

Montgomery Planning
AXCOBAR TREE EXPERTS
CONDITIONAL USE NO. CU202402
FOREST CONSERVATION PLAN NO. F20230310

Description

Melvin Alfaro, (Axcobar Tree Experts) seeks a Conditional Use approval to operate a Landscape Contractor pursuant to Montgomery County Zoning Ordinance Sections 59-7.3.1.E (General Conditions) and 59.3.5.5 (Specific Conditions) and Forest Conservation Plan Amendment .

No. CU202402 & F20230310

Completed: 10-20-2023

MCPB
Item No. 4
11-02-2023

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Floor 14
Wheaton, MD 20902

Planning Staff

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LOCATION/ADDRESS

20108 Zion Road, Gaithersburg 20882

MASTER PLAN

2005 Olney Master Plan

ZONE

R-200

PROPERTY SIZE

2.01 Acres

APPLICANT

Melvin Alfaro

ACCEPTANCE DATE

07-10-2023

REVIEW BASIS

Chapter 59 and Chapter 22A

HEARING EXAMINER PUBLIC HEARING

11-20-2023

Summary:

- Application for a Landscape Contractor business in the R-200 zone.
- Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.
 - Hearing Examiner Hearing is scheduled on November 20, 2023
- Staff recommends approval of the Forest Conservation Plan with conditions.
- The Conditional use conforms to the use standards in Sec. 59.7.3.1 (Conditional Use) of the Montgomery County Zoning Ordinance.
- Staff has not received any public correspondence as of the date of this Staff Report.
- The proposed use is consistent with the 2005 *Olney Master Plan*.
- The Project complies with Guidelines for Environmental Management of Development in Montgomery County and Chapter 22A, as conditioned.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE NO. CU202402

Staff recommends approval of Conditional Use No. 202402 to operate a Landscape Contractor business subject to the following conditions:

- 1) Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use site plan and landscaping plan, as included in the Application.
- 2) The hours of operation are limited to 6:30 AM until 7:00 PM Monday through Friday and 9 AM to 3 PM on Sundays. (excluding emergency situations (e.g. a tree fell in the Conditional Use area, or across the driveway, etc.)).
- 3) The maximum number of employees onsite is limited to 19.
- 4) No non-employees shall be on-site at any time.
- 5) The trucks, skid-steers, trailers, equipment associated with the Landscape Contractor use may be stored on the property; however, the equipment stored on-site may not be used within the Conditional Use area, except in emergency situations (e.g. a tree fell in the Conditional Use area, or across the driveway, etc.). All truck, equipment, and small engine maintenance must be performed off-site at a commercial facility.
- 6) The Applicant must not allow on-site commercial trucks or other vehicles that use engine brakes or "jake brakes".
- 7) The Applicant must comply with the approved Forest Conservation Plan for the Subject Property.
- 8) Within three (3) months of the approval of the Conditional Use, the Applicant must obtain a written lease agreement or license to use the restroom facilities of the existing house on the Property for its employees for so long as the use exists, unless a separate facility is provided.

FOREST CONSERVATION PLAN F20230310

Staff recommends Approval of the Preliminary/Final Forest Conservation Plan No. F20230310 with 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 approved 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 and environmental buffers 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 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.
 - 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 0.48 acres of new forest planting and for the landscape trees, mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
5. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP, 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.
6. 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 16 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.

SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

BACKGROUND

The Applicant purchased the property in November of 2019 and began operating his tree care company at the location. In November of 2020 the Applicant received a Civil Citation failure to obtain a Conditional Use Approval to operate a Landscape Contractor (59.7.3.1).

Subsequently, the Applicant applied to the Hearing Examiner's office. The Application was accepted for filing on July 10, 2023, pursuant to Section 59.7.3.1 of the Zoning Ordinance. The Applicant, Melvin Alfaro (Axcobar Tree Services), has requested approval of a conditional use to allow the operation of a landscape contractor business in the R-200 zone (Project).

The property has always been rural in nature and zoning classification. The initial zoning classification for the properties in 1958 was R-R that was for 20,000 square foot lot sizes. The 1967 *Olney Master Plan* rezoned the properties to R-A, which was 2-acre lot sizes. The 1980 *Olney Master Plan* changed the area from R-A to the current R-200 zoning.

VICINITY/NEIGHBORHOOD

The property located at 20108 Zion Road, Gaithersburg, Maryland consists of 2.01 acres and is two unplatted parcels (parcel 910 and Parcel 980 Tax Map #HU23) (Property or Subject Property). The land is improved with a single-family residential structure and a gravel contractor's area.

For the purpose of determining the compatibility of the Project, it is necessary to delineate and characterize the surrounding neighborhood. The Applicant has offered a proposed definition of the neighborhood to include the area most likely to be affected by the Project, which includes lots generally located within 1,200 feet of the Property (Figure 4). Staff concurs and accepts this proposed definition of the neighborhood.

The surrounding neighborhood consists of rural residential, public utility and institutional (churches) on lots within a 1,200-foot radius. The surrounding area is predominantly unimproved farmland, a golf course (Blue Mash), M-NCPPC parkland, Blue Mash Nature Trail (next to the closed, former county landfill), churches, and semi-wooded parcels with some single-family residential dwellings all in the AR and R-200 zones. To the west is Pepco property, right-of-way and power lines. To the south is a vacant, developed lot and to the east is Zion Road, with a large open field and farm across Zion Road. Immediately to the north is a single-family residence.

Existing Conditional Uses in the surrounding neighborhood include:

- BA-1819 (from 1965) & 1820 for Pepco at and around 20300 Zion Road, Brookeville (approx. 35 acres). The approvals include public utility buildings and structures, Substation, and overhead power lines, all of which are to the north and west of subject property.

- S-717 (CBA 867, CBA 2046, S-1187) for current “Our House” operations (former Melwood Farm from 1966 approval)(a non-profit residential training program) at 4615 Brookeville Road and 19715 Zion Road on over 139 acres.

- BAS 254 and 254-A- from M-NCPPC property at 5130 Brookeville Road, Brookeville related to Mt Zion local park consisting of 10.7 acres.

While there are three other conditional uses approved within the neighborhood, none of them are commercial uses or landscape contractors, therefore approving one would not oversaturate the area.

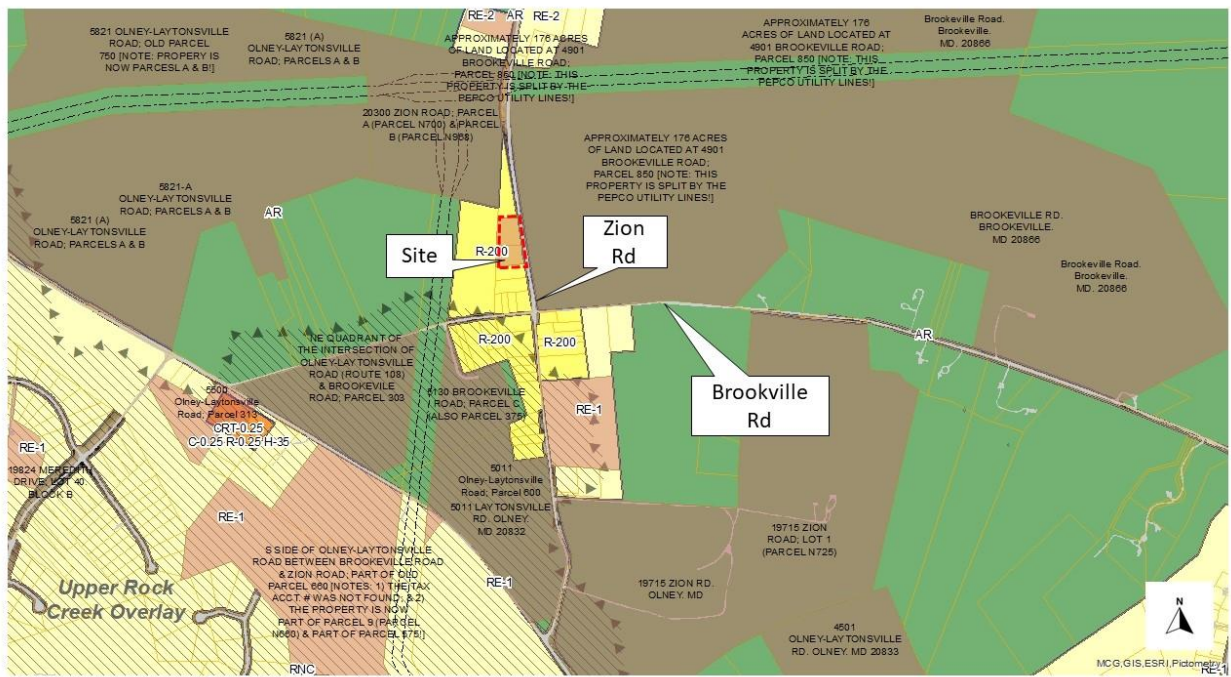


Figure 1: Zoning Map of Subject Property

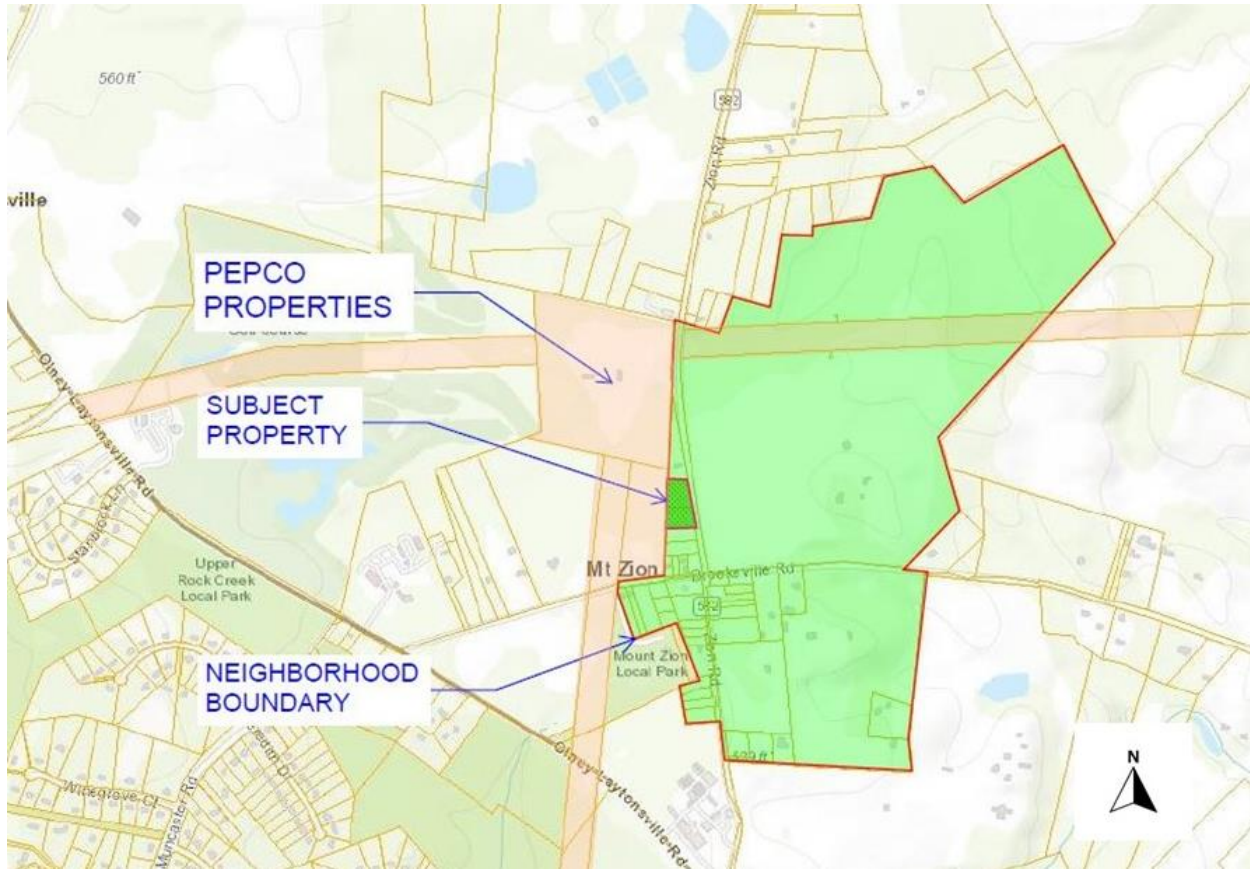


Figure 2: Applicant's Defined Neighborhood

PROPERTY DESCRIPTION

The Property is improved with a single-family residential structure and a gravel contractor's area and is generally flat with a slight uphill slope from Zion Road. The Property is mostly open with approximately 0.81 acres of forest onsite. There are no existing streams or wetlands onsite. There are no known rare, threatened, or endangered species known to exist on this Property.

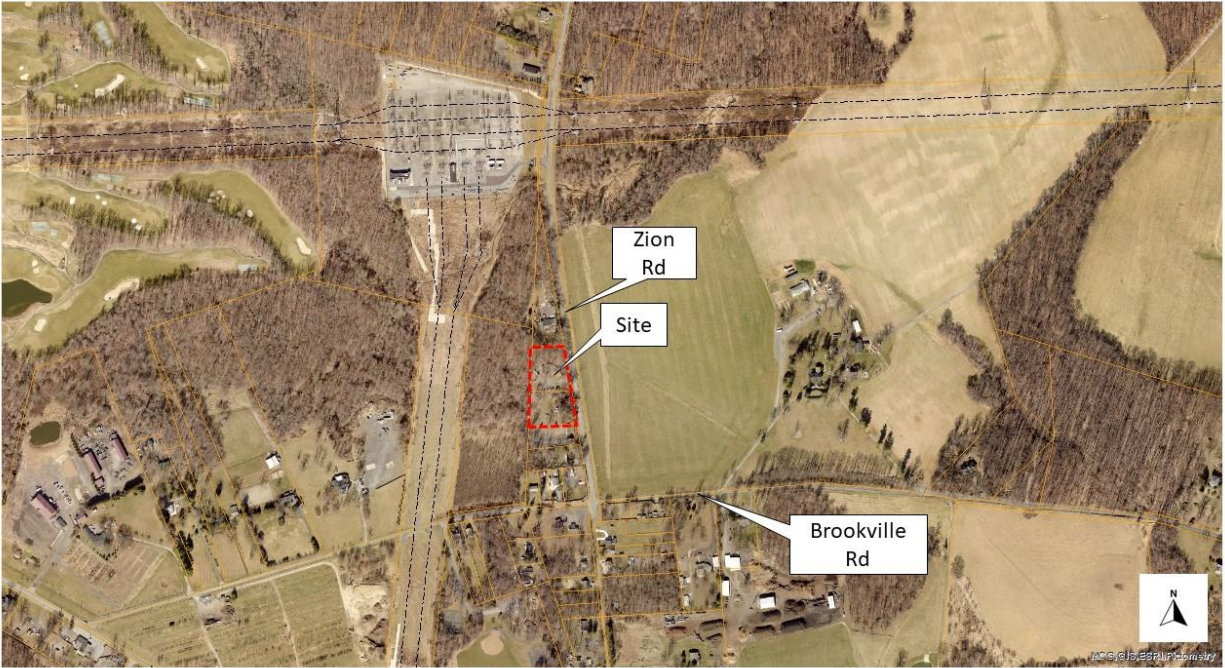


Figure 3: Aerial View of Vicinity near intersection of Brookville Road and Zion Road

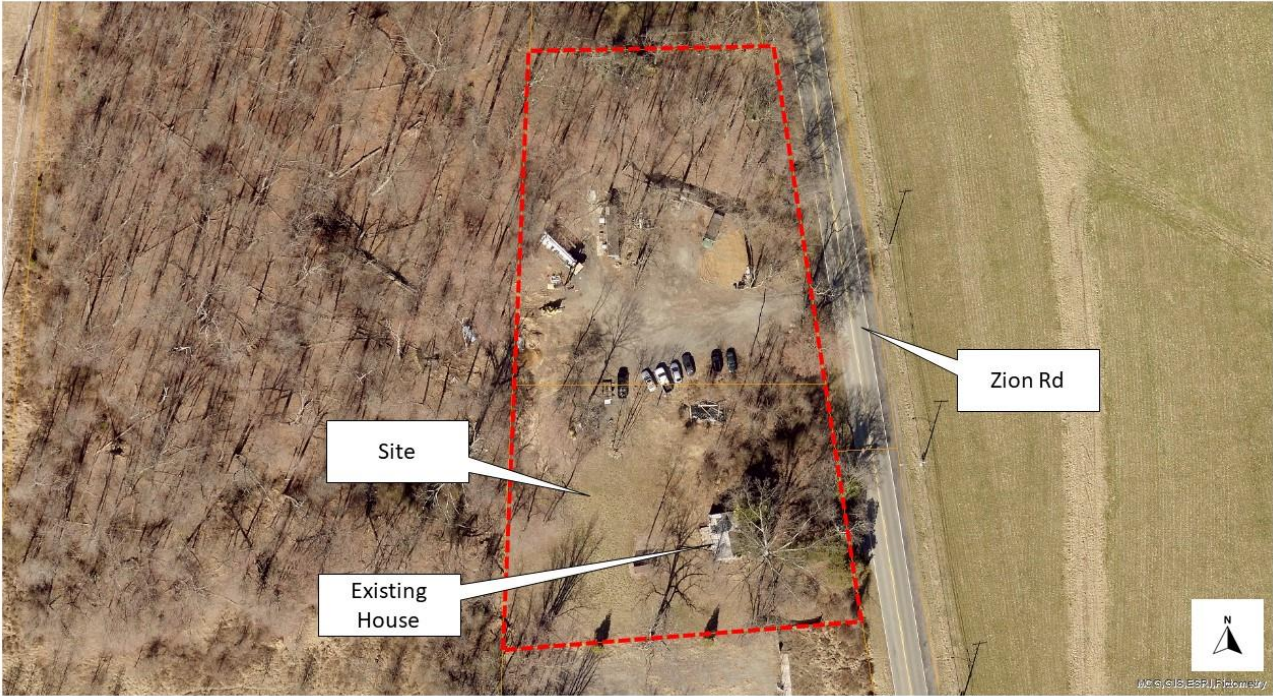


Figure 4: Aerial View Of Subject Property

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

Conditional Use Area

The Conditional Use area proposed for this Application is the entire 2.01 acres of the Property.

Operations

Axcobar is a business that provides tree services including:

- Tree cut down / removal
- Stump grinding
- Wood removal
- Yard cleaning
- Lot clearing
- Storm damage service
- Emergency tree removal / assistance

Axcobar's hours of operation will generally be from 6:30 AM until 7:00 PM Monday through Friday (although it will generally finish earlier during winter hours due to need for work to be done during sunlight hours) and 9 AM to 3 PM on Sundays.

The Applicant will have no retail sales or retail nursery operation, so customers will not visit the Site. Therefore, there will be little activity on-site during most of the day since team members will be performing tree care work at off-site locations. Occasionally a manager will remain or return to the property during the day for a task. Staff on rare occasions also may return during the day to exchange or pick up a piece of equipment or vehicle. The only exceptions to these hours/days of operations are emergency tree services.

Buildings

There is one vacant single-family building on site that pre-dated Mr. Alfaro's purchase of the Property. Said building is located on Parcel P980, with an address of 20108 Zion Road. The structure was approved for 768 square feet and will be renovated or rebuilt pursuant to County review and approval. Said structure will serve as a residence and emergency bathroom for Axcobar staff and allow for additional screening from offsite properties. No other new buildings are proposed.

Staffing

The Conditional Use proposes a total of up to 19 on-site employees. The breakdown of the requested-on site employees include:

- 4 Owner and Managers

- 15 Field Team Members (it is less during slower time periods-such as winter)

Vehicles and Equipment

Axcobar has a fleet of fourteen (14) current vehicles. The vehicles include nine work trucks with only two of said trucks being over 26,000 pounds (one being a crane truck only used for exceptionally large jobs and/or trees), the other seven (7) being under 26,000 pounds and the remaining five (5) Axcobar vehicles being four (4) small pickup trucks and one (1) sedan car.

Additionally, the Applicant would like one (1) additional vehicle to plan for minor future growth.

Thus, requesting for a total of fifteen (15) vehicles.

In addition, the Applicant will have woodchippers, loaders, trailers, stump grinders and other similar equipment that support the tree care operations. The vehicles and tree care equipment will be stored overnight in the parking areas designated on the Site Plan.

Access and Parking

The Property has frontage only on Zion Road. The existing Parcel P925 will be utilized for the Conditional Use. The entrance onto Parcel P980 with the residential structure will be utilized for the residential use. The applicant has no need or plans to modify the entrance.

Parking will be provided on the properties in multiple exterior locations as shown on the Site Plan drawing. The residential parking is located on a separate driveway and is not shared with the Conditional Use parking.

The residential portion of the site has two (2) spaces in the private driveway and the Conditional Use will have twenty-seven (27) spaces.

In terms of access Axcobar utilizes employee carpooling, particularly for the field crews, with two or more passengers arriving per vehicle. Consequently, the Applicant expects a maximum of seven (7) or eight (8) vehicles will travel to the Site each morning and exit each night with staff and management.

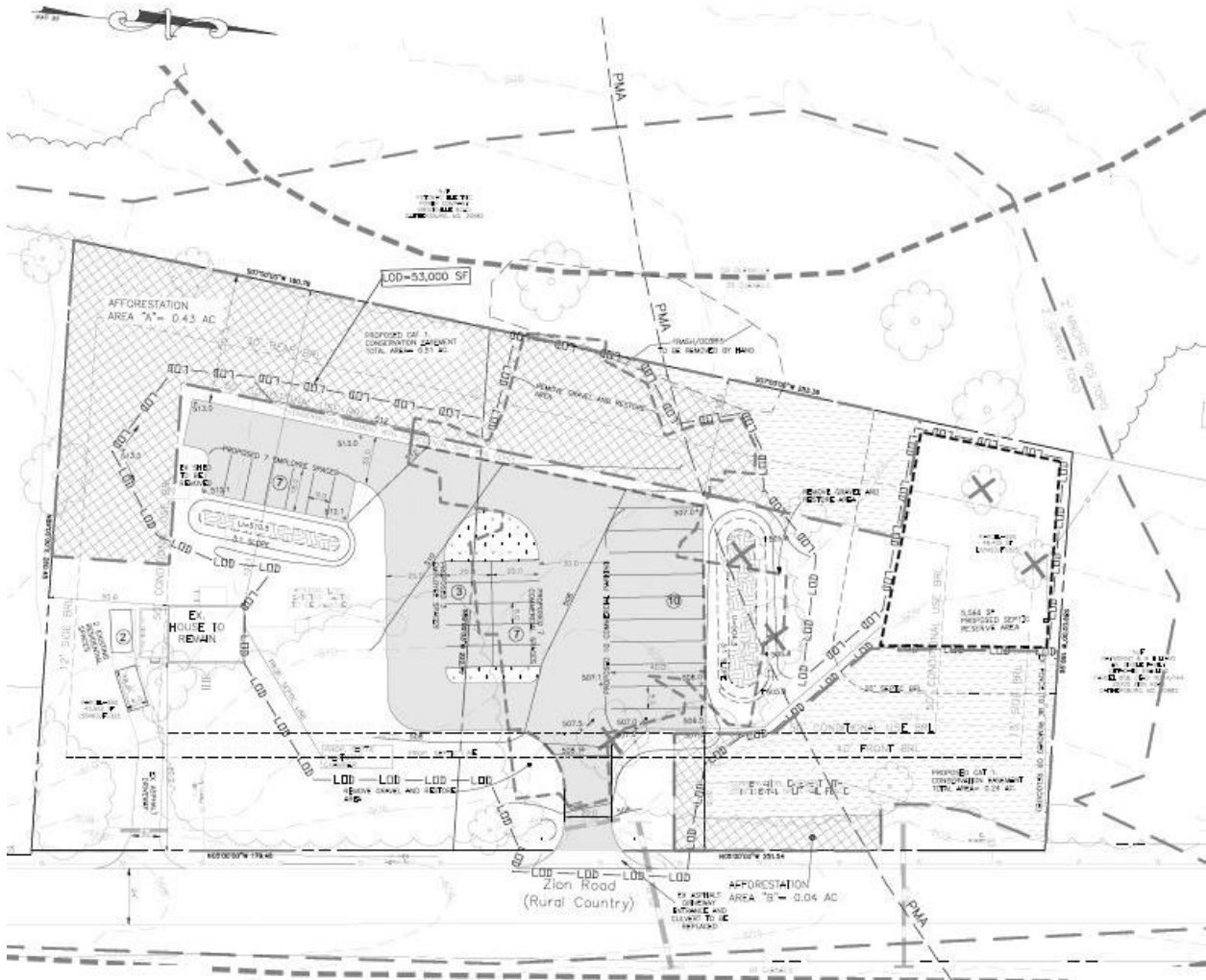


Figure 5: Conditional Use Area Detailed View

Preliminary Plan

No Preliminary Plan of Subdivision is required for this Conditional Use because no new building permits are required as part of this application.

FOREST CONSERVATION

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved for this Property on October 24, 2022, #420230060. There are no streams or wetlands on the Property. The Property is located within the Hawlings River Watershed Class IV-P watershed. No rare, threatened, or endangered species were observed onsite.

With this Application, the Applicant submitted a Preliminary/Final Forest Conservation Plan (FFCP) #F20230310. The applicant is proposing to meet all forest conservation requirements onsite (as discussed below in Section 5).

SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has not received any correspondence on this application.

SECTION 5: ANALYSIS AND FINDINGS

CONDITIONAL USE NO. CU202402

1. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:

a) satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.

This finding is satisfied, there are no previous approvals.

b) satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

i. 59.3.5.5.B Use Standards

Where Landscape Contractor is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

1) In the Agricultural, Rural Residential, and Residential Detached zones the minimum lot area is 2 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory or operation.

The finding is satisfied. The Project is located in the R-200 zone and is located on a 2.12-acre piece of land.

2) Building and parking setbacks, including loading areas and other site operations, are a minimum of 50 feet from any lot line.

The finding is satisfied. As shown on the Applicant's site plan and discussed above in Section 2 of this report.

- 3) The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on-site must be limited by the Hearing Examiner to avoid an adverse impact on abutting uses. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.**

This finding is satisfied. As shown on the Applicant's site plan the Project satisfies all applicable parking and vehicle storage requirements for the use and the zone. The Applicant has shown on the Conditional Use plan that an adequate number of parking spots has been provided. Staff concludes that adequate parking has been provided onsite.

- 4) Sale of plant materials, garden supplies, or equipment is prohibited unless the contracting business is associated with a Nursery (Retail) or Nursery (Wholesale).**

This finding is satisfied. No retail or wholesale operations are proposed.

- 5) The Hearing Examiner may regulate hours of operation and other on-site operations to avoid adverse impact on abutting uses.**

Acknowledged by the Applicant. The proposed operations are 6:30 AM until 7:00 PM. Monday through Friday (although it will generally finish earlier during winter hours due to need for work to be done during sunlight hours) and 9am to 3pm on Sundays. The hours during which Axcobar Tree experts will be active are consistent with the agricultural activities conducted on farms surrounding the subject property and typical Landscape Contractor operations and are designed to avoid adverse impact on users abutting the Property. Employees typically arrive and depart in the morning prior to peak traffic hours and have staggered return and exit times in the afternoon/evening. In addition, Axcobar's tree operations occur off-site, thus reducing impact on abutting properties.

ii. **Development Standards**

The following table displays the relevant R-200 development standards for the Property. The Conditional Use Application is applicable to 2.01 acres of the Property as shown on the site plan. The Project complies with the following development standards associated with the R-200 zone and a landscape contractor.

Table 1 – Development Standards

Development Standard	Permitted/Required	Provided
Minimum Net Lot Area ¹	2 acres	2.01 acres
Minimum Lot Width at Front Building Line	100 ft.	331 ft.
Minimum Lot with at Front Lot Line	25 ft.	431 ft.
Maximum Density	1 dwelling unit per 20,000 sf.	1 dwelling unit
Maximum Coverage	25%	1.3%
Minimum Setback from all Lot Lines ²	50 ft.	80.2 ft. front, 50.8 ft. side, 137.1 ft. rear
Maximum Height, Principal Building	50 ft.	<50 ft.
Maximum Height, Accessory Structure	35 ft.	NA
Vehicle Parking Spaces Required	27 spaces ³ 0.5 per employee 1.0 per commercial vehicle	29 spaces (0.5 * 19 = 9.5 required) 10 provided (1.0 * 15 = 15 required) 17 provided

¹ Per 59.3.5.5.B.b.1 minimum lot area of two acres is required for a landscape contractor.

² 59.3.5.5.B.b.2 building, parking, operations setbacks for a landscape contractor are a minimum of 50 feet from any lot line.

³ Per 59.6.2.4.B required parking for a landscape contractor employees and commercial vehicles.

	2 per single-family detached house	2 provided 17 + 10 + 2 = 29
Bicycle Parking Space Required	0	0

iii. **General Requirements**

(1) Access

The proposed area of conditional use has frontage only on Zion Road. The existing Parcel P925 will be utilized for the Conditional Use. The entrance onto Parcel P980 with the residential structure will be utilized for the residential use. The applicant has no need or plans to modify the entrance.

(2) Parking, Queuing and Loading

The Applicant’s Landscape Plan must demonstrate how the proposed development meets the requirements under Sections 6.2.9, 6.4.3 and 6.5.2 of the Montgomery County Zoning Ordinance for parking lots, landscaping requirements and screening. The following paragraphs discuss the applicability of these sections.

Section 6.2.9.C. Parking Lot Requirements for 10 or More Spaces

There is one parking lot comprised of 27 parking spaces for employees’ personal vehicles, work trucks, trailers and equipment. The Parking Facility Limit of 17,683 square feet as shown on the submitted Landscape Plan.

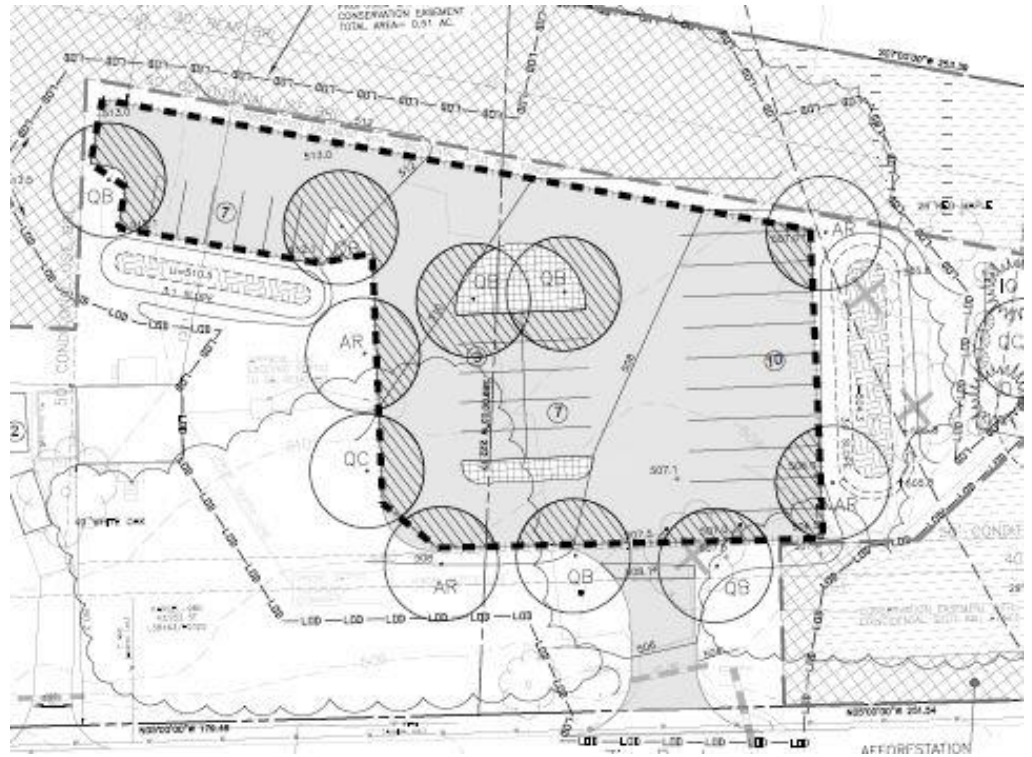


Figure 6: Parking Area and Tree Canopy Coverage

1. Landscaped Area
 - a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5 percent of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.
 - b. A maximum of 20 parking spaces may be located between islands.
 - c. A landscaped area may be used for a stormwater management ESD facility.

The current Application shows two landscaped islands of approximately 951 square feet (5.4%) located in the center of the parking area. Based on the Applicant's proposed Parking Facility Limit of 17,683 square feet, this parking island meets the 5% requirement of Section 6.2.9.C.1.

2. Tree Canopy

Each parking lot must maintain a minimum tree canopy of 25 percent coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.

The current Application shows that the tree canopy coverage under Section 6.2.9.C.2 (25%) are being met. The Applicant is proposing a canopy coverage of 25.4% of the parking area.

3. Perimeter Planting
 - a. The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:
 - i. Be a minimum of 10 feet wide;
 - ii. Contain a hedge, fence, or wall a minimum of 6 feet high;
 - iii. Have a canopy tree planted every 30 feet on center; and
 - iv. Have a minimum of 2 understory trees planted for every canopy tree.

Perimeter planting as shown on the landscaping plan meets the requirements under Section 6.2.9.C.3 (Figure 6).

Parking will be provided on the properties in multiple exterior locations as shown on the Site Plan drawing.

(3) Screening

Section 6.5.2.B specifies, in the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Section 6.5.2.B does not apply to this application because the Applicant is using an existing single-family detached house type.

(4) Signage

The Property does not currently include any signage identifying the use. The Applicant is not asking for any additional signage.

c) *substantially conforms with the recommendations of the applicable master plan;*

The Project is subject to the policies and recommendations contained in the 2005 Olney Master Plan and the 1993 Functional Master Plan for the Patuxent River Watershed.

The Property lies within the area covered by the 2005 *Olney Master Plan* (“Master Plan”). It is in the “Northern Olney” plan neighborhood and within the Hawlings River watershed, itself a subwatershed of the Patuxent River. Very broadly, the Master Plan supports agricultural preservation, watershed protection, and maintaining rural character in Northern Olney.

While there are no site-specific recommendations for the Subject Property, the property is within the rural community of Mt. Zion, which was established prior to the Civil War by free African Americans and is discussed on page 19 of the Master Plan. The Master Plan describes the rural communities as “an integral part of the rural heritage of Northern Olney. They are older settlements with well-known place names, and the people who live there have historical ties to the community.” The Master Plan describes the community as being “stable” and mentions that Mt. Zion “now includes some vacant lots that can be redeveloped under current zoning. ... The current zoning and land use policies in and around Mt. Zion are appropriate and should be retained.”

To understand the zoning and land use policies that were in place at the time of the 2005 Master Plan, one must return to the 1980 *Olney Master Plan* (“1980 Plan”), which discusses Mt. Zion on pages 72 through 76. The 1980 Plan described a need to retain some of the smaller lots (such as those currently in the R-200 zone, including the Subject Property) “to allow for natural expansion and to provide affordable building sites for residents” (p. 72). The 1980 Plan recommends maintaining the existing scale of development, with “new development consistent with the historical character and community lifestyle in rural settlements.” The 1980 Plan specifically recommends rehabilitation or replacement of dilapidated structures, which the Applicant intends to do with the existing uninhabitable structure on the Property. The 1980 Plan also recommends zoning strategies that would “facilitate the orderly expansion of rural communities and to allow the mix of residential lot sizes and commercial uses that characterize rural settlement.” (p. 74-75) A tree care company and rehabilitated house are both consistent with the historical character and community lifestyle of Mt. Zion and are within the zoning and land use policies that were in place at the time of the 2005 Olney Master Plan.

The Master Plan discourages commercial uses outside the Town Center, but the proposed tree service use is not the kind of commercial use that would be appropriate in the Town Center and is arguably more appropriate in the more rural area surrounding the Subject Property.

The Master Plan recommends minimizing negative impacts of conditional uses, especially with respect to nonresidential character, such as parking lot visibility; the size, height, and

scale of buildings; and intrusive lighting. Excessive imperviousness levels are also discouraged. The Application proposes a parking lot which takes up a considerable amount of space on the Property and will be creating a large area of impervious surfaces. The Applicant has proposed a few large trees between Zion Road and the parking lot, but more understory plantings or other screening will be necessary to screen the lot from the road. A mixture of species should be used to ensure screening in all seasons. The proposed afforestation should help on the northern part of the parking lot, but more should be done on both sides of the proposed entry drive and the southern part of the lot to ensure that the parking lot and vehicles are minimally visible. The impervious surfaces should be minimized to the extent possible and should remain within the established guidelines for the area, especially the part of the property within the Patuxent Primary Management Area (PMA).

The Master Plan provides numerous recommendations aimed at protecting the regional drinking water supply in the Triadelphia and Howard T. Duckett reservoirs, the latter of which is downstream from the Hawlings River. The Master Plan recommends habitat protection, forest protection, and wetland restoration and protection throughout the plan area and particularly in the Hawlings and Patuxent River watersheds. However, there are no site-specific environmental recommendations on the Subject Property. But general environmental recommendations apply on the site, and in particular any requirements of the Patuxent PMA. The Master Plan encourages new developments to use environmentally sensitive development techniques to minimize impervious surfaces and control run-off. The environmental planner will address the environmental review of the site. The environmental planner will review the requirements and recommendations of the 1993 Functional Master Plan for the Patuxent River Watershed.

Part of the property will be retained for its former use as a residential property with a single-family detached house and should not detract from the rural character of the area. The proposed forest retention and planting and the suggested additional screening should help protect the character of the existing community. As long as impervious surfaces are minimized and screening is adequate, the Application substantially conforms with the recommendations of the Master Plan.

d) ***is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan; The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood.***

This finding is satisfied. The character of the surrounding area is predominantly rural residential and agricultural uses. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan because the use

is sufficiently located away from any sensitive land uses or dwelling units.

- e) will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;**

This finding is satisfied. As discussed in Section III of this report, the Project substantially conforms to the polices and recommendations contained in the Master Plan. There are no residential areas that would be adversely affected or altered by the Project because the Project is sufficiently buffered (Afforestation and landscaping) and located away (~200 ft) from existing residential uses to the north and south. Furthermore, as discussed above in Section II, three active conditional use/special exceptions currently exist in the vicinity, two of which are public uses Pepco and Mt. Zion Local Park. The third use is for a group vocational home and is not commercial in nature. As such, there would not be an overconcentration of conditional uses in the area.

- f) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:**
- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or**
 - ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and**

A Preliminary Plan of Subdivision is not required, and Staff has determined that there are adequate public services and facilities to serve the proposed use as described below.

(1) Transportation

Adequate Public Facilities Review (APF) and Local Area Transportation Review (LATR)

The Subject Property is located on Zion Road, 500 feet north of Brookeville Road. Zion Road is classified as a Country Road on the portion of which the Subject Property is located. In the 2023 *Rustic Roads Functional Master Plan*, Zion Road is designated as a *Rustic Road* starting at Riggs Road, 1.2 miles north of the Subject Property.

Consistent with the 2021 *Complete Streets Design Guide* and 2018 *Bicycle Master Plan* recommendations for bicycle and pedestrian facilities, bikeable shoulders are suggested for Zion Road between Brookeville Road (south) and Riggs Road (north). However, the Subject Property is exempt from providing pedestrian and bicycle improvements based on Section 49-33(d)(A) of the County Code. According to the Code, residential properties in Road Code Areas identified as RURAL and totaling more than 25,000 square feet are exempted from constructing sidewalks or any master-planned facilities.

The Subject Property is located in a Rural Road Code Area, is approximately 2.01 acres (~87,000 square feet) and is zoned R-200. The Subject Property is exempted from constructing any bicycle or pedestrian frontage improvements or infrastructure based on the latter. No additional right-of-way dedication is required as the full right-of-way has been achieved.

Local Area Transportation Review

Currently, the Subject Property is staffed by a maximum of 16 employees at any one time. The Applicant anticipates an additional three staff members in the future for a total of 19 employees. The Subject Property contains no retail sales operations, negating the need for customers to visit the Site. Additionally, all operations occur at offsite locations during the hours mentioned above. Given the negligible weekday and partial weekend activities expected to happen, the Applicant has provided a Transportation Exemption Statement (“TES”).

Based on the trip generation table provided below, the Application generates fewer than 50 new person trips in the morning and evening peak hours. As a result, the Application is not subject to completing a Transportation Impact Study (“TIS”).

Trip Generation						
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Staff	19	19	38	19	19	38
Total Trips			76			

*Based on the current number of employees operating from the Site

Table 2: Trip Generation for the Proposed Conditional Use

(2) Other Public Facilities

The Property is located within water and sewer categories W-6 and S-6 and is serviced by private well and septic.

The existing residential structure has an associated well and septic field and the facilities will be used as needed by employees. If the residential structure is leased for any reason a use agreement will need to be recorded.

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

g) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. **the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;**
- ii. **traffic, noise, odors, dust, illumination, or a lack of parking; or**
- iii. **the health, safety, or welfare of neighboring residents, residents, visitors, or employees.**

This finding is satisfied.

The inherent characteristics include:

- Vehicle and pedestrian trips to and from the Property;
- Parking for employees;
- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors associated with trucks and equipment;

- Work yard area; and
- Lighting.

These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected. Surrounding residential uses are well-buffered from the area intended for the Conditional Use in distance, by existing and proposed landscape, and by forest conservation.

There are no non-inherent characteristics unique to the physical location, operation, or size of a proposed use.

- 2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.***

This finding is satisfied, it is located in the R-200 zone however no new buildings are to be constructed. *If the existing structure is renovated/rebuilt it will remain residential in character.*

- 3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.***

Acknowledged by the Applicant

- 4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.***

This finding is not applicable. The Applicant does not propose an agricultural conditional use. The Project is a conditional use application for a landscape contractor.

- 5. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:***

- a) Filling Station;***
- b) Light Vehicle Sales and Rental (Outdoor);***
- c) Swimming Pool (Community); and***
- d) the following Recreation and Entertainment Facility use: swimming pool, commercial.***

The finding is not applicable. The Project is a not a filling station, light vehicle sales and

rental (outdoor), swimming pool (community); or a swimming pool, commercial. The use is for a landscape contractor.

6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- a) Funeral Home; Undertaker;**
- b) Hotel, Motel;**
- c) Shooting Range (Outdoor);**
- d) Drive-Thru**
- e) Landfill, Incinerator, or Transfer Station; and**
- f) a Public Use Helipad, Heliport or a Public Use Helistop.**

This finding is not applicable. The Application is not for a funeral home, undertaker, hotel, motel, shooting range (outdoor), drive-thru, landfill, incinerator, transfer station, public use helipad, heliport or a public use helistop. The use is for a landscape contractor.

FOREST CONSERVATION PLAN NO. F20230310

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 is a request for a tree variance for impacts and removal of variance trees. The Forest Conservation Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

Natural Resource Inventory/Forest Stand Delineation Plan

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420230060 for this Property was approved on October 24, 2022. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is comprised of two properties, Parcel 104 and Parcel 617, totaling 37.61 acres. The Subject Property is located within the Hawlings River watershed, classified as a Use Class IV-P by the State of Maryland. The Subject Property contains 0.81 acres of forest. In addition, there are numerous specimen trees both on-site and adjacent to the Subject property that have a diameter breast height (“DHB”) of 30 inches or more. The Subject Property does not contain any streams, wetlands, floodplain, or stream valley buffer.

Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan No. F20230310 (“FFCP”) (Attachment A) for concurrent review with the development plan application for Conditional Use Plan No. CU202402. The Application 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-200 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 Net Tract Area for forest conservation purposes includes the 2.12 acre. There is a total of 0.81 acres of existing forest on the Subject Property with the Applicant proposing to remove 0.53 acres of forest. This results in a total afforestation/reforestation requirement of 0.48 acres within the same watershed/Priority Area or 0.75 acres outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement onsite.

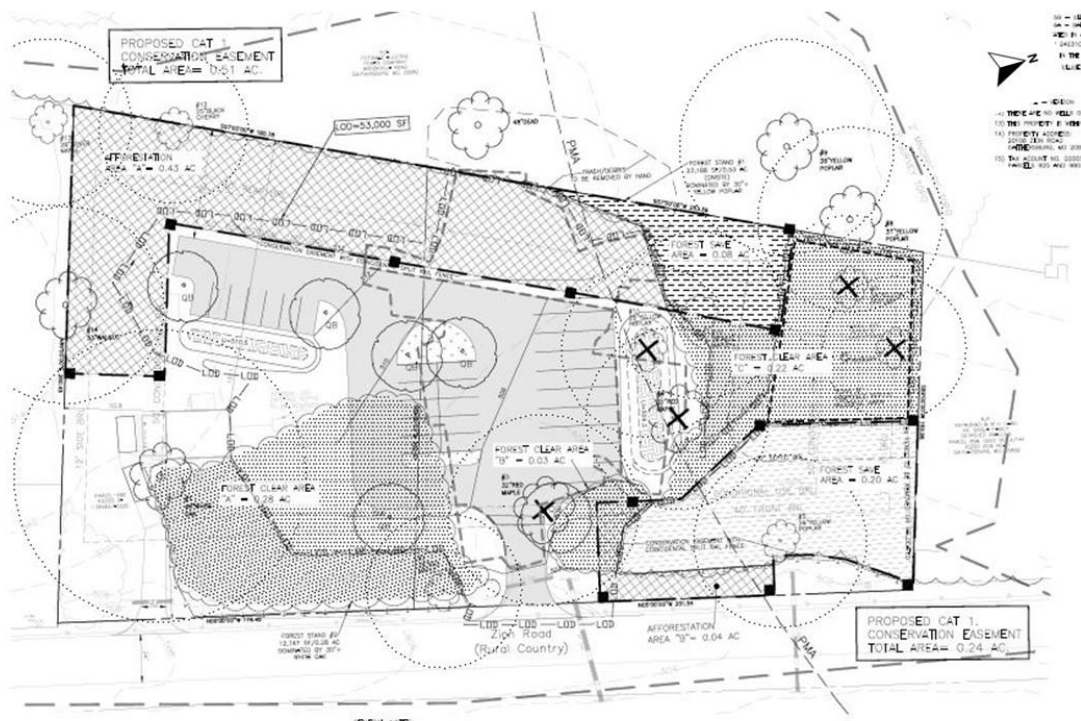


Figure 7: Forest Conservation

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 trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request

The Applicant submitted a variance request in a letter dated April 13, 2023 (Attachment B). The Applicant proposes to remove two (2) and impact four (4) 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 (Table 1).

In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Staff agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance. The Applicant has demonstrated that the denial of the Variance request would cause an unwarranted hardship because each of the existing variance trees lies within or very near existing infrastructure to be removed, grading due to topographic conditions, or proposed utilities. Staff has reviewed this Application and based on the existing conditions on the Subject Property and has determined that there is an unwarranted hardship.

Variance Findings

The following determinations are 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.*

Granting the Variance to remove Trees 3 & 4 and impact Trees 1, 8, 9 and 14 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site. These impacts 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.

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 proposed improvements, 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. Two of the Protected Trees being impacted will help to stabilize the stream buffer and become part of the stream buffer reforestation area.

Table 2: Variance Trees

Specimen Tree Summary							
Tree #	Species (ScientificName)	Species (CommonName)	D.B.H (inches)	Percent of CRZ Impacted (SF)	Tree Condition	Comments	Disposition
1	QUERCUSALBA	WHITEOAK	49	17%	GOOD		Impacts only
3	ACERRUBRUM	REDMAPLE	32	98%	POOR	Utility installation and gravel removal	Removal
4	ACERRUBRUM	REDMAPLE	31	71%	FAIR	ESD installation	Removal
8	LIRIODENDRONTULIPIFERA	YELLOWPOPLAR	31	27%	GOOD	OFFSITE	Impacts only
9	LIRIODENDRONTULIPIFERA	YELLOWPOPLAR	36	1%	GOOD	OFFSITE	Impacts only
14	JUGLANS	WALNUT	33	10%	GOOD	Grading	Impacts only

Variance Mitigation

Staff recommends that mitigation for the loss of the specimen trees be provided onsite. Mitigation should be at a rate that approximates the form and function of the tree removed. Staff recommends that replacement occur at a ratio of approximately 1-inch caliper for every 4-inch DBH removed (63 x .25 = 16). Mitigation for the removal of the two (2) trees must be provided in the form of six (6) native canopy trees with a minimum size of three (3) inches in diameter at breast height. While these trees will not be as large as the tree lost, they will provide some immediate canopy and will help augment the functions lost.

SECTION 6: CONCLUSION

The proposed conditional use complies with the general conditions and standards of a Landscape Contractor in the R-200 Zone, subject to the recommended conditions of approval. The proposed use

is consistent with the goals and recommendations of the 2005 *Olney Master Plan* and the 2018 *Bicycle Master Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.

The FCP meets all requirements of Chapter 22A (Forest Conservation Law) and as conditioned Staff recommends approval if a Conditional Use is ultimately approved.

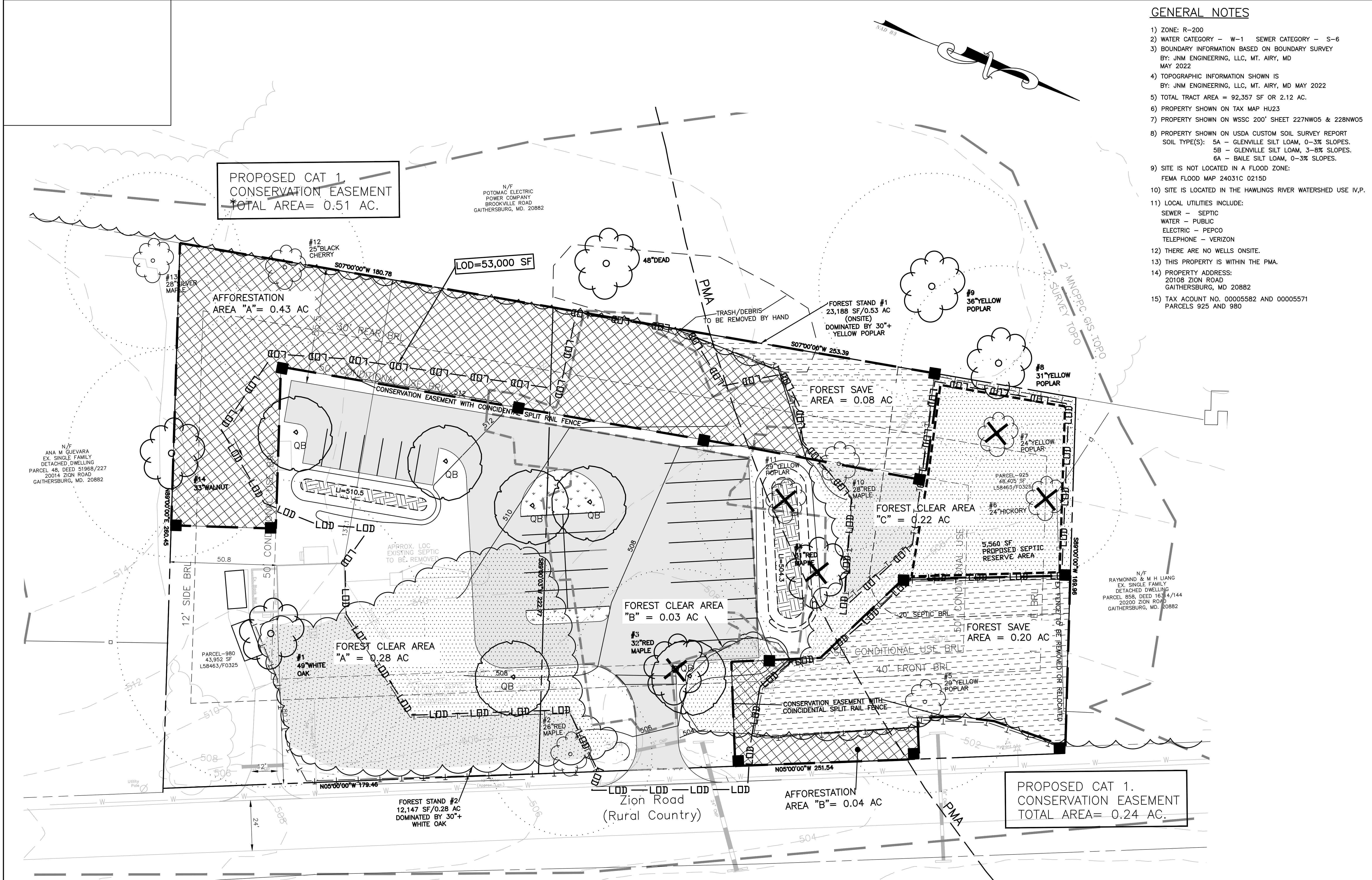
ATTACHMENTS

Attachment A: Forest Conservation Plan

Attachment B: Variance Tree Request

Attachment C: Conditional Use Plan and Statement of Justification

Attachment A: Forest Conservation Plan



GENERAL NOTES

- 1) ZONE: R-200
- 2) WATER CATEGORY - W-1 SEWER CATEGORY - S-6
- 3) BOUNDARY INFORMATION BASED ON BOUNDARY SURVEY BY: JNM ENGINEERING, LLC, MT. AIRY, MD MAY 2022
- 4) TOPOGRAPHIC INFORMATION SHOWN IS BY: JNM ENGINEERING, LLC, MT. AIRY, MD MAY 2022
- 5) TOTAL TRACT AREA = 92,357 SF OR 2.12 AC.
- 6) PROPERTY SHOWN ON TAX MAP HU23
- 7) PROPERTY SHOWN ON WSSC 200' SHEET 227NW05 & 228NW05
- 8) PROPERTY SHOWN ON USDA CUSTOM SOIL SURVEY REPORT SOIL TYPE(S): 5A - GLENVILLE SILT LOAM, 0-3% SLOPES. 5B - GLENVILLE SILT LOAM, 3-8% SLOPES. 6A - BAILE SILT LOAM, 0-3% SLOPES.
- 9) SITE IS NOT LOCATED IN A FLOOD ZONE: FEMA FLOOD MAP 24031C 0215D
- 10) SITE IS LOCATED IN THE HAWLINGS RIVER WATERSHED USE IV.P.
- 11) LOCAL UTILITIES INCLUDE:
SEWER - SEPTIC
WATER - PUBLIC
ELECTRIC - PEPCO
TELEPHONE - VERIZON
- 12) THERE ARE NO WELLS ONSITE.
- 13) THIS PROPERTY IS WITHIN THE PMA.
- 14) PROPERTY ADDRESS:
20108 ZION ROAD
GAITHERSBURG, MD 20882
- 15) TAX ACCOUNT NO. 00005582 AND 00005571 PARCELS 925 AND 980

LEGEND

- EXISTING TREE ≤24"
- #1 26" WHITE PINE EXISTING SIGNIFICANT TREE ≥24" WITH TAG NUMBER AND CRZ
- #1 32" WHITE PINE EXISTING SPECIMEN TREE >30" DBH WITH TAG NUMBER AND CRZ
- EXISTING TREE TO BE REMOVED
- LIMITS OF SURVEY
- PROPOSED CONTOUR
- EX. CONTOUR
- PROPERTY BOUNDARY
- NON-FOREST CANOPY
- FOREST TREE LINE
- BUILDING RESTRICTION LINE/CONDITIONAL USE SETBACK
- PMA BOUNDARY
- EX. GRAVEL TO BE REMOVED
- PROPOSED GRAVEL DRIVEWAY / PARKING
- PROPOSED LANDSCAPE INFILTRATION
- LIMIT OF DISTURBANCE
- PROPOSED LAWN
- EXISTING SEPTIC PUMP /TANK AND LINES
- PROPOSED SEPTIC PUMP /TANK AND LINES
- EXISTING WATERLINE
- SEPTIC RESERVE
- 20' SEPTIC BRL
- CATEGORY 1 CONSERVATION EASEMENT WITH SPLIT RAIL FENCING ALONG BOUNDARY OF EASEMENT
- AFFORESTATION AREA
- FOREST SAVE AREA
- FOREST CLEAR AREA
- FOREST CLEAR AREA FOR WORKSHEET PURPOSES ONLY
- TA PROPOSED CANOPY TREE FOR SPECIMEN TREE MITIGATION
- PERMANENT TREE EASEMENT SIGNAGE
- TREE PROTECTION FENCE

GENERAL NOTES:

- ROOT PRUNING WILL OCCUR PRIOR TO THE CONSTRUCTION OF THE UTILITY LINES. ROOT PRUNING SHALL NOT OCCUR PRIOR TO EXISTING UTILITY LOCATIONS VERIFIED.
- THE EXTENT OF ROOT PRUNING IS TO BE DETERMINED AT THE PRECONSTRUCTION MEETING.
- NO CLEARING IS TO TAKE PLACE OUTSIDE OF THE LIMITS OF DISTURBANCE.
- A COPY OF THE APPROVED FOREST CONSERVATION PLAN MUST BE MAINTAINED ONSITE THROUGHOUT CONSTRUCTION.

Significant Specimen Tree Summary 24" +									
Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H. (Inches)	CRZ (Feet)	Impact (SF)	Impact (%)	Tree Condition	Comments	Disposition
1	QUERCUS ALBA	WHITE OAK	49	16972	2837	17%	GOOD		SAVE/PROTECT
2	ACER RUBRUM	RED MAPLE	26	4778	1880	39%	GOOD		SAVE/PROTECT
3	ACER RUBRUM	RED MAPLE	32	7238	7081	98%	POOR	HEART ROT	REMOVE
4	ACER RUBRUM	RED MAPLE	31	6793	4837	71%	FAIR		REMOVE
5	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	29	15945	0	0%	GOOD		SAVE/PROTECT
6	CARYA SSP.	HICKORY	24	4072	2721	67%	GOOD		REMOVE
7	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	24	4072	3301	81%	GOOD		REMOVE
8	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	31	6793	1816	27%	GOOD	OFFSITE	SAVE/PROTECT
9	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	36	9181	118	1%	GOOD	OFFSITE	SAVE/PROTECT
10	ACER RUBRUM	RED MAPLE	28	5542	2162	39%	GOOD		SAVE/PROTECT
11	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	29	5945	4884	82%	GOOD		REMOVE
12	PRUNUS SEROTINA	BLACK CHERRY	25	4418	0	0%	POOR	NO CANOPY	SAVE/PROTECT
13	ACER GLABRUM	SILVER MAPLE	28	5542	0	0%	GOOD		SAVE/PROTECT
14	JUGLANS	WALNUT	33	7688	774	10%	GOOD		SAVE/PROTECT

* BOLD TYPE DENOTES SPECIMEN TREES

Condition Scoring System	
No Apparent Problems	Excellent
Minor Problems	Good
Major Problems	Fair
Extreme Problems	Poor

GRAPHIC SCALE



DEVELOPER'S CERTIFICATE

The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. F20230310 including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: _____
 Contact Person or Owner: MELVIN ALFARO
 Address: 17405 REDLAND RD, ROCKVILLE, MD 20855
 Phone and Email: 240 490 7911 MELVIN.ALFARO@GMAIL.COM
 Signature: _____

CERTIFICATION OF QUALIFIED PROFESSIONAL

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON HAS BEEN PREPARED IN ACCORDANCE WITH MARYLAND STATE, MNC&PC AND MONTGOMERY COUNTY FOREST CONSERVATION LAWS.

3.29.2023
DATE

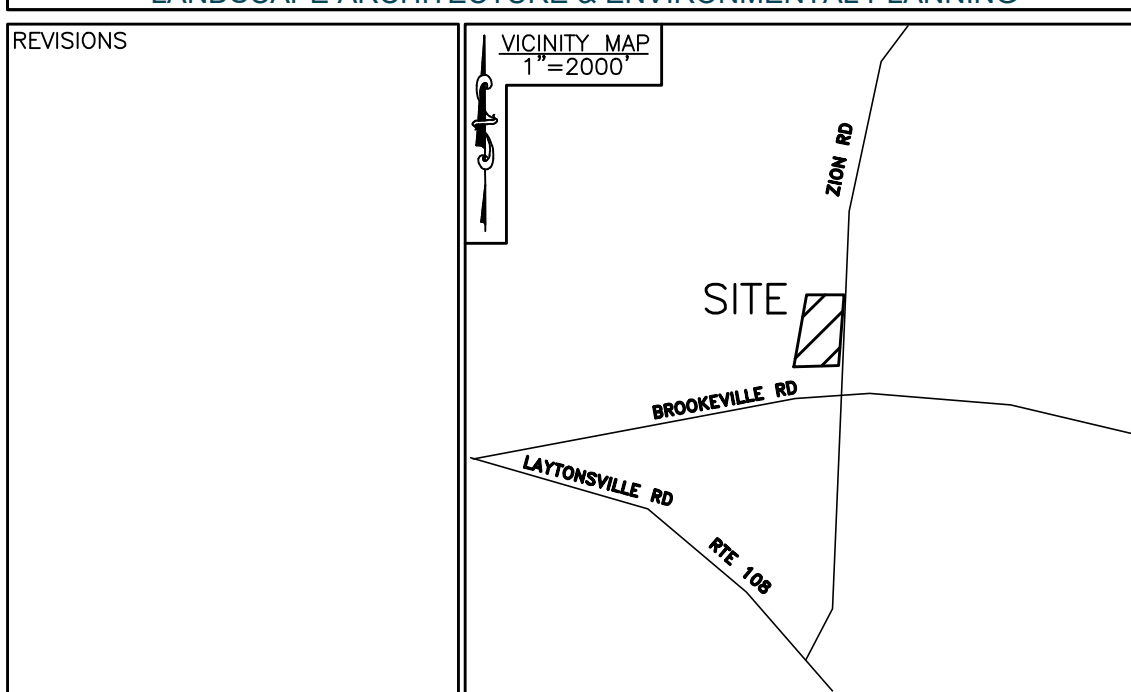
M. Norton
MICHAEL A. NORTON
MDNR / COMAR 08.19.06.01
QUALIFIED PROFESSIONAL

PRELIMINARY/FINAL FOREST CONSERVATION PLAN F20230310

PROJECT: AXCOBAR PROPERTY
20108 ZION ROAD
GAITHERSBURG, MD 20882
PARCELS 925 AND 980 L58463/F325
MONTGOMERY COUNTY, MD
ELECTION DISTRICT 1

PREPARED FOR: MELVIN ALFARO & ELENA REYNOSO
17405 REDLAND ROAD
ROCKVILLE, MD 20855
MELVINAXCOBAR@GMAIL.COM

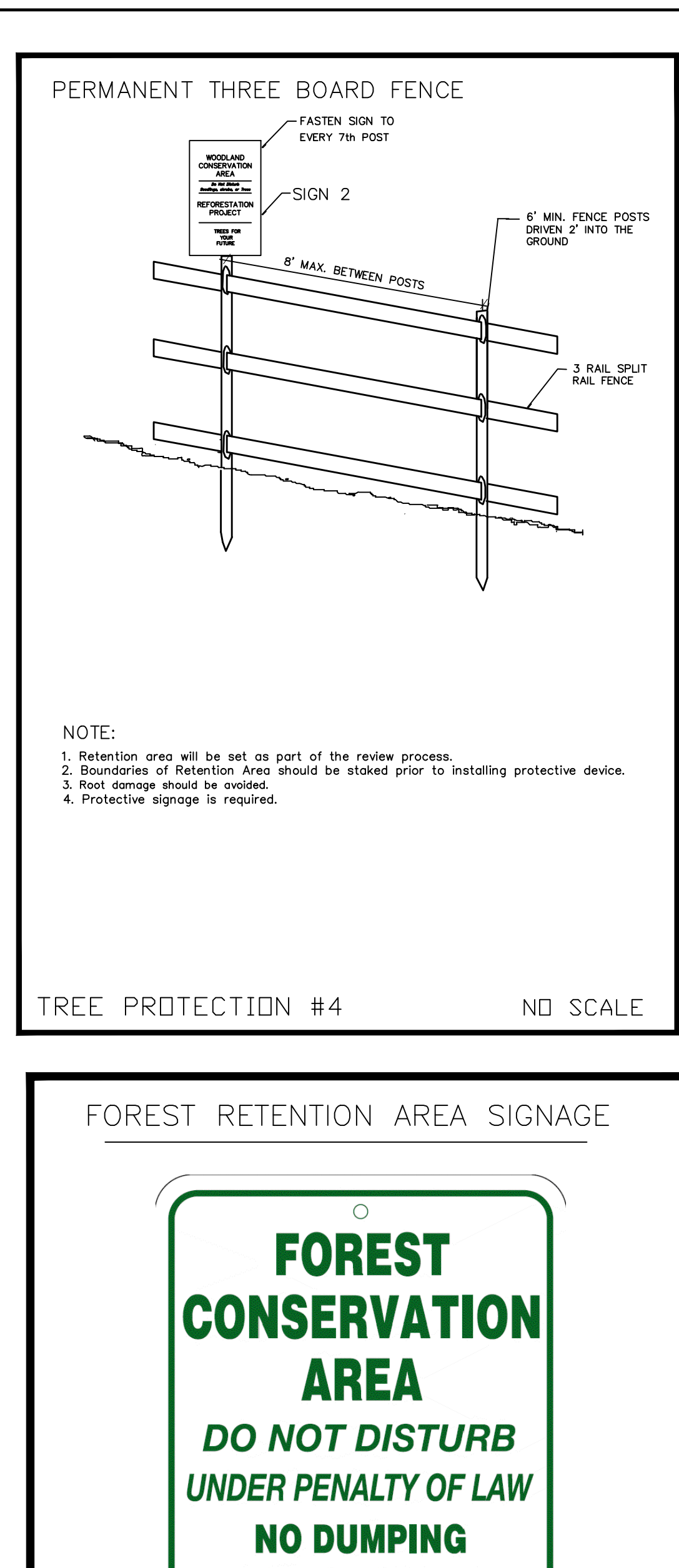
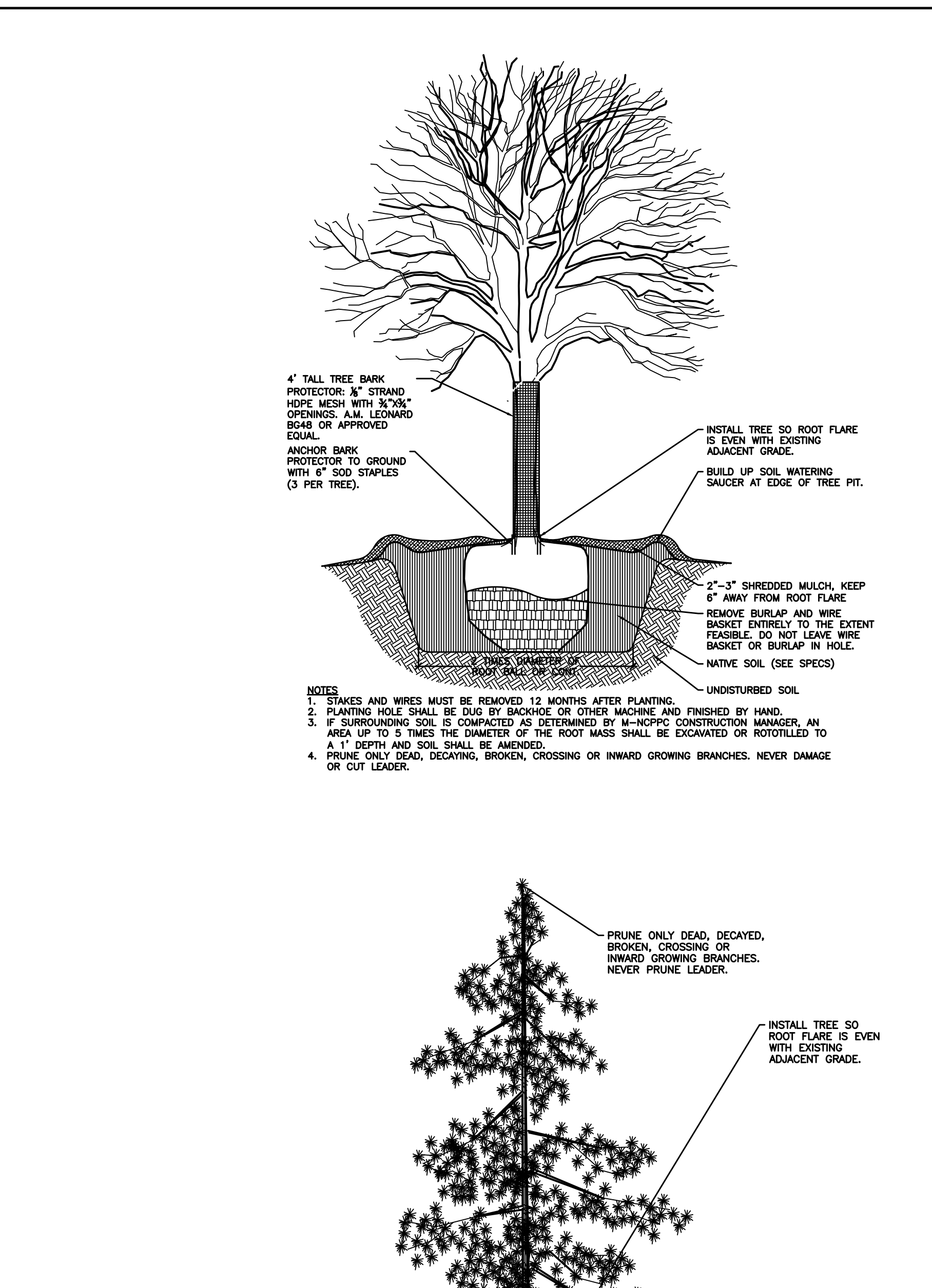
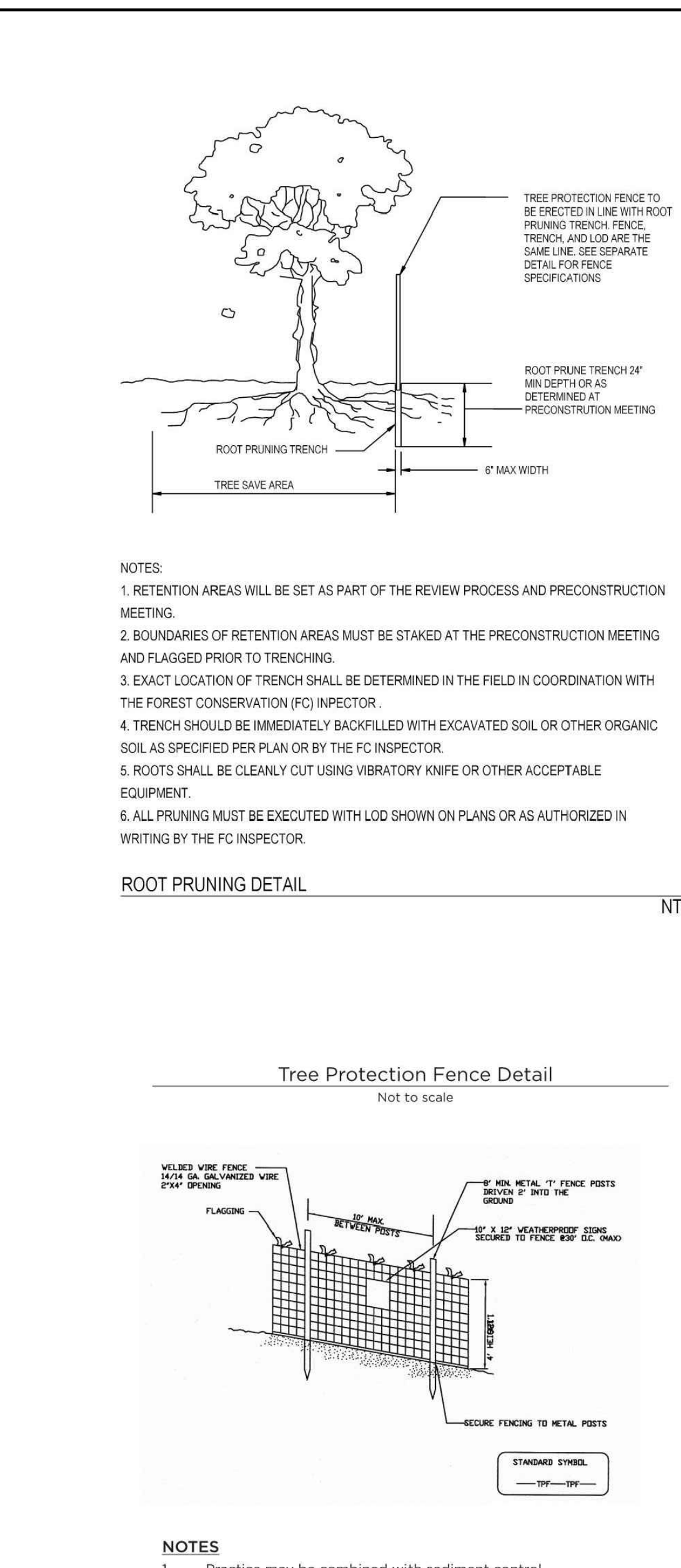
nld NORTON LAND DESIGN
LANDSCAPE ARCHITECTURE & ENVIRONMENTAL PLANNING
1746 DORSEY HALL DRIVE 2ND FLOOR
ELLICOTT CITY, MD 21042
O 443.542.9199
NORTONLANDDESIGN.COM



WATER CLASS: IV.P	WATERSHED: HAWLINGS RIVER	FEMA FLOODPLAIN PANEL # 24031C02152
TRIBUTARY: UNNAMED		
TAX MAP: HU23	200' SHEET: 227NW05 228NW05	ADC MAP: 20
SCALE: AS SHOWN	DATE: MARCH 2022	PROJ. NO: 21-166
		SHEET NO: L-4.1

FOREST CONSERVATION WORKSHEET							
AXCOBAR PROPERTY WITHIN SAME WATERSHED OR PRIORITY AREA							
NET TRACT AREA:							
A. Total tract area ...							2.12
B. Additions to tract area (Off-Site Work, etc.; construction required by this plan)...							0.00
C. Land dedication acres (parks, county facility, etc.) ...							0.00
D. Land dedication for roads or utilities (construction not required by this plan) ...							0.00
E. Area to remain in commercial agricultural production/use ...							0.00
F. Other deductions (specify)							0.00
G. Net Tract Area							2.12
LAND USE CATEGORY: (from Chapter 22A-3. Definitions)							
Input the number "1" under the appropriate land use, limit to only one entry.							
ARA	CDR	MDR	IDA	HDR	MPD	CIA	
0	0	0	0	1	0	0	
G. Afforestation Threshold ...				15%	x G =		0.32
H. Conservation Threshold ...				20%	x G =		0.42
EXISTING FOREST COVER:							
I. Existing forest cover							0.81
J. Area of forest above afforestation threshold							0.49
K. Area of forest above conservation threshold							0.39
BREAK EVEN POINT:							
L. Forest retention above threshold with no mitigation							0.50
M. Clearing permitted without mitigation							0.31
PROPOSED FOREST CLEARING:							
N. Total area of forest to be cleared							0.53
O. Total area of forest to be retained							0.28
PLANTING REQUIREMENTS:							
P. Reforestation for clearing above conservation threshold							0.19
Q. Reforestation for clearing below conservation threshold							0.29
R. Credit for retention above conservation threshold							0.00
S. Total reforestation required							0.48
T. Total afforestation required							0.00
U. Credit for landscaping (may not be used to meet reforestation requirement if project is located outside an EFA. For projects within EFA, may not exceed 20% of project)							0.00
V. Total reforestation and afforestation required							0.48

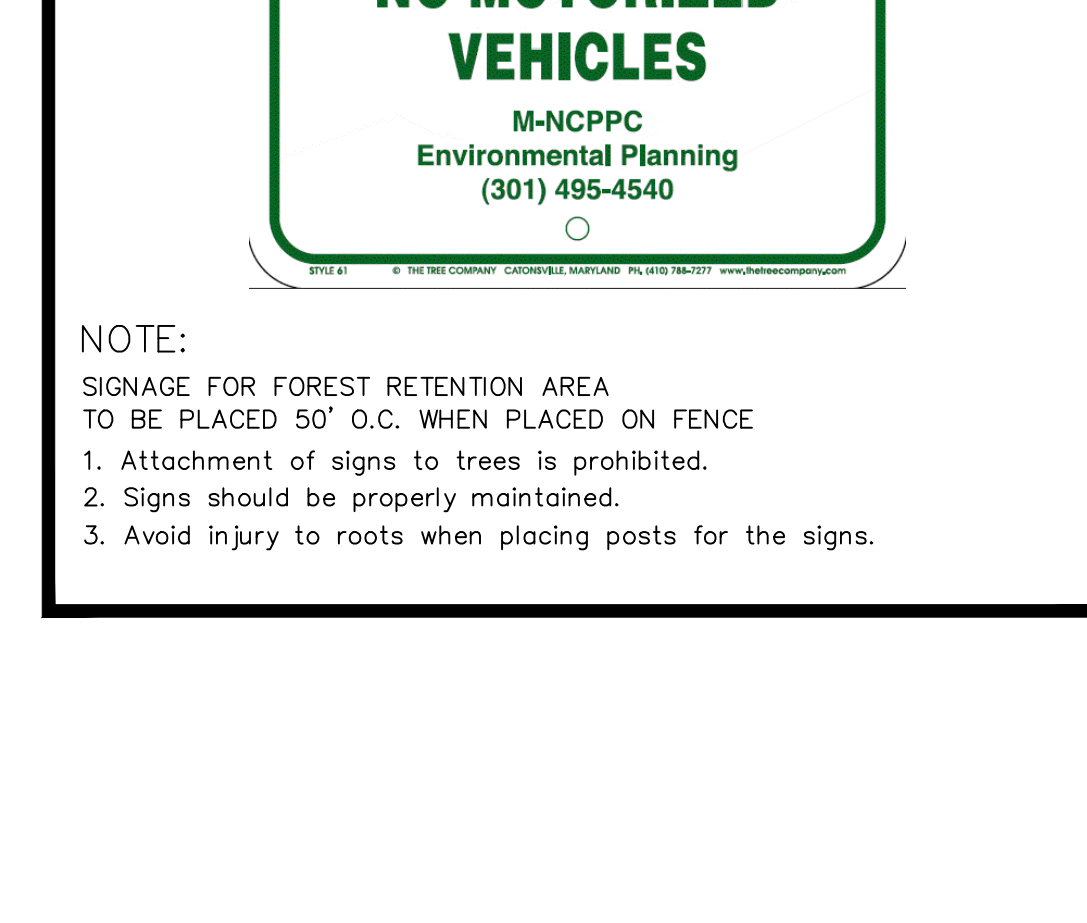
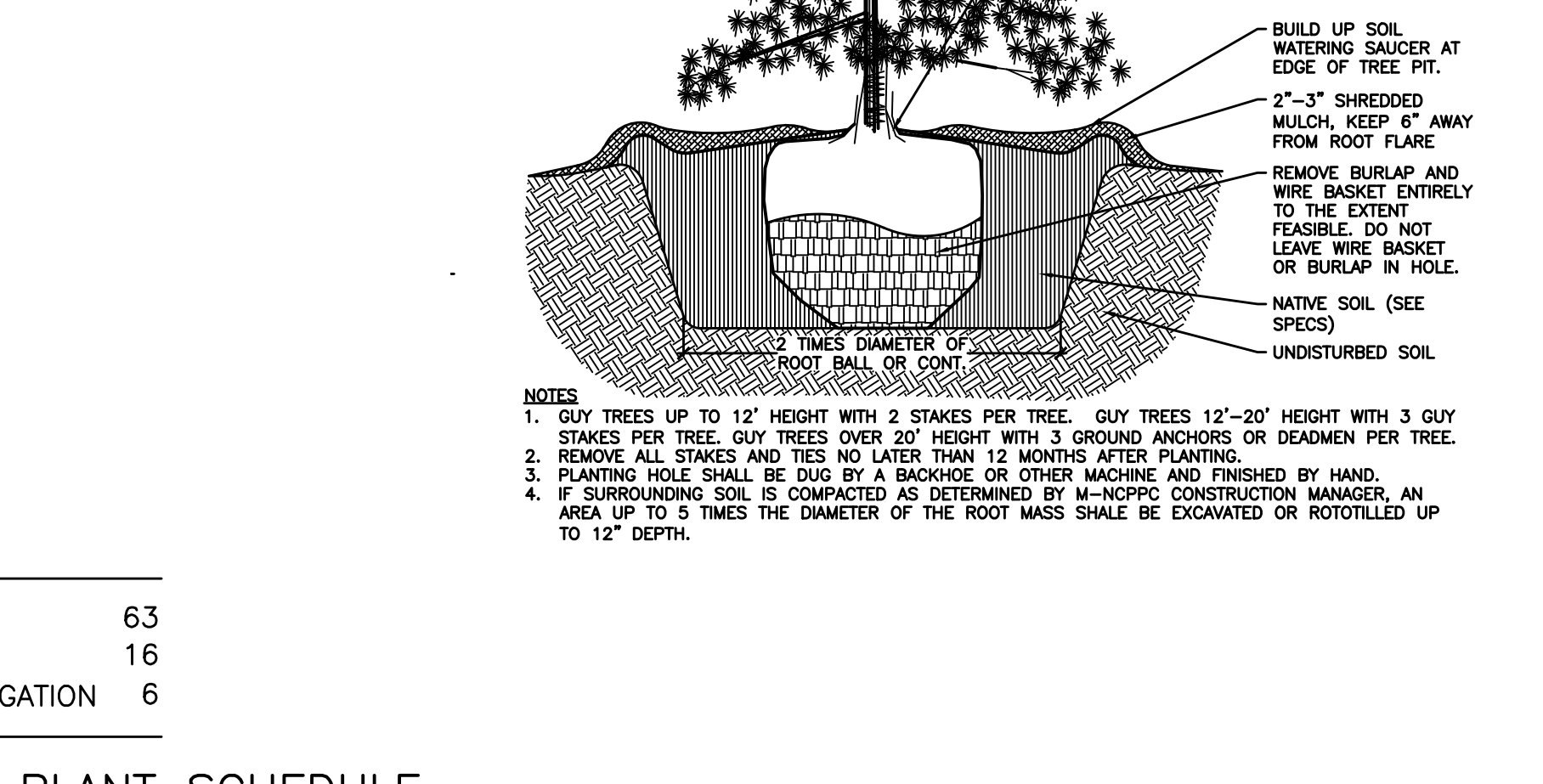
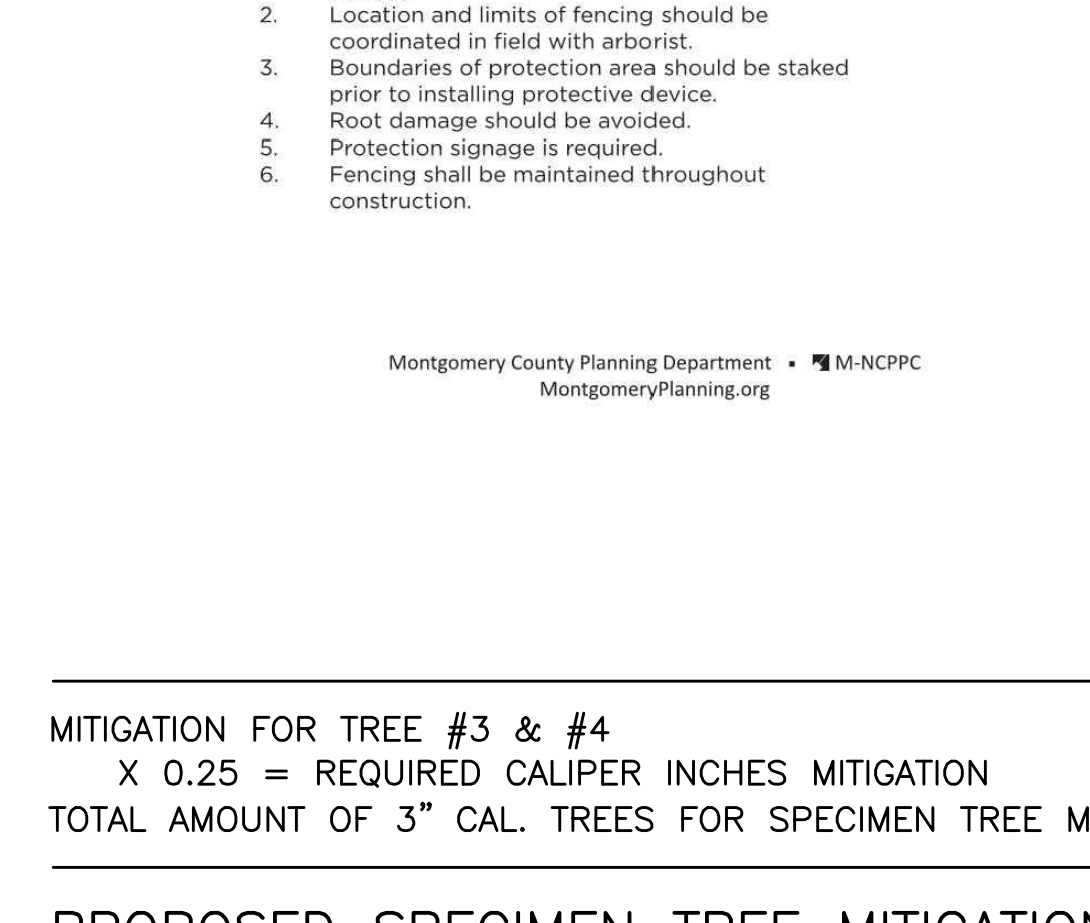
FOREST CONSERVATION WORKSHEET							
AXCOBAR PROPERTY OUTSIDE SAME WATERSHED OR PRIORITY AREA							
NET TRACT AREA:							
A. Total tract area ...							2.12
B. Additions to tract area (Off-Site Work, etc.; construction required by this plan)...							0.00
C. Land dedication acres (parks, county facility, etc.) ...							0.00
D. Land dedication for roads or utilities (construction not required by this plan) ...							0.00
E. Area to remain in commercial agricultural production/use ...							0.00
F. Other deductions (specify)							0.00
G. Net Tract Area							2.12
LAND USE CATEGORY: (from Chapter 22A-3. Definitions)							
Input the number "1" under the appropriate land use, limit to only one entry.							
ARA	CDR	MDR	IDA	HDR	MPD	CIA	
0	0	0	0	1	0	0	
G. Afforestation Threshold ...				15%	x G =		0.32
H. Conservation Threshold ...				20%	x G =		0.42
EXISTING FOREST COVER:							
I. Existing forest cover							0.81
J. Area of forest above afforestation threshold							0.49
K. Area of forest above conservation threshold							0.39
BREAK EVEN POINT:							
L. Forest retention above threshold with no mitigation							0.50
M. Clearing permitted without mitigation							0.31
PROPOSED FOREST CLEARING:							
N. Total area of forest to be cleared							0.53
O. Total area of forest to be retained							0.28
PLANTING REQUIREMENTS:							
P. Reforestation for clearing above conservation threshold							0.39
Q. Reforestation for clearing below conservation threshold							0.36
R. Credit for retention above conservation threshold							0.00
S. Total reforestation required							0.75
T. Total afforestation required							0.00
U. Credit for landscaping (may not be used to meet reforestation requirement if project is located outside an EFA. For projects within EFA, may not exceed 20% of project)							0.00
V. Total reforestation and afforestation required							0.75



SITE TABULATIONS:	
ACREAGE OF NET TRACT:	2.12
ACREAGE OF TRACT REMAINING IN AGRICULTURE:	0.00
ACREAGE OF ROAD AND UTILITY R/W WHICH WILL NOT BE IMPROVED AS PART OF DEV. APPLICATION:	0
ACREAGE OF EX. FOREST:	0.81
ACREAGE OF TOTAL FOREST RETENTION:	0.00
ACREAGE OF TOTAL FOREST CLEARED:	0.53
LAND USE CATEGORY:	HDR
AFFORESTATION THRESHOLD:	0.32
CONSERVATION THRESHOLD:	0.42
ACREAGE OF FOREST RETAINED, CLEARED, AND PLANTED WITHIN WETLANDS:	0.00/0.00/0.00
ACREAGE OF FOREST RETAINED, CLEARED, AND PLANTED WITHIN 100-YEAR FLOODPLAIN:	0.00/0.00/0.00
ACREAGE OF FOREST RETAINED, CLEARED, AND PLANTED WITHIN STREAM BUFFERS:	0.00/0.00/0.00
ACREAGE OF FOREST RETAINED, CLEARED, AND PLANTED WITH PRIORITY AREAS:	0.23/0.22/0.03
LINEAR EXTENT & AVERAGE WIDTH OF STREAM BUFFER:	0'/0'

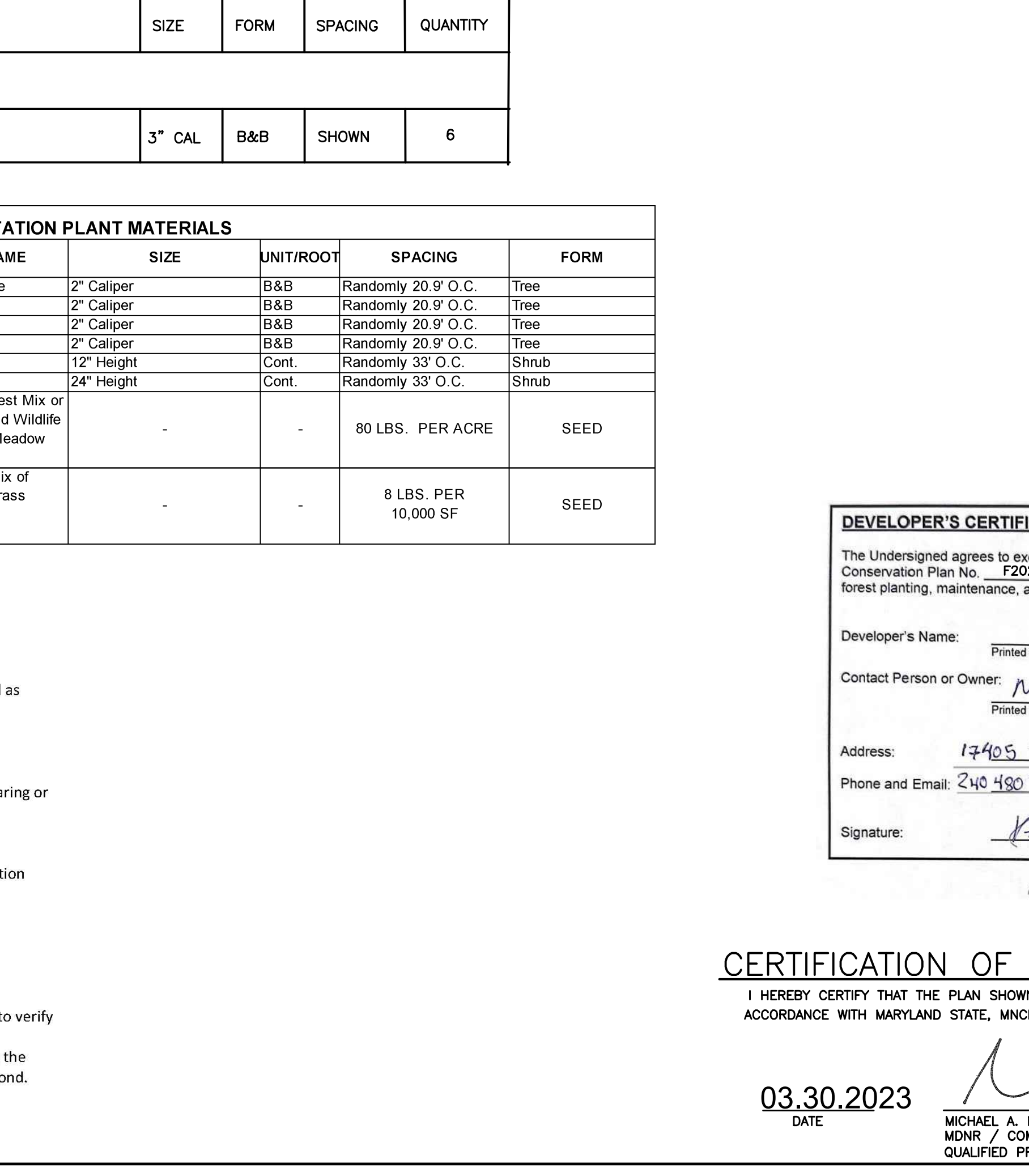
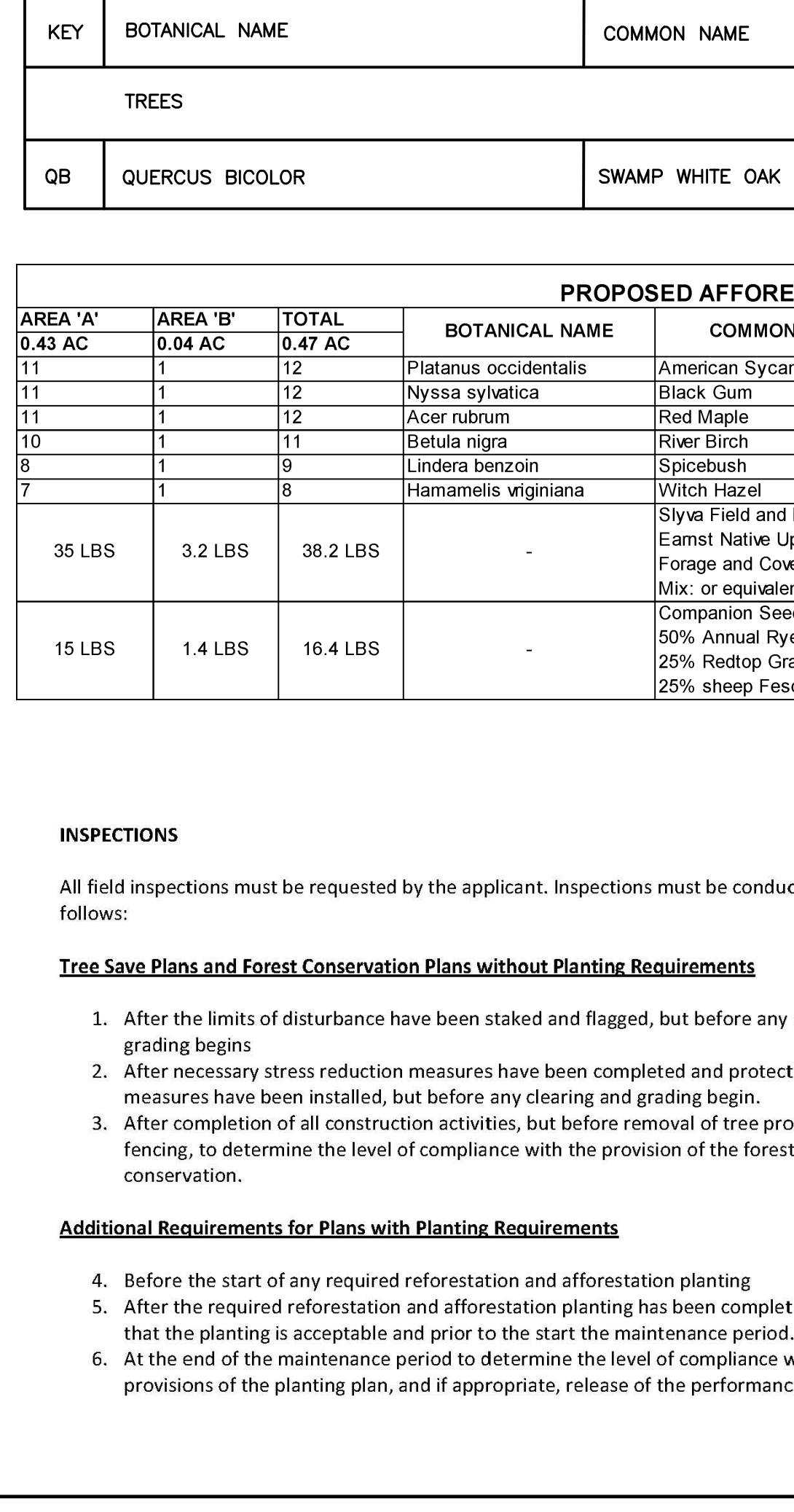
SITE PLANTING & REFORESTATION GENERAL NOTES

- DRAWINGS ARE FOR TREE CONSERVATION AND REFORESTATION PURPOSES ONLY. AS-BUILT CONDITIONS MAY VARY. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS AND UTILITY LOCATIONS SHOWN AND DESCRIBED ON THE DRAWINGS, AND SHALL INFORM NORTON LAND DESIGN, TEL. NO. 443-542-9199 OF ANY DISCREPANCIES OR POTENTIAL PROBLEMS PRIOR TO COMMENCING WORK.
- IN REFORESTATION AREAS ALL BRANCHED DECIDUOUS TREES SHALL BE PLANTED WITH RANDOM SPACING 20.9' ON CENTER. SHRUBS AND CONTAINER GROWN EVERGREENS NOT IN PLANTING BEDS SHALL BE PLANTED IN RANDOM SPACING 33.0' ON CENTER.
- DO NOT PLANT TREES OR SHRUBS WITHIN 3'-0" OF THE CENTERLINE OF SWALES OR DITCHES.
- "MISS UTILITY" (1-800-257-7777) MUST BE CONTACTED A MINIMUM OF 48 HOURS PRIOR TO PROCEEDING WITH ANY EXCAVATION FOR PLANT MATERIAL INSTALLATION.
- NO PLANT MATERIAL SHALL BE PLANTED DIRECTLY IN FRONT OF ROADWAY SIGN SIGHT LINES.
- PLANT MATERIALS AND PLANTING MEASURES SHALL CONFORM WITH THE "LANDSCAPE SPECIFICATION GUIDELINES FOR THE BALTIMORE-WASHINGTON METROPOLITAN AREAS", LATEST EDITION.
- ALL PLANTS SHALL BE WATERED FOR A TWO YEAR PERIOD AS REQUIRED. THE CONTRACTOR SHALL PROVIDE SUFFICIENT MANPOWER AND EQUIPMENT TO COMPLETE THE WATERING AS REQUIRED.
- THE FOLLOWING LIST OF PLANTS SHALL BE PLANTED ONLY DURING THE SPRING PLANTING SEASON: ACER RUBRUM AND QUERCUS SPP. (ALL OAK SPECIES).
- ALL EXISTING TRASH AND IMPERVIOUS AREAS SHOWN ON THE PLAN TO BE REMOVED MUST BE REMOVED AND ANY DISTURBED SOIL MUST BE STABILIZED AND SEED. IT MAY BE NECESSARY TO SCARIFY AND/OR AERATE THE SOIL.
- PLANTS SHALL BE INSPECTED BY THE CONTRACTOR AND ANY MATERIAL THAT IS EITHER DAMAGED OR WHICH HAS ROOT BALL COMPACTION, J-ROOTED OR KINKED ROOT SYSTEMS WILL BE REPLACED. NO PLANTS WILL BE STORED ON SITE. PLANTS WILL BE PLANTED IMMEDIATELY ONCE RECEIVED FROM THE NURSERY.
- STOCK WILL BE PLANTED IN RANDOM ORDER TO REFLECT NATURAL GROWTH OF THE FOREST.
- PLANTING FIELD SHOULD BE 2X ROOT BALL DIAMETER. NATIVE SOIL MATERIAL WILL BE USED TO BACKFILL PLANT SITE AND AREA WILL BE PACKED TO REMOVE AIR POCKETS. RAKE SOIL EVENLY OVER THE PLANTING FIELD AND COVER HOLE WITH THREE INCHES OF MULCH. WATER TO SETTLE SOIL AND PROVIDE MOISTURE AS NEEDED.
- DEER PROTECTION MEASURES TO BE PROVIDED FOR ALL PLANTED TREES. SPECIFIC MEASURES TO BE DETERMINED AS PART OF THE PRE-PLANTING MEETING.
- AREA OF STOCKPILE AND EXISTING PAVEMENT TO BE REMOVED ARE TO BE DECOMPACTION AND REPLACED TO A DEPTH OF 24" PRIOR TO PLANTING.



PLANTING SCHEDULE	
TASKS	MONTHS
	JAN FEB MAR APR MAY JUNE JULY AUG SEPT OCT NOV DEC
TRANSPLANT OF 2" DBH OR GREATER	
PLANTING SEEDLINGS, WHIPS	
MINIMUM MONITORING	* * *
FERTILIZER * (IF NEEDED)	
WATER **	
PRUNING	
KEY	ACTIVITIES DURING THESE MONTHS ARE DEPENDENT UPON GROUND CONDITIONS RECOMMENDED GREATLY RECOMMENDED DEPENDENT UPON SITE CONDITIONS WEEKLY WATERING IS GREATLY RECOMMENDED FROM MAY THROUGH OCTOBER UNLESS WEEKLY RAINFALL EQUALS 1"
NOTES:	The planting and care of trees is most successful when coordinated with the local climatic conditions. This calendar summarizes some of the recommended time frames for basic reforestation and stress reduction activities.

PROPOSED SPECIMEN TREE MITIGATION PLANT SCHEDULE								
KEY	BOTANICAL NAME	COMMON NAME	SIZE	FORM	SPACING	QUANTITY		
TREES								
QB	QUERCUS BICOLOR	SWAMP WHITE OAK	3" CAL	B&B	SHOWN	6		
PROPOSED AFFORESTATION PLANT MATERIALS								
AREA 'A'	AREA 'B'	TOTAL	BOTANICAL NAME	COMMON NAME	SIZE	UNIT/ROOT	SPACING	FORM
0.43 AC	0.04 AC	0.47 AC						
11	1	12	Platanus occidentalis	American Sycamore	2" Caliper	B&B	Randomly 20.9' O.C.	Tree
11	1	12	Nyssa sylvatica	Black Gum	2" Caliper	B&B	Randomly 20.9' O.C.	Tree
11	1	12	Acer rubrum	Red Maple	2" Caliper	B&B	Randomly 20.9' O.C.	Tree
10	1	11	Betula nigra	River Birch	2" Caliper	B&B	Randomly 20.9' O.C.	Tree
8	1	9	Lindera benzoin	Spicebush	12" Height	Cont.	Randomly 33' O.C.	Shrub
7	1	8	Hamamelis virginiana	Witch Hazel	24" Height	Cont.	Randomly 33' O.C.	Shrub
35 LBS	3.2 LBS	38.2 LBS	Sylvia Field and Forest Mix or Earnst Native Upland Wildlife Forage and Cover Meadow Mix. or equivalent				80 LBS. PER ACRE	SEED
15 LBS	1.4 LBS	16.4 LBS	Companion Seed Mix of 50% Annual Rye Grass 25% Redtop Grass 25% sheep Fescue				8 LBS. PER 10,000 SF	SEED
INSPECTIONS								
All field inspections must be requested by the applicant. Inspections must be conducted as follows:								
Tree Save Plans and Forest Conservation Plans without Planting Requirements								
1. After the limits of disturbance have been staked and flagged, but before any clearing or grading begins								
2. After necessary stress reduction measures have been completed and protection measures have been installed, but before any clearing and grading begin.								
3. After completion of all construction activities, but before removal of tree protection fencing, to determine the level of compliance with the provision of the forest conservation.								
Additional Requirements for Plans with Planting Requirements								
4. Before the start of any required reforestation and afforestation planting								
5. After the required reforestation and afforestation planting has been completed to verify that the planting is acceptable and prior to the start the maintenance period.								
6. At the end of the maintenance period to determine the level of compliance with the provisions of the planting plan, and if appropriate, release of the performance bond.								



PRELIMINARY/FINAL FOREST CONSERVATION PLAN NOTES & DETAILS F20230310

PROJECT: AXCOBAR PROPERTY 20108 ZION ROAD GAITHERSBURG, MD 20882 PARCELS 925 AND 980 L58463/F325 MONTGOMERY COUNTY, MD ELECTION DISTRICT 1

PREPARED FOR: MELVIN ALFARO & ELENA REYNOSO 17405 REDLAND ROAD ROCKVILLE, MD 20855 MELVINAXCOBAR@GMAIL.COM

NORTON LAND DESIGN 5146 DORSEY HALL DRIVE 2ND FLOOR ELLICOTT CITY, MD 21042 O 443.542.9199 NORTONLANDDESIGN.COM LANDSCAPE ARCHITECTURE & ENVIRONMENTAL PLANNING

REVISIONS: VIGNITY MAP 1"=2000

WATER CLASS: IV,P WATERSHED: HAWLINGS RIVER FEMA FLOODPLAIN PANEL # 24031C02152

TAX MAP: HU23 200 SHEET: 227NW05 228NW05 ADC MAP: PAGE: 20 GRID: K1

SCALE: AS SHOWN DATE: MARCH 2023 PROJ. NO: 21-166 SHEET NO: L-4.2

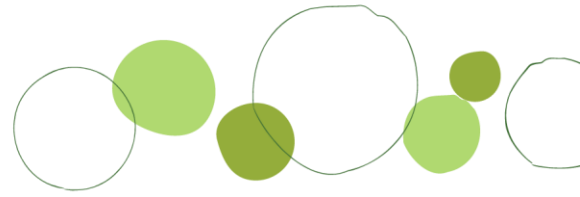
DEVELOPER'S CERTIFICATE: The Undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. F20230310 including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: MELVIN ALFARO
Contact Person or Owner: MELVIN ALFARO
Address: 17405 REDLAND RD, ROCKVILLE, MD 20855
Phone and Email: 240 490 7911 MELVINAXCOBAR@GMAIL.COM

CERTIFICATION OF QUALIFIED PROFESSIONAL: I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON HAS BEEN PREPARED IN ACCORDANCE WITH MARYLAND STATE, MNCPPC AND MONTGOMERY COUNTY FOREST CONSERVATION LAWS.

03.30.2023 DATE: MICHAEL A. NORTON MONTGOMERY COUNTY REGISTERED PROFESSIONAL

Attachment B: Forest Conservation Variance



April 13, 2023

Montgomery County
 Planning Department
 2425 Reddie Drive, 14th Floor
 Wheaton, MD 20902

Axcobar Property
 Request for Specimen Tree Variance
 MNCPPC NRI-FSD# 420230060

On behalf of the property owner and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow impacts to, or the removal of, the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named residential construction project.

Project Description:

The Subject Properties

The subject property is 2.12 acres. The site is currently developed with one single family detached house, shed and gravel parking and is going through the conditional use process for a landscape contractor. The site is bordered by residential property on the north, south, and west side, and agricultural property on east side.

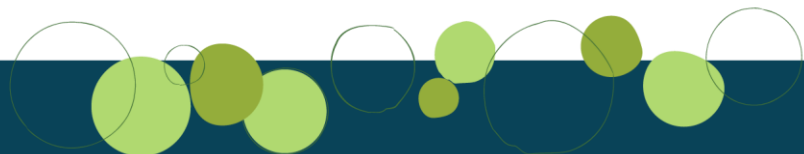
Forest Conservation

Natural Resources Inventory/Forest Stand Delineation has been approved for the Subject Property. A Final Forest Conservation Plan is filed with this application. There is 0.81 acres of forest on the Subject Property.

There are freestanding specimen trees located sporadically around the area to be developed with specimen trees on the south and west property lines with impacts only and adjacent to the existing entrance and parking to be removed.

The following specimen trees require a variance:

Specimen Tree Summary							
Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	Percent of CRZ Impacted (SF)	Tree Condition	Comments	Disposition
1	QUERCUS ALBA	WHITE OAK	49	17%	GOOD		Impacts only
3	ACER RUBRUM	RED MAPLE	32	98%	POOR	Utility installation and gravel removal	Removal
4	ACER RUBRUM	RED MAPLE	31	71%	FAIR	ESD installation	Removal
8	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	31	27%	GOOD	OFFSITE	Impacts only
9	LIRIODENDRON TULIPIFERA	YELLOW POPLAR	36	1%	GOOD	OFFSITE	Impacts only
14	JUGLANS	WALNUT	33	10%	GOOD	Grading	Impacts only



Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states that the applicant must:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

Justification of Variance

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

Response: This work will require disturbance of the root zones of a total of five (5) specimen trees. Two (2) of the impacted trees will be required to be removed. Each of the existing variance trees lies within or very near existing infrastructure to be removed, grading due to topographic conditions, or proposed utilities.

The property area is constrained by the PMA to the north, and the northwest corner of the property being the only suitable location for a new septic system to replace the existing outdated and failing system.

- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

Response: If the requested Variance were denied, the Applicant would suffer unwarranted hardship and would be deprived of rights commonly enjoyed by other property owners in the R-200 zone and adjoining areas similar to the location of the Property. If the requested variance were denied, the Applicant would be denied the right enjoyed by other similarly situated property owners to develop their R-200 zoned property in a manner permitted by the zoning ordinance that is consistent with the development history of the neighborhood.

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

Response: Tree removals have been minimized by careful design of the layout ensuring the preservation of as many specimen trees as possible. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes removing excess impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality*.

Specimen tree removals are proposed to be mitigated for onsite through new plantings as depicted on the FCP. Additional canopy planting will serve to create greater ecological quality while establishing further buffering of adjacent land uses (residential).

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

Response: The Approved and Adopted Trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Specimen Tree Variance. Generally, the Technical Manual recognizes that clearing is appropriate for street and driveway construction to provide access to new development and to create a building envelope for development. Among the development factors that the Technical manual considers appropriate for consideration when a Variance request is before the Planning Board is whether an urban form of development is desired at a particular location

The Technical Manual also acknowledges that well planned clearing balances the public policies of preserving forest and funneling development into appropriate locations. The Technical Manual provides that one factor to be considered.

“The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees.”

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which states that a variance must not be granted if granting the request:

- (1) Will confer on the applicant a special privilege that would be denied to other applicants;

Response: The zoning allows for a landscape contractor under a conditional use. The requirements of the conditional use can be met without variances in design. As such, this is not a *special privilege* to be conferred on the applicant.

- (2) Is based on conditions or circumstances which are the result of the actions by the applicant;

Response: The Applicant has taken no *actions leading to the conditions or circumstances* that are the subject of this variance request. Through design, the utilities are being located and ESD measure provided.

- (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

Response: The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

- (4) Will violate State water quality standards or cause measurable degradation in water quality.

Response: Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality. The specimen tree removal is further proposed to be mitigated through the installation of 6 – 3” caliper trees.

Conclusion:

For the above reasons, the applicant respectfully requests that the MNCPPC Staff APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact/remove the specimen trees to allow the construction of this project.

The recommendations in this report are based on tree conditions noted at the time the NRI/FSD field work was conducted. Tree condition can be influenced by many environmental factors, such as wind, ice and heavy snow, drought conditions, heavy rainfall, rapid or prolonged freezing temperatures, and insect/disease infestation. Therefore, tree conditions are subject to change without notice.

The site plans and plotting of tree locations were furnished for the purpose of creating a detailed Tree Protection Plan. All information is true and accurate to the best of my knowledge and experience. All conclusions are based on professional opinion and were not influenced by any other party.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Norton', written in a cursive style.

Michael Norton

Attachment C: Conditional Use Statement of Justification

BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE :
PETITION OF MELVIN ALFARO :
(DBA AXCOBAR TREE : Conditional Use
EXPERTS) FOR A :
CONDITIONAL USE FOR A : Application No. CU 23-_____
LANDSCAPE CONTRACTOR :

APPLICANT'S STATEMENT
OF JUSTIFICATION

The Petitioner, Melvin Alfaro, (dba Axcobar Tree Experts, hereinafter referred to as "Axcobar") seeks a Conditional Use approval pursuant to Montgomery County Zoning Ordinance Sections 59-7.3.1.E (General Conditions) and 59.3.5.5 (Specific Conditions) in order to construct and operate a landscape contractor business at 20108 Zion Road, Gaithersburg, Maryland. (Tax ID Numbers 00005582 and 00005571).

Applicant is ready to upload the Forest Conservation Plan (#F20230310) and Stormwater Management Plan (#289469) to ePlans when so advised by County staff.

I. INTRODUCTION

The property owner of the subject property, 20108 Zion Road, Gaithersburg (Tax ID Numbers 00005582 and 00005571) is Mr. Melvin Alfaro, owner of Axcobar and his wife, Elena. Axcobar began performing work for customers in and around Montgomery County over ten years ago. Axcobar Tree Experts operates as a tree care company that provides all work related to tree cutting/removal, including stump grinding, wood removal, yard cleaning, lot cleaning, storm

damage services and emergency tree removal/assistance and similarly related work related to trees. Axcobar operates on a 12-month calendar, however, the winter months are typically slower, except for emergency services.

Per SDAT records Mr. and Mrs. Alfaro purchased the subject properties in November 2019. The prior owner sold both lots to the Alfaro family. The goal is to obtain all government approvals to operate Axcobar at the site. The two parcels (P980 and P925) total 43,560 and 44,431 square feet each for a total of 87,991 square feet for the CU area, which totals 2.01 acres for both properties. Please see attached emails from County DPS Zoning Manager and this writer and supporting documents that confirm that the property meets the code requirement for the minimum 2-acre area for a landscape contractor CU. The property has a vacated residence on it that was built in 1948. The applicant plans to restore the residence's functionality and habitability, including allowing Axcobar staff to use the bathroom for emergency situations. Significant discussion and review of the structure, bathroom and septic have occurred with County Staff (planning and well and septic, etc.) and support has been provided for this approach. To reach this goal, the concept of the installation of an alternative septic system has been approved by County DPS (well and septic). (Please see attached email and Report in Table of Contents (TOC) #18) The alternative system became an option after the existing septic system was evaluated and a sand mound system considered, and both were determined to be insufficient. More to be explained herein on these topics.

A landscape contractor use is permitted as a conditional use in the AR Zone pursuant to Sections 59-3.16 and 59-3.5.5.

II. SUBJECT PROPERTY

The two subject properties located at 20108 Zion Road in Gaithersburg, are comprised of 2.01 acres of land zoned in the R-200 zone. Consisting of two adjoining parcels as shown on the Conditional Use Site Plan (See (TOC) #10), Parcel ID#s 00005582 and 00005571. The properties are unplatted. The land is improved with the one uninhabitable residential structure. Please see attached photos and aerials of the property and area (See TOC #7). The Applicant intends to repair and/or replace and use this structure for multiple purposes, likely as a residence or on-site office to enable an emergency bathroom location for staff. The property adjoins Pepco property, ROW and power lines immediately to its west. To the south is a vacant, developed property. To the east is Zion Road and across it a large open field part of a farm. To the north is a single-family residence. Said owner/renter is a supporter of Axcobar (see attached letter TOC #19 from Mr. Liang of 20200 Zion Road). The applicant is not proposing any new structures or any material alterations to the property, besides as shown on the engineering plans to allow onsite parking, fire access, innovative septic system (underground), stormwater management and equipment storage. The property does have nice, long standing, existing landscaping and screening, especially along Zion Road to the east and west, which significantly limits visibility onto the property. See TOC #7_ re aerial and site photos. See Conditional Use Site Plan (TOC #10).

III. USE HISTORY

The subject property as noted previously, consists of two parcels totaling just over 2 acres. The total property (consisting of both parcels) had one structure, a small residence of 768 square feet built on it in 1948. The structure has been vacant and uninhabitable for a number of

years before the applicant purchased the properties. It appears to only have served as a residentially zoned property throughout its history. However, the prior owner stored and parked large commercial vehicles and equipment on site. And unfortunately, the property was left by prior owner in disrepair with significant dead trees, old tires, bricks, cement, old vehicles and garbage on said properties. See TOC # 22. The applicant has put in considerable time, efforts and expense to clean up the property. These efforts included fourteen (14) oversized truckloads of refuse left behind by the prior owner that Mr. Alfaro properly disposed of off the property upon receipt of the property. See TOC #23. Mr. Alfaro is committed to being a good, contributing, long term neighbor to the community.

IV. ZONING HISTORY

The property has always been rural in nature and zoning classification. The initial zoning classification for the properties in 1958 was R-R that was for 20,000 square foot lot sizes. The 1967 Olney Master Plan rezoned the properties to R-A, which was 2-acre lot sizes. In the 1980 the Olney Master Plan changed the area from R-A to R-200 that it presently remains.

There is no official zoning history from a Special Exception or Conditional Use standpoint on the subject property.

V. Neighborhood

Applicant defines the surrounding neighborhood as rural residential, public utility and institutional (churches) on lots within a 1,200-foot radius. See Map below.



The surrounding area is predominantly unimproved farmland, a golf course (Blue Mash), M-NCPPC parkland, Blue Mash Nature Trail (next to the closed, former county landfill), churches and semi-wooded parcels with some single-family residential dwellings all in the AR and R-200 zones. As noted earlier, to the west is Pepco property, ROW and power lines. To the south is a vacant developed lot and to the east is Zion Road, with a large open field and farm across Zion Road. Immediately to the north is a single-family residence that is supportive of Mr. Alfaro and Axcobar. The conditional use area elevation slopes up a bit from the entrance off Zion Road. Additionally, the subject properties / planned Conditional Use area are screened nicely by existing vegetation, trees on site and changes in elevation. We will also install any required landscaping and additional screening and/or buffering per Code.

V. DESCRIPTION OF OPERATIONAL FEATURES

A. Business Activities

Axcobar is a vigorous and successful business that provides the below wide-ranging tree services:

- Tree cut down / removal
- Stump grinding
- Wood removal
- Yard cleaning
- Lot clearing
- Storm damage service
- Emergency tree removal / assistance

B. Staffing

A total of up to 16 on site employees. The breakdown of the requested-on site employees include:

Owner and Managers 4

Field Team Members 12 (it is less during slower time periods-such as winter)

Total 16 presently.

Applicant would also like to ask for minimal future growth of one more team of up to 3 staff members. So future growth would permit up to a total of 19 staff members.

C. Hours of Operation

Axcobar's hours of operation will generally be from 6:30 AM until 7:00 PM. Monday through Friday (although it will generally finish earlier during winter hours due to need for work to be done during sunlight hours) and 9am to 3pm on Sundays.

The Applicant will have no retail sales or retail nursery operation, so customers will not visit the site. Therefore, there will be little activity on-site during most of the day since team members will be off performing tree care work at off-site locations. Occasionally a manager will remain or return to the property during the day for a task. Staff on rare occasions also may return during the day to exchange or pick up a piece of equipment or vehicle. The only exceptions to these hours/days of operations are as follows:

- a. Emergency tree services.

D. Buildings

There is one vacant, uninhabitable building on site that pre-dated Mr. Alfaro's purchase of the property. Said building is located on Parcel P980, with an address of 20108 Zion Road. The structure was approved as 768 square feet and will be re-built to that size or slightly larger pursuant to County review and approval. Said structure will serve as a residence and emergency bathroom for Axcobar staff and allow for additional screening from offsite properties. No new buildings are proposed.

E. Trucks and Equipment

Axcobar has a modest fleet of fourteen (14) current vehicles. Of these fourteen (14) only twelve (12) reside on site overnight. Two of the vehicles also serve as personal vehicles

for two of the management team. The vehicles include nine work trucks with only two of said trucks being over 26,000 pounds (one being a crane truck only used for exceptionally large jobs and/or trees), the other seven (7) being under 26,000 pounds and the remaining five (5) Axcobar vehicles being four (4) small pickup trucks and one (1) sedan car. However, on a daily basis it is typical that only nine (9) to ten (10) of the twelve work vehicles would be utilized. In this application, Axcobar would like to request for one additional vehicle to plan for minor future growth. Thus, requesting for fourteen (14) current vehicles and future growth to add one more for a total of fifteen (15) vehicles later if and when business needs justify. So, in summary, only twelve (12) vehicles will reside on site and only nine (9) to ten (10) will be utilized daily.

In addition, the Applicant will have woodchippers, loaders, trailers, stomp grinders and other similar equipment that support the tree care operations. The vehicles and tree care equipment will be stored overnight in the parking areas designated on the Site Plan.

F. Parking

Parking will be provided on the properties in multiple exterior locations as shown on the Site Plan drawing.

These spaces do not total the same number of employees because Axcobar experiences an elevated level of employee carpooling, particularly for the field crews, with two or more passengers arriving per vehicle. Consequently, applicant expects that a maximum of seven (7) vehicles will travel to the site each morning and exit each night with staff and management in the short term and if any expansion occurs per requested it would add one additional vehicle for up to a total of eight (8) under future growth plan.

G. Property Access

The proposed area of conditional use has frontage only on Zion Road. The existing northernly onto Parcel P925 will be utilized for the Conditional Use. The entrance onto Parcel P980 with the residential structure will be utilized for the residential use. The applicant has no need or plans to modify the entrance. However, the fire marshal, planning staff or other government entities who are part of the review, may request some entrance improvements.

V. Master Plan

The Property resides in the 2005 Olney Master Plan area. This area has always been agricultural and rural residential. The area remains a mixture of rural residential, agricultural, institutional and public utility in nature to the present day.

The 2005 Olney Master Plan does not have a specific recommendation for a landscape contractor use. However, the zoning code does permit landscape contracting locations in the R-200 zone via conditional use. Mr. Alfaro's Axcobar Tree Experts is even less impactful than a typical, traditional, full-service landscaper that has stock material (trees, shrubs, mulch, pavers, etc.) on site and delivered regularly, along with the need to move, organize and restock material with bobcats, backhoes and similar machinery. The applicant focuses just on tree care services and thus does not have material on site nor have material delivered to the subject property. The tree care use is agriculturally based since it focuses on tree care for customers. For the subject properties on Zion Road there are no site-specific recommendations. Yet, the Master Plan does discuss special exceptions (now conditional uses) in the Plan. On pages 41-42 it discusses protecting existing communities by discouraging proliferation of commercial use outside of town

center. We note that while this is a special exception/conditional use it is of modest scope and size of the type the master plan envisioned to be in R-200 zones overall and per zoning code. Additionally, it is not a use that can be placed in Olney Town Center area due to strong need of Town Center area for large and pure commercial uses that invite customers to its locations. Further, the Plan notes that it desires to prevent the possibility of large special exception uses not envisioned in this Plan. Well, landscape contractors have always been existing in the rural and large lot areas of the County and the use grew out of farms and horticulture. They are also typically not what would be considered “large special exception uses”, especially the applicant’s modest size family business use requested. Lastly, the three recommendations on page 42 to limit large special exceptions uses not envisioned in the Plan do not apply to the proposal by Axcobar. It is not along Georgia Avenue between Norbeck Road and Town Center, and it will not have a non-residential character as the residence will be re-built and it will be quiet all day, the parking lot area will be minimally visible, will not have lighting related to the CU use and the only typical residential lighting for the structure. The residential structure will be of very modest to low size, height and scale. The subject conditional use is compatible with existing rural character of the surrounding area. The existing character and scale of the minor development proposed will not negatively impact area.

V. Development Standards for R-200 zone

R-200 Development Standard	59.4.4.7.B Required	59.3.5.5.B Landscape Contractor	59.6.2.4.B Required	Proposed	
Minimum Lot Area	20,000 SF	2 acres	2 acres	2.12 AC	
Minimum Lot Width:					
- At street line	25			431'	
- At building line	100			331'	
Maximum Lot Coverage	25%			--	
Minimum Principal Building Setback					
- Front	40	50'		80.2'	
- Side street	40	50'			
- Side	12	50'		50.8	
- Sum of Sides	25				
- Rear	30	50'		137.1	
Accessory Building Setback					
- Front	65	50'		N/A	
- Side Street	40	50'		N/A	
- Side	15	50'		N/A	
- Rear	7	50'		N/A	
Minimum Parking Set Back			50	50.9	
Height of Principal Building	50			<50'	
Height of Accessory Building	35			N/A	
Minimum Spaces				Vehicle Spaces	
- Office			2.80 / 1,000 GFA	0	
- Existing House			2.0/SF House	2	
- Landscape Contractor - Employee (Onsite)			1.0 / Employee	0	
- Landscape Contractor - Employee (Field)			0.5 / Employee	17	
- Commercial Vehicles			1 / Vehicle	10	
Total				29	

VI. CONFORMANCE WITH NECESSARY FINDINGS

A. General Conditional Use Findings Required Under Section 59-7.3.1.E.

1. *To approve a conditional use application, the Hearing Examiner must find that the proposed development:*

a. *Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.*

This section is not applicable. There are not any active, existing prior approvals for the subject site.

b. Satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

The proposed use, a landscape contractor, is permitted by conditional use approval in the R-200 zone in which the property is located (Section 59.3.1.6). Compliance with applicable development standards is shown on tables on the face of the plans submitted.

c. Substantially conforms with the recommendations of the applicable master plan.

The Subject Property is located within the planning area for the 2005 Olney Master Plan area. This area has always been low density rural residential and agricultural. The area remains low density residential and agricultural in nature to the present day. In addition, it will not constitute a nuisance because of traffic, noise, or physical activity in view of the size and scope of the proposed use, its hours of operation and its location. And typical landscaping operations are anticipated and allowed per CU via County Zoning Code and Maryland case law. In fact, while the operation does have both a morning and afternoon peak activity and vehicle trip time when staff and management arrive and leave the landscape contracting yard, that time is typically less than two (2) hours in total a day (about 45 minutes in the am for handing out of assignments and setup and thirty plus minutes when the staff and vehicles return in the afternoon to drop off vehicles, clean up and provide some set up for the next day) and per the attached Traffic document (TOC # 15) is projected to involve a trip generation calculated at ten (10) vehicle trips in the morning and up to seventeen (17) spread out during several hours in the afternoon based

upon when the teams finish their work at customers offsite properties and return to drop off the work vehicles and exit the property. These numbers are well below the maximum weekday peak hour numbers. Also attached is a Site Distance Report (SOJ #20). At all other times, the property is essentially quiet and without any material traffic, noise or movement coming or going on the property. Occasionally, management may remain on site longer or return if needed. Also on a rare occasion, staff may come back during the day to swap out equipment or a vehicle. Last, this proposed tree care company is much smaller and thus less impactful than (2) other traditional landscape contractors recently approved by CU in the Olney Master Plan area. See 15-04 David Mamana and Greenskeeper Landscaping and Lawn MGT, Inc. that was approved for up to 53 staff (with only 26 allowed on site at one time) and 30 work vehicles and CU18-06 Goshen Enterprises, Inc. approved for up to 38 staff (that can be increased to 50 when septic enhanced) and 20 work vehicles.

d. Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the Plan.

The proposed conditional use will be in harmony with the general character of the neighborhood and will not constitute a nuisance because of traffic, noise, or physical activity in view of the size and scope of the proposed use, its hours of operation and its location. The equipment and activities to be conducted on site by Axcobar are comparable to and not too atypical to what occurs in farming operations on nearby farms. Additionally, landscape contracting is permitted in R-200 zones, and many exist in the County. And as stated earlier this is a tree care company, which has significantly fewer moving parts and operations than a typical,

traditional landscape contractor and thus even less impact than anticipated under the Code. Further, this application is for a small family size operation. Lastly, the zone permits the requested use as a Conditional Use and the property layout and planned use design provides adequate setbacks, screening and blending.

The property fronts on Zion Road, involves no new structures are planned (just replacing long standing vacant house), and thus the applicant will not materially change the appearance of the property, as it has existed for many years.

e. Will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Applicant's research discovered a few special exceptions or conditional uses located in the area. The uses are noted below. It is not likely that the approval of the subject Conditional Use would adversely affect the predominantly rural residential, utility and agricultural nature of the area. In fact, it is likely that the operation would not be visible from the road or nearby properties (perhaps besides the two adjacent ones to the north and south where the neighbor to the north is a supporter and the property to the south is vacant) and will have minimal daily vehicle trips.

Although there are low density residential uses within the neighborhood, the property is also located near a long standing, large utility operation, agricultural and institutional uses. The subject conditional use does not propose to construct any new structures. The proposed re-build of the long-standing residence will continue to blend in well with the surrounding neighborhood and have no material visual impact on it. The subject CU is small in scope with minimal changes to the property and is consistent with the recommendation of the Master Plan and would not alter the nature of the area.

- BA-1819 (from 1965) & 1820 for Pepco at and around 20300 Zion Road, Brookeville (approx. 35 acres). The approvals include public utility buildings and structures, Substation and overhead power lines, all of which are to the north and west of subject property.
- S-717 (CBA 867, CBA 2046, S-1187) for current “Our House” operations (former Melwood Farm from 1966 approval) at 4615 Brookeville Road and 19715 Zion Road on over 139 acres.
- BAS 254 and 254-A- from M-NCPPC property at 5130 Brookeville Road, Brookeville related to Mt Zion local park consisting of 10.7 acres.

f. Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. *if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

ii. *if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

A preliminary subdivision plan is not filed concurrently and is not expected to be required subsequently. The subject use has little need for typical public services. The property has access to public water and will be installing a brand new, alternative septic system pursuant to consultation with County Well and Septic officials and septic system professional consultant. Please see attached email (SOJ #18) from County Department of Permitting Services Well and Septic division manager and applicant team, including professional innovative septic system engineering consultant and report (SOJ #18) from County and State recognized professional innovative septic system engineering consultant with an innovative plan designed for the subject property due to County determination that the existing septic and a sound mound system are insufficient. The maximum population of employees will be on the property only in the early morning for approximately 45 plus minutes, when the management and field team members have arrived.

The capacity of the road network to manage the minor increase of traffic is addressed in the Applicant's M-NCPPC Traffic document that notes the minimal vehicle trips of ten in the morning peak hours and seventeen spread out over the afternoon peak hours and in reality it is

likely that some of those afternoon vehicle trips would fall before or after peak hours. (SOJ #15). Additionally, the Applicant has supplied a line of site study for access and use of Zion Road as prepared by a certified State Land Surveyor for this very straight area of Zion Road, which notes that the visibility is excellent. In fact, the Site Distance Report shows that the site distance in both directions is nearly double the required 200-foot distance at 396 and 367 feet for the posted 30 mph speed limit. The site will also be well below the 50-trip vehicle number in the am and pm peak travel hours (at approximately 1/3 the threshold that would require a traffic study). In fact, staff arrival in the am will be before the peak travel time has begun and exit of staff in the afternoon and evening will typically be spread over multiple hours as projects are completed each day.

f. Will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood.*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Applicant is confident that this requirement is met. The inherent physical and operational characteristics associated with a landscape contractor will not cause undue harm to the

neighborhood. And again, the impact is significantly less for a tree care company vs traditional, typical landscape company as there is no stock material on site or deliveries and less need to move material around on the property, to remain onsite during the day or to have an onsite office and employees onsite all day. The inherent characteristics include Vehicle and pedestrian trips to and from the Property; Parking for employees; Varied hours of operation; Sound or odors associated with vehicles; Sound or odors associated with trucks and equipment; Work yard area; and Lighting. These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected and again are materially less for a tree care use, which falls within landscape contractor, but has much fewer moving parts, material, equipment, staff, office need, etc., and thus much less impact to the property and area. As noted earlier, there are few residences in close proximity and they are well buffered from the Project via distance, setbacks, existing and proposed landscape, changes in elevation, field plantings, and by forest conservation. The Project's non-inherent characteristics would not cause an adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Applicant will meet this requirement by re-building the long-standing residence that has been abandoned well before applicant bought the property. The rebuilt will be a residence, have design and look of a residence and be a very modest size at less than 1,000 square feet.

B. Use Standards for Landscape Contractor under Section 59-3.3.5

The proposed landscape contractor use complies with the use standards found in Section 59-3.5.5.B as follows:

- 1. In the Agricultural, Rural Residential, and Residential Detached zones the minimum lot area is 2 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory or operation.*

This standard is met. The area to be devoted to conditional use purposes is 2.01 acres. Please see attached SOJ #17 that includes emails with County DPS zoning manager and attachments that support DPS position that the 2 parcels owned and to be used by Applicant for CU are of sufficient size of at least (2) acres for a landscape contractor size. The proposed use and size are small to modest sized family tree care business vs. a typical, projected full service and sized landscape contractor operation that per Zoning Code Section 3.5.5. Landscape Contractor includes among other- the business of designing, installing, planting, or maintaining lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage features, or other activities intended to enhance the appearance or usefulness of outdoor areas. Landscape Contractor also means providing snow removal services

with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location.

2. *Building and parking setbacks, including loading areas and other site operations, are a minimum of 50 feet from any lot line.*

As shown on the attached plan, all building, parking, loading, and site operations are located more than 50 feet from the boundaries of the main parcel of land.

3. *The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on-site must be limited by the Hearing Examiner to avoid an adverse impact on abutting uses. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.*

The number of vehicles and equipment that will be parked on-site is consistent with the scope of operations of this sized landscape contractor. There is more than adequate parking and/or storage areas provided on site for all the identified trucks, equipment, and employees' personal vehicles.

4. *Sale of plant materials, garden supplies, or equipment is prohibited unless the contracting business is associated with a Nursery (Retail) or Nursery (Wholesale).*

There will be no direct or retail sale of plant materials, garden supplies, or equipment to the public conducted on the site.

5. *The Hearing Examiner may regulate hours of operation and other on-site operations to avoid adverse impact on abutting uses.*

The hours during which Axcobar will be active are consistent with the activities conducted on farms, churches, public utilities, golf course, county park and residences near the subject property, typical for Landscape Contractor operations and are designed to avoid adverse impact on users abutting the property. Employees typically arrive and depart in the morning prior to peak traffic hours and have staggered return and exit times in the afternoon/evening. In addition, Axcobar's property will be vacant for the vast majority of each day thus reducing impact on abutting properties.

C. Conformance with the General Development Requirements of Article 59-6

1. *Division 6.1. Site Access*

Access to the site is from an adjacent public street, which will provide safe and convenient circulation for all. See attached site distance report. (SOJ #20).

2. *Division 6.2. Parking, Queuing, and Loading.*

As shown on the Conditional Use Plan, the Subject Property complies with all applicable requirements of Division 6.2, related to the required number of parking spaces. A total of 10 off-street parking spaces are provided for staff pursuant to request and per Section 59.6.2.4. of the Zoning Ordinance for a

Landscape Contractor in an R-200 zone for employee parking. Additionally, the project will provide spaces for the up to 17 trucks and equipment.

Division 6.4. General Landscaping and Outdoor Lighting.

The Applicant will meet all general landscaping requirements as shown on the landscaping drawing plans. No outdoor lighting is proposed for the landscape contractor use. The residence to be re-built will have typical, low level outdoor lighting.

3. *Division 6.5. Screening Requirements*

The attached Landscaping Plan demonstrates how the screening requirements of the Zoning Ordinance are satisfied to ensure compatibility with the surrounding neighborhood.

Division 6.6 Outdoor Display and Storage

The attached Landscaping Plan also demonstrates how the screening requirements of the Zoning Ordinance are satisfied for screening of the conditional use equipment to ensure compatibility with the surrounding neighborhood.

4. *Division 6.7. Signs*

The property does not currently include any signage identifying the use. The applicant is not needing or asking for any signage.

VI. CONCLUSION

In summary, this Statement of Justification demonstrates that the proposed conditional use application for a Landscape Contractor on Zion Road in Gaithersburg meets the definition for the use, the development standards for the underlying R-200 zone, satisfies the use standards for a Landscape Contractor, meets all applicable requirements of the Zoning Ordinance and is consistent with the Master Plan. Thus, it will deliver a compatible land use at this site that will

enable a Landscape Contractor, with a focus on overall tree care for a county population and beyond in need of such expertise and services.

Respectfully submitted,

MILLER, MILLER & CANBY

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