



## PSSM at Black Rock, Mandatory Referral, MR2020006

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Joshua Penn, Planner Coordinator, Area 3 [Joshua.Penn@montgomeryplanning.org](mailto:Joshua.Penn@montgomeryplanning.org), 301-495-4546

Richard Weaver, Chief, Area 3 [Richard.Weaver@montgomeryplanning.org](mailto:Richard.Weaver@montgomeryplanning.org), 301-495-4544

Completed: 3/13/20

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### Description

#### PSSM at Black Rock: MR2020006

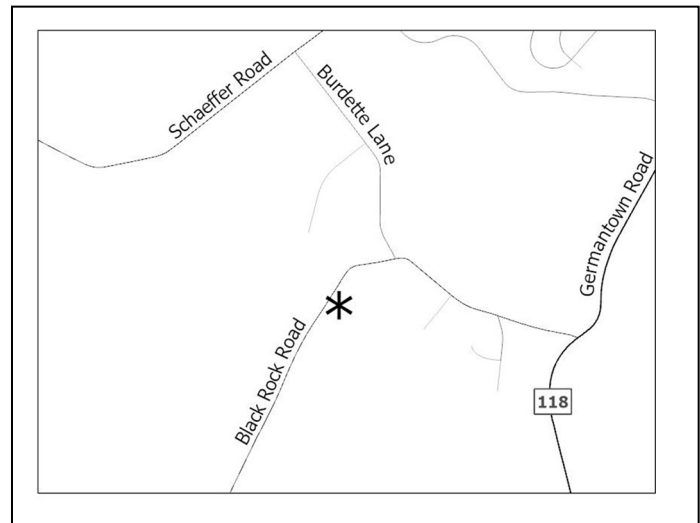
- Forest Conservation Plan associated with a request to construct a Public Safety System Modernization (PSSM) radio communications tower
- 17410 Black Rock Road in Germantown
- Zone: AR
- Property Size: 16.43 Ac
- Master Plan: 1980 Preservation of Agriculture & Rural Open Space Master Plan
- Part A - 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 250 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 Application is located at 17410 Black Rock Road, Parcel 973 Tax Map ET122, in Germantown ("Property"). The Property is surrounded to the west and south by larger farm parcels zoned Agriculture Reserve (AR). To the north and east the property is adjacent to R-200 zoned properties. Further away from the site to the north is South Germantown Recreational Park.

The Property is hilly and generally sloping from the outer edges to the center of the Property where there is an existing farm pond and wetlands. There are two forest stands totaling about 3.38 acres along the western edge of the property of the Property. There is a stream that flows into the farm pond and exits to the southwest. 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.

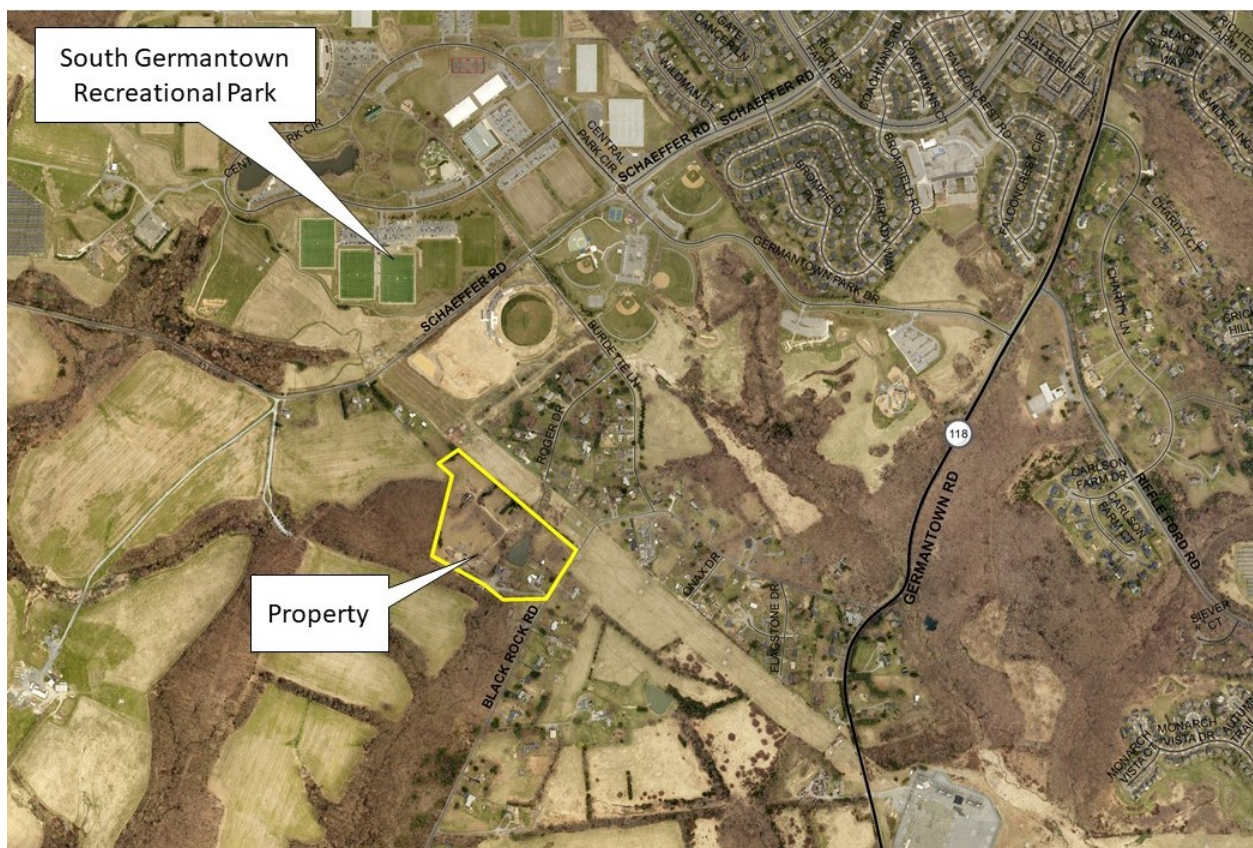


Figure 1: Aerial Photograph of the Vicinity



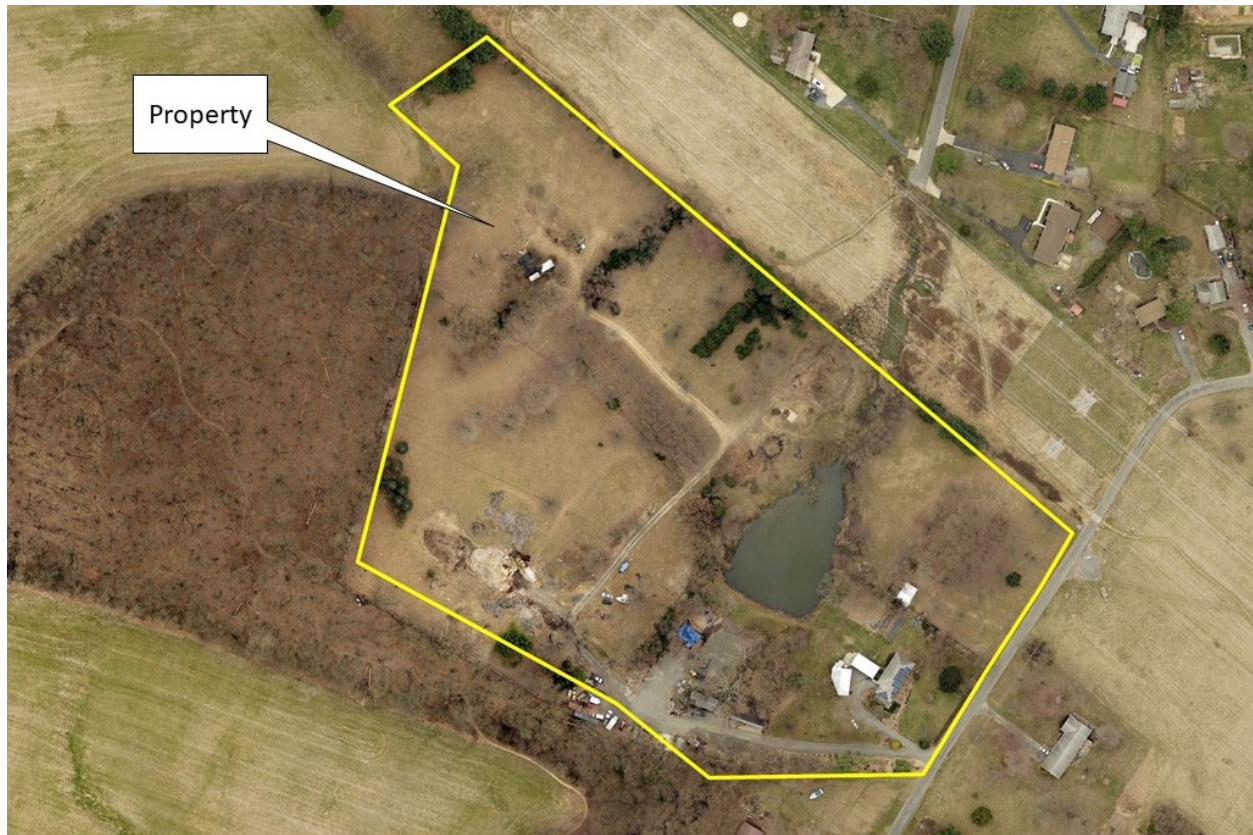


Figure 2: Aerial Photograph of the Site

## PROJECT DESCRIPTION

The Applicant proposes to build a 250 foot tall Class III lattice tower with a 4' lightning rod totaling 254 feet in height and adjacent to the existing Pepco Transmission lines and towers. 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 70' x 70' pad site area in the southeast area of the Property. A 11'8" x 40' 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) #420200570 was approved by Staff on February 10, 2020 (Attachment A). The Site is within the Lower Great Seneca Creek watershed, a Use I-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 outer edges to the center of the Property where there is an existing farm pond and wetlands. There are two forest stands totaling about 3.38 acres along the western edge of the property of the Property. There is a stream that flows into the farm pond and exits to the south. 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.

This Application has no direct impacts on any environmentally sensitive areas.

### 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 no forest clearing and no forest retention. The net tract area for the Application, for purposes of Chapter 22A is 1.14 acres, 15.29 acres will remain in agriculture and is exempt from forest conservation. The proposed development on the Property generates a 0.23-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 13, 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-33   | Northern Red Oak | 63" DBH | 1%              | Save, Root Prune |

Table 1: Impacted Variance Tree Table

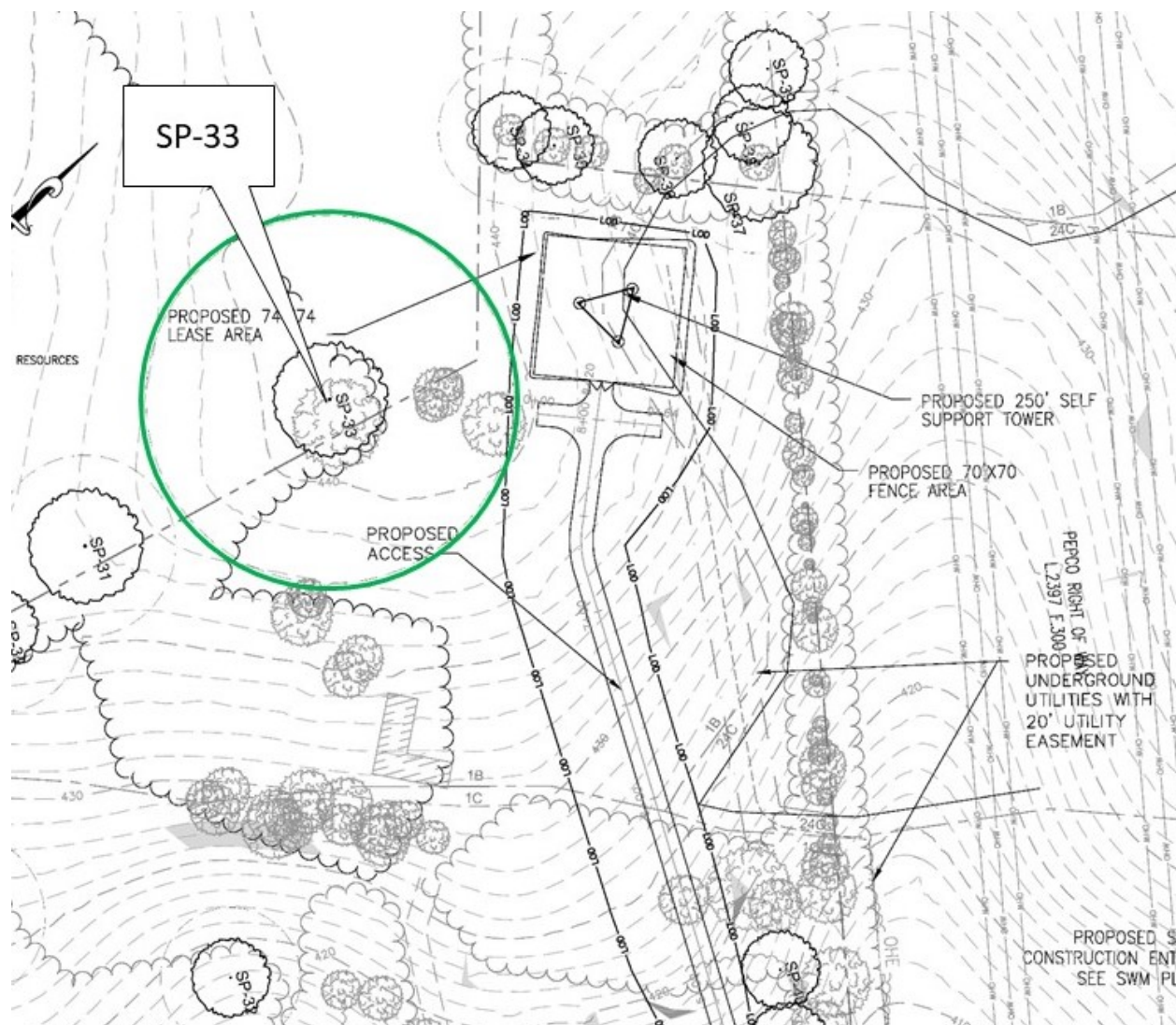


Figure 3: Variance Tree Distribution (Green = Impacted)

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 provide and stormwater management.

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 access and to provide stormwater management for the public safety 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 site access and stormwater management requirements.

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 March 12, 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