

Montgomery Planning
WILDWOOD MANOR SWIM CLUB
FOREST CONSERVATION PLAN F20230180



Description

Request for approval of a Forest Conservation Plan associated with the proposed renovation of the pool, existing building, and parking and to make updates for stormwater management and ADA accessibility. The Subject Property contains a cemetery that was not previously included in the Montgomery County Burial Sites Inventory.

No. F20230180
Completed: 9-7-2023

MCPB
Item No. 8
9-21-2023

Montgomery County
Planning Board
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Planning Staff

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LOCATION/ADDRESS

10235 Hatherleigh Drive, Bethesda

MASTER PLAN

North Bethesda-Garrett Park Master Plan

ZONE

R-90

PROPERTY SIZE

4.75 Acres

APPLICANT

Wildwood Manor Swim Club

ACCEPTANCE DATE

April 16, 2023

REVIEW BASIS

Chapter 22A

Summary:

- Staff recommends approval with conditions of a Forest Conservation Plan, including a tree variance, associated with the sediment control permit for the proposed renovation of the pool, existing building, and parking and to make updates for stormwater management and ADA accessibility. A site plan is not required for the proposed improvements.
- The 4.75-acre Property is developed on the east side with an existing swimming pool, pool house, and parking. A cemetery is located within the wooded area to the west of the pool.
- During the course of this review, it was determined through historical and archaeological investigation that a cemetery exists on the Property. It has now been identified as the Newman Family Cemetery (HP-359). Joseph Newman and his wife Elizabeth were African American and purchased the property in 1872. The cemetery may include the graves of people who were once enslaved on the property and ancestors of the Newman family. This site has been added to the Montgomery County Burial Sites Inventory.
- The limits of disturbance associated with the proposed pool renovations do not intrude into the delineated cemetery area.
- The cemetery and surrounding forest are being protected in a Category I Forest Conservation Easement. The Category I Easement also prohibits disturbance of the soil and vegetation except as allowed under the terms of the easement agreement. No trees will be impacted or removed within the limits of the burial ground.
- Staff modified the Forest Conservation Easement language to protect and allow flexibility in potential future memorialization related to the cemetery.

TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS	3
FOREST CONSERVATION PLAN F20230180.....	3
SECTION 2: SITE DESCRIPTION.....	5
VICINITY.....	5
PROPERTY DESCRIPTION.....	6
SECTION 3: PROJECT DESCRIPTION.....	9
PROPOSAL.....	9
SECTION 4: FOREST CONSERVATION PLAN F20230180 FINDINGS AND ANALYSIS.....	10
FOREST CONSERVATION.....	10
SECTION 5: COMMUNITY OUTREACH	17
SECTION 6: CONCLUSION	17
ATTACHMENTS	17

SECTION 1: RECOMMENDATIONS AND CONDITIONS

FOREST CONSERVATION PLAN F20230180

Staff recommends approval of Forest Conservation Plan No. F20230180, for the renovation of the existing pool, building, and parking and to make updates for stormwater management and ADA accessibility, subject to the following conditions:

1. 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.
2. 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 Inspection Staff.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the certified Final Forest Conservation Plan.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a) Record a Category I Conservation Easement over all areas of forest retention, forest planting, environmental buffers, and cemetery area as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
 - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - c) Install the permanent conservation easement fencing, including an opening for pedestrian access to the cemetery, along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d) Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the 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 FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff. 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.
 - e) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the variance mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.

5. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 41.5 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
6. The Category I Conservation Easement on the Property must include the following provisions, applying only to the area designated on the FCP for protection of the existing cemetery:
 - a) Clearing of plant material (such as brush, saplings, undergrowth, or non-woody vegetation), spreading of mulch within the cemetery area and placement of fencing or markers is permitted as needed to establish an attractive and recognizable burial ground.
 - b) Limited clearing of trees is permitted, subject to the approval of the Planning Director, to establish an attractive and recognizable burial ground and to place fencing or markers. The tree canopy should be maintained to facilitate the continued functioning of the Easement area as forest.
 - c) Placement of appropriate markers, monuments, or signage for the purposes of delineation, acknowledgment, and interpretation of the cemetery is permitted.
 - d) Placement of a fence or erection of a structural improvement for the purposes of delineation and acknowledgment of the cemetery is permitted, subject to the approval of the Planning Director.
 - e) Unpaved paths or trails consistent with the purpose of the Easement are permitted to allow access to the cemetery area.
7. At the time of Certified Forest Conservation Plan, revise the Forest Conservation worksheet to include 0.04 acres off-site disturbance.

SECTION 2: SITE DESCRIPTION

VICINITY

The Wildwood Manor Swim Club (Property) is located in Bethesda within a single-family neighborhood north of Grosvenor Lane east of Old Georgetown Road and west of Rockville Pike. Single-family houses lie to the south, west, and north of the Property. The Property abuts a nursing home to the east.



Figure 1 - Vicinity Map

PROPERTY DESCRIPTION

The 4.75-acre Property is developed on the east side with an existing swimming pool, pool house, and parking, with a grassy area next to the driveway entrance used for volleyball in the southwest corner. Hatherleigh Drive runs along the western boundary of the Property, with Cheshire Lane to the north. An intermittent stream runs along the western and northern sides of the Property. The stream buffer, located between the stream and the developed area on the western portion of the site, is largely forested. Wooded slopes rise west to east and north to south from the stream valley to the swimming pool and attendant facilities at the top of the hill. A cemetery is located within the wooded area to the west of the pool.

THE CEMETERY

During the course of this review, it was determined through historical and archaeological investigation that a cemetery exists on the Property. This cemetery was not previously included in the Montgomery County Burial Sites Inventory and has since been designated as the “Newman Family Cemetery (HP-359).” The burial ground might be associated with the family of Joseph Newman (1846-1907). As noted in the attached memorandum from M-NCPPC Historic Preservation Program staff (Attachment C), this cemetery might have been established after Mr. Newman and his wife purchased the property in 1872, or it might have already been in use as a cemetery prior to that time. Mr. and Mrs. Newman were African American, and the Property was once part of a larger parcel where people had been held in slavery. Descendants of the Newman family sold the property to Wildwood Manor Swim Club in 1959 (Montgomery County Land Records Book 2587, Page 167). The report from the archaeological investigation is attached (Attachment D).



Figure 2 – Subject Property

ASSOCIATED APPLICATIONS

Prior to submitting the subject Forest Conservation Plan, the Board of Appeals approved Case No. CBA-734 [S-125] on March 29, 2023 (Attachment E). The Board of Appeals approval modifies prior special exceptions granted to the Wildwood Manor Swimming Pool Association to permit the replacement of the existing swimming pool, expansion of the existing pavilion area, enlargement of the existing sports court area, and modification of the Hatherleigh Drive vehicular entrance. The subject Forest Conservation Plan is necessary to implement the Board of Appeals approval.

The subject Forest Conservation Plan was initially submitted with a concurrent Administrative Subdivision Application, designated No. 620230070. That Administrative Subdivision was withdrawn by the Applicant on July 25, 2023, based on coordination between the Applicant and the Department of Permitting Services, who determined that a subdivision was not required to implement the proposed renovation work. The current FCP is required as part of the Sediment and Erosion Control Permit process.

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The existing pool, building, and parking lot were constructed many decades ago with minor modifications completed in recent years. These facilities are in need of significant repair and restoration. The Project will remove and replace the existing 6-lane pool with a new 8-lane pool, remove and replace existing pavement, upgrade the parking lot and driveway, and refurbish the building. At the same time, the swim club facilities will be brought up to code for fire and rescue access, stormwater management, and ADA accessibility. Specific work associated with the pool renovation will be the subject of commercial building permits issued by the Department of Permitting Services and will not extend beyond the limits of disturbance approved through the subject Forest Conservation Plan.

Work associated with the pool renovation will disturb some of the trees and forest that have grown around the pool, however, most of the existing forest will be preserved and placed in a Category I Forest Conservation Easement to ensure its long-term protection.

The limits of disturbance associated with the proposed pool renovations do not intrude into the delineated cemetery area. The delineated cemetery area is 22 feet away from the proposed limits of disturbance associated with the pool renovation. As a result of the subject application, the cemetery will be protected within the proposed Category I Forest Conservation Easement, which prohibits disturbance of the soil and vegetation except as allowed under the terms of the easement agreement. In accordance with the Montgomery County Burial Sites Guidelines, the limits of the cemetery were reviewed and confirmed by the Planning Department's Compliance Review Archeologist.

The proposed conditions of approval associated with the subject Forest Conservation Plan will modify the standard Category I Forest Conservation Easement agreement language to allow treatments, such as fencing, placement of signs or markers, mulching, etc. to delineate and acknowledge the cemetery in the future. Any future treatment should be undertaken with the cooperation of the Applicant, descendants, and Montgomery County Planning, including Forest Inspectors, and Historic Preservation Program staff.

Including the cemetery within a Category I Forest Conservation Easement adds a substantially greater level of protection for the cemetery than would otherwise exist. In general, a property owner can obtain the authorization of the state's attorney for the county for the relocation of graves¹, after which the area could be redeveloped by the owner. In contrast, a Category I Forest Conservation Easement assures that the cemetery will be preserved in place in its current forested setting.

¹ No disturbance or relocation of graves is proposed as part of the Subject Application or as part of the proposed pool renovation project.

SECTION 4: FOREST CONSERVATION PLAN F20230180 FINDINGS AND ANALYSIS

FOREST CONSERVATION

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law (“FCL”) and the Montgomery County Planning Department’s Environmental Guidelines². As required by Chapter 22A, a Forest Conservation Plan was submitted with the Application. The tract area for the Property is 4.75 acres but off-site work totaling 0.04 acres is required to improve the connection to the Hatherleigh Drive and connect to the storm drain system. The Forest Conservation worksheet will be updated to reflect the final acreage of off-site disturbance as required on the Final Sediment and Erosion Control Plan. The updated tract area will not change the forest conservation mitigation required.

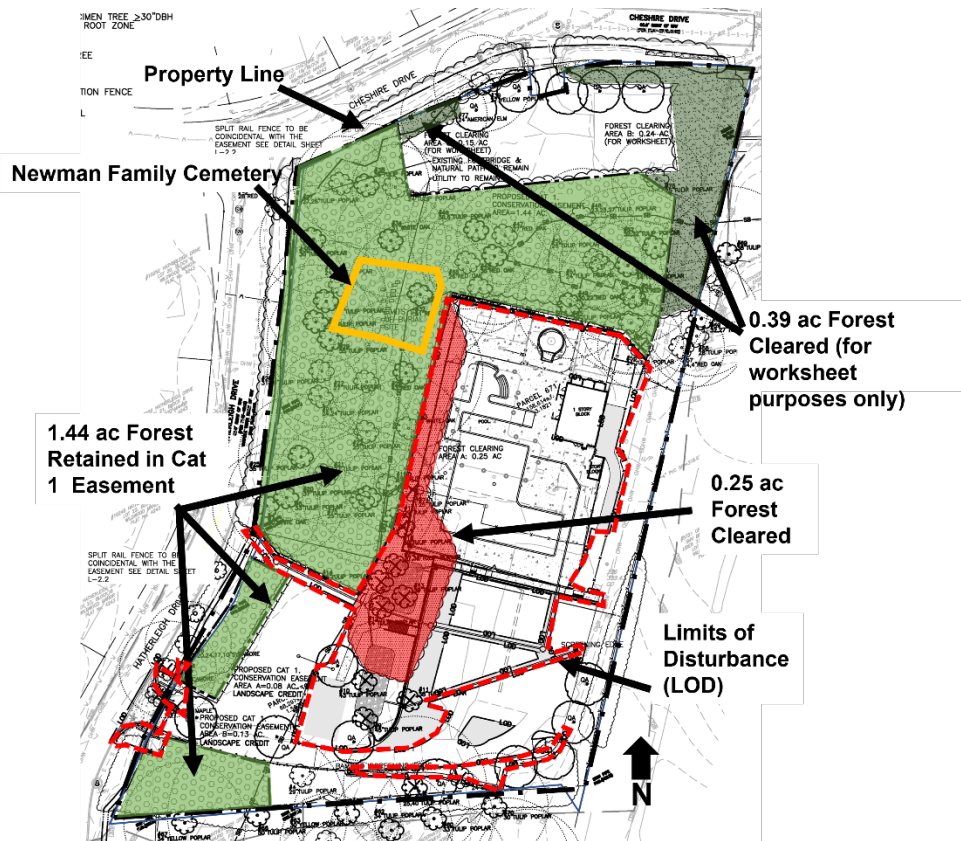


Figure 3 - Overall Forest Conservation Plan

The Subject Property is zoned R-90 and is classified as High Density Residential as defined in Section 22A-3 of the FCL and as specified in the Trees Technical Manual. The Subject Property contains 2.09 acres of existing forest. The Applicant proposes to remove 0.65 acres of forest and retain 1.44 acres. The retained forest will be protected within a Category I Forest Conservation Easement. Because the

² Based on the initial submittal date for the Subject Application, the Forest Conservation Plan is subject to the Forest Conservation Law in effect prior to April 3, 2023.

credit for forest retention above the conservation threshold (0.49 acres) exceeds the reforestation requirement (0.16 acres), no mitigation for forest removal is required as calculated in the Forest Conservation Worksheet.

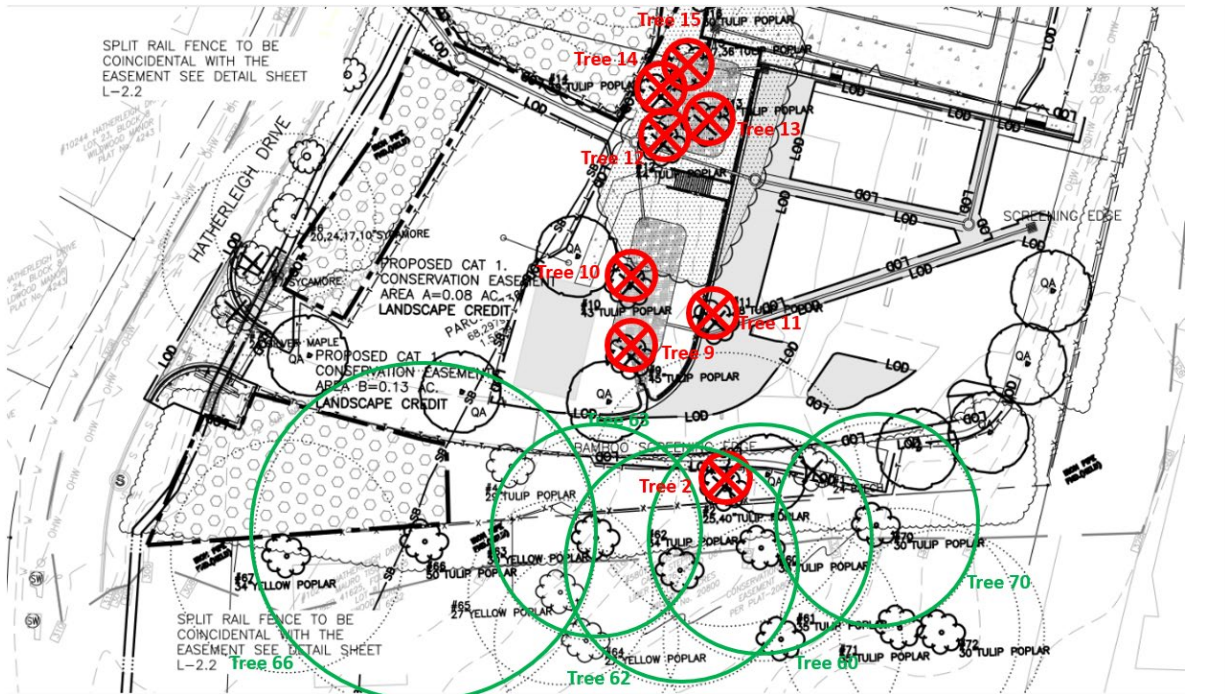


Figure 4 - Variance Trees to be removed in red, Variance trees to be saved in green.



Figure 5 - Variance Trees to be removed in red, Variance trees to be saved in green.

TREE VARIANCE REQUEST

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-21 (“Variance”). Otherwise such resources as defined under Section 22A-12(b)(3) must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 24 Protected Trees as identified in Table 1. No trees will be impacted or removed within the limits of the burial ground. The Variance request is for the removal of 9³ and impact to 15 Protected Trees for the construction of the new pool deck, pavement widening, driveway entrance and utilities. Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made for a Variance to be granted. Staff has

³ Five (5) trees identified for removal are located within the forest area, outside the limits of the burial ground. Mitigation for removal of Protected Trees within forest stands is not required because compensation is accounted for through the Forest Conservation Worksheet.

made the following determinations in the review of the Variance request and the proposed Forest Conservation Plan.

Table 1: Removed Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
2	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 in.	40%	Remove tree with mitigation
9	Tulip Poplar	<i>Liriodendron tulipifera</i>	45 in.	100%	Remove tree with mitigation
10	Tulip Poplar	<i>Liriodendron tulipifera</i>	43 in.	100%	Remove tree with mitigation
11	Tulip Poplar	<i>Liriodendron tulipifera</i>	38 in.	100%	Remove tree with mitigation
12	Tulip Poplar	<i>Liriodendron tulipifera</i>	40 in.	100%	Remove tree
13	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	100%	Remove tree
14	Tulip Poplar	<i>Liriodendron tulipifera</i>	33 in.	100%	Remove tree
15	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 in.	100%	Remove tree
16	Tulip Poplar	<i>Liriodendron tulipifera</i>	39 in.	100%	Remove tree

Table 2: Impacted Protected Trees

Tree ID	Common Name	Scientific Name	DBH	% Impact	Status
7	White Oak	<i>Quercus alba</i>	36 in.	6%	Save tree
8	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	5%	Save tree
20	Tulip Poplar	<i>Liriodendron tulipifera</i>	37 in.	27%	Save tree
28	Red Oak	<i>Quercus rubra</i>	43 in.	30%	Save tree
32	Red Oak	<i>Quercus rubra</i>	41 in.	13%	Save tree
45	Red Oak	<i>Quercus rubra</i>	38 in.	9%	Save tree
46	Tulip Poplar	<i>Liriodendron tulipifera</i>	38 in.	1%	Save tree
49	Red Oak	<i>Quercus rubra</i>	30 in.	29%	Save tree
53	Tulip Poplar	<i>Liriodendron tulipifera</i>	44 in.	2%	Save tree
54	Red Oak	<i>Quercus rubra</i>	43 in.	13%	Save tree
60	Tulip Poplar	<i>Liriodendron tulipifera</i>	33 in.	10%	Save tree
62	Tulip Poplar	<i>Liriodendron tulipifera</i>	34 in.	2%	Save tree
63	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	2%	Save tree
66	Tulip Poplar	<i>Liriodendron tulipifera</i>	50 in.	1%	Save tree
70	Tulip Poplar	<i>Liriodendron tulipifera</i>	30 in.	17%	Save tree

In accordance with Section 22A-21(a), the Applicant requested a Variance (Attachment B), and the Staff agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use for a community swim club of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship because the Property has been in service as a community pool for decades and needs to be repaired, refurbished, and brought up to code for Fire Department access and stormwater management.

The work is largely being restricted to the existing developed area of the Property, with limited expansion and disturbance to allow for construction and bringing the Property and facilities up to code. Over the years, large trees have grown up around the pool facilities, with CRZs extending into the construction area. Nine (9) of the variance trees will suffer sufficient CRZ impacts to necessitate their removal. Six (6) of these trees, numbers 9, 10, 12, 13, 14, and 15, lie within an area where stormwater management facilities are to be located. Stormwater facilities must be located where they are downslope of impervious surfaces to be treated, and outside of stream valley buffers. There are no good options for relocating these facilities to save additional variance trees. Tree number 11 is impacted by parking, stormwater facilities and grading of a steep slope. Tree number 16 is right next to the pool deck that must be replaced and is too close to that construction to be saved. Tree number

2 is impacted by pavement widening required for fire department access. The CRZ of 15 Protected Trees will be impacted, but will be retained. Of these, trees numbered 7 and 8 will be impacted by the required stormwater outfall. Trees 20, 28, 32, 45, 46, 49, 53 and 54 will be impacted by reconstruction of the pool deck. Trees 60, 62, 63, 66, and 70 will be impacted by the pavement widening required for emergency services access. Forest clearing and Protected Tree removal have been minimized, with the majority of the onsite forest and variance trees preserved and protected by a Category I Conservation Easement.

The locations of the existing facilities being refurbished and reconstructed, the proximity of large trees that have grown up around the pool facilities, and the requirements to meet code emergency services access and stormwater management significantly affects the ability of the project to avoid impacts to variance trees. Based on the existing conditions on the Subject Property, avoiding impacts to all variance trees would prevent the reasonable use of the Property, thereby creating an unwarranted hardship for the Applicant.

Tree Variance Findings

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

Granting the Variance to remove or disturb the Protected Trees listed in Tables 1 and 2 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site, as outlined in the preceding paragraphs. Impacts have been minimized but cannot be avoided. Therefore, 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 on existing site conditions and the requirements to meet development standards and County Code requirements. As noted above, the need to repair and refurbish existing facilities limits the Applicant's ability consider alternative designs that would avoid impacts to Protected Trees. The Applicant has designed the project to minimize the impacts to Protected Trees to the extent possible and maximize forest retention.

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 required improvements on the Property, and 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.

The Variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Trees being removed are not located within a stream buffer, wetland, or a special protection area. Mitigation trees will be planted on the Subject Property to replace the lost form and function of Protected Trees being removed.

Mitigation for Trees Subject to the Variance Provision

There are four (4) Protected Trees located outside of forest proposed for removal resulting in a total of 166 inches of DBH being removed. The FCP includes mitigation for Protected Trees numbers 9, 10, 11, and 12, to replace the form and function of these trees. Per Planning Board policy, these trees will be replaced 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 results in a total mitigation required of 41.5 inches. The Applicant is proposing to plant fourteen 3-inch caliper trees to meet this requirement.

Although 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 these trees. These mitigation trees must be overstory trees native to the Piedmont Region of Maryland and installed on the Subject Property outside of any rights-of-way and/or utility easements. This Application is subject to the Forest Conservation Law in effect prior to April 3, 2023 therefore no mitigation is required for Protected Trees removed within forest stands.

SECTION 5: COMMUNITY OUTREACH

Staff received email communications from current and former neighbors about the cemetery site independently of the Subject Application. A neighbor contacted the Maryland Historical Trust (MHT) about a cemetery they had heard about from a previous owner of their home. MHT put the neighbor in touch with Coalition to Protect Maryland Burial Sites who forwarded the contact to Montgomery Planning on April 23, 2023. Historic Preservation (HP) staff corresponded with interested current and former neighbors in April and May 2023, independent of any discussion of proposed pool renovations. HP staff met virtually with the neighbor via Teams on April 28, 2023. The meeting and correspondence focused on collecting neighbor memories of hearing about a “slave cemetery” on the Subject Property, and possibly seeing what appeared to be possible grave markers on the south side of the pool complex after it was built approximately 60 years ago. Historical maps and archaeological investigation showed that the family cemetery was located in the forested area to the west of the existing swimming pool. No additional communications about the pool renovations have been received.

SECTION 6: CONCLUSION

As conditioned, Forest Conservation Plan No. F20230180 satisfies the requirements of Chapter 22A of the Montgomery County Forest Conservation Law in effect prior to April 3, 2023, and Staff recommends approval with the conditions specified at the beginning of this report. No disturbance is proposed within the limits of the Newman Cemetery. The retained forest and Newman Cemetery will be protected by a modified Forest Conservation Category I Easement that allows for the maintenance and function of the cemetery while providing protection from disturbance.

ATTACHMENTS

Attachment A: Forest Conservation Plan

Attachment B: Variance Request

Attachment C: Memorandum from Historic Preservation

Attachment D: Archaeological Study

Attachment E: Board of Appeals Resolution CBA-734