

# Benning & Associates, Inc.

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To: Mr. Patrick Butler, Upcounty Planning Area Chief / M-NCPPC  
From: David W. McKee  
Date: 05-02-2022  
Re: Bucklodge (11989032A)

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Dear Mr. Butler,

In accordance with the requirements of Section 22A-21 of the County Code and on behalf of the applicant for this project, I am writing to request a variance from provisions of Chapter 22 as it applies to this project. Specifically, a variance is required to impact a specimen tree located on the property.

The tree proposed to be impacted is shown on the pending Preliminary / Final Forest Conservation Plan (FCP) for the subject project. The tree requiring a variance is as follows:

<b>SPECIMEN TREE CHART</b>						
<b>TREE NUMBER</b>	<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>	<b>SIZE (D.B.H.)</b>	<b>TREE CONDITION</b>	<b>%CRZ IMPACTED</b>	<b>Status</b>
ST-1	Quercus alba	White Oak	43.6"	Moderate	27%	Retain

The subject property is zoned IM (moderate industrial) and is planned to be developed for uses appropriate for the zone. Plans for the site propose new buildings, access driveways, parking areas, stormwater management areas, sand mound septic systems, and new well sites for potable water. The property currently consists of 2 recorded building lots and 3 recorded outlots. The outlots are to be converted to building lots or combined with an adjacent lot to create a total of 4 building lots.

Specific impacts to the tree included in this variance request are as follows:

ST-1, a 43.6" White Oak, is located in the western corner of the property within the limits of proposed Lot 1 (currently Outlot B). Because of limitations caused by access to the lot, the location of approved sand mounds, and other site conditions, the only practical location for a new building on the lot is in an area which is near the location of ST-1. The tree will be impacted by grading for the proposed new building. Stormwater management measures are

also proposed within the critical-root-zone of the tree. Because the impacts are not severe, the tree is planned to be retained with appropriate tree protection measures.

**Requirements for Justification of Variance:**

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

1. Describe the special conditions peculiar to the property which would cause 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 granting of the variance; and
4. Provide any other information appropriate to support the request.

There are special conditions peculiar to the property which would cause unwarranted hardships should the variance not be approved. The site is in an area of the County which is not served by public water or public sewer. On-site wells and sewage disposal systems (sand mounds) are necessary on each of the lots for the site to be developed. The locations of the proposed sand mound septic areas on each lot were determined by testing the soil for percolation, and the locations shown on plans are the only locations where passing tests were obtained. As Lot 1 cannot be developed without the use of sand mound septic systems in the locations shown, all other site features must work around the areas reserved for sand mounds. In addition to the area reserved for septic areas and well sites, an existing stormwater management pond is in the eastern portion of the lot. These factors result in placement of the new building at the west end of the lot near the area where the specimen tree is located. However, special care has been taken to minimize impacts to the specimen tree, and to avoid impacts to another nearby tree so that both can be retained.

Should this variance not be approved, the property owner would be deprived of rights commonly enjoyed by others in similar circumstances. The property has been planned to meet all zoning, Master Plan, and site-specific conditions. Approval of this variance allows the owner to proceed with development of the site in a manner which is appropriate in the IM zone.

The granting of a variance to remove specimen trees will not result in a violation of State water quality standards or any measurable degradation in water quality. The tree which is the subject of this variance is not proposed to be removed. Furthermore, the project has been planned to comply with the latest State and County stormwater management requirements. The project will provide environmental site design (ESD) practices.

**In addition to the above, Section 22A-21(d) indicates 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 the 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.

This request for a variance will not confer a special privilege that would be denied to other applicants. Approval of the requested variance will allow the property owner to develop the property in a manner appropriate for the IM zone.

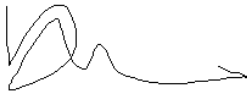
This variance request is not based on conditions and circumstances which are the result of actions by the applicant. No actions have been taken other than to submit plans for approval of development in accordance with the current zoning of the property.

The request for a variance does not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

Granting this variance request will not violate State water quality standards or cause measureable degradation in water quality. As noted above, the tree which is the subject of this variance is not proposed to be removed. Furthermore, the project has been planned to comply with the latest State and County stormwater management requirements. The project will provide environmental site design (ESD) practices.

For the above reasons, we respectfully request approval of this request for a variance from provisions of Section 22A-21 of the Montgomery County Code. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,



David W. McKee