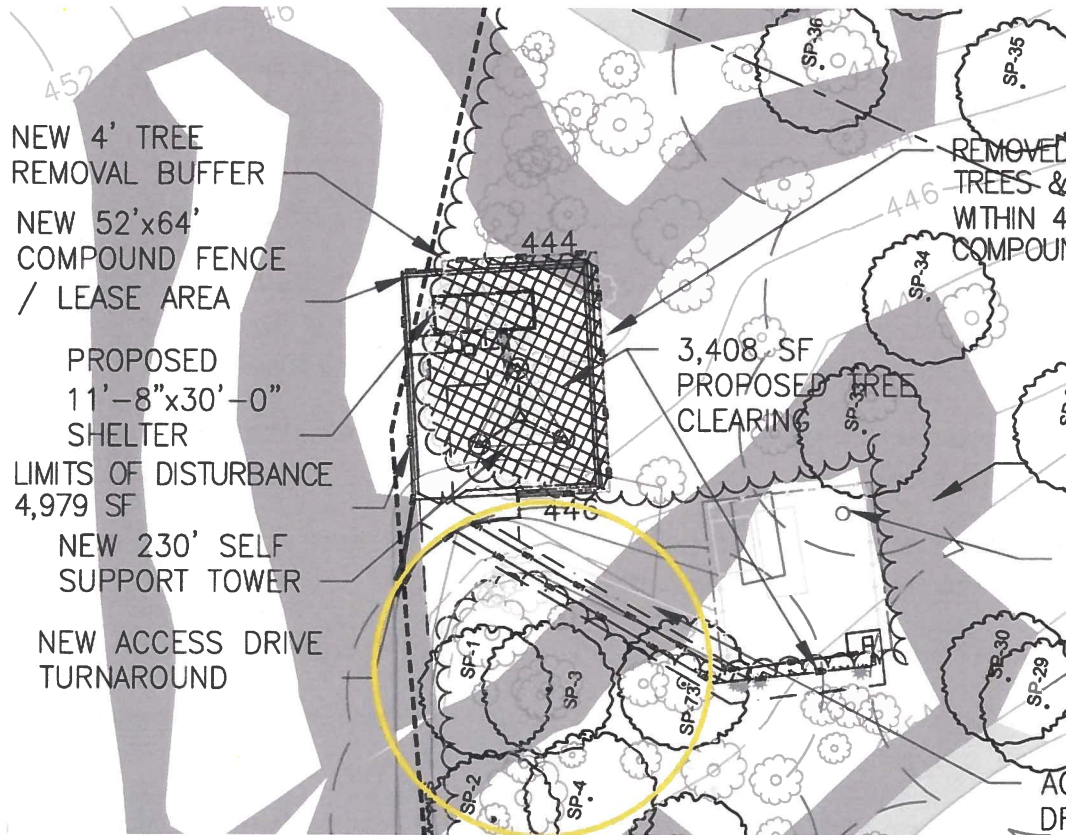


Figure 2: Variance Tree Distribution (Red = Removed: Yellow = Impacted)

Unwarranted Hardship Basis – Pursuant to Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of the Site. The Applicant contends that an unwarranted hardship would be created due to existing conditions on the Site and the need to access the power grid already being utilized by the existing tower.

If a variance were not considered and the Applicant was not allowed to disturb the tree the development proposal would not be possible; this is a public safety tower needed to complete the County’s network. As such, this would cause an unwarranted hardship to the community that it serves. Staff has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not considered.

Variance Findings – Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the FCP:

Granting of the requested variance:

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

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Tree is due to the need to connect the public safety tower into the existing power grid already being utilized by the existing telecommunications tower. 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 need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based on existing site conditions, including the location of the Protected Trees in relation to access the existing power grid.

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

The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this need for a variance.

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

The variance will not violate State water quality standards or cause measurable degradation in water quality. No Protected Trees are being removed.

Mitigation for Protected Trees –Mitigation would only be required to replace the form and function of the trees being removed. No Protected Trees are being removed so there will be no loss of form or function. Staff is not requesting any mitigation for this Application.

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 February 13, 2020, the County Arborist has not provided a recommendation as of the posting of this Staff Report.

Variance Recommendation – Staff recommends that the variance be **Approved**.

CONCLUSION

Staff recommends the Planning Board **Approve with conditions** the Forest Conservation Plan and the variance request.

ATTACHMENTS

- A. Approved Natural Resource Inventory/Forest Stand Delineation
- B. Forest Conservation Plan (FCP)
- C. Variance Request