

June 24, 2021

Amanda Farber  
[amandafarber@hotmail.com](mailto:amandafarber@hotmail.com)

Re: Tree Considerations – Infill Development

Dear Ms. Farber:

Thank you for your thoughtful letter to the Montgomery County Planning Department, Montgomery County Planning Board, and Montgomery County Council dated April 13, 2021, regarding possible solutions for the loss of trees due to infill development in Montgomery County. We apologize for the length of time that it has taken us to respond, but we wanted to discuss the topic and gather ideas from all the pertinent county agencies that play a role in this issue.

We appreciate your concern about the loss of trees in the county. As you know, the Planning Department and other county agencies work diligently to protect trees while also allowing for planned development in areas of the county where it is appropriate. This of course leads to an ongoing discussion of balancing construction with a recognition of the benefits that trees provide county residents.

As a county, we advocate for growth while protecting and enhancing our natural resources. Our master plans establish goals for tree canopy in urban areas. Our development applications strive to protect trees and forests wherever possible. While there is always work to do, we are proud of the results these laws and hard work have achieved and know that this balanced approach ensures that tree canopy is present throughout the county.

The Planning Department and various county agencies are responsible for implementing and enforcing the Tree Canopy Law, the Roadside Trees Protection Law, the Forest Conservation Law, and requirements for permitting. This letter was written in consultation with the following county agencies:

- **Department of Environmental Protection**, responsible for implementing the planting programs required by the Tree Canopy Law.
- **Department of Transportation**, responsible for maintaining and planting trees in the right-of-way, implementing the plantings required by the Roadside Trees Protection Law, and ensuring compliance with the Roadside Trees Protection Law for DOT projects.
- **Department of Planning**, part of the Maryland-National Capital Park & Planning Commission, responsible for implementing and enforcing the Forest Conservation Law and implementing the Reforest Montgomery planting program as required by the Law.
- **Department of Permitting Services**, responsible for implementing permitting requirements for right-of-way and construction, enforcing the Roadside Trees Protection Law, administering the requirements of the Tree Canopy Law, collecting mitigation fees necessary to plant trees, reviewing sediment and erosion control plans, and reviewing stormwater management plans.

The following sections of this letter address the requirements and accomplishments of the county's tree-related laws, considerations for implementing any additional laws that would require permits or prevent removal of individual trees, discussion of balancing competing requirements through the development process, and ideas for additional tree protection and tree planting in Montgomery County.

## **The County's Tree-Related Laws: Requirements and Accomplishments**

The County's Tree Canopy Law and Roadside Trees Protection Law were introduced to work alongside the County's Forest Conservation Law to conserve and mitigate for adverse impacts during development in Montgomery County.

The intent of the Forest Conservation Law is to regulate forest, rather than individual trees, though plans subject to the law do require mitigation for the removal of large specimen trees. The Forest Conservation Law has a primary focus on regulating removal, protection, and planting of forest in the County. All amendments to the Montgomery County Forest Conservation Law must be approved by the state of Maryland to ensure compliance with the enabling state law, the Forest Conservation Act of 1992.

The Tree Canopy Law requires mitigation for all environmental impacts, including disturbance to and removal of trees. Mitigation fees are paid into a dedicated account based on the area of disturbance reported on applications for sediment control permits. The Roadside Trees Protection Law, on the other hand, requires a review of impacts to conserve street trees wherever possible. If a tree in the right-of-way must be removed, then mitigation is required in the form of one replacement street tree planted (adjacent to the disturbance) and payment of a fee equivalent to two additional trees into a dedicated account. This provides a replacement ratio of 3 street trees planted for every 1 removed. The bond rate, codified separately in the regulations, sets the mitigation fee for both of these laws.

### **To date, these three laws have resulted in numerous accomplishments for trees and forest in Montgomery County:**

- From enactment of the Tree Canopy Law through the end of Fiscal Year 2021, more than \$4,062,000 have been deposited into the dedicated account and more than \$1,710,000 was spent to plant over 3,800 shade trees. During Fiscal Year 2022, an additional \$800,000 will be paid out to install nearly 2,100 shade trees to bring the total number of shade trees planted to nearly 6,000. At least 1,500 separate properties have received shade trees and DEP's equity target areas have received a slightly greater percentage of plantings than the remaining areas of the county. More than 40% of trees planted are in Bethesda, Chevy Chase, and Silver Spring. The next annual report will be distributed in the near future. The program has made considerable progress in increasing capacity over the years and a new position was approved in the County's Fiscal Year 2022 budget.
- Since inception, the Roadside Trees Protection Law has collected \$1,107,986.55 as a result of mitigation for removing trees from the right of way. This money is then transferred to DOT for planting trees back into the right of way. The law has preserved 25,508 trees, removed 2,507 trees and planted 2,155 trees back into the right of way.
- Over the past 28 years, the Forest Conservation Law has resulted in permanent protection of over 12,700 acres of existing forest and more than 2,800 acres of planted forest in Montgomery County. In addition to this acreage, other projects subject to the Forest Conservation Law have met planting or preservation requirements through landscape plans or tree save plans. This type of mitigation has most often been required for projects located in areas of the county without forest.
- The Reforest Montgomery program, funded by fee-in-lieu payments, has reforested 59 acres and planted more than 10,000 trees in the past 15 years. In the past year alone, Reforest Montgomery doubled the number of free and discounted native trees offered to county residents, and reforested 10 acres of land through partnerships.

## Implications of a Permit or Protection-Based Law

Laws that require permits to remove individual trees on private property, or laws that protect individual trees of a certain size are typically implemented by local municipalities rather than counties because the scale of implementation is significantly more manageable at a smaller scale.

Implementing such a law on a county-wide scale would require a substantial increase in staff, resources, and support. Consider the size of Garrett Park (0.3 square miles), Takoma Park (2.1 square miles) and Washington, DC (68 square miles), compared to Montgomery County's 507 square miles. Takoma Park's tree removal permit program is managed by one city arborist. With a full team of about 8-10 arborists, Washington, DC's Tree Canopy Protection Law protects heritage trees (over 31.8" DBH) but otherwise accepts mitigation for special trees (over 14" DBH). This mitigation, though managed through a permit program, still allows property owners to remove these trees by paying a fee into the city's tree fund. That funding is then used by the city to plant replacement trees along streets and in city parks. In this way, DC's Tree Canopy Protection Law is somewhat similar to Montgomery County's Tree Canopy Law and Roadside Trees Protection Law.

The issues of protecting individual trees affected by redevelopment of single family homes in urban and urbanizing areas of Montgomery County has been [debated since the early 2000s](#). Finding a balance between the competing zoning, stormwater, parking, and green space interests/requirements, as well as property rights, is a significant challenge that cross-cuts numerous laws, regulations, agencies, and stakeholder groups.

Right-of-way trees face even more obstacles to growth than those on private property. Restrictive root spaces can lead to a street tree's early decline, limited soil volume may limit the size of trees that can be planted, and overhead power lines may require a large tree to be pruned. There are also infrastructure, safety, and site-line considerations necessary in the right-of-way.

In sum, creating laws that protect individual trees on private property offer a variety of challenges and a careful balancing of public interests.

## Strategies for Additional Tree Protection & Planting

The following ideas would help expand tree planting and protection efforts and help provide additional resources and capacity for this work. Some of these ideas require changes in laws and regulations. It is important to note that these programs need additional funding and additional staff (these two components go hand-in-hand). Supplementing these programs with additional resources would allow for more planting in public space and private properties and may incentivize tree conservation where possible.

- Increase the mitigation fees paid to plant street trees and shade trees as required through the Roadside Trees Protection Law and the Tree Canopy Law, currently set in regulations at \$250 per tree. According to Montgomery County Department of Transportation data, the average cost per tree has increased by 17% each year since fiscal year 2015. Increasing this amount would allow the programs required by the Tree Canopy Law and Roadside Trees Protection Law to plant more trees.

- Require payments of mitigation fees required by the Roadside Trees Protection Law to be proportional, increasing with the size of the street tree to be removed. Also, the number of trees required for mitigation by the Tree Canopy Law could be increased. This approach might incentivize conservation of larger trees and smaller disturbances. Further, it could also result in more funding for tree planting programs, which could be carried out with additional staff.
- Consider possible amendments to Chapter 49 of the Code of Montgomery County Regulations and Montgomery County Department of Transportation Standard for Tree Location 700.01/701.01 to reduce spacing requirements for trees so that a greater concentration of trees can be planted in the right-of-way where there are no additional constraints or safety concerns.
- Provide additional staff and funding to support and expand existing county tree planting programs like Tree Montgomery, Reforest Montgomery, and the street tree planting program. As one example, the Montgomery County Department of Transportation does not receive enough funding to grind the number of stumps created each year. This leads to a growing number of street tree boxes that cannot be planted. Proper funding and additional staff would allow the agency to begin to taper this backlog, open up spaces for trees to be planted, and potentially expand collaborative programs with homeowners and HOAs.
- Expand efforts to obtain grant funding and offer more grants to local community groups and non-profit organizations. Both approaches could result in an expansion of tree planting in the county, beyond the tree planting required by the county's tree laws.

We would be happy to schedule a meeting or conference call at your convenience to further discuss these ideas. Please reach out to us with your availability and any other questions you may have.

Sincerely,

The Montgomery County Department of Permitting Services

The Montgomery County Department of Environmental Protection

The Montgomery County Department of Transportation

The Montgomery County Department of Planning