



Spectrum Retirement: Forest Conservation Plan No. CU2020-05

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Staff Report Date: 06-19-2020

Description

Spectrum Retirement

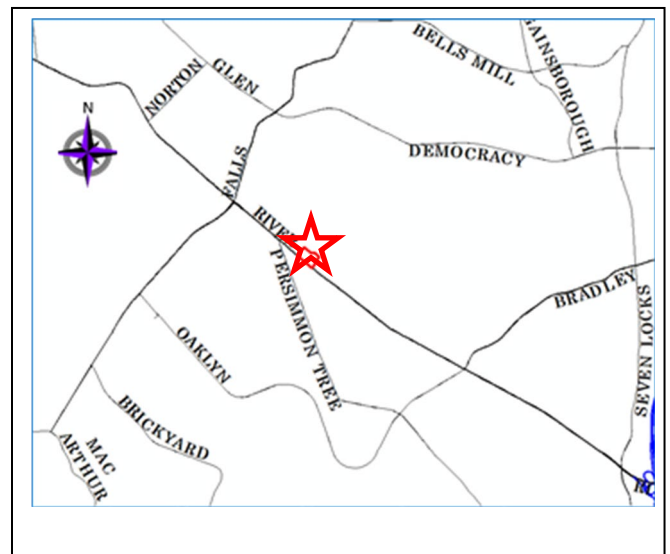
Request for a Preliminary Forest Conservation Plan
Approval for proposed construction of a Residential Care Facility with 100 units and 130 beds including a memory care section of 18 units, on a 5.93-acre property located at 9545 River Road on the north side of the Road, 0.5 mile east of its intersection with Falls Road, Potomac, MD, Identified as Parcel 786 Tax Account No. 10-00855533, RE-2 zone, 2002 Potomac Subregion Master Plan.

**Staff Recommendation: Approval with conditions
(Planning Board Action)**

Applicant: Spectrum Retirement Communities, LLC

Application Filed: March 19, 2020

Review Basis: Chapter 22A, Forest Conservation Law



- The review of this Preliminary Forest Conservation Plan accompanies the companion staff report for the Conditional Use project CU2020-05
- The forest conservation requirement will be met through onsite afforestation planting.
- Three, 3" caliper native trees are provided as mitigation for a tree variance.

STAFF RECOMMENDATION: Approval of the Forest Conservation Plan No. CU2020-05, subject to the following conditions:

1. This PFCP is conditionally approved and final approval is contingent upon approval by the Montgomery County Hearing Examiner of Conditional Use No. CU2020-05.
2. Applicant must submit a Final Forest Conservation Plan ("FFCP") to M-NCPPC Staff for review with the Preliminary Plan of Subdivision submittal.
3. The FFCP must be consistent with the final approved PFCP.
4. Applicant must obtain approval of the Final Forest Conservation Plan prior to certification of the preliminary plan of subdivision.
5. The Applicant must provide mitigation for the loss of trees per the approved variance in the form of three (3) native canopy trees with a minimum size of three (3) caliper inches. The trees must be clearly shown and labelled on the Final Forest Conservation Plan. The mitigation trees must be planted outside of any right-of-way, or utility easements, including stormwater management easements and not counted as part of the screening requirement under Division 6.5 of the Montgomery County Zoning Ordinance. The mitigation trees must be installed and accepted by M-NCPPC within one year of construction completion.
6. The limits of disturbance shown on the final Sediment Control Plan must be consistent with the limits of disturbance shown on the Final Forest Conservation Plan.
7. 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.

SITE DESCRIPTION

The subject property is identified as 9545 River Road, Parcel 786 Tax Account No. 10-00855533, *2002 Potomac Subregion Master Plan Master Plan*. ("Subject Property" or "Property"). The Property is zoned Residential Estate - 2 Zone (RE-2), and it is 5.93 acres in size. The Property is developed as a retail nursery with multiple buildings, green houses, bulk storage areas, and gravel parking as well as operational parking areas that are used for the nursery.

The entire Property drains to the Cabin John Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters. There are offsite streams to the northeast and northwest of the Property and some stream valley buffers (SVB) from these features extend onto the Property. The Property contains no forest. Five large trees were identified on the Property or within 100 feet of the Property by the NRI/FSD, including two specimen trees (≥ 30 inches Diameter at Breast Height (DBH)). There are no steep slopes or highly erodible soils. Neighboring properties are zoned RE-2 residential single family and R-200 residential single family along the northwest property line (Figures 1 and 2).



Figure 1. 2015 Aerial Photograph of Vicinity with Zoning



Figure 2. 2015 Aerial Photograph of Property

PROJECT DESCRIPTION

The Preliminary Forest Conservation Plan (PFCP) was prepared as part of Conditional Use Application No. CU2020-05 ("Application"), for a Residential Care Facility with 100 units and 130 beds including a memory care section of 18 units (Attachment A). While the Planning Board is technically advisory on Hearing Examiner applications, the Planning Board must make a finding that the pending Conditional Use Application complies with Chapter 22A, the Montgomery County Forest Conservation Law.

The Application proposes to clear and regrade the site for the construction of a residential care building and associated amenities.

ANALYSIS AND FINDINGS

The Conditional Use and 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(b) as a project by, “a person required by law to obtain approval of a special exception or a conditional use, or a sediment control permit on a tract of land 40,000 square feet or larger...” The Property included in the Application is 5.93 acres in size, Parcel 786.

Environmental Guidelines

A Natural Resources Inventory and Forest Stand Delineation (NRI/FSD) #420200520 was approved by Staff on March 5, 2020 (Attachment B). The entire Property drains to the Cabin John Creek Watershed, which is classified by the State of Maryland as Use Class I-P waters. There are offsite streams to the northeast and northwest of the Property and in some cases the stream valley buffer extends onto the Property. The Property contains no forest. Five large trees were identified on the Property or within 100 feet of the Property, including two specimen trees (≥ 30 inches Diameter at Breast Height (DBH)). There are no steep slopes or highly erodible soils.

SVB Encroachment

A 0.013-acre (approximately 579 sf) section of stream valley buffer is not being placed into a conservation easement because of its proximity to the building and the need to maintain a walkable path for residents, emergency personnel, and access to stormwater facilities. As compensatory mitigation, the Applicant is providing two times the acreage, 0.026 acres with native plantings throughout the site along building foundations and garden spaces. These areas consist of a layered planting palette, including ground covers, perennials, grasses, shrubs, and understory trees, creating wildlife habitat, carbon sequestration, and microclimate cooling. The final location and details will be provided with the Final Forest Conservation Plan.

Forest Conservation

The total tract area for the Property is 6.02 acres (including offsite improvements). The project does not propose to clear any forest, however, based on the land use category and the forest conservation worksheet there is a 1.20-acre afforestation planting requirement. The Applicant proposes to meet the requirements onsite via new forest planting which will be placed into Category I conservation easements.

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 January 7, 2020, for the removal and impact of variance trees (Attachment C). The Applicant proposes to remove one and impact one protected tree that are 30 inches or greater, DBH, and are considered a high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Details of the protected trees to be removed and impacted are provided in Table 1 and shown graphically in Figure 3.

Table 1: Variance Tree Impacts

TREE #	DBH INCHES	SPECIES (SCIENTIFIC NAME)	SPECIES (COMMON NAME)	CONDITION	RECOMMENDATION
T1	30	<i>Acer negundo</i>	Boxelder	Poor	REMOVE: 100% CRZ impact. Tree in poor condition covered with English ivy.
T4	Est. 35	<i>Quercus rubra</i>	Red Oak	Poor	SAVE: Request variance to impact the CRZ. An 11% CRZ impact to this offsite tree warrants the tree to be saved. Removal may occur by others due to the poor condition of the tree not related to construction.

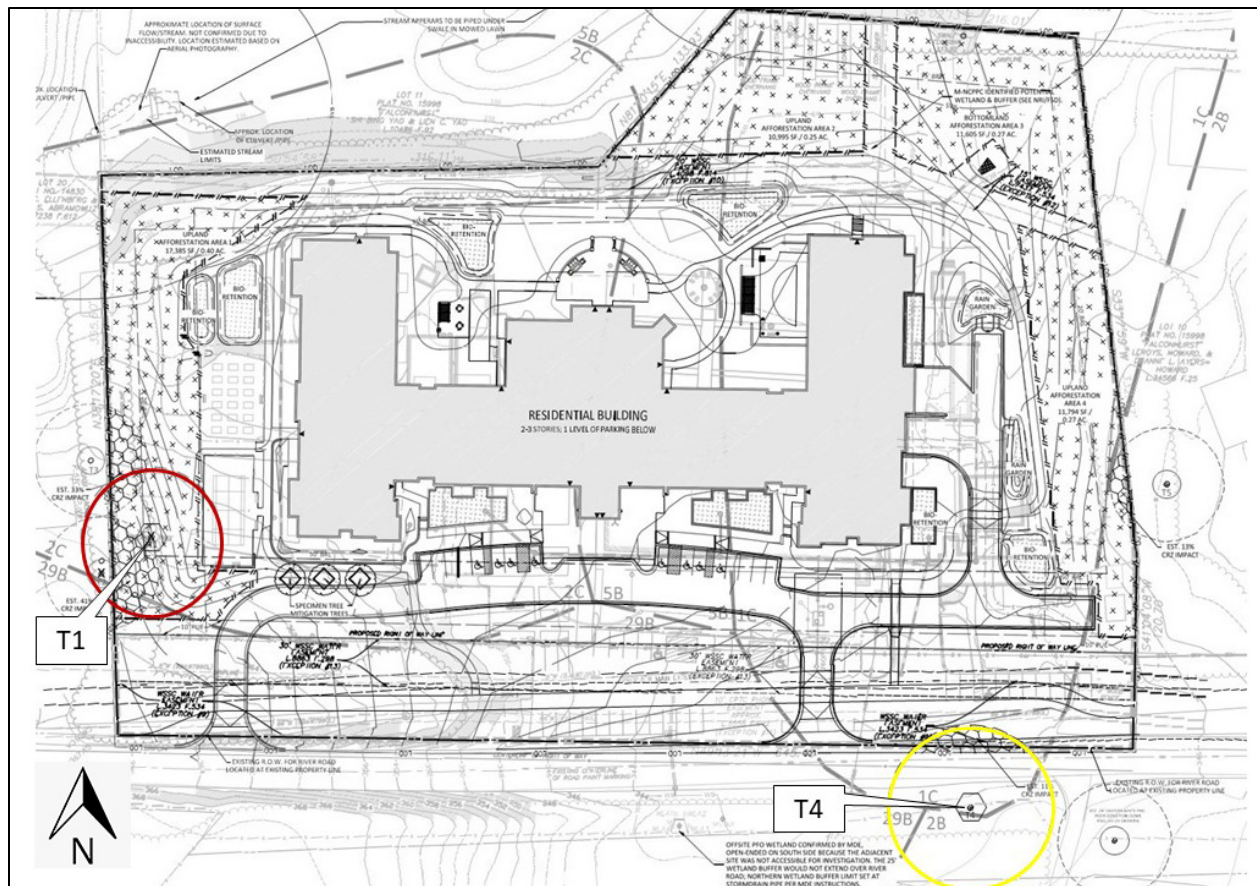


Figure 3: Variance Tree Distribution (Red = Removed: Yellow = Impacted)

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 because the proposed CRZ impact to the offsite specimen tree is due to road improvements (removal of the existing parking lot and re-establishment of the edge of River Road); however, impacts are minimized by avoiding ground disturbance adjacent to the tree. Additionally, tree T1 will be impacted from the removal of the existing use, compacted soils, old storage/display areas, and asphalt millings. Denial of the variance would cause unwarranted hardship in significantly reducing the area of the Property that could be redeveloped because of site work necessary to create safe access from the site. The egress point cannot be moved further away from the property line and still meet safe sight distance requirements. This would preclude implementation of the Project.

If a variance were not considered and the Applicant was not allowed to disturb the trees the development proposal would not be possible as such; this would cause an unwarranted hardship. 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 PFCP:

Granting 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 Trees is due to the reasonable development of the Site. The Protected Trees are in the developable area of the Site. Granting a variance to allow land disturbance within the developable portion of the Site is not unique to this Applicant. 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 within the developable area of the Site and offsite in the area of required roadway improvements.

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. The Protected Trees removed will be mitigated for by planting new trees which will provide water quality benefits offsetting the tree removed.

In addition, the Montgomery County Department of Permitting Services (MCDPS) is reviewing a stormwater management concept for the proposed project. The stormwater management concept incorporates Environmental Site Design standards.

Mitigation for Protected Trees –the Protected Tree subject to the variance provision and proposed to be removed is located outside of existing forest. Mitigation for the removal of the one tree is recommended at a rate that approximates the form and function of the trees removed. Therefore, Staff is recommending that replacement occur at a ratio of approximately 1-inch caliper for every 4 inches removed, using trees that are a minimum of 3 caliper inches in size. This Application proposed to remove 30 inches in DBH, resulting in a mitigation requirement of 7.5 caliper inches of planted, native, canopy trees with a minimum size of 3-inch caliper. While these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of this tree.

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 June 6, 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 **granted**.

NOTIFICATION and OUTREACH

The Subject Property was properly signed with notification of the upcoming Conditional Use Hearing prior to submission. All adjoining and confronting property owners, civic associations, and other registered interested parties will be notified of the upcoming public hearing on the proposed amendment. As of the date of this report, staff has received no inquiries. Any comments received hereafter will be forwarded to the Board.

CONCLUSION

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

Attachments

Attachment A – Natural Resources Inventory
Attachment B - Forest Conservation Plan
Attachment C - Variance Request

Attachment A: Natural Resources Inventory

LEGEND

LIMITS OF SUBJECT PROPERTY
ADJACENT PROPERTY LINES
EX. TREE <24" DBH

EX. SIGNIFICANT TREE
≥ 24" -29" DBH WITH CRITICAL ROOT ZONE

EX. SPECIMEN TREE
≥ 30" DBH WITH CRITICAL ROOT ZONE

EX. SHRUB

EX. TREE CANOPY EDGE

SLOPES ≥ 25%

SLOPES 15% OR LESS ON HIGHLY ERODIBLE SOILS

SOIL BOUNDARY & TYPE

GENERAL DIRECTION OF OVERLAND FLOW
STREAM CENTERLINE
STREAM VALLEY BUFFER
SURVEYED CONTOURS

GIS CONTOUR (M-NCPPC)

EX. CABLE TV CONDUIT
EX. ELECTRICAL CONDUIT
EX. EDGE OF PAVEMENT
EX. FENCE LINE
EX. NATURAL GAS CONDUIT
EX. OVERHEAD WIRES
EX. FIBEROPTIC CONDUIT
EX. TELEPHONE/COMM. CONDUIT
EX. PUBLIC UTILITIES EASEMENTS
EX. SANITARY SEWER
EX. STORM DRAIN
EX. WATER LINE

EX. SANITARY CLEANOUT
EX. STORM DRAIN MANHOLE
EX. ELECTRICAL JUNCTION BOX
EX. ELECTRICAL MANHOLE
EX. FIRE DEPT. CONNECTION
EX. FIRE HYDRANT
EX. GAS MANHOLE
EX. GUY POLE
EX. GAS VALVE
EX. LIGHT POLE
EX. PHONE PEDISTAL
EX. PHONE MANHOLE
EX. UTILITY POLE
EX. SANITARY MANHOLE
EX. TRAFFIC CONTROL BOX
EX. TRAFFIC SIGNAL POLE
EX. CABLE TV PEDISTAL
EX. UNKNOWN UTILITY MANHOLE
EX. WATER METER

EX. WATER MANHOLE
EX. WATER VALVE
EX. BOLLARD
EX. SIGN POST
EX. WOOD POST
EX. INLETS
EX. CURB INLET
EX. EXISTING CONC. EX. CONCRETE CURB AND GUTTER BLDG. EX. BUILDING STORY EX. STORY TRV. EX. ELEC. TRANSFORMER ASPH. EX. ASPHALT ESMT. EX. EASEMENT RCP EX. REINFORCED CONC. PIPE CMP EX. CORRUGATED METAL PIPE BRL EX. BLDG. RESTRICTION LINE R/W EX. RIGHT-OF-WAY FF EX. FINISHED FLOOR ELEVATION

NOTE 1:
EPHEMERAL / INTERMITTENT SWALE

THE SWALE APPEARS TO BE EPHEMERAL BASED ON OBSERVED FIELD CONDITIONS ON JULY 18, 2019. THE FOLLOWING CHARACTERISTICS WERE OBSERVED:

- ERODED AND DEFINED BED AND BANK STARTING NEAR THE EDGE OF THE SUBJECT PROPERTY, CONTINUING DOWNSTREAM.
- OPPOSITE THE SWALE IS LINED WITH LARGE STONORIP RAP AND SOME LANDSCAPE CLOTH.
- SCOURING ALONG THE BANKS INDICATES SIGNIFICANT STORMFLOW.
- SEDIMENTS ARE POORLY SORTED AND CONSIST PRIMARILY OF LARGE STONES AND RIP RAP.
- THE SWALE IS DRY EXCEPT FOR THREE VERY SMALL SHALLOW POOLS OF WATER (EIGHT INCHES IN DIAMETER OR LESS) LIKELY FROM THE THUNDERSTORM ON THE PREVIOUS DAY.
- THE SWALE IS ON A MODERATE SLOPE OF APPROXIMATELY 15% - 25%.
- A METAL PIPE PROTRUDES FROM NEAR THE TOP OF THE SWALE, THE SOURCE OF WHICH IS UNKNOWN.
- CHANNEL SINUOSITY IS POOR.
- NO SIGNS OF AQUATIC FAUNA WERE OBSERVED (NO CRAYFISH BURROWS)
- NO ALGAE-COVERED OR WATER STAINED ROCKS WERE OBSERVED

OBSERVATIONS MADE DURING THE SUMMER MONTHS AND SURFACE FLOW FROM GROUNDWATER THAT MAY BE PRESENT DURING THE SPRING SEASON WAS NOT OBSERVED. MANY AND DEPLETMENT OF NATURAL RESOURCES GIVE INDICATE A WETLAND OR POND WAS PREVIOUSLY PRESENT NEAR THE TOP OF THIS SWALE, WHICH IS NO LONGER PRESENT. THE GENERAL YONCORGRA, OCCURRENCE OF A FLOW UPSTREAM ON THE OPPOSITE SIDE OF THE RIVER ROAD TO THE WEST OF THE SITE, AND MAPPED HYDROIC SOLS (C) INDICATE THE POTENTIAL FOR WETLANDS IN THE SWALE. THE POTENTIAL FOR THE SWALE TO HAVE EXHIBITED INTERMITTENT FLOW, HOWEVER, CURRENT SWALE CHARACTERISTICS AND SITE CONDITIONS OBSERVED INDICATE THAT THE SWALE CURRENTLY FUNCTIONS AS A POINT OF STORMFLOW ACCUMULATION AND DRAINAGE FOR MOST OF THE RELATIVELY LEVEL SITE.

DURING A FIELD REVIEW OF THIS SWALE FEATURE ON NOVEMBER 25, 2019, THE MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE) IDENTIFIED THE MORPHOLOGICAL FEATURES OF THE SWALE BEGINNING APPROXIMATELY 80 FEET EAST OF THE PROPERTY BOUNDARY (NEAR THE NORTHEASTERN CORNER OF THE ADJACENT TENNESSEE COUNTY) IDENTIFY INTERMITTENT STREAM FEATURES AND THAT AT THIS POINT THE FEATURE WOULD BE CONSIDERED WATER OF THE STATE. THE SWALE UPOUSURE FROM THIS POINT TO THE PROPERTY EDGE IS CONSIDERED BY MDE TO BE EPHEMERAL AND NOT REGULATED BY THE STATE.

M-NCPPC HAS DETERMINED FOR PURPOSES OF THE NR/USD THAT THE INTERMITTENT PORTION OF THE SWALE WILL BEGIN APPROXIMATELY 50 FEET FROM THE PROPERTY LINE. THE SWALE UPOUSURE FROM THIS POINT TO THE PROPERTY EDGE IS CONSIDERED BY M-NCPPC TO BE EPHEMERAL AND NOT REGULATED BY M-NCPPC.

THE SWALE WAS NOT REGULATED BY USACE, AND THE EPHEMERAL PORTION MAY BE ADDITIONALLY USACE-REGULATED.

NOTE 2:
CATTAILS STAND

A NARROW AREA ON TOP OF A SEWER LINE CONSISTS OF DENSE CATTAIL GROWTH; DARK, LOW CHROMA CATTAILS (10YR 2/2 AND 2/2) APPROXIMATELY EIGHT INCHES IN DEPTH WERE OBSERVED FROM AT LEAST 100' SOIL AUGER SAMPLES. REFUSAL WAS AT EIGHT INCHES WHEN THE AUGER MADE CONTACT WITH CONCRETE. NO REDOX FEATURES WERE OBSERVED IN THE SOIL SAMPLES, AND THE SOIL WAS A DRY SILT-CLAY. THE CATTAIL GROWTH IS LOCATED ON TOP OF A MAPPED SEWERLINE ALSO INDICATED BY A MANDREINER IN THE FIELD. THE AREA IS RELATIVELY FLAT AND APPEARS TO BE LOCATED IN A SLIGHT DEPRESSION RELATIVE TO THE SURROUNDING AREA. ONE SECONDARY WETLAND HYDROLOGIC INDICATOR OF GROUNDWATER POSITION APPLIED TO THIS AREA, WHICH ALONE WOULD NOT QUALIFY FOR THE PRESENCE OF WETLAND HYDROLOGY, WHILE CATTAILS ARE A WETLAND ORBATE SPECIES, THE LACK OF PROMINENT REDOX CONCENTRATIONS TO MEET THE HYDROIC SOLS CRITERIA DESCRIBED IN THE 2018 FIELD INDICATORS OF HYDROIC SOLS, AND INSUFFICIENT WETLAND HYDROLOGIC INDICATORS.

ON NOVEMBER 8, 2019 AN ADDITIONAL SOIL SAMPLE WAS OBTAINED ON THE SIDE SLOPES AT THE DRAINAGE HEADWALL WITH HYDROIC SOLS CHARACTERISTICS.

IN A FIELD REVIEW MEETING ON NOVEMBER 25, 2019, MDE STAFF DETERMINED THAT THE ONSITE AREA WITH CATTAILS DID NOT QUALIFY AS A WETLAND AND WOULD NOT BE REGULATED BY THE STATE. THE SOILS IN A SMALL AREA HAD BEEN IDENTIFIED AS CATTAILS AND CONSIDERED AS A WETLAND. THE STATE HAS OBSERVED THAT THE STORMFLOW ACCUMULATES IN THIS AREA ON TOP OF CONCRETE FROM THE SURROUNDING IMPERVIOUS AREA. SEE GENERAL NOTES, MEETING MINUTES FROM NOVEMBER 25, 2019, AND MDE LETTER DATED FEBRUARY 19, 2020.

M-NCPPC HAS DETERMINED THAT THE AREA QUALIFIES AS A WETLAND UNDER THEIR ASSESSMENT AND REQUIRES A 25-FOOT STREAM BUFFER AROUND THIS AREA.

NOTE 3:
OFFSITE STREAM AT THE NORTHEAST OF THE SITE

A MAPPED STREAM OCCURS OFFSITE TO THE NORTHEAST OF THE SUBJECT PROPERTY. FIELD OBSERVATIONS AND AERIAL PHOTOGRAPHY SHOW THAT THE STREAM IS LARGELY PAVED THROUGH THE ADJACENT PROPERTY UNDER A BURIED SWALE IN THE RAVINE, BUT DRAINS AT THE NORTHERN AND SOUTHERN ENDS AT THE ADJACENT PROPERTY. THE OPEN STREAM CHANNEL SECTIONS WERE VIEWED FROM ADJACENT PROPERTIES DUE TO SITE ACCESS. THE STREAM CHANNEL SECTIONS WERE VIEWED FROM ADJACENT PROPERTIES DUE TO SITE ACCESS. THE STREAM CHANNEL SECTIONS WERE VIEWED FROM ADJACENT PROPERTIES DUE TO SITE ACCESS. THE STREAM CHANNEL SECTIONS WERE VIEWED FROM ADJACENT PROPERTIES DUE TO SITE ACCESS.

NOTE 4:
OFFSITE WETLAND TO THE WEST OF THE SITE

A SMALL WETLAND WAS IDENTIFIED AND DELINEATED OFFSITE ON THE WEST SIDE OF RIVER ROAD AS SHOWN ON M-NCPPC. MDE STAFF REVIEWED THE M-NCPPC MAP AND CONCURRED WITH THE OCCURRENCE OF THIS WETLAND. NO STREAMS WERE IDENTIFIED BY VIKA OR MDE STAFF ON THE WEST SIDE OF RIVER ROAD WITHIN THE ROAD RIGHT-OF-WAY OR WITHIN 100 FEET OF THE SUBJECT PROPERTY.

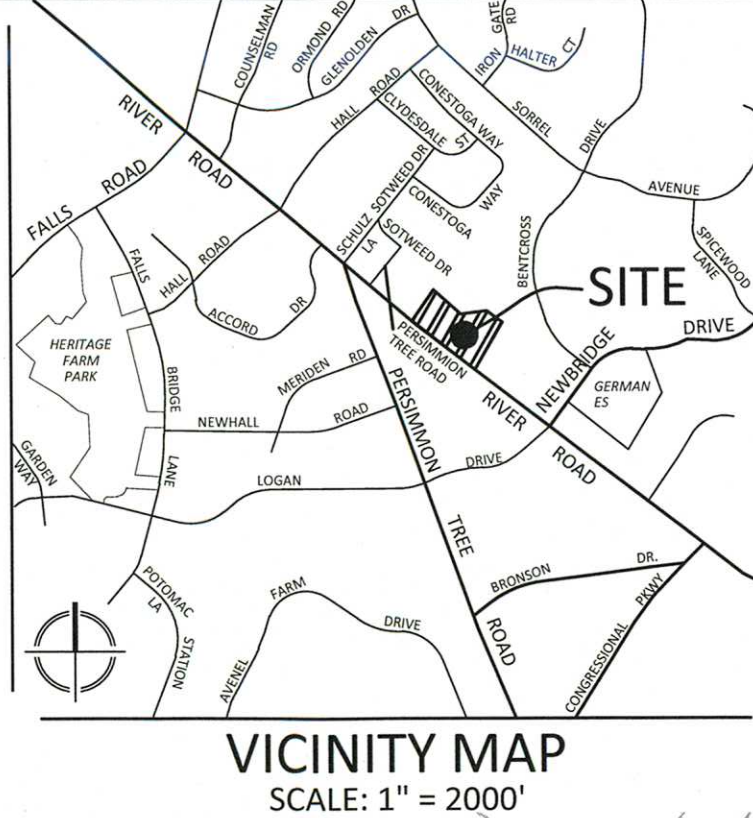
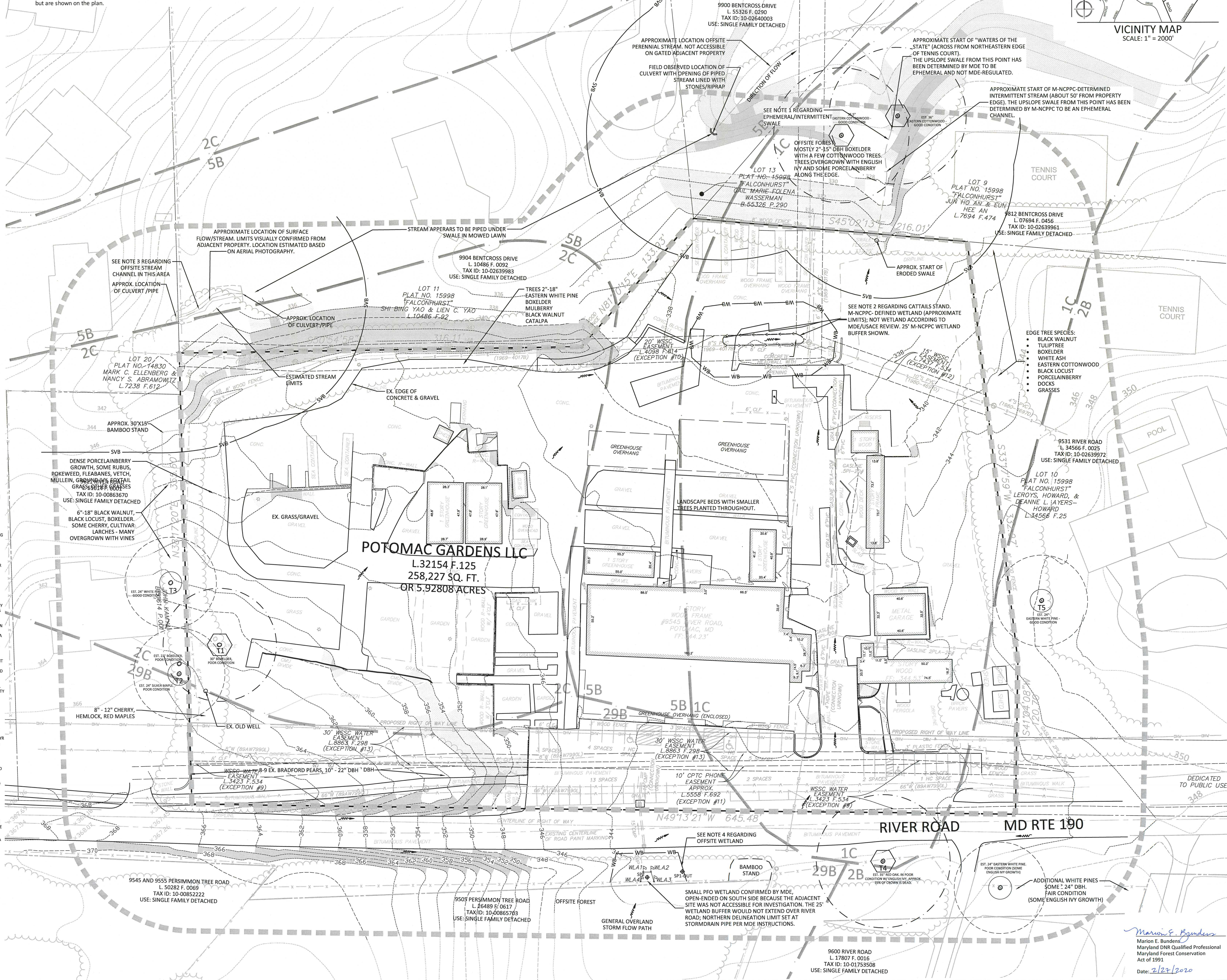
0 15' 30' 60'

SCALE: 1" = 30'

TREE #	DBH INCHES	SPECIES (SCIENTIFIC NAME)	SPECIES (COMMON NAME)	CONDITION	COMMENTS
T1	30	<i>Acer negundo</i>	Bowlder	Poor	Not tagged. Covered with English Ivy.
T2	Est. 24	<i>Acer saccharum</i>	Silver Maple	Poor	Offsite tree, not tagged. Covered with vines.
T3	Est. 24	<i>Pinus strobus</i>	Eastern White Pine	Good	Offsite tree, not tagged.
* T4	Est. 35	<i>Quercus rubra</i>	Red Oak	Poor	Offsite tree, not tagged. Covered with English Ivy, approximately 75% of crown is dead.
T5	Est. 24	<i>Pinus strobus</i>	Eastern White Pine	Good	Offsite tree, not tagged.

* Specimen Tree

Other Significant/Specimen Trees within the 100-foot NRI/FSD study area with no Critical Root Zone impacts expected are not listed in this tree table but are shown on the plan.

[illegible]

Attachment B: Preliminary forest Conservation Plan

Attachment C: Tree Variance Request



January 7, 2020

Katherine Nelson
Planner Coordinator
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 9545 River Road
Variance Request for Specimen Tree Removal/Impact

Dear Ms. Nelson:

On behalf of our client, Spectrum Acquisition Potomac, LLC (the "Applicant"), and pursuant to Section 22A-21 of the Montgomery County Code (the "Code"), as well as Sections 5-1607 and 5-1611 of the Natural Resources Article of the Maryland Code, we respectfully request a variance to allow impacts to or removal of two (2) specimen trees identified below. These trees are also shown on approved Natural Resources Inventory/Forest Stand Delineation 420200520, as well as the proposed Preliminary Forest Conservation Plan for the above-referenced project. As noted in greater detail below, it is appropriate to grant a variance in this matter because strict enforcement would result in unnecessary hardship or practical difficulty to Applicant.

Introduction

The project associated with this variance request is Applicant's redevelopment of 9545 River Road (the "Property") located in Potomac, Maryland with a senior care residential facility (the "Project"). Associated infrastructure including driveways, parking areas, stormwater facilities as well as walking paths, rain gardens and recreational areas, and onsite afforestation and landscaping are proposed. The Property is currently comprised of approximately 5.93 acres of improved land with a commercial landscape operation and associated buildings, surface parking and driveways, outdoor storage and planting areas, and some landscape features with trees, shrubs, and lawn. The Property is bounded by River Road (Maryland Route 190) to the southwest, and residential neighborhoods to the northwest, northeast, and southeast.

As part of the proposed Project, Applicant seeks a variance for the removal of one (1) specimen tree on the Property, and impacts to the Critical Root Zone ("CRZ") of one (1) specimen tree on a property on the opposite side of River Road. This variance request complies with M-NCPPC and Maryland state law, which require Applicant to file for a variance from these laws to remove or impact any specimen tree (tree 30" or greater in Diameter at Breast Height [DBH] or tree with a DBH equal to or greater than 75% of the current State Champion of its species as designated by MDNR); trees that are part of an historic site or associated with an historic structure; any tree designated by the State or County as a national, State, or County champion tree; or any tree, shrub or plant identified on the Rare, Threatened, or Endangered



(RTE) species list provided by the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources.

The following table lists the two (2) specimen trees for which Applicant seeks a variance to remove or impact the CRZ:

TREE #	DBH INCHES	SPECIES (SCIENTIFIC NAME)	SPECIES (COMMON NAME)	CONDITION	RECOMMENDATION
T1	30	<i>Acer negundo</i>	Boxelder	Poor	REMOVE: 100% CRZ impact. Tree in poor condition covered with English ivy.
T4	Est. 35	<i>Quercus rubra</i>	Red Oak	Poor	SAVE: Request variance to impact the CRZ. An 11% CRZ impact to this offsite tree warrants the tree to be saved. Removal may occur by others due to the poor condition of the tree not related to construction.

Justification of Variance

Section 22A-21 of the County Ordinance authorizes the County to approve variances to the Forest Conservation Lawn allowing disturbances to certain trees, including specimen trees. An applicant seeking a variance must present a request in writing and the applicable approving authority must make certain findings and descriptions prior to approval. Applicant's variance request satisfies the required findings as follows:

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

The Project proposes the construction of a senior care and living facility, meeting a need for an anticipated shortage of senior housing as stated in the Master Plan. Design principles incorporated into this project serve to preserve the subregion's green and rural character while creating a pedestrian and bicycle-friendly environment. Afforestation plantings onsite, the incorporation of rain gardens in addition to required stormwater facilities, walkways through landscaped and recreational areas, and pedestrian and bicycle lanes along River Road in front of the proposed facility are all in keeping with these design principles. While afforestation is proposed in the area of the onsite Specimen Tree, grading in the immediate area is required to carry out these design elements prior to afforestation planting; therefore, the removal of Specimen Tree T1 cannot be reasonably avoided. The proposed CRZ impact to the offsite specimen tree is due to road improvements; however, impacts are minimized by avoiding ground disturbance adjacent to the tree. Denial of the variance would cause unwarranted hardship in significantly reducing the area of the Property that could be redeveloped because of site work necessary to create safe access from the site. The egress point cannot be moved further away from the property line and still meet safe sight distance requirements. This would preclude implementation of the Project, considerably undermine the economic viability of any redevelopment of the Property, and prevent achievement of planning goals.

Impacts minimization and avoidance to the specimen trees are described as follows:



- This work will require removal of one (1) onsite specimen tree and CRZ impacts to one (1) offsite specimen tree:
- The proposed removal of Specimen Tree T1 is due to its location inside the proposed Limits of Disturbance (L.O.D.) where grading is required. This tree is located in a lawn area adjacent to nursery planting areas near the property edge, and is considered to be in poor condition, partially due to significant overgrowth of vines on the tree. While development in the vicinity of the tree is avoided and afforestation plantings are proposed in this location, grading to support the design of the project could not be reasonably minimized to save the tree.
- Tree T4 is located to the southwest of the Property, across River Road. The proposed CRZ impact is due to improvements to River Road as part of the Project. CRZ impacts to this tree were minimized by confining the Limits of Disturbance ("LOD") to within the existing roadway asphalt on the side of the Property.

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

Denial of the variance would deprive Applicant of rights commonly enjoyed by others in similar areas. The land within the Property's vicinity, including those along River Road, has been considerably improved primarily with single-family residential development. The Project minimizes development impact by providing housing for a number of seniors in a single building footprint on previously developed land. The Property use is consistent with the existing character of the surrounding neighborhood, with a compatible building and residential uses incorporating a walkable, bicycle-friendly design.

Strict enforcement of the County Code will unfairly prevent the redevelopment of the Property to the same extent as similarly situated properties along River Road where safe site distance for an egress point is necessary. Approval of the variance will allow Applicant to create residential facility which is consistent with the rights enjoyed by nearby property owners.

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

The granting of Applicant's variance request will not result in a violation of State water quality standards, nor will a measurable degradation in water quality occur as a result. On the contrary, the Project will implement measures to improve water quality, such as the incorporation of stormwater facilities where none previously existed. Rain gardens are not required but are proposed to be included and will serve as redundant stormwater mitigation, enhancement to groundwater recharge, and for aesthetic value. The stream valley buffer extending onsite from a stream located on an adjacent property is proposed to be nearly completely planted as forest. The onsite Specimen Tree proposed for removal is not located in a stream valley buffer or other area classified as an environmentally sensitive feature.



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

Approving Applicant's variance request is justified for other reasons as well. The Project proposes forest plantings along a significant portion of the Property perimeter, meeting all of the Project's Forest Conservation requirements onsite and significantly improving environmental conditions where no forest currently occurs. Parts of the proposed onsite afforestation would be contiguous to offsite existing forest and stream valley buffer. The Landscape Plan also includes a significant number of proposed plantings throughout the property, including replacement trees for the proposed removal of the onsite specimen tree, additional shade trees, evergreen trees, ornamental trees, and planting beds, all of which will serve to improve ecological quality.

Furthermore, the variance does not arise from a condition related to land or building use, either permitted or nonconforming, on a neighboring property.

Thank you for your consideration of Applicant's tree variance request. The supporting information provided in this letter establishes that denial of the variance would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant's efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,



Marion E. Bundens
Maryland DNR Qualified Professional
Senior Environmental Planner

