



Loiederman
Soltesz Associates, Inc.

June 13, 2012

Mark Pfefferle, Acting Chief
M-NCPPC
Environmental Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Hanover Shady Grove
Final Forest Conservation Plan Amendment - Variance Request
LSA Project #1611-01-00

Dear Mr. Pfefferle,

On behalf of Hanover R.S. Limited Partnership, Loiederman Soltesz Associates, Inc. is requesting a variance for the removal of four (4) trees all 30 inches or greater in DBH, as required under Section 22A-21 of Montgomery County's Forest Conservation Law and 2010 revisions to the State Forest Conservation Law enacted by State Bill 666. Where it notes the variance pertains to "Trees having a diameter measured at 4.5 feet above the ground of 30 inches diameter or 75% of the diameter of the current state champion tree of that species as designated by the department". The removal or impact of these trees is for the residential development of a two multi-family buildings on undeveloped pad sites in the existing Shady Grove Executive Center office park.

Project Information

The subject property (Hanover Shady Grove) consists of two parcels (T-T, R-R) located in the Shady Grove Executive Center Office Park, at the northeast quadrant of the intersection of Omega Drive and Research Boulevard in Rockville, Maryland. The undeveloped pads total approximately 6.92 acres. The property is zoned CR (Commercial/Residential) Zone (CR 1.5: C 1.5, R 1.5, H 100) and will be developed under the optional method of development.

The Hanover Shady Grove Site Plan Application proposes development of two residential buildings with approximately 370 multi-family dwelling units (up to 452,152 square feet), including 13.5% Moderately Priced Dwelling Units ("MPDUs"), structured parking (to be provided in a new structure, as well as through the shared use of an existing parking garage), resident amenities, and public open spaces.

The originally approved Natural Resources Inventory showed 17 specimen or significant trees located on the property. A reevaluation of the property in April 2012 shows current conditions as including only 15 specimen or significant trees on the subject property.

The proposed plan retains 9 specimen trees and 3 significant trees.

The property has an approved Sketch Plan (#320120020) and is now in the process of amending the approved Preliminary Plan that will be reviewed concurrently with the proposed Site Plan.

The trees identified in this variance request for removal or CRZ impacts are shown on the amended Final Forest Conservation Plan. The trees to be removed are either located within the limits of disturbance or the LOD impacts to their critical root zone are too large to expect tree survival.

Trees for Removal

Listed below are the trees identified for impact on the Final Forest Conservation Plan Amendment.

ID #	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	NOTES	% Impact
T1	52	Pignut Hickory	<i>Carya glabra</i>	Good		100%
T2	26	Pin Oak	<i>Quercus palustris</i>	Good		100%
T3	26	Red Maple	<i>Acer rubrum</i>	Good		100%
T4	42	Tulip Poplar	<i>Liriodendron tulipifera</i>	Good		100%
T5	28	Tulip Poplar	<i>Liriodendron tulipifera</i>	Good		100%
T6	46	Red Maple	<i>Acer Rubrum</i>	Good		100%

Trees T-1 and T-4 were identified on the previously approved Final Forest Conservation Plan to be removed.

Tree T-6 was identified on the approved Final Forest Conservation Plan as taken for canopy credit. The nature of the site's infill development causes the unavoidable removal of this tree.

Critical Root Zone Impacts

There are six (6) specimen trees impacted by the limits of disturbance (LOD) for the development. All of these trees will have less than 30% CRZ impact. Tree protection fencing will be erected for trees which are impacted. An arborist will be involved in writing a Certified Arborist report.

Additional Application Requirements

Per Montgomery County's Forest Conservation Law Section 22A-21(b) of the *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) Provided any other information appropriate to support the request.

Pursuant to: Item "(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship; and" Item "(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas":

The land use and proposed density is recommended in the Great Seneca Science Corridor Master Plan. The SMA rezoned this property from C-2 to CR Zone to allow for infill of commercial and residential development in an area that has significant office development. The current development proposal for 2 multi-family buildings is constrained by the existing buildings and the area of the two undeveloped parcels.

The subject plan proposes to retain 6 (66%) of these specimen trees.

All specimen trees to be impacted are within the same area, which currently functions as a shaded lawn/open space. Existing Forest Conservation Category I easements encumber the property. The expectation for this property, per the Master Plan is that based on both the 1986 and 1997 approved preliminary plans shows a building to be located at the location where the impacts to the existing specimen trees will occur.

The unwarranted hardship to the property owner is that this expectation, which was previously recommended for approval by MNCPPC Staff via approved preliminary plans cannot be realized without impacting the trees. Considering the configuration of the property, the design constraints, the location and condition of the specimen trees being removed, and the Master Plan objectives, it would cause unwarranted hardship to the applicant if the variance request were to be denied.

As previously stated, the intent to locate a building on the site has been previously recommended for approval by MNCPPC Staff. Enforcement of a prohibition of removing the specimen trees would deprive the applicant of the rights commonly enjoyed by others who are in similar areas that have many of the same features as the subject property.

Pursuant to "(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"

The trees proposed for removal are not directly connected to any streams, or part of a riparian buffer system. The proposed stormwater management plan for the new buildings makes provision for stormwater runoff that would have been intercepted by these trees. SWM calculations show that the proposed plan will improve water quality at this location.

Pursuant to "(4) Provided any other information appropriate to support the request."

As stated previously, the approved plan for this site has always called for a building in the location where the trees are to proposed for removal. No other specimen trees within the forest conservation plan area will be impacted.

Minimum criteria for Variance

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;
- (2) Is based on conditions or circumstances which are the result of actions by the applicant;
- (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- (4) Will violate State water quality standards or cause measurable degradation in water quality

Pursuant to "(1) Will confer on the applicant a special privilege that would be denied to other applicants." The use of this site for a residential dwellings is a permitted and Master Plan recommended use and will operate in a manner consistent with that of surrounding multifamily dwellings in the area and in Montgomery County. As such, this is not a special privilege to be conferred on the applicant.

Pursuant to "(2) Is based on conditions or circumstances which are the result of actions by the applicant; and (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property" the applicant has taken no actions leading to the conditions or circumstances that are the subject of this variance request. Furthermore, the surrounding land uses do not have any inherent characteristics that have created this particular need for a variance.

Pursuant to "(4) Will violate State water quality standards or cause measurable degradation in water quality" the applicant cites the reasoning in the previous response to requirement 22A-21 (b)(3), and restates its belief that granting this variance request will not violate State water quality standards or cause measurable degradation in State water quality standards. In fact, the resulting development will use stricter sediment control and stormwater management practices than were employed in the initial development and the quality of the water leaving the site will be improved from existing conditions.

For these reasons listed above, we believe it is appropriate to grant this request for a variance. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,
LOIEDERMAN SOLTESZ ASSOCIATES, INC.

Chanda S. Beaufort, RLA
Assistant Project Manager

cc: