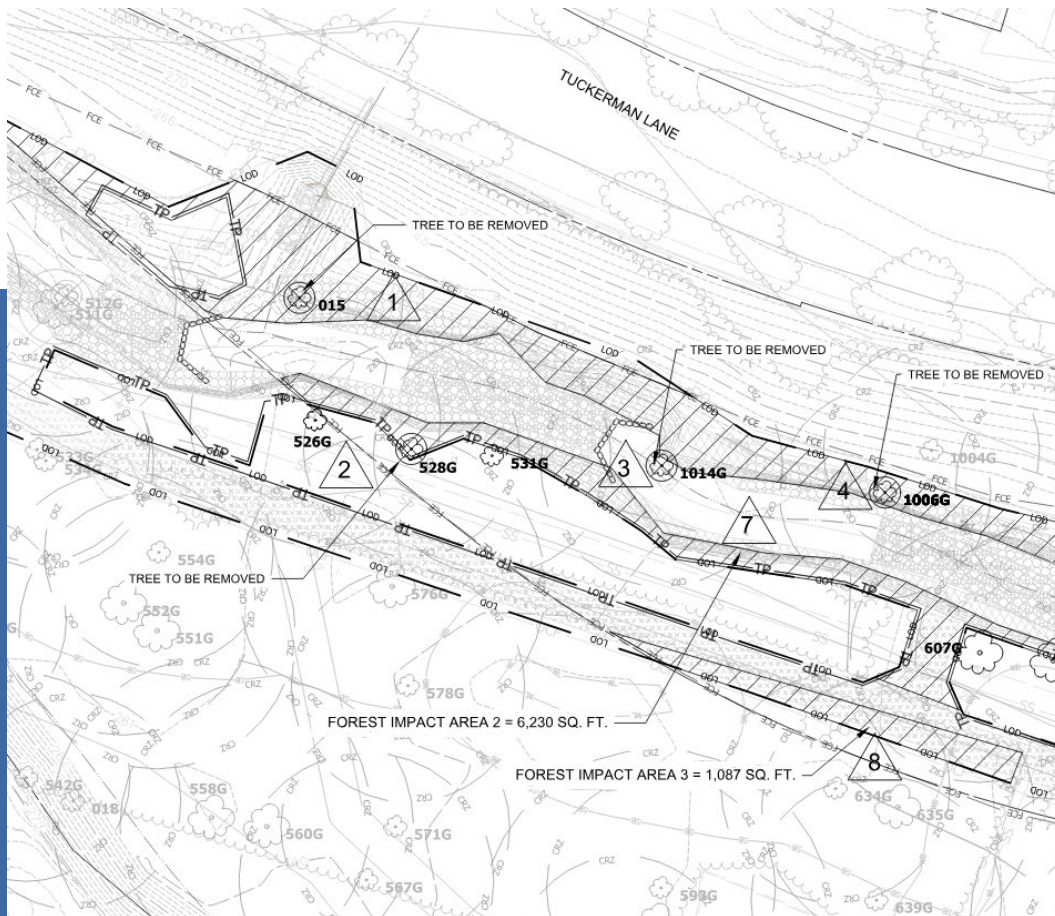


GROSVENOR/LUXMANOR TRIBUTARY STREAM RESTORATION SITE PLAN AMENDMENT NO. 81996023A



Description

Request to amend Site Plan No. 819960230, "Tuckerman Heights," to permit disturbance of a Category I Forest Conservation Easement in association with stream restoration work.

No. 81996023A

Completed: 5-05-2022

MCPB

Item No.

5-19-2022

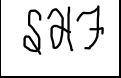

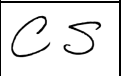
Montgomery County

Planning Board

2425 Reedie Drive, Floor 14

Wheaton, MD 20902

Planning Staff

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LOCATION/ADDRESS

South of Tuckerman Lane, approximately 1,050 feet west of Rockville Pike (MD 355)

MASTER PLAN

North Bethesda/Garrett Park Master Plan

ZONE

R-90/TDR 9

PROPERTY SIZE

2.75 acres

APPLICANT

Montgomery County Department of Environmental Protection

ACCEPTANCE DATE

March 2, 2022

REVIEW BASIS

Forest Conservation Chapter 22A



Summary:

- Staff recommends **approval** of the Site Plan Amendment.
- The Final Forest Conservation Plan Amendment proposes to disturb 0.78 acres within the Category I Easement, including 0.40 acres of forest within the Limits of Disturbance (LOD). The area within the LOD will be reforested upon completion of the stream restoration work, and the Category I Easement will not be removed.
- The Amendment includes a variance request to impact eleven (11) trees that are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Of the eleven (11) impacted trees, the Applicant requests permission to remove five (5) trees and save six (6) of these eleven (11) trees.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of Site Plan Amendment No. 81996023A for purposes of amending the Final Forest Conservation Plan associated with the Grosvenor/Luxmanor Stream Restoration Project. All site development elements shown on the latest electronic version of the Site Plan Amendment as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the following conditions. Except as amended by the revised and additional conditions below, the conditions approved under Site Plan No. 819960230 remain valid and in full force and effect.

REVISED CONDITIONS

2. A final Tree Protection Plan including special protection measures needed to reduce the impacts to the targeted individual trees to be saved along the Property boundary shall be submitted by the Applicant and approved by the Maryland-National Capital Park and Planning Commission staff prior to approval of the signature set of the Site Plan. This plan shall also detail the methods of tree protection and sequence of construction for installation of the retaining wall behind Lots 8-12 and for the driveway of Lot 17. These tree protection measure apply only to the Property north of Tuckerman Lane. Tree protection measures for the Grosvenor/Luxmanor Stream Restoration Project south of Tuckerman Lane are specified on the Amended Final Forest Conservation Plan 81996023A.

3. Tree protection fence around the forest retention areas on the portion of the Property north of Tuckerman Lane, especially adjacent to Lot 17, shall be a chain link fence buried 18" in the ground or super silt fence. Tree protection measures for the Grosvenor/Luxmanor Stream Restoration Project south of Tuckerman Lane are specified on the Amended Final Forest Conservation Plan 81996023A.

NEW CONDITIONS

6. 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.
7. 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 Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
8. Prior to the initial planting acceptance inspection by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
9. Prior to any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures. All proposed measures should be chosen with consideration of the proximity to the on-site stream and

wetlands and the sensitive nature of this watershed. The use of herbicides should be avoided where possible.

10. The Applicant must install the Afforestation/Reforestation plantings, as shown on the approved FFCP, in the first planting season following stabilization of the applicable disturbed area.
11. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
12. Prior to Certified FFCP, please add the developer’s signature block to sheets 7, 8, 9, 10, and 11, and add the M-NCPPC signature block to sheets 10 and 11.

SECTION 2: SITE DESCRIPTION

SITE LOCATION & DESCRIPTION

The Subject Property is located immediately south of Tuckerman Lane, approximately 1,050 feet west of Rockville Pike (MD 355) in the *North Bethesda/Garrett Park Master Plan* area (Figure 1). The Property is owned by the Tuckerman Heights Homeowners Association, and is identified as Parcel D, “Tuckerman Heights,” as shown on Plat #20751, Liber 17517 at Folio 9 in the County land records. The Application includes a letter authorizing the Montgomery County Department of Environmental Protection to submit plans and Applications for the Grosvenor/Luxmanor Stream Restoration Project on the Property. The letter is signed by the President of the Tuckerman Heights Homeowners Association.

The Subject Property, Parcel D “Tuckerman Heights” is a 2.28-acre Category I Forest Conservation Easement that forms a largely forested open space area owned by the Tuckerman Heights Homeowners Association (Figure 2). The total area of the open space parcel is approximately 2.75 acres. The net tract area of the Final Forest Conservation Plan Amendment within this open space parcel, as determined by the area within the Limits of Disturbance, is 0.78 acres.

The forested open space contains the Grosvenor/Luxmanor stream tributary of Rock Creek and its associated stream buffer, as well as wetlands and wetland buffers. The staff report for the original Site Plan (No. 819960230) noted that the streambanks were severely eroded at the time of the Site Plan approval. The Statement of Justification for this project notes that Montgomery County’s MS4 permit requires the Montgomery County Department of Environmental Protection (DEP) to restore impervious surface areas that are not currently treated to the Maximum Extent Practicable (MEP), including restoring degraded stream channels. Due to the degraded conditions in this portion of the Grosvenor/Luxmanor stream channel, this stream has been identified for stream restoration to help fulfill MS4 permit requirements.



Figure 1. Site vicinity



Figure 2. Site detail

SECTION 3: PROJECT HISTORY & PROPOSAL

Previous Approvals

The original Site Plan and associated Final Forest Conservation Plan (No. 819960230) were approved for construction of the Tuckerman Heights single-family attached housing development across Tuckerman Lane to the north of the Category I Forest Conservation Easement. The Category I Easement was recorded to protect the forested stream buffer along the Grosvenor/Luxmanor Branch stream.

Proposal

The Final Forest Conservation Plan is being amended to allow disturbance within the previously recorded Category I Easement for stream restoration work being done by the Montgomery County Department of Environmental Protection. The Final Forest Conservation Plan Amendment proposes to disturb 0.78 acres within the Category I Easement, including 0.40 acres of forest within the Limits of Disturbance (LOD). This area is considered cleared under the Forest Conservation Law and Regulations, although not all of the trees within the LOD will be removed. The area within the LOD will be reforested upon completion of the stream restoration work, and the Category I Easement will not be removed as a result of the Subject Application. The Application includes a variance request to impact eleven (11) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Of the eleven (11) trees being impacted, variance permission is being requested to remove five (5) trees and save six (6) of these eleven (11) trees. An expanded explanation of the Final Forest Conservation Plan Amendment is provided in Section 4 of this Staff report.

SECTION 4: FINDINGS AND ANALYSIS - SITE PLAN NO. 81996023A

The Planning Board found that Site Plan No. 819960230 was consistent with Preliminary Plan No. 119960910, met the requirements of the R-90/ TDR-9 Zone; satisfied Forest Conservation and complied with other applicable regulatory requirements (Attachment A). The Planning Board further determined that the Project was compatible with other uses and other site plans when considering existing and proposed adjacent development.

The Amendment complies with the general requirements and development standards of the Zoning Ordinance, Subdivision Regulations and substantially conforms with the goals and recommendations of the 1992 *North Bethesda/Garrett Park Master Plan*. The elements of the proposed Site Plan Amendment No. 81996023A remain consistent with the original findings, except finding 7, which is modified below to permit disturbance of a Category I Forest Conservation Easement in association with stream restoration work.

7. All Forest Conservation Law, Chapter 22A requirements are satisfied.

The Property is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan. Included with the Forest Conservation Plan Amendment is a request for a tree variance for impacts and removal of subject trees. The Site Plan Amendment complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

a. Natural Resource Inventory/Forest Stand Delineation

Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) No. 420201490 was approved for this Property on April 21, 2020. The NRI/FSD documents that the Property is located within the Lower Rock Creek watershed, which is classified as Use Class I-P by the State of Maryland. The Subject Property is forested and contains several trees with a diameter breast height (“DBH”) of 30 inches or more. The area includes stream buffers, wetlands, and 100-year floodplains. There are no recorded occurrences of rare, threatened, or endangered species, and no historic resources or cemeteries are known to exist on the Property.

b. Forest Conservation Plan

The Applicant has submitted a Final Forest Conservation Plan (“FCP”) Amendment (Attachment B) that satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned R-30 and is assigned a Land Use Category of High Density Residential (“HDR”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the area within the Limits of Disturbance, and totals 0.78 acres. There is a total of 0.40 acres of existing forest on the Subject Property. For purposes

of the Forest Conservation Law, all 0.40 acres within the Limits of Disturbance are counted as cleared, although not all trees within the forested area will be removed. The proposed forest clearing generates a reforestation requirement of 0.37 acres. The Applicant proposes to meet the planting requirement on-site by reforesting the entire 0.78-acre LOD. All of the retained and planted forest will continue to be protected in a Category I Conservation Easement.



Figure 3 – Tree Variance Request Exhibit

Forest Conservation Variance

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (“CRZ”) requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition. 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 or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; 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.

Variance Request - The Applicant submitted a variance request in a letter dated March 29, 2022 (Attachment C). The Applicant proposes to impact eleven (11) trees that are 30 inches or greater DBH, that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Tables 1 & 2). Of the eleven (11) trees being impacted, variance permission is being requested to remove five (5) trees and save six (6) of these eleven (11) trees (Figure 3). The variance request notes that efforts will be made to save four out of the five trees requested for removal. The

variance permission for removal is being sought now in case removal is deemed necessary by the forest inspector or certified arborist at the time of construction.

Table 1 – Protected Trees to be impacted but saved

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
551G	Tuliptree (<i>Liriodendron tulipifera</i>)	32"	<1%	This tree is located outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
552G	Tuliptree (<i>Liriodendron tulipifera</i>)	30.5"	3%	This tree is located outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
576G	American beech (<i>Fagus grandifolia</i>)	35.5"	21%	This tree is located outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
635G	American beech (<i>Fagus grandifolia</i>)	31.5"	21%	This tree is located outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
658G	Tuliptree (<i>Liriodendron tulipifera</i>)	32.5"	7%	This tree is located outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
694G	Tuliptree (<i>Liriodendron tulipifera</i>)	30"	10%	This tree is located outside of the LOD but the CRZ is within a staging area. Due to the need to provide adequate space for construction activities for the stream restoration, these CRZ impacts cannot be avoided.

Table 2 – Protected Trees to be removed

Tree Number	Species	DBH Inches	% CRZ Impacts	Status and Notes
511G	Tuliptree (<i>Liriodendron tulipifera</i>)	30"	92%	Tree is located within the LOD and on the stream bank where grading is proposed. Due to the need to stabilize the stream to accomplish the project goals, removal of this tree cannot be avoided.
607G	Tuliptree (<i>Liriodendron tulipifera</i>)	30"	67%	Save if possible. This tree is located just outside of the LOD but the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
610G	Northern red oak (<i>Quercus rubra</i>)	32"	70%	Save if possible. This tree is located just outside of the LOD but on the stream bank and the CRZ is within a proposed access path. Due to the need to provide adequate access to the stream channel for restoration, these CRZ impacts cannot be avoided.
853G	American beech (<i>Fagus grandifolia</i>)	32"	43%	Save if possible. This tree is located outside of the LOD, but the CRZ is along the stream bank where grading is proposed. Due to the need to stabilize the stream bank to accomplish the project goals, these impacts cannot be avoided.
996G	Northern red oak (<i>Quercus rubra</i>)	30.5"	30%	Save if possible. This tree is located outside of the LOD, but the CRZ is along the stream bank where grading is proposed. Due to the need to stabilize the stream bank to accomplish the project goals, these impacts cannot be avoided.

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the fixed location of the stream and the trees surrounding it, and the project goal to restore the streambanks to reduce erosion and sedimentation, and to restore stream function. This requires both creating an access route to get the necessary equipment to the stream restoration site, and the need to grade some streambanks back to reduce erosion and restore function. Two (2) of the trees for which removal permission is sought are heavily impacted by the access route. Three (3) of the trees for which removal permission is sought are on areas of the streambanks which will be graded to accomplish the objectives of the stream restoration. The stream restoration cannot be accomplished without impacting these trees, and the stream restoration is being planned and implemented in order to reduce erosion and sediment pollution in response to MS4 permit requirements. Therefore, there is a sufficient unwarranted hardship to justify a variance request.

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, in order for a variance to be granted. Staff has made the following determinations in the review of the variance request and the proposed Forest Conservation Plan:

Variance Findings

Staff has made the following determination based on the required findings that 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 removal and disturbance to the specified trees are due to the project objectives to reduce sediment pollution, the fixed location of the stream that is to be restored, and the location of the trees around the stream. The Applicant has worked with the County Arborist to minimize removals of, and impacts to, variance trees. Granting a variance to allow disturbance and meet the objectives of the stream restoration project is not unique to this Applicant. 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 requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project.
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 a result of the existing conditions and the proposed project design, not as a result of land or building use on a neighboring property.
4. *Will not violate State water quality standards or cause measurable degradation in water quality.*
In this case, the purpose of the project is to remediate degraded water quality. The trees are within a forest that will be replanted upon completion of the project. These trees will replace

water quality functions that may be lost by the removed trees. Therefore, Staff concurs that the Application will not violate State water quality standards or cause measurable degradation in water quality. In time, between the stream restoration and the forest replanting, water quality should ultimately be improved over current conditions.

Mitigation for Trees Subject to the Variance Provision

No mitigation is required for trees that are impacted but retained. Retained trees will continue to provide water quality functions as before. It has been M-NCPPC policy not to require mitigation for Protected Trees removed within forest stands since the removal of the forest is accounted for through the Forest Conservation Worksheet, and all disturbed forest will be replanted. As conditioned, the replanted forest will be protected as part of a 5-year maintenance and management agreement.

Variance Recommendation

Staff recommends approval of the variance request.

SECTION 5: COMMUNITY CORRESPONDENCE

The Applicant has complied with all submittal and noticing requirements, and Staff has not received correspondence from community groups or citizens as of the date of this report.

SECTION 6: CONCLUSION

The Application satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Therefore, Staff recommends approval of the Site Plan Amendment to amend the Forest Conservation Plan with conditions as cited in this Staff Report.

ATTACHMENTS:

Attachment A – MCPB Site Plan Resolution No. 819960230

Attachment B – Amended Final Forest Conservation Plan

Attachment C – Variance Request

SB

ATTACHMENT A



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD OPINION

Site Plan Review: No. 8-96023
Project: Tuckerman Heights
Date of Hearing: September 12, 1996

Action: ***APPROVAL SUBJECT TO CONDITIONS.*** (Motion was made by Commissioner Aron; seconded by Commissioner Richardson; with a vote of 4-1, Commissioners Aron, Holmes, Richardson and Hussmann voting for and Commissioner Baptiste voting against.)

The date of this written opinion is December 5, 1996, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before January 5, 1997.

On April 19, 1996, Kay Enterprises, Ltd. (the "Applicant") submitted an application for the approval of a site plan for property in the R-90/TDR-9 and R-30 zones. The application was designated Site Plan Review No. 8-96023.

On September 12, 1996, the Site Plan was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Board heard testimony and received evidence submitted in the record on the application for the Site Plan. On this same date, the Planning Board also considered the Applicant's jointly filed Preliminary Plan application for the site, designated as Preliminary Plan No. 1-96091.

INTRODUCTION

The entirety of the project ("Subject Property" or "Property") consists of 7.45 acres, divided by Tuckerman Lane. The northern parcel - the development portion of the site - is 4.75 acres and zoned R-90/TDR-9. The 2.70-acre southern parcel of the Subject Property is zoned R-30 and abuts open space and the Grosvenor Park townhouse development. This portion of the site includes a 35-foot wide right-of-way dedication for future use as a transitway. The Subject Property is bounded on the north and northeast by the Georgetown Preparatory School Property ("School Site"), zoned

R-90, and Tuckerman Station subdivision on the west. Tuckerman Station is a townhome development developed under the PD-9 Zone. The Grosvenor Park townhome development (zoned R-30) is located to the south, and high-rise residential development (zoned R-10) is located to the southeast across Grosvenor Lane.

Luxmanor Branch flows from west to east through the southern section of the Property. The north side of the Property is bisected by a major drainage channel which joins Luxmanor Branch through a culvert under the road. Staff testimony indicated that while perhaps at one time this drainage channel was a stream, it appears now to only carry stormwater runoff, with resulting severe erosion to the channel banks.

The Property is partially forested, and contains numerous large trees including many that are greater or equal to 24 inches. The site also includes several specimen size trees.

SITE PLAN DEVELOPMENT FEATURES

The Applicant proposes 37 one-family attached units (garage townhome style) and associated recreation facilities. All of the proposed dwelling units and facilities will be located on the 4.75-acre northern portion of the Property, which will be accessed from one entrance off of Tuckerman Lane. The southern portion will remain undeveloped as a Homeowner's Association ("HOA") open space parcel. The concurrently filed and reviewed Preliminary Plan No. 1-96091 also includes dedication of a 35-foot-wide right-of-way for the future North Bethesda Transitway on the southern portion of the Property.

As part of the Preliminary Plan submittal, the Applicant requested the Planning Board to waive the 100-foot setback requirement as set forth in Section 59-C-7.15(b)(1) of the Montgomery County Zoning Ordinance, which provides that no building can be constructed within 100 feet of property which the area Master Plan recommends single-family detached zoning. The School Property is zoned R-90 (a one-family residential zone), and the Applicant proposed townhome setbacks ranging from 30 to 68 feet. Section 59-C-1.394(c) allows the Board to waive the setback requirements if it finds that the immediately adjoining property is recommended for institutional use on the approved and adopted Master Plan and the immediately adjoining property will not be adversely affected by the waiver for present or future use. Staff recommended approval of this waiver request because the Master Plan recommends the adjoining School Property for continued institutional use. Staff believed the adjoining property would not be adversely affected by the waiver for present or future use, and that finding is incorporated into the Board's Site Plan findings. Staff recommended that this setback is compatible with the adjacent School Site.

The existing site zoning allows a base density of 17 units. The Master Plan allows use of Transferable Development Rights ("TDR") to increase the site's density, and the Applicant proposes use of an additional 20 units to reach a project total of 37 units. In the Preliminary Plan application, the Applicant asked the Planning Board to waive a Zoning Ordinance requirement that mandates at least 15% of the total number of proposed dwelling units must be one-family detached units (all of

the dwelling units in the Applicant's Preliminary Plan are one-family attached units) to enhance compatibility with the adjacent properties.¹ The Board waived this 15% requirement based upon a finding that the proposed development is more desirable for environmental reasons or is more compatible with adjacent development than that which would result from adherence to the 15% requirement. Staff recommended approval of this waiver based on the density recommended in the Master Plan and the compatibility of the proposed townhouses with the existing townhouses, multi-family developments and institutional uses in the surrounding area.²

The requisite Forest Conservation Plan shows retention of the two-acre forested portion of the Property south of Tuckerman Lane, an additional 0.9 acres elsewhere, and a replanting of approximately 0.5 acres on-site. Approximately 0.2 acres will be afforested off-site. In addition, due to the high quality and large size of the trees on the northern parcel, the area along the drainage channel as well as the contiguous northeastern corner have been identified as tree save areas. Around the perimeter of the Property, the Applicant will provide a 10-foot no-disturb area from identified trees.

The Applicant proposed a multi-age play and picnic/sitting area on the northern portion of the Property. A proposed pathway system will connect to an existing bike path to the west along Tuckerman Lane, and to an existing 9-foot wide asphalt path along the east property line of Tuckerman Station.

Access to the northern portion of the Property will be from one driveway entrance off of Tuckerman Lane.

FINDINGS

Based upon the testimony, evidence and the contents of the public record and file in this matter, including the Staff Report dated September 6, 1996, the Planning Board, as to Site Plan No. 8-96023, finds that:

1. The Site Plan is in conformance with the simultaneously approved Preliminary Plan No. 1-96091 for the Property.
2. The Site Plan meets all of the requirements of the R-90/TDR-9 Zone in which it is located, subject to the waivers granted in Preliminary Plan 1-96091.

¹ MONT. CO. CODE CHAPTER 59-C-1.395.

² MONT. CO. CODE CHAPTER 59-C-1.395.

3. The School Property, although zoned R-90, is recommended for institutional use in the approved and adopted North Bethesda/Garrett Park Master Plan, and will not be adversely affected for present or future use by the granting of a waiver to allow the Applicant to place townhouses 30 feet from the joint Property line.
4. The use of all townhouse units on the Property is more compatible with the adjacent and surrounding townhouses, multi-family development and institutional uses than adhering to the 15% requirement for single-family detached houses.
5. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.
6. The Site Plan is in conformance with the land use, zoning, TDR and transitway recommendations of the 1992 North Bethesda/Garrett Park Master Plan.
7. The Site Plan meets all applicable requirements of Chapter 22A regarding Forest Conservation.
8. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.
9. The Board waives the Zoning Ordinance requirement that setbacks equal building height, based on a finding that the resulting development is compatible with the surrounding uses, both existing and proposed.

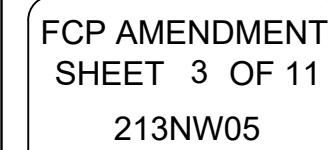
The Planning Board Approves Site Plan No. 8-96028 which consists of 37 garage townhouses with the following conditions:

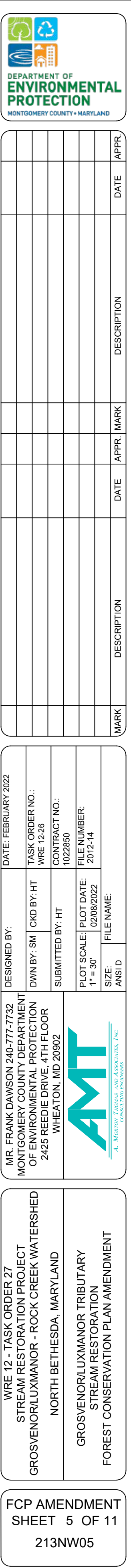
- (1) Standard Conditions dated October 10, 1995, Appendix A to Planning Board Staff Report dated September 6, 1996 and included as part of the public record for Site Plan No. 8-96023.
- (2) A final Tree Protection Plan including special protection measures needed to reduce the impacts to the targeted individual trees to be saved along the Property boundary shall be submitted by the Applicant and approved by The Maryland-National Capital Park and Planning Commission staff prior to approval of the signature set of the Site Plan. This plan shall also detail the methods of tree protection and sequence of construction for installation of the retaining wall behind Lots 8-12 and for the driveway of Lot 17.
- (3) Tree protection fence around the forest retention areas, especially adjacent to Lot 17, shall be a chain link fence buried 18" in the ground or super silt fence.

- (4) The Site Plan shall show additional right-of-way dedication or an easement along Tuckerman Lane to accommodate the existing guardrail along the roadway per the Montgomery County Department of Public Works and Transportation requirements.
- (5) The Site Plan shall show a 10-foot-wide public utility easement along the Tuckerman Lane frontage and locations of the transformers in accordance with PEPCO requirements.

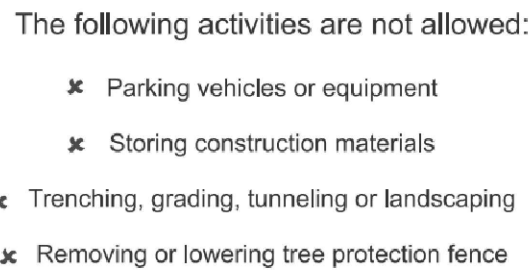
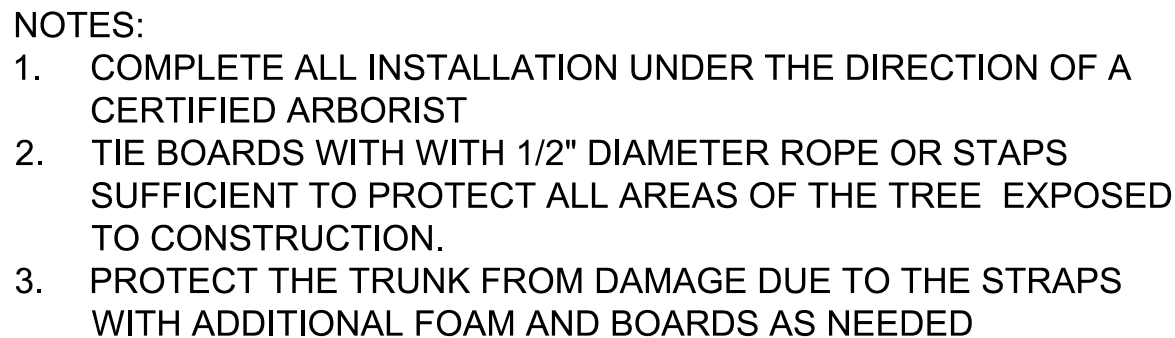
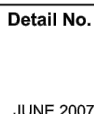
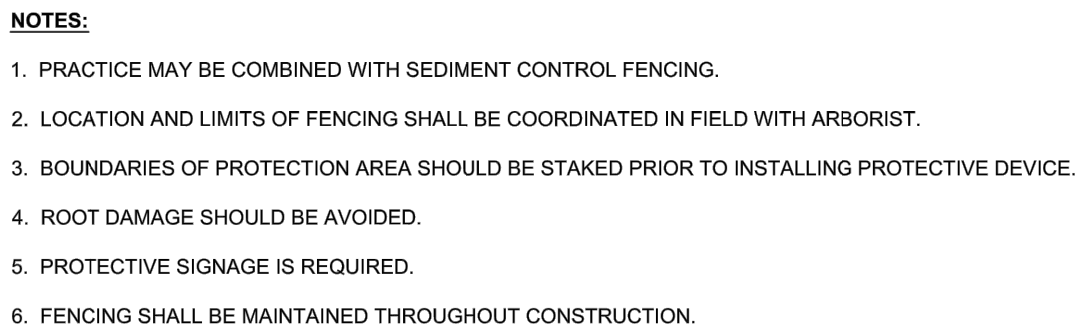
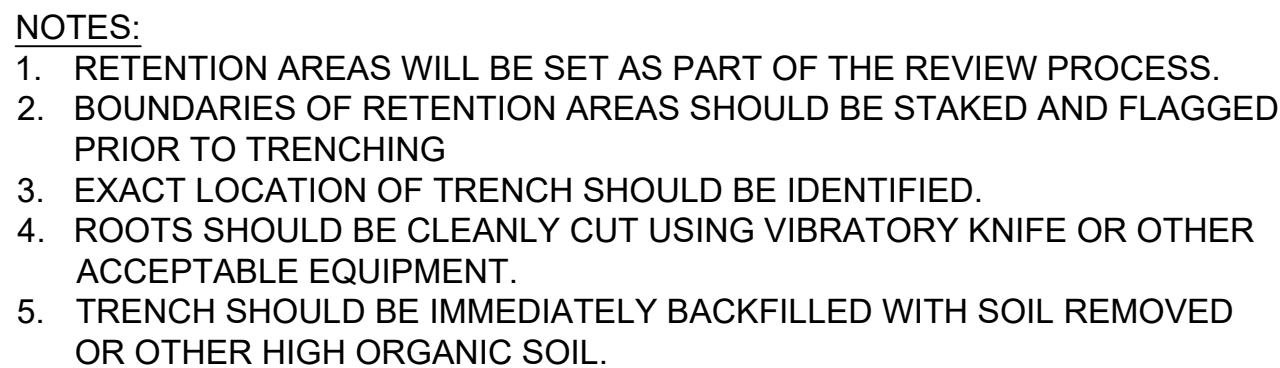
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HEATHER TATONE
COASTAL RESOURCES, INC.
25 OLD SOLOMONS ISLAND ROAD,
ANNAPOLIS, MD 21401

SEE SHA SPECIFICATION 707.03.03 FOR SEED APPLICATION
RATE ON SHA PROPERTY

WET MEADOW/WETLAND ESTABLISHMENT	
GRASSES, SEDGES AND RUSHES INCLUDE ALL	PURE LIVE SEED* LB PER ACRE
COMMON RUSH	1.6
FOX SEDGE	1.0
FOWL BLUEGRASS	2.0
LONGHAIR SEDGE	0.6
RATTLESNAKE MANNAGRASS	1.0
SHALLOW SEDGE	0.6
WOOLGRASS	0.6

STREAMSIDE/LOWLAND MEADOW ESTABLISHMENT	
GRASSES, SEDGES AND RUSHES INCLUDE ALL	PURE LIVE SEED ¹ LB PER ACRE
BIG BLUESTEM	1.6
EASTERN GAMAGRASS	1.0
HARD	2.0
FESCUE	0.6
INDIANGRASS	1.0
KENTUCKY BLUEGRASS	0.6


RIPARIAN/UPLAND MEADOW ESTABLISHMENT	
GRASSES, SEDGES AND RUSHES INCLUDE ALL	PURE LIVE SEED* LB PER ACRE
BROOMSEDGE BLUESTEM	1.0
DEERTONGUE	2.0
HARD FESCUE	20.0
LITTLE BLUESTEM	2.0
PURPLETOP	1.0
VIRGINIA WILDRYE	0.5

NOTE: THE RATE SHOWN IS PURE LIVE SEED. USE GERMINATION AND PURITY DATA FROM THE SEED TAG TO CALCULATE THE ACTUAL SEEDING RATE NEEDED TO OBTAIN THE SEEDING RATE IN PURE LIVE SEED.



DEPARTMENT OF
**ENVIRONMENTAL
PROTECTION**
MONTGOMERY COUNTY • MARYLAND

[illegible]

	DESIGNED BY:	TASK ORDER NO.:	DATE: FEBRUARY 2022
	DWYN BY: SM	CONTRACT NO.:	
	SUBMITTED BY: HT	FILE NUMBER:	
	PLOT SCALE: PLOT DATE:	FILE NAME:	
	P2 = 20	02/08/2022	201214

WIRE 12 - TASK ORDER 27
STREAM RESTORATION PROJECT
GROSSEVENOR-LUXMANOR-ROCK CREEK WATERSHED
NORTH BETHESDA, MARYLAND

GROSSEVENOR - LUXMANOR STREAM
RESTORATION PROJECT FOREST
CONSERVATION PLAN AMENDMENT

ATTACHMENT C



December 27, 2021

Mr. Mark Pfefferle
The Maryland-National Capital Park and Planning Commission
Environmental Planning Division
2425 Reedie Drive, 14th Floor
Wheaton, MD 20910

Subject: Variance Request
Project: Forest Conservation Plan Amendment (81996023)
WRE12-27 Grosvenor-Luxmanor Stream Restoration Project

Dear Mr. Pfefferle:

On behalf of the Montgomery County Department of Environmental Protection (DEP) we are submitting this variance request in accordance with Section 22A-21(b) of the Montgomery County Forest Conservation Law, for the above referenced stream restoration project. A total of two (2) specimen trees may be impacted by the project (see **Table 1**) and a variance is being requested to potentially remove both of those trees, which have significant critical root zone (CRZ) impacts (>30 percent). All efforts will be made to protect and save these two trees therefore a variance is only being requested in case removal is deemed necessary by the inspector/certified arborist at the time of construction.

Table 1- Specimen Tree Impacts						
	Tree ID	Scientific Name	Common Name	DBH	Condition	Critical Root Zone Impact %
REMOVE*	607G	Liriodendron tulipifera	Tuliptree	30	Good	67
REMOVE*	610G	Quercus rubra	Northern red oak	32	Good, undermined	70

*All attempts should be made to protect and preserve these trees but due to potential damage to the critical root zones, the forest conservation inspector and/or contractors arborist will ultimately determine the removal/save status of these trees.

a.) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship.* The project area was identified for stream restoration by the DEP, as outlined in the Montgomery County Coordinated Implementation Strategy, to meet the requirements of Montgomery County's MS4 Permit. The project limits of disturbance (LOD) were designed to avoid impacts to trees and wetlands as much as possible while still providing sufficient access for construction. While impacts were reduced and avoided in many locations, they could not be completely avoided because of the need to provide adequate access to the stream channel for restoration and stabilization measures to accomplish the project goals.

b.) Describe how enforcement of this chapter will deprive the landowner of rights commonly enjoyed by others in similar areas.

Comparable stream restoration projects have been completed by other state, federal, and local agencies designed to improve water quality and riparian habitat in the state.

c.) 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 granting the variance.

The variance will not violate state water quality standards or cause measurable degradation in water quality. The proposed stream restoration will have an approved sediment and erosion control plan and will not violate any state water quality standards. The goals of the stream restoration project are water quality improvements including channel sediment yield reduction, long-term stream bed and bank stabilization, floodplain reconnection, increased groundwater recharge, increased flow attenuation, and storm drain outfall/end of pipe improvements. In addition, ecological improvements are anticipated which include aquatic and riparian habitat enhancement, resident fish passage enhancement, riparian buffer restoration, and ecological function uplift.

d.) Provide any other information appropriate to support the request.

Multiple days of field walks were done with Laura Miller, DEP's Forest Conservation Coordinator, AMT designers and DEP staff. AMT and DEP walked each to agree or disagree on all proposed tree takes within the LOD. After the walk, the tree removal list was finalized based on the design impacts and safety of pedestrians and the future construction crews. After these walks, it was decided to include LOD islands within the project limits to ensure minimal impacts to mature trees away from work or access paths. Access Paths were optimized to avoid unnecessary tree takes where the design allowed. Trees within fill conditions were saved in most cases. Tree protection fencing and tree planking will be installed where necessary. Root pruning will occur under the supervision of a certified arborist. The forest conservation inspector and/or the contractor's arborist will ultimately determine whether these trees need to be removed.

Please contact me at 443-837-2146 or heathert@cri.biz, if any additional information is required.

Sincerely,



Heather Tatone
Senior Environmental Scientist
Coastal Resources, Inc.