



Audubon Naturalist Society/ Woodend Nature Sanctuary, Final Forest Conservation Plan Amendment No. SC2020007



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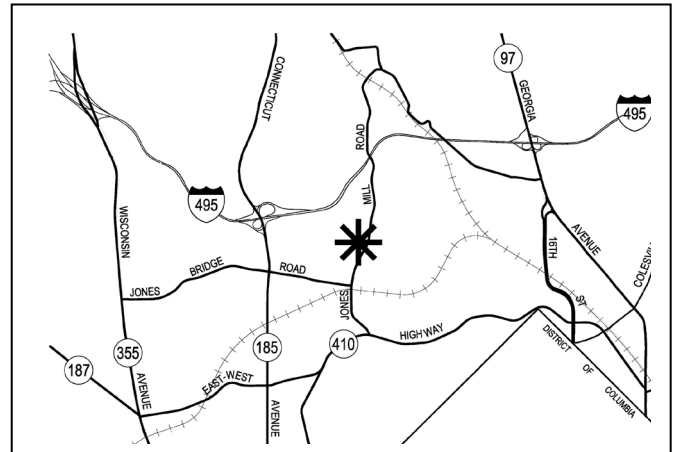


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Description

Completed: 5.17.21

- **Request:** Final Forest Conservation Plan Amendment associated with Special Exception Amendment CBA-2643-A to create a nature play space for outdoor recreational and learning and a permeable parking area
- **Located** at 8904 Jones Mill Road
- 40.19 acres (1,750,983 square feet) of tract area zoned R-90 and 1990 *Bethesda-Chevy Chase Master Plan*
- **Applicant:** Audubon Naturalist Society
- **Acceptance Date:** October 19, 2020
- **Review Basis:** Chapter 22A Forest Conservation Law
- **Hearing Examiner Public Hearing Date:** June 11, 2021



Summary

- Staff recommends **APPROVAL with conditions** for the proposed Final Forest Conservation Plan Amendment.
- Final Forest Conservation Plan Amendment for a Special Exception Amendment request to allow for the creation of a nature play space and permeable parking area to be established on the existing property of the Audubon Naturalist Society. The property lies within the *Bethesda-Chevy Chase Master Plan* and is in the R-90 Zone.
- The Site has been operating as a Charitable (previously Eleemosynary) and Philanthropic Institution special exception use since 1969 with numerous amendments over the years including to permit a bookshop, storage shed, cattle grates and various types of signage.
- This Amendment incorporates the Forest Conservation requirements related to modifying the existing special exception use to allow a nature play space for outdoor recreational opportunities and outdoor learning by modifying site elements, such as landscaping, parking, and stormwater management, and by updating previous conditions of approval consistent with the amended use.
- The Applicant received approval to construct the Nature Play Space from the Historic Preservation Commission in May 2018 and Forest Conservation Plan approval related to stream restoration and a nature trail in April 2020.
- The Recommendations for Special Exception Amendment CBA-2643-A are described in a separate report.

SECTION 1: RECOMMENDATION AND CONDITIONS

Staff recommends approval of the Final Forest Conservation Plan Amendment with the following conditions:

1. The Applicant must comply with all tree-protection and tree-save measures shown on the approved Final Forest Conservation Plan (FFCP). Tree-save measures not specified on the FFCP may be required by the M-NCPPC Forest Conservation Inspection Staff.
2. Prior to plan certification, the Applicant must update all Forest Conservation Plan graphics, tables, worksheets, notes and references to consistently reflect the site area, Limits of Disturbance (LOD), Right-of-Way dedications, forest conservation credit, and required planting.
3. The sediment & erosion control plan must be consistent with the LOD and the associated tree/forest preservation measures of the FFCP.
4. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
5. Stormwater Management
The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services (MCDPS) – Water Resources Section in its Site Development Stormwater Management Plan letter dated January 8, 2020 and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by the MCDPS – Water Resources Section provided that the amendments do not conflict with other conditions of approval.

SECTION 2: SITE DESCRIPTION AND VICINITY

Subject Property

The subject site ("Subject Property" or "Property") is located at 8940 Jones Mill Road, approximately 1700 feet north of the intersection with Jones Bridge Road. The Site consists of approximately 40.19 acres (1,750,983 square feet) and is bisected by Jones Mill Road, with Property on the east and west side of the roadway. The Property has approximately 930 feet of frontage on Jones Mill Road and 1270 feet of frontage on Brierly Road. Rock Creek Park abuts the Property along the eastern property line. To the northwest quadrant of the intersection of Jones Mill Road and Jones Bridge Road is the Manor Care Chevy Chase Healthcare Facility and to the southwest corner is the North Chevy Chase private swimming pool. The Property is within the area encompassed by the 1990 *Bethesda – Chevy Chase Master Plan* (Master Plan).



Figure 1 – Site Aerial/Vicinity Map

Site

The Property is zoned R-90 and is currently improved as the Audubon Naturalist Society (ANS) of the Central Atlantic States, Inc., a Charitable and Philanthropic Institution special exception use since its initial approval on September 2, 1969. The special exception has been amended several times to make slight adjustments to the special exception use on the Subject Property. The Property is comprised of offices, former estate garage, service buildings and associated surface parking, and undeveloped forest and fields areas that are maintained as a wildlife sanctuary. All existing structures will be retained.

Analysis

The Property is referred to as ‘Woodend Nature Sanctuary’ or ‘Woodend’ which is the name of the estate home located on the Property and designated as a historic resource with National Trust for Historic Preservation, Maryland Inventory of Historic Properties, and Montgomery County Master Plan for Historic Preservation. The Property is adjacent to single family detached homes in the R-90 zone along its northern and southern property lines in the Parkcrest and Clean Drinking Farm subdivisions.

The Subject Property is located within the Lower Rock Creek watershed, a Use I watershed¹. The Property contains numerous mature trees onsite, many of which are located within forest stands. There are three forest stands, for a total of 27.3-acres of forest onsite. As this property is designated historic, in addition to mature trees, additional consideration will be given to proposed impacts on trees sized at 1” caliper or greater.

The Subject Property, which currently operates as an approved Special Exception, has an extensive history of regulatory approvals which are fully detailed in the Staff Report for Special Exception Amendment CBA-2643-A; however, within this report Staff would like to specifically cite the Board of Appeals’ April 16, 2019 approval of CBA 2643-A to allow several improvements to an existing nature trail to enhance wheelchair accessibility and utility of that feature along with the restoration of the adjacent Clean Drinking Stream. This approval then led to the Montgomery County Planning Department’s April 16, 2020 approval of the original Forest Conservation Plan (no. SC2020007) for this site. This Administrative Forest Conservation Plan approval allowed improvements to an existing nature trail to enhance wheelchair accessibility and utility of that feature along with the restoration of the adjacent Clean Drinking Stream. With this approval, the Applicant established 21.7-acres of Category 1 Forest Conservation Easement to address the resulting Forest Conservation requirements and priorities of the Environmental Guidelines to prioritize protection of streams and associated buffers.

Historic Designation

The recommendations of the Master Plan emphasize the historic designation of the entire Property and its importance in the future use of the Property. Woodend is the accomplished work of architect John Russell Pope. Its eclectic classicism style is frequently recognized in a review of Montgomery County’s history. The Property was built for the late Chester and Marion Wells, the latter was an ardent bird watcher and bequeathed the property to the Audubon Naturalist Society. ANS’ mission is consistent with the stewardship of the Site by not only protecting the natural features of the Property, but its man-made structures as well. ANS received HPC approval for the Natural Play Space in May 2018. Today, the historic mansion on the property has been converted for multiple uses such as education, administration, and other programmatic endeavors in support of the ANS mission. The environmental setting of the property has also been maintained in order to preserve the wooded setting throughout both the previous regulatory approvals and the currently proposed work.

¹ WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE. Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; and industrial water supply.

SECTION 3: ANALYSIS AND FINDINGS

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for the Subject Property on September 12, 2019 in association with the original Forest Conservation Plan Application and Approval which was finalized in April 2020. The Subject Property is located within the Lower Rock Creek watershed, a Use I watershed. The Property contains numerous mature trees onsite, many of which are located within forest stands. There are three forest stands, for a total of 27.3-acres of forest, onsite. The forest stands are dominated by Tulip Poplar, Elm, Ash, and Cottonwood trees as well as numerous understory and ground cover species. Among the mature trees on site are trees subject to the Variance provision of the Forest Conservation Law, including specimen trees which measure 30-inches or greater in diameter-at-breast height (DBH). The site also includes four County champion trees: a 53" Black Walnut, a 50" Atlas Cedar, a 45" Japanese Maple, and a 36" English Oak. These trees are not proposed to be impacted by this Application and have been proposed for appropriate tree protection and mitigation during the previously approved stream restoration and nature trail work on the ANS campus as part of the original Forest Conservation Plan.

The Audubon Naturalist Society is associated with the historic Woodend Sanctuary, which is listed in the Maryland Inventory of Historic Properties, site number (M 35-12). As described in the Applicant's Statement of Justification, the 1990 *Bethesda-Chevy Chase Master Plan* encourages the preservation of the large, open space of the property and protection of its natural attributes. The Applicant has received HPC approval of the Nature Play Space improvements in May 2018 and has addressed, as part of this Application, materials related to the review and Historic Area Work Permit approval for the currently proposed work.

Within the boundaries of the Property, the topography varies dramatically with the mansion building atop the highest elevation of about 300' while the easy boundary of the property along Rock Creek is at the lowest elevation of 200'. The area of the property adjacent to Rock Creek lies within the 100-year floodplain and has been incorporated into Category 1 Forest Conservation Easement as part of the approved Forest Conservation Plan. Within the main area of the property, west of Jones Mill Road, there is an isolated area of highly erodible soils (16D Brinklow Silt Loam), however the property is mainly composed of soil (Glenelg (2C))which is neither highly erodible nor hydric. There are no wetlands associated with the property, but there is an intermittent stream, aptly named "Clean Drinking Stream" in reference to the nearby residential subdivision, and an associated stream buffer onsite. There are no known rare, threatened, or endangered species on site.

Forest Conservation

This Application is subject to Chapter 22A Forest Conservation Law and proposes to amend the previously approved Preliminary/Final Forest Conservation Plan (No. SC2020007), which is shown in Figure 2 below. The previous FFCP for this Property, approved on April 16, 2020, proposed work associated with stream restoration, a nature trail, and outdoor education areas; as part meeting forest conservation requirements associated with that work, the Applicant provided over 20-acres of Category 1 Forest Conservation Easement on the Property. It is also important to note that while the currently proposed work takes place outside the LOD of the stream restoration and nature trail, the proposed Nature Play Space will be situated on an area of the ANS property previously used for material staging during prior construction. To that end, the disturbance to the proposed Nature Play Space area has already been reviewed by Staff and appropriately mitigated by the Applicant. Accordingly, this report will focus on analysis of the proposed disturbance for construction of a permeable parking area as shown in figures 3 and 4.

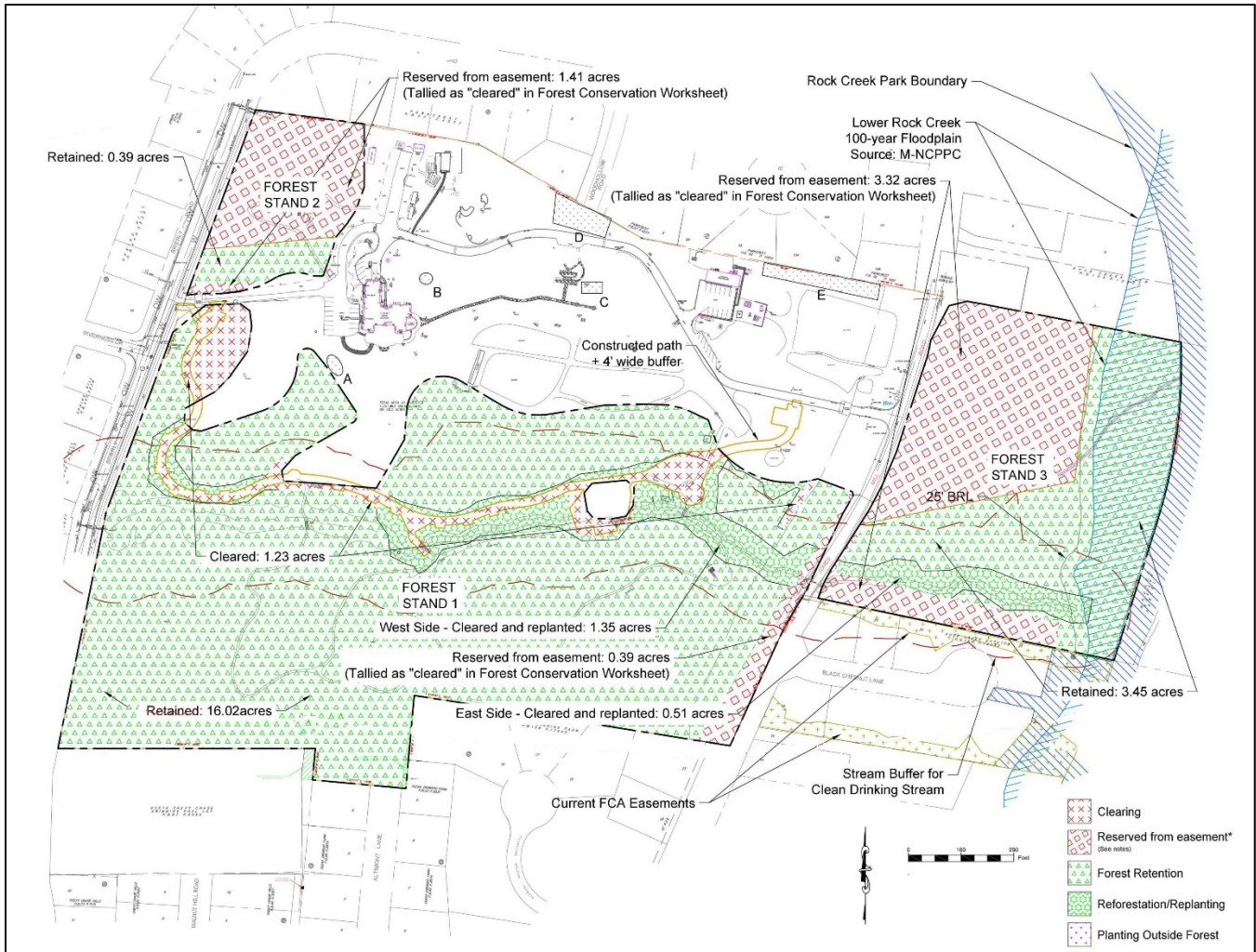


Figure 2 – Previously Approved Forest Conservation Plan

Currently, the Applicant is proposing an amendment to the previously approved plan in an effort to provide parking and equitable access to the trails and educational areas on the site. As illustrated in Figure 3, the additional LOD proposed in this Amendment does not overlap with previous disturbance and includes no additional forest clearing. Based on the expanded LOD, the amended Forest Conservation Worksheet continues to show a that there is no new Afforestation and Reforestation Requirement due to the extensive Conservation Easements which were approved with the original Forest Conservation Plan and resulted in credit for 15.46-acres of retention above the conservation threshold. Such expanded credit above the requirement is supported by Staff as this effort by the Applicant works toward meeting the priorities of stream and stream buffer protection as described in the Montgomery County Environmental Guidelines. The currently proposed work is limited to approximately 4.5-acres; however it does not include further forest clearing, thus resulting in maintaining the previously approved level of credit. Other than the inclusion of this additional work, specifically captured on newly added Sheet 21 (Attachment A), the Forest Conservation Plan and proposed work remains unchanged. As conditioned, the Application satisfies the requirements of Chapter 22A Forest Conservation.

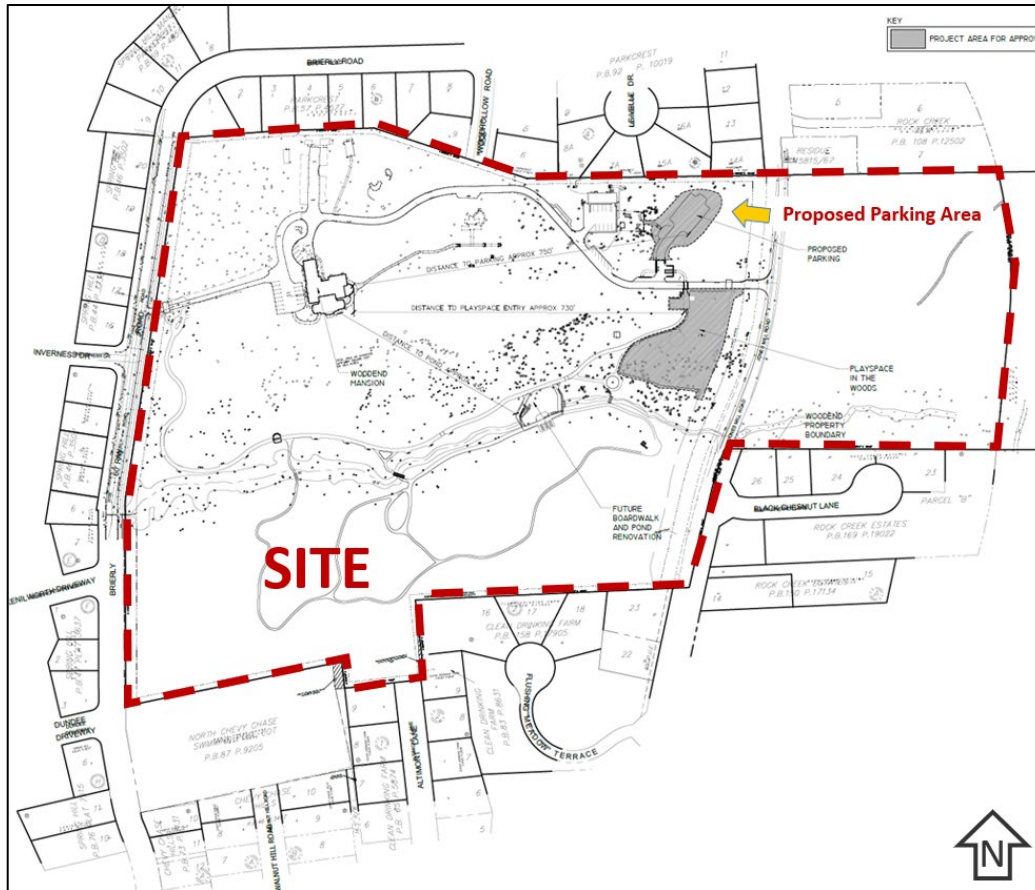


Figure 3 – Site Map (currently proposed work in grey)

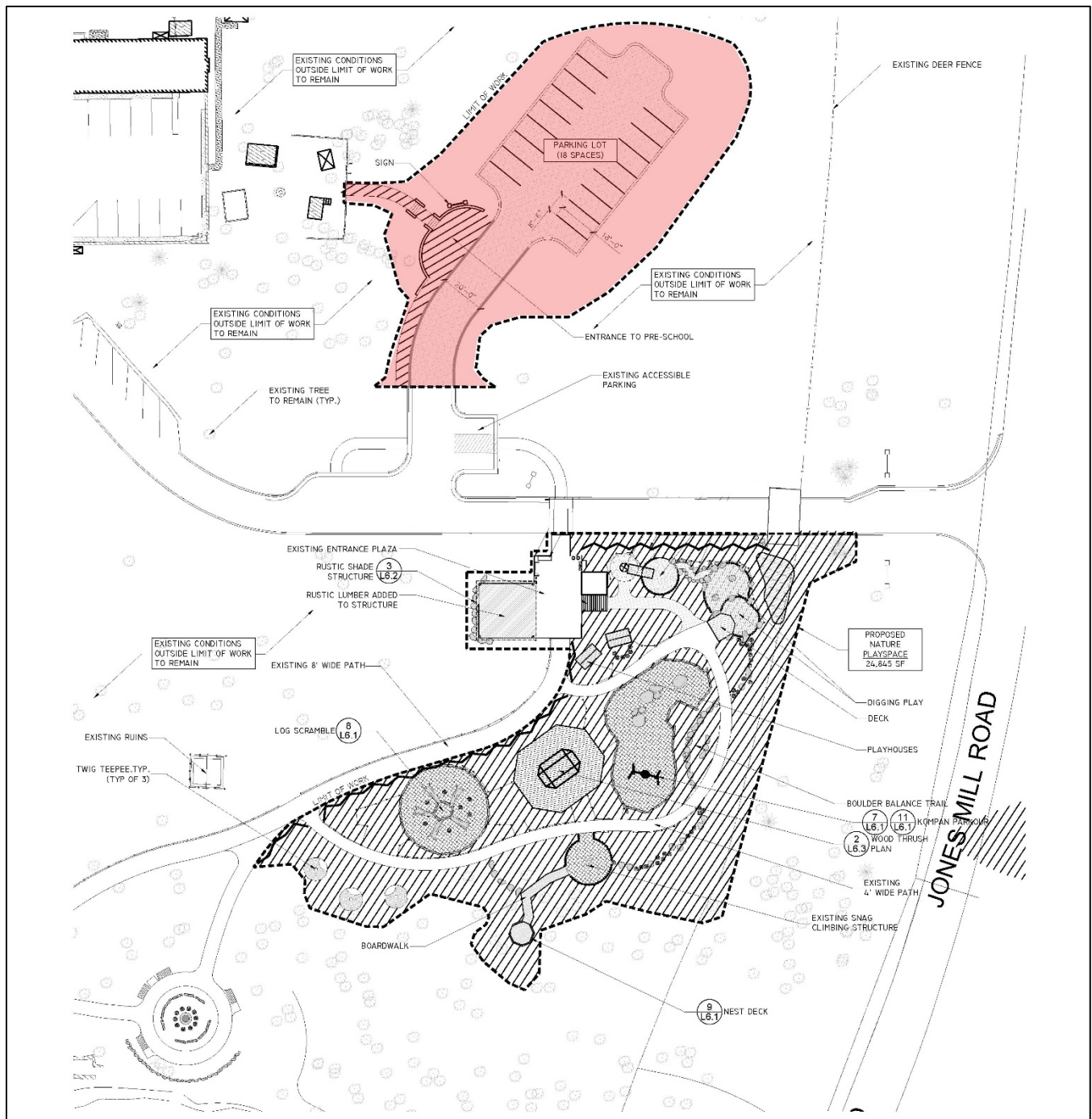


Figure 4 – Scope of work proposed by CBA-2643-A (area of FCP Amendment shaded in red)

Forest Conservation Variance

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

The Subject Property, Audubon Naturalist Society (ANS), consists of 40 acres of land which is bisected by Jones Mill Road. Given that the approximately 33 acres of land west of Jones Mill Road is recognized in the Maryland Inventory of Historic Properties, per Forest Conservation Law Section 22A-12(b)(3)(B)(i), a variance is required for all trees (1" diameter and greater) that are part of a historic site. East of Jones Mill Road, a variance is required for any tree with a diameter at breast height (DBH) of 30 inches or greater. This project has been specifically positioned in a non-forested, field area of the site to avoid impact to the otherwise forested Audubon Naturalist Society campus. Nevertheless, the work proposed by this amendment still requires a variance as there are moderate impacts to individual protected trees as shown in Figure 4 (above) and Figure 5 (below). Following coordination with Staff, in an effort to reduce CRZ impact to nearby trees, the Applicant submitted a variance request on May 17, 2021 (Attachment B) for the proposed impact to 3 mature subject trees and 13 subject trees, sized from 8-15" in diameter, that are considered high-priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. The 13 smaller trees are illustrated in the Forest Conservation Plan amendment as shown in Figure 5 below and have minor to moderate CRZ overlap with the proposed LOD. The impacts proposed to these young trees is proposed to consist of fill rather than more detrimental construction impacts.

Table 1: Subject Trees to be Impacted

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
SP-207	Black Walnut	34"	27%	Good	SAVE
LG-210	Tulip Poplar	26"	3%	Good	SAVE
LG-211	Black Walnut	25"	29%	Good	SAVE
NE-004	Black Walnut	15"	8%	Good	SAVE
NE-006	Japanese Cedar	9"	3%	Good	SAVE
NE-008	Black Walnut	10"	19%	Good	SAVE
NE-009	Crab Apple	10"	31%	Fair	SAVE
NE-010	Black Walnut	15"	15%	Good	SAVE
NE-011	Japanese Cedar	13"	10%	Good	SAVE
NE-012	Japanese Cedar	10"	37%	Good	SAVE
NE-013	Japanese Cedar	15"	29%	Good	SAVE
NE-014	Japanese Cedar	13"	11%	Good	SAVE
NE-015	Japanese Cedar	8"	30%	Good	SAVE
NE-016	Pin Oak	14"	36%	Good	SAVE
NE-017	Japanese Cedar	13"	10%	Good	SAVE
NE-018	Japanese Cedar	10"	29%	Good	SAVE

Unwarranted Hardship for Variance Trees

Based on the following justifications, the Applicant has met all criteria required to grant the variance for the impact to, but retention of, three (3) trees. The extents of impacts to critical root zones (CRZ) vary, as detailed within the associated Forest Conservation Plan sheets, however efforts to minimize impacts using tree protection measures have been specified in all plans and notes. Per Section 22A-21, a variance may only be granted if the Director or Planning Board as applicable, finds that leaving the requested trees in an undisturbed state will result in unwarranted hardship. Staff has determined that the Applicant has shown that enforcement of the Law for the designated trees would result in an unwarranted hardship for the because these trees are proposed for impact due to their proximity to this particular setting of the ANS Campus. If proposed elsewhere, the parking area would impact forest and numerous mature trees. Within the currently proposed location, the Applicant has minimized the impact to mature trees and made use of this areas proximity to the nature trail to further reduce the need to expand the LOD in connecting the parking area to a more distant trail location. Further, the proposed parking area will allow access to a new trail which accommodates visitors with disabilities while also maintaining permeability to combat stormwater runoff. In striking the balance between locating the parking area in a place convenient for trail access while also keeping extensive grading and excavation work to a minimum, it is necessary to encroach upon some of the critical root zones of the subject trees as described herein. This project seeks to provide access to the site for educational purposes integral to the goals of ANS; avoiding impacts to subject trees would preclude the addition of ADA access which is currently not available. Therefore, Staff agrees that there is an unwarranted hardship.

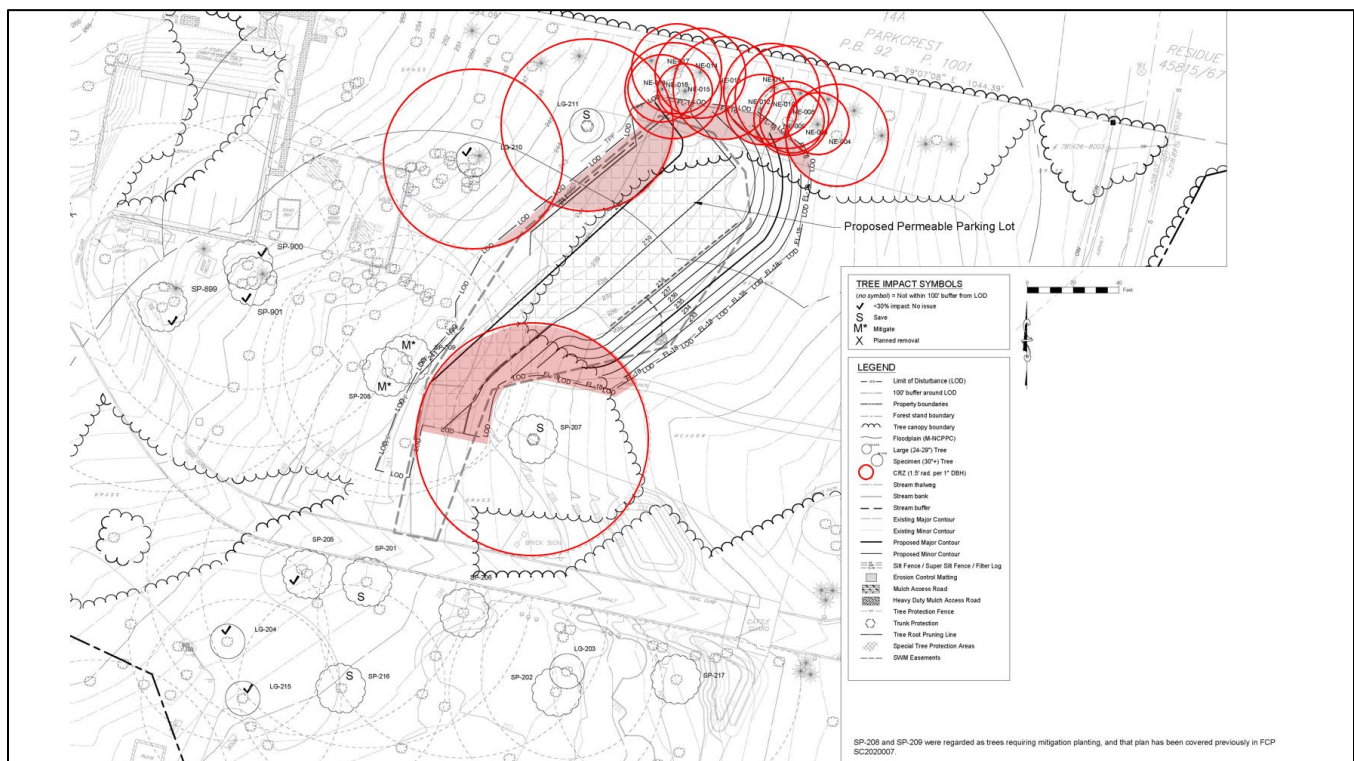


Figure 5 – CRZ Impact to Subject Trees

Variance Findings

Staff has made the following determination based on the required findings for granting of the requested variance:

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

The work proposed for the parking area is directly related to Audubon Naturalist Society's proposal to provide access to the trail for those with disabilities. As with any project that must provide grading for ADA access, the scope of work is carefully considered to provide an accessible pathway. ANS has taken this approach, while also providing permeable materials for the parking area which requires further grading for the installation of the necessary drainage work. Although installation of this specific material more impact than an impervious surface, the Applicant's effort in this regard helps the project meet the stormwater management goals and avoid degradation to water quality. Granting the variance will not confer a special privilege on the Applicant as providing equitable access and incorporating stormwater management associated with development are key elements for many applications and often require the impact to subject trees. A variance request would be granted to any Applicant in a similar situation with the proposed protective measures included as a component of construction.

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

As stated above, the requested variance and associated tree impacts are due to the limited available locations onsite to provide equitable access to the nature trail while minimizing impacts to the environmental features onsite, which includes three large forest stands with mature and champion trees as well as smaller trees which are subject to the variance provisions of the Forest Conservation Law given the historic setting. The Applicant has located the parking area to avoid impacts to forest completely and does not propose the removal of any trees. Staff finds that the variance request submitted reflects efforts to lessen overall site impacts; placed anywhere else on ANS Property, similar, if not greater, impacts would be proposed. Therefore, this variance request is not based on circumstances which are the result of actions by the Applicant.

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 not at all related to land or building use on a neighboring property. The request is related to work on the Subject Property with the goal of providing safe access to the nature trails.

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

While the Subject Property is associated with Rock Creek and "Clean Drinking Stream", as described above, the proposed work is not directly adjacent to either bodies of water or their associated buffers and floodplains. As a mostly naturalized site with significant changes in elevation, large forests onsite, and minimal development over the long history of this property, there has been limited opportunity to provide environmental site design stormwater management practices. The proposed parking area includes the use of permeable pavers to reduce stormwater impacts. Further, the planting plan includes substantial tree and shrub plantings which will also help water quality goals by maintaining, and increasing, the level of shading, and water retention and uptake. Therefore, the Application will avoid causing measurable degradation in water quality or a violation of State water quality standards.

Mitigation for Trees Subject to the Variance Provisions

There are no subject trees proposed for removal in association with this Application, therefore no mitigation is required.

County Arborist's Recommendations

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 this request. The Applicant's request was forwarded to the County Arborist. Any response received will be presented at the time of Planning Board Hearing.

Staff Recommendation on the Variance

As a result of the above findings, Staff recommends approval of the Applicant's request for a variance from the Forest Conservation Law to impact, but retain, sixteen total subject trees associated with the application.

Stormwater Management (SWM)

The Project must comply with the requirements of Chapter 19 of the Montgomery County Code. Pursuant to this requirement, the Applicant has submitted a combined Stormwater Management Concept/Site Development Stormwater Management Plan. Based on review by the Department of Permitting Services Water Resources Division, the plan was deemed acceptable on January 8, 2020. The plan proposes to meet required stormwater management goals via the use of a bioswale and micro bioretention. There is no stormwater management waiver associated with this Application. A detailed review of stormwater management computations will occur at time of detailed plan review.

Conclusion

Staff recommends approval of the Amended Final Forest Conservation Plan, with conditions as enumerated in the Staff Report. Staff also recommends approval of the variance request as submitted on May 17, 2021 and described in this report.

ATTACHMENTS:

Attachment A: Forest Conservation Plan Amendment

Attachment B: Applicant's variance request letter

Attachment C: MCDPS Stormwater Management Plan Letter