

March 7, 2022

Written Testimony for Montgomery County's Fiscal Year 2023 Capital Budget and FY23-28 CIP

Submitted by: Sylvia S. Tognetti, Silver Spring MD

Dear Montgomery County Council,

I support the testimony of the Montgomery County Stormwater Partners Network (SWPN), for which I serve on the steering committee. I am submitting this separate individual testimony to bring your attention to some of the perverse effects for water quality of a particular drainage project on my street, Menlo Avenue in Silver Spring. It is listed in the current proposed CIP among projects already completed, which were funded through the Water Quality Protection Charge. However, it appears to have resulted in the erosion of the streambed in my backyard, which also degrades water quality. ***Furthermore, it also appears to have been necessary because of waivers from stormwater management requirements that had been granted by DPS*** in 2018 for the construction of two new houses (10218 and 10220 Menlo), which are much larger than the single dilapidated teardown that they replaced, which also necessitated removal of several large trees. A fee in lieu of stormwater management practices was paid for a third house (10219 Menlo) in 2005, before on-site stormwater management was required. Another dilapidated house was torn down (at 10221 Menlo), on which work had been stopped at the time, because the allowable limit of disturbance was exceeded during demolition. That lot is currently for sale. I know it is not the only such project in the County.

No advance public notice was given for the drainage project, which I learned about when I heard trucks backing up on the street to install it. I found out that the work was initiated by DOT without a permit due to emergency basement flooding (at 10217 Menlo). As shown in one of the pictures below, the stream behind my house suddenly became clouded with sediment. I proceeded to contact DPS, which resulted in a one week pause for the project to obtain a sediment and erosion control permit. In response to my questions, DPS also provided information about the waivers previously issued on the street. Per an email response from DPS, *"Stormwater management requirements do not apply to this drainage project because it is not part of development and will not create additional impervious area"*. Therefore, no alternatives even had to be considered, but it is clearly the result of the waivers granted by DPS for development projects, which did add impervious area.

Nor was any public notice provided or alternatives considered when DPS issued the waivers from onsite stormwater management requirements in 2018 and 2005. In the above referenced email, DPS also explained that "A sediment control permit (Permit No 284178) was issued for these lots in October, 2018. Each of these lots is 7,500 square feet in area. Current code requires stormwater treatment practices to be installed on lots of this type when possible. A geotechnical analysis provided prior to issuance of the sediment control permit indicated that the soils at this location are unsuitable for such practices (dense weathered rock at depths ranging from 3' – 5'), therefore compliant stormwater treatment practices could not be installed. A fee in lieu was paid."

This drainage project added an outfall to a small headwater stream that starts in the Capitol View-Homewood Local Park at the top of the street. This stream, Forest Glen Creek, runs behind my home at 10211 Menlo, and those of several other concerned neighbors who all noticed that this stream has been increasingly deepening or downcutting and eroding its banks since the building of the new houses. Since then, the stream has further eroded, exposing an old inactive drainage pipe on my property, also shown in the before and after pictures below.

The side of the street that backs up to the stream is also part of the Capital View Historic District, and houses on this side are presumably required to be consistent with the historic character of the neighborhood and to obtain a Historic Area Work Permit. The house at 10219, built in 2005, is hardly “in character.” We have yet to see plans for 10221. I can only imagine what the stream will look like if this trend of replacing smaller non-historic houses with bigger ones continues.

Coincidentally, when I heard the trucks, I was on a call to discuss the issue of waivers, with other members of the Stormwater Partners Network, and then saw the pipes ready to be placed in a deep trench that was in process of being dug. Others in SWPN had similar stories, and the Audubon Naturalist Society obtained and mapped information about all 1,283 waivers granted just between January 2014 and July 2020. These discussions led to the requests pertaining to waivers in the SWPN testimony.

In addition to increasing the stormwater waiver fee, as requested by SWPN, I also ask that, at a minimum, public notice be provided in advance of issuing these waivers, and also installing drainage projects, so that greener alternatives can be considered. The fee should be an amount sufficient to treat the additional volume of runoff generated, and also reduce the incentive for adding impervious surfaces, which destroy our streams and increase pollution from stormwater runoff to the Chesapeake Bay.



Figure 2: Stream during the project in January 2020 which does not show the exposed pipe



Figure 1: Stream on 3-6-2022 - exposed pipe that was not there before the project. Erosion carried away the streambank and the ferns planted there to help protect it.



Figure 3: Exposed pipe when first noticed, October 2020 and April 2021



Figure 4: Stream during the project - clouded with sediment, January 2020