



January 7, 2020

Katherine Nelson
Planner Coordinator
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 9545 River Road
Variance Request for Specimen Tree Removal/Impact

Dear Ms. Nelson:

On behalf of our client, Spectrum Acquisition Potomac, LLC (the "Applicant"), and pursuant to Section 22A-21 of the Montgomery County Code (the "Code"), as well as Sections 5-1607 and 5-1611 of the Natural Resources Article of the Maryland Code, we respectfully request a variance to allow impacts to or removal of two (2) specimen trees identified below. These trees are also shown on approved Natural Resources Inventory/Forest Stand Delineation 420200520, as well as the proposed Preliminary Forest Conservation Plan for the above-referenced project. As noted in greater detail below, it is appropriate to grant a variance in this matter because strict enforcement would result in unnecessary hardship or practical difficulty to Applicant.

Introduction

The project associated with this variance request is Applicant's redevelopment of 9545 River Road (the "Property") located in Potomac, Maryland with a senior care residential facility (the "Project"). Associated infrastructure including driveways, parking areas, stormwater facilities as well as walking paths, rain gardens and recreational areas, and onsite afforestation and landscaping are proposed. The Property is currently comprised of approximately 5.93 acres of improved land with a commercial landscape operation and associated buildings, surface parking and driveways, outdoor storage and planting areas, and some landscape features with trees, shrubs, and lawn. The Property is bounded by River Road (Maryland Route 190) to the southwest, and residential neighborhoods to the northwest, northeast, and southeast.

As part of the proposed Project, Applicant seeks a variance for the removal of one (1) specimen tree on the Property, and impacts to the Critical Root Zone ("CRZ") of one (1) specimen tree on a property on the opposite side of River Road. This variance request complies with M-NCPPC and Maryland state law, which require Applicant to file for a variance from these laws to remove or impact any specimen tree (tree 30" or greater in Diameter at Breast Height [DBH] or tree with a DBH equal to or greater than 75% of the current State Champion of its species as designated by MDNR); trees that are part of an historic site or associated with an historic structure; any tree designated by the State or County as a national, State, or County champion tree; or any tree, shrub or plant identified on the Rare, Threatened, or Endangered

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(RTE) species list provided by the U.S. Fish and Wildlife Service or the Maryland Department of Natural Resources.

The following table lists the two (2) specimen trees for which Applicant seeks a variance to remove or impact the CRZ:

TREE #	DBH INCHES	SPECIES (SCIENTIFIC NAME)	SPECIES (COMMON NAME)	CONDITION	RECOMMENDATION
T1	30	<i>Acer negundo</i>	Boxelder	Poor	REMOVE: 100% CRZ impact. Tree in poor condition covered with English ivy.
T4	Est. 35	<i>Quercus rubra</i>	Red Oak	Poor	SAVE: Request variance to impact the CRZ. An 11% CRZ impact to this offsite tree warrants the tree to be saved. Removal may occur by others due to the poor condition of the tree not related to construction.

Justification of Variance

Section 22A-21 of the County Ordinance authorizes the County to approve variances to the Forest Conservation Lawn allowing disturbances to certain trees, including specimen trees. An applicant seeking a variance must present a request in writing and the applicable approving authority must make certain findings and descriptions prior to approval. Applicant’s variance request satisfies the required findings as follows:

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

The Project proposes the construction of a senior care and living facility, meeting a need for an anticipated shortage of senior housing as stated in the Master Plan. Design principles incorporated into this project serve to preserve the subregion’s green and rural character while creating a pedestrian and bicycle-friendly environment. Afforestation plantings onsite, the incorporation of rain gardens in addition to required stormwater facilities, walkways through landscaped and recreational areas, and pedestrian and bicycle lanes along River Road in front of the proposed facility are all in keeping with these design principles. While afforestation is proposed in the area of the onsite Specimen Tree, grading in the immediate area is required to carry out these design elements prior to afforestation planting; therefore, the removal of Specimen Tree T1 cannot be reasonably avoided. The proposed CRZ impact to the offsite specimen tree is due to road improvements; however, impacts are minimized by avoiding ground disturbance adjacent to the tree. Denial of the variance would cause unwarranted hardship in significantly reducing the area of the Property that could be redeveloped because of site work necessary to create safe access from the site. The egress point cannot be moved further away from the property line and still meet safe sight distance requirements. This would preclude implementation of the Project, considerably undermine the economic viability of any redevelopment of the Property, and prevent achievement of planning goals.

Impacts minimization and avoidance to the specimen trees are described as follows:



- This work will require removal of one (1) onsite specimen tree and CRZ impacts to one (1) offsite specimen tree:
- The proposed removal of Specimen Tree T1 is due to its location inside the proposed Limits of Disturbance (L.O.D.) where grading is required. This tree is located in a lawn area adjacent to nursery planting areas near the property edge, and is considered to be in poor condition, partially due to significant overgrowth of vines on the tree. While development in the vicinity of the tree is avoided and afforestation plantings are proposed in this location, grading to support the design of the project could not be reasonably minimized to save the tree.
- Tree T4 is located to the southwest of the Property, across River Road. The proposed CRZ impact is due to improvements to River Road as part of the Project. CRZ impacts to this tree were minimized by confining the Limits of Disturbance (“LOD”) to within the existing roadway asphalt on the side of the Property.

(2) *Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Denial of the variance would deprive Applicant of rights commonly enjoyed by others in similar areas. The land within the Property’s vicinity, including those along River Road, has been considerably improved primarily with single-family residential development. The Project minimizes development impact by providing housing for a number of seniors in a single building footprint on previously developed land. The Property use is consistent with the existing character of the surrounding neighborhood, with a compatible building and residential uses incorporating a walkable, bicycle-friendly design.

Strict enforcement of the County Code will unfairly prevent the redevelopment of the Property to the same extent as similarly situated properties along River Road where safe site distance for an egress point is necessary. Approval of the variance will allow Applicant to create residential facility which is consistent with the rights enjoyed by nearby property owners.

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

The granting of Applicant’s variance request will not result in a violation or State water quality standards, nor will a measurable degradation in water quality occur as a result. On the contrary, the Project will implement measures to improve water quality, such as the incorporation of stormwater facilities where none previously existed. Rain gardens are not required but are proposed to be included and will serve as redundant stormwater mitigation, enhancement to groundwater recharge, and for aesthetic value. The stream valley buffer extending onsite from a stream located on an adjacent property is proposed to be nearly completely planted as forest. The onsite Specimen Tree proposed for removal is not located in a stream valley buffer or other area classified as an environmentally sensitive feature.



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

Approving Applicant's variance request is justified for other reasons as well. The Project proposes forest plantings along a significant portion of the Property perimeter, meeting all of the Project's Forest Conservation requirements onsite and significantly improving environmental conditions where no forest currently occurs. Parts of the proposed onsite afforestation would be contiguous to offsite existing forest and stream valley buffer. The Landscape Plan also includes a significant number of proposed plantings throughout the property, including replacement trees for the proposed removal of the onsite specimen tree, additional shade trees, evergreen trees, ornamental trees, and planting beds, all of which will serve to improve ecological quality.

Furthermore, the variance does not arise from a condition related to land or building use, either permitted or nonconforming, on a neighboring property.

Thank you for your consideration of Applicant's tree variance request. The supporting information provided in this letter establishes that denial of the variance would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant's efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,



Marion E. Bundens
Maryland DNR Qualified Professional
Senior Environmental Planner

