April 20, 2020

M-NCPPC, Attn. Steve Findley, Planner Area 2
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Wilgus Property
Preliminary Forest Conservation Plan - Variance Request
Preliminary Plan Number: 120200140

Dear Mr. Findley,

On behalf of Wilgus-Montrose Associates LLC (Applicant), Soltesz is requesting a variance for the critical root zone (CRZ) impact to one hundred and ten (110) trees 30 inches or greater in diameter at breast height (DBH), as required under Section 22A-21 of the Montgomery County Code (Code). This variance request is also consistent with recent revisions to the State Forest Conservation Law enacted by Senate Bill 666 and codified at Section 5-1607(c)(2) of the Natural Resources Article of the Maryland Code, which notes that a variance is required to disturb trees with a DBH of 30" or greater, or with a DBH that is at least 75% of the diameter of the state champion tree of that species.

The impact to these trees results from a mixed-use project located in the White Flint 2 Sector Plan area in Rockville. These trees are within the proposed LOD and will be removed due to tree health, species-wide survivability, and guidelines put forth by Montgomery County. The Forest Conservation Plan was prepared in consultation with Don Zimar, RPF #377, RCA #446, who provided guidance regarding the health and preservation opportunities for the existing trees on the subject property.

Project Information

The subject property is bounded by Montrose Parkway, Montrose Road, East Jefferson Street, and Towne Road. The gross tract area is approximately 16.64 acres across five separate parcels. The zoning classifications of the parcels, from west to east, are CRN-0.75, C-0.0, R-0.75, H-50; CR-2.0, C-0.25, R-1.75, H-75; CR-2.0, C-1.0, R-1.5, H-200.

On August 21, 2019, the Montgomery County Planning Board (Planning Board) approved a sketch plan (#320190070) permitting the construction of up to 1,274,498 square feet of total development, with up to 1,025,789 square feet of multi-family and townhouse residential uses and up to 248,709 square feet of commercial uses (Sketch Plan).

Applicant seeks to implement the Sketch Plan on the subject property with the Preliminary Plan, which proposes 15,000 square feet of retail space and 745 dwelling units that will include 107 townhomes, 34 2-over-2 units, and 604 multi-family units. This variance request is being submitted to achieve the proposed Preliminary Plan.

Critical Root Impacts

A NRI-FSD (#420182300) was approved for the subject property on July 9, 2018. The specimen trees below that will be impacted as a result of this variance request are shown on the NRI/FSD and are numbered accordingly for reference purposes. 110 specimen trees are proposed for removal.

WILGUS SPECIMEN TREES TO BE REMOVED (108 TOTAL)					
Tree #	Common Name	Botanical Name	DBH (inch)	Cond.	Impact
1	Tulip Tree	*Liriodendron tulipifera*	38	Good	100%
2	Tulip Tree	*Liriodendron tulipifera*	44	Fair	100%
3	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
4	Tulip Tree	*Liriodendron tulipifera*	41	Poor	100%
5	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
6	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
7	Tulip Tree	*Liriodendron tulipifera*	41	Fair	100%
8	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
9	Tulip Tree	*Liriodendron tulipifera*	58	Fair	100%
10	Tulip Tree	*Liriodendron tulipifera*	30	Fair	100%
11	Tulip Tree	*Liriodendron tulipifera*	42	Poor	100%
12	Tulip Tree	*Liriodendron tulipifera*	30	Poor	100%
13	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
14	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
15	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
16	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
20	Tulip Tree	*Liriodendron tulipifera*	30	Fair	100%
22	Tulip Tree	*Liriodendron tulipifera*	30	Poor	100%
23	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
24	Tulip Tree	*Liriodendron tulipifera*	32	Fair	100%
26	Tulip Tree	*Liriodendron tulipifera*	28	Poor	100%
27	Tulip Tree	*Liriodendron tulipifera*	32	Poor	100%
28	Tulip Tree	*Liriodendron tulipifera*	40	Fair	100%
29	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
30	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
31	Tulip Tree	*Liriodendron tulipifera*	34	Fair	100%
33	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
34	Tulip Tree	*Liriodendron tulipifera*	32	Fair	100%
35	Tulip Tree	*Liriodendron tulipifera*	32	Fair	100%
36	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
37	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
41	Tulip Tree	*Liriodendron tulipifera*	42	Fair	100%
43	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%

45	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
50	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
51	Tulip Tree	*Liriodendron tulipifera*	64	Poor	100%
53	Hickory species	*Carya spp.*	30	Fair	100%
54	Black Oak	*Quercus velutina*	34	Fair	100%
55	Tulip Tree	*Liriodendron tulipifera*	42	Fair	100%
56	White Oak	*Quercus alba*	38	Fair	100%
57	Tulip Tree	*Liriodendron tulipifera*	32	Fair	100%
58	Tulip Tree	*Liriodendron tulipifera*	30	Fair	100%
61	Tulip Tree	*Liriodendron tulipifera*	34	Poor	100%
62	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
66	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
67	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
70	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
71	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
73	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
75	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
76	Tulip Tree	*Liriodendron tulipifera*	48	Poor	100%
77	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
78	Tulip Tree	*Liriodendron tulipifera*	34	Poor	100%
79	Tulip Tree	*Liriodendron tulipifera*	32	Poor	100%
80	Tulip Tree	*Liriodendron tulipifera*	30	Poor	100%
82	Tulip Tree	*Liriodendron tulipifera*	46	Fair	100%
83	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
84	Tulip Tree	*Liriodendron tulipifera*	45	Fair	100%
85	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
86	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
87	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
88	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
89	Tulip Tree	*Liriodendron tulipifera*	52	Fair	100%
90	Tulip Tree	*Liriodendron tulipifera*	56	Fair	100%
91	Tulip Tree	*Liriodendron tulipifera*	56	Fair	100%
92	Tulip Tree	*Liriodendron tulipifera*	60	Poor	100%
93	Tulip Tree	*Liriodendron tulipifera*	40	Fair	100%
94	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
96	Tulip Tree	*Liriodendron tulipifera*	42	Fair	100%
97	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
98	Tulip Tree	*Liriodendron tulipifera*	46	Fair	100%
99	Tulip Tree	*Liriodendron tulipifera*	52	Fair	100%
100	Hickory species	*Carya spp.*	30	Fair	100%
101	Black Oak	*Quercus velutina*	52	Fair	100%

102	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
103	White Oak	*Quercus alba*	48	Poor	100%
104	Tulip Tree	*Liriodendron tulipifera*	56	Fair	100%
105	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
106	Tulip Tree	*Liriodendron tulipifera*	41	Fair	100%
107	Tulip Tree	*Liriodendron tulipifera*	41	Fair	100%
109	Tulip Tree	*Liriodendron tulipifera*	30	Poor	100%
111	Tulip Tree	*Liriodendron tulipifera*	34	Fair	100%
112	Tulip Tree	*Liriodendron tulipifera*	54	Fair	100%
113	Red Maple	*Acer rubrum*	34	Fair	100%
114	Tulip Tree	*Liriodendron tulipifera*	44	Fair	100%
115	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
116	Tulip Tree	*Liriodendron tulipifera*	48	Fair	100%
117	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
118	Tulip Tree	*Liriodendron tulipifera*	46	Poor	100%
119	Tulip Tree	*Liriodendron tulipifera*	46	Poor	100%
120	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
121	Tulip Tree	*Liriodendron tulipifera*	30	Fair	100%
123	Honeylocust	*Gleditsia triacanthos*	38	Poor	100%
124	Tulip Tree	*Liriodendron tulipifera*	42	Poor	100%
125	Tulip Tree	*Liriodendron tulipifera*	44	Fair	100%
126	Tulip Tree	*Liriodendron tulipifera*	46	Fair	100%
127	Tulip Tree	*Liriodendron tulipifera*	38	Poor	100%
128	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
130	Ash species	*Fraxinus spp.*	34	Poor	100%
133	Black Locust	*Robinia pseudoacacia*	32	Poor	100%
134	Tulip Tree	*Liriodendron tulipifera*	36	Fair	100%
135	Tulip Tree	*Liriodendron tulipifera*	36	Poor	100%
136	Tulip Tree	*Liriodendron tulipifera*	38	Fair	100%
137	Tulip Tree	*Liriodendron tulipifera*	42	Fair	100%
139	Black Locust	*Robinia pseudoacacia*	36	Poor	100%
140	Black Locust	*Robinia pseudoacacia*	36	Poor	100%
142	Chestnut oak	*Quercus montana*	32	Fair	100%
143	Red Mulberry	*Morus rubra*	32	Poor	100%
145	Black Locust	*Robinia pseudoacacia*	38	Poor	100%
148	Eastern Cottonwood	*Populus deltoides*	30	Poor	100%
Total DBH Removed			**4335**		
Total Caliper Replacement Required (1" caliper/4" DBH)			**1084**		

Required Mitigation

All 110 of the trees listed above to be removed equate to a combined DBH of 4335". This yields a requirement of 1084" in total caliper replacement. Approximately 251" will be replaced on-site with the provision of ninety eight (98) trees as shown below. Fifty three (53) of the on-site mitigation trees will be located in the landscaped buffer area between the project site and the Cherington townhome community.

Quantity	Location	Common Name	Botanical Name	Size
24	Buffer	Loblolly Pine	*Pinus taeda*	1-1½" cal.
2	Buffer	Swamp White Oak	*Quercus bicolor*	4-4½" cal.
4	Buffer	Willow Oak	*Quercus phellos*	4-4½" cal.
23	Buffer	American Holly	*Ilex opaca*	1-1½" cal.
45	Private ROWs	Native Species to be determined		4-4½" cal.
98	**Total On-Site Mitigation Trees**			

The remainder of the mitigation requirement (833") will be fulfilled through the purchase of a forest bank. The forest bank will consist of 4.17 acres, the equivalent of four hundred and seventeen (417) 2" caliper trees.

Category	***Quantity***	***Total Caliper***
4" Caliper Trees (On-Site)	51	204"
1" Caliper Trees (On-Site)	47	47"
2" Caliper Trees (Forest Bank)	417	834"
Total Trees to be Planted	**515**	
Total Caliper Replacement		**1085"**

Variance Request

Applicant's variance request should be granted pursuant to Section 22A-21 of the Code as the enforcement of Chapter 22A of the Code would result in an unwarranted hardship as detailed below.

The application requirements of Section 22A-21(b) of the Code require an applicant for a variance to:

(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
(2) describe how enforcement of this Chapter 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.

The Applicant meets the above criteria as follows:

(1) *- Special conditions peculiar to the property which cause the unwarranted hardship:*

The existing forest stands on the subject property are dominated by tulip poplar, or *Liriodendron tulipifera*. This species includes 85% of the specimen trees to be removed. While the tulip poplar is a native, fast-growing species that supports wildlife, it is not a preferred plant in urban areas like those recommended for mixed-use infill development within the White Flint 2 planning area, including the subject property. Mr. Zimar attests to the species' weak wood and vulnerability to storm damage as a potential long-term issue for the future residents and tenants of the site, as well as existing development adjacent to the subject property. These trees, if maintained, would struggle not only during the construction phase but also after development is completed and create potential safety concerns.

Another significant factor supporting removal of these trees is health, which further impacts the chance of survival and risks to human health and safety. According to Mr. Zimar's field assessment, created as part of the Approved NRI/FSD, just one of the 110 trees to be removed (approximately 1% of the total) is in good health, while the remaining trees are in either fair (63%) or poor (36%) condition. Construction activities such as grading and truck movements around a tree's CRZ in combination with existing poor tree health will most likely jeopardize the survivability and long term viability of these trees.

Additionally, the subject property lies within the boundaries of the White Flint 2 Sector Plan ("WF2 Sector Plan"), approved and adopted in January 2018. It is a stated intention of the WF2 Sector Plan to "[c]oncentrate additional density in areas with potential to create mixed-use activity in support of ongoing efforts to transform these areas" as well as "[i]dentify properties that could develop as unique mixed-use neighborhood centers to serve established communities." WF2 Sector Plan, pg. 24.

The subject property lies in the Rockville Pike Montrose North District of the WF2 Sector Plan within the "Cherington Area." WF2 Sector Plan, pg. 36. The WF2 Sector Plan specifically discusses the subject property as follows:

> The undeveloped portions of the Wilgus property have the greatest potential for new development. Redevelopment in this area would serve as an important link between the Executive Boulevard District and the Pike & Rose development. WF2 Sector Plan, pgs. 36-37.

These recommendations acknowledge that the subject property is expected to provide greater intensities and building heights using the CR Zone on the eastern portion, and lower heights and densities using the CRN Zone on the westernmost portion, directly south of the existing Cherington townhouses. Applicant has respected these recommendations by in a single approved Sketch Plan for the entire subject property, including the CRN portion, and providing approximately 1.4 acres of public open space in the proposed development, including the Central Public Park.

In recognition of the fact that the Cherington community lies immediately north of a portion of the subject property, the WF2 Sector Plan recommends the abutting portion of the subject property (Parcel N273) be zoned CRN 0.75, C-0.0, R-0.75, H-50 and that the new residential development in this location be compatible with the adjacent Cherington townhouse community. Accordingly, the Sketch Plan provides townhouses in this area and a minimum 20' wide vegetated buffer between the existing Cherington townhomes and the proposed new townhomes to the south. WF2 Sector Plan, pg. 37. The Preliminary Plan associated with this variance request is consistent with and implements the WF2 Sector Plan and Sketch Plan by providing townhouses and a planted buffer that naturally screens the new development from the existing townhouse community and places end units perpendicular to the existing community with no intervening roads or alleys between.

For the above reasons, redevelopment of the subject property invokes specific conditions peculiar to the subject property that warrant removal of the specimen trees as requested. To disallow this variance request would result in precluding development consistent with the health status and species assessment of the trees in question, the very recent recommendations of the WF2 Sector Plan, the approved Sketch Plan and other established land use policies of the County.

(2) *- Enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas*:

The geography, demographics, and land use policies of the County have influenced the establishment of the three overall planning areas in the County. Development is more closely clustered in Areas 1 and 2 with Area 3 being more rural. Within Areas 1 and 2, transit accessibility has heavily influenced where the highest density of development is recommended. With growing population and market demand for housing, the County has responded in kind by utilizing zoning, planning, and other policies and regulations to guide and encourage redevelopment in these areas. The Zoning Ordinance, General Plan, master plans, and sector plans reflect the development policies of Montgomery County.

The subject property is part of a desired development pattern of targeting redevelopment along major identified transportation corridors. In the White Flint Planning Area immediately east of the subject property, the densest development radiates outward from the White Flint Metro. The zoning designations of the subject property shift from CR (commercial/residential) to CRN (commercial/residential neighborhood), with various levels of density and building height. It is clear that the subject property, zoned CR and CRN, is intended by the WF2 Sector Plan for urban mixed-use development with building heights of up to 200 feet. *See also* previous discussion. Denying the variance request would prevent the Applicant from implementing the specific land use recommendations for the subject property in the WF2 Sector Plan and achieved in the Sketch Plan. In view of the established and desired development pattern and specific development recommendations for the subject property, such a denial would deprive the landowner of rights commonly enjoyed by others.

(3) - *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 subject property is located in the Cabin John Creek Watershed. The project site is completely bounded by asphalt pavement and the site does not directly drain into a body of water. Stormwater Management will be proposed throughout the project according to the current Maryland Department of the Environment (MDE) and Montgomery County Department of Permitting Services (DPS) regulations and standards. In compliance with these standards, Environmental Site Design (ESD) practices will be implemented to the maximum extent practicable (MEP) through a combination of planning techniques, alternative cover, and micro-scale practices. These ESD practices optimize conservation of natural features, like drainage patterns, soil and vegetation, etc., along with slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration. Applying these techniques will ensure that all available resources have been considered in order to protect streams and waterways from the impact of land development activities. Thus, Applicant is confident that state water quality standards will not be violated and the development will not cause any measurable degradation in water quality.

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

The Applicant believes the information set forth above is adequate to justify the variance request. Furthermore, the Applicant's request complies with the "minimum criteria" of Section 22A-21(d) of the Code:

(1) the request will confer no special privilege on the Applicant that would be denied to any other applicants;
(2) the request is not made based on conditions or circumstances that are the result of actions by the Applicant;
(3) the requested variance is not based on a condition relating to land or building use, either permitted or nonconforming on a neighboring property; and
(4) removal of the impacted trees will not violate State water quality standards or cause measurable degradation in water quality.

As the above responses demonstrate, no special privileges or benefits would be accorded to the Applicant by granting the requested variance. The reasons supporting the variance request arise from the health and species characteristics of existing trees, as well as the goals, objectives, and specific zoning and planning recommendations for the subject property. These factors have been carefully considered by the Planning Board and County Council and incorporated in the approved Sketch Plan which this Preliminary Plan implements. Accordingly, the factors that justify the variance are not based on conditions or circumstances that are a result of actions by the Applicant or related to conditions on adjacent or neighboring land or buildings. Finally, as detailed above, all state water quality standards will be met and there will be no measurable degradation in water quality as a result of the development.

For all of the above reasons, Applicant respectfully requests that this variance request be granted. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

SOLTESZ

Keely D. Lauretti
Landscape Architect