

February 21, 2023

Ms. Mary Jo Kishter
Maryland-National Capital Park and Planning Commission
Area 3 Planning Division
2425 Reddie Drive, 2nd Floor
Wheaton, MD 20902

Re: Sandy Spring Missing Middle Pilot Project
Request for Specimen Tree Variance
Preliminary Plan No. 1-20220050
Site Plan No. 8-20220090
S-NRI No. 4-20220510

Dear Ms. Kishter,

On behalf of our clients, RAD6 Corporation and the Housing Opportunities Commission (Applicant), Townscape Design LLC is writing to request a variance for impacts to the critical root zones (CRZ) of seven (7) specimen trees pursuant to the provisions under Section 22A-21 of the Montgomery County Forest Conservation Law pertaining to trees having a thirty (30) inch diameter measured at 4.5 feet above the ground, or 75% of the current state champion tree of that species. The impacted trees are identified on the approved Natural Resources Inventory for the above named project and within this document.

Project Description

The subject property is located on the north side of Olney-Sandy Spring Road (MD 108), immediate east of Skymeadow Way and Branchwood Lane in Sandy Spring, Maryland. The application area is approximately 3.27 acres, and comprised of multiple recorded lots and a single parcel as follows:

- 617 Olney-Sandy Spring Road, part of the Bloomfield Subdivision; and
- Certain Lots within the Sandy Spring Meadows Subdivision:
 - Parcel "B" at 17901 Skymeadow Way;
 - Lot 7 at 17938 Skymeadow Way,
 - Lot 8 at 17934 Skymeadow Way,
 - Lot 9 at 17930 Skymeadow Way,
 - Lot 10 at 17926 Skymeadow Way,
 - Lot 11 at 17922 Skymeadow Way,
 - Lot 12 at 18001 Branchwood Lane,
 - Lot 13 at 18005 Branchwood Lane,
 - Lot 14 at 18009 Branchwood Lane,
 - Lot 15 at 18013 Branchwood Lane,
 - Lot 16 at 18017 Branchwood Lane, and
 - Lot 17 at 18033 Branchwood Lane (collectively, the "Property").

The property is classified in the Residential-R-60 zone (R-60). The property is bordered to the east by residential lots in the RE-1, R-60 and R-200 zones. The property has roadway frontage to the north and west of the application area within the Sandy Spring Meadow subdivision. The confronting lots are in the R-60 and CRN zones. Residential lots in the R-90 and R-200 zones are confronting the subject property to the south. The controlling master plan is the 2015 Sandy Spring Rural Village Plan (Plan). The Plan recommends infill development/redevelopment on the subject property. As indicated on the approved NRI, there are no sensitive areas or forest located on the tract.

The property is partially located within the Patuxent Management Area (PMA) and is subject to the requirements of the PMA. The property is zoned R-60 and is therefore considered an 'area of nonconformance'. Areas of nonconformance are required to implement stormwater best management practices that may include clustering development to minimize negative impacts on water quality, and utilizing more innovative and effective stormwater practices, such as designing to the 10-year storm, rather than the 2-year storm.

The proposed project specifically clusters development outside the PMA boundary and increases open space and tree planning within the PMA boundary. In addition, the new development will be utilizing innovative and environmentally sensitive design solutions for stormwater management of disturbed areas.

The tract is presently developed with twelve single family homes and open space. One of the single family homes will be removed and the open space will be reconfigured and enlarged. In addition to the eleven (11) retained homes, the subject property is proposed to be developed with a combination of nineteen (19) dwelling units within duplex and townhouse building types.

Per the requirements of the Master Plan of Highways and Transitways (MPOHT), Olney-Sandy Spring road / MD 108 (A-92) will be dedicated to the master plan width of eighty (80) feet along some of the frontage. Skymeadow Way will be partially dedicated and improved to the master plan width of sixty (60) feet along that portion of the frontage that is classified as a Business District Street (B-26), and to a width of fifty (50) feet for the undesignated frontage of Parcel B.

The MPOHT and Master Plan of Bikeways require right-of-way widening, grading and the construction of a 10-foot wide sidepath (bikeway) along MD 108 and a 5-foot pedestrian sidewalk along Skymeadow Way. In addition, a new Public Utility Easement (PUE) is also provided. Existing utilities, which are generally co-located with the impacted trees, may need to be relocated, which may require additional trenching within the CRZ.

In order to construct a pedestrian path, limited impacts to the CRZ of Tree #9 will be required. The forest conservation plan calls for limited cutting of no more than 2 inches in the CRZ of this tree for the construction of the path and provides construction details that will limit impacts.

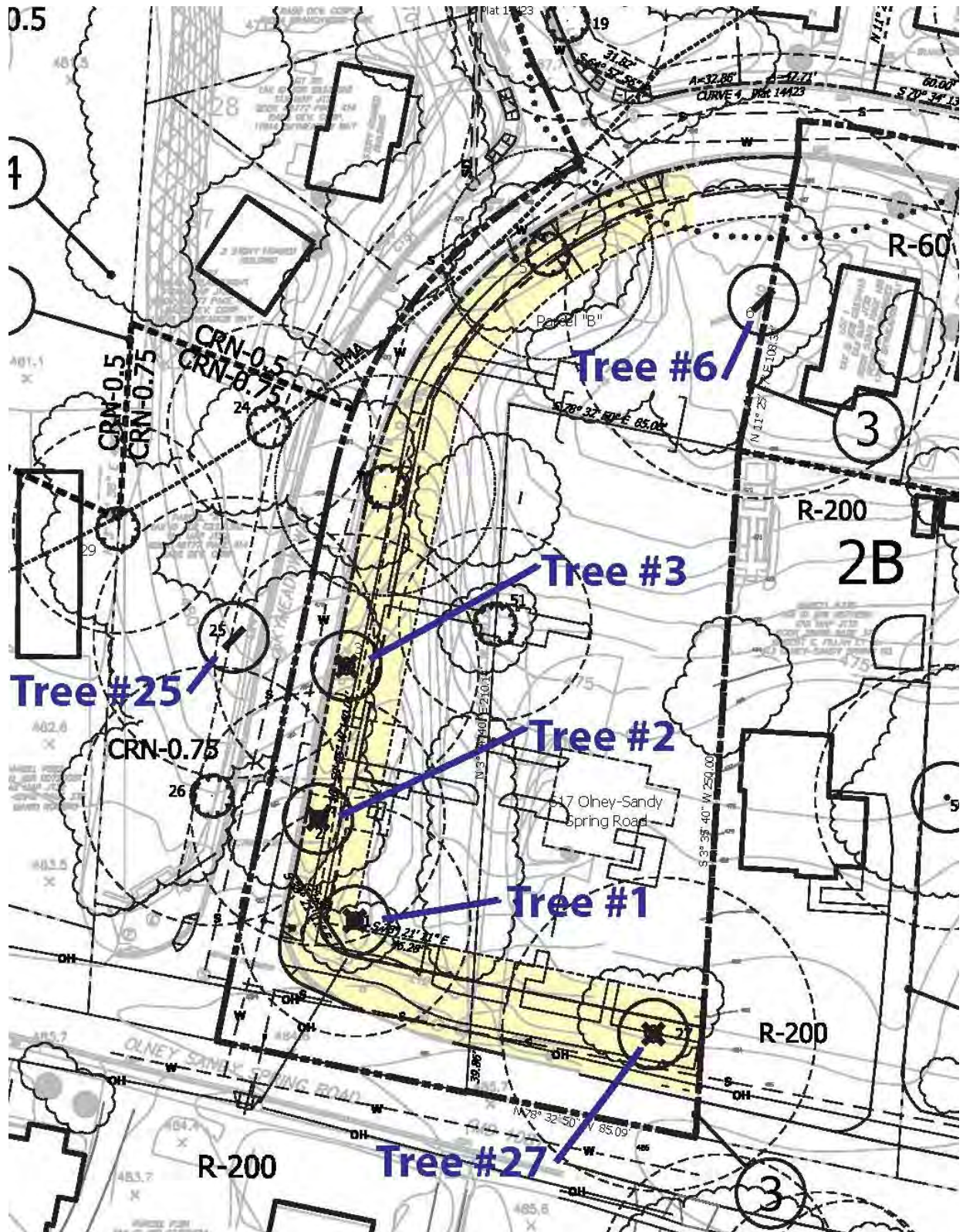


Figure 1. Detail of SNRI with proposed public improvements shown in yellow and impacted specimen trees highlighted.

Variance Request

There are fifteen (15) specimen trees indicated on the approved NRI. Of those indicated, eight (8) are outside the limits of disturbance, three (3) specimen trees are proposed to have limited critical root zone (CRZ) impact, and four (4) specimen trees will have higher levels of impact and are proposed to be removed. The seven (7) impacted specimen trees are hereinafter defined as the “Specimen Trees”), as summarized in Table 1 below.

Table 1.

Tree No.	Species	DBH (in)	Quality	Location	Proposed Disposition	CRZ Area (sf)	CRZ Impact (sf)	CRZ Impact (%)	Justification
1	<i>Thuja species</i>	36	Poor	Ex. PUE / Prop. RW	Remove	9160	6100	66.6%	Poor quality, impacted by proposed bikeway / PUE
2	<i>Quercus palustris</i> Pin Oak	30	Fair/ Good	Ex. PUE / Prop. RW	Remove	6360	3080	48.4%	Poor quality due to disease, and impacted by required public improvements
3	<i>Quercus palustris</i> Pin Oak	32.5	Good	Ex. PUE / Prop. RW	Remove	7470	3390	45.4%	Poor to fair quality due to disease, and Impacted by required public improvements
6	<i>Acer sacharinum</i> Silver Maple	MT	Good	On-site	Retain	16286	5101	31.3%	Partially impacted by public sidewalk and project improvements. Special construction techniques will be employed to minimize impacts.
9	<i>Acer sacharinum</i> Silver Maple	38	Good/Ex	On-site	Retain	10,309	2752	26.7%	Partially impacted due to construction of new pathway to improve pedestrian connectivity, and by stormwater improvements. Special construction techniques will be employed to minimize impacts.
25	<i>Quercus palustris</i> Pin Oak	34	Good	Off-site; CRZ partially within Prop. RW	Retain	8172	670	8.2%	Partially impacted by required public improvements.
27	<i>Acer platanoides</i> Norway Maple	38	Poor	Proposed RW	Remove	10210	5900	57.8%	Poor quality, invasive species, within future RW, impacted by required bikeway improvement.

Pursuant to Section 5-1607 of the State Law and Section 22A-12 of the County Law, the Specimen Trees are protected and can only be removed or impacted for the Project with the approval of the Tree Variance Request by the Montgomery County Planning Director or Planning Board pursuant to the standards established in Section 5-1611 of the State Law and Section 22A-21 of the County Law.

Pursuant to Section 5-1611, variances may be granted:

(a) ... where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an Applicant.

(b) Variance procedures adopted under this section shall:

- (1) Be designed in a manner consistent with the spirit and intent of this subtitle; and
- (2) Assure that the granting of a variance will not adversely affect water quality.

Pursuant to Section 22A-21 (b), the Applicant for a tree variance must:

- 1) *Describe the special conditions particular to the property which would cause the unwarranted hardship.*

The Applicant is providing public utilities needed to serve the project and building public infrastructure that serves the greater community. The proposed road, bikeway, sidewalk, and utility improvements significantly impact four (4) of the six (6) specimen trees, requiring removal. Two of the four trees are pin oaks which are in severe decline. These improvements are required by government in order to receive approval for the development and no reasonable alternative to avoid the trees is available. The two specimen trees which will be retained have impacts from public infrastructure in support of the project and which serves the greater community. These impacts have been minimized and care will be taken during construction to limit CRZ intrusion.

Moreover, the 2015 Sandy Spring Rural Village Plan (the "Master Plan") recommends infill redevelopment with the required right-of-way dedications and public infrastructure on MD Route 108 and Skymeadow Way. Therefore, the variances sought for removal and impacts to the Specimen Trees are necessary for the Applicant to comply with the Master Plan recommendations applicable to the Property. Not permitting the project due to the required governmental public improvements would be an unwarranted hardship that is not required of other similar projects.

- 2) *Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.*

Similarly zoned properties require public improvements (streetscape and common open space) in order to be approved. Avoiding impacts to the identified trees would make it impossible or infeasible to provide the necessary improvements. This would deprive the landowner of rights commonly enjoyed by others in similar areas. Significantly, the retention of and prohibition of impacts to the Specimen Trees would preclude the Master Plan vision for infill redevelopment with housing for all income and age levels and pedestrian improvements along MD Route 108, Skymeadow Way, and internal to the project. The improvements proposed not only benefit the subject application, as described above, but also will be utilized and enjoyed by the greater community.

- 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.*

Trees proposed for impact or removal are not directly connected to any streams, or part of a riparian buffer system or within any wetland systems. Thus, the disturbance to the root zones will not violate

State water quality standards. The site will be developed using standard storm water quality and quantity control measures and sediment control methods. The proposed stormwater management plan for the project will improve overall water quality. In connection with site development described above, the Applicant is proposing improved stormwater management in compliance with current regulations. The concept stormwater management plan incorporates the State and County's Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP), according to the latest revision to Chapter 5 of the MDE Stormwater Management Design Manual. In addition, the Applicant is proposing the planting of additional trees in the northern portion of the site in order to enhance water quality and to protect existing forest by placing a Category I conservation easement over high-priority forest along a headwater tributary to the Patuxent River that is not currently protected.

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

The master plan recommends this property for infill development in order to meet certain community and affordable housing goals defined in the Master Plan. The impacts are the minimum necessary for construction of the improvements. The impacts and removal of the Specimen Trees is necessary to allow for implementation of the Master Plan vision of encouraging opportunities for infill housing development and streetscape improvements. The variances requested are also necessary to allow for the creation of additional common open space that will serve the existing community. Lastly, the variances requested will allow for a compatible transition between the Sandy Spring Village Center to the east and the single-family detached dwellings along MD Route 108.

Justification for Tree Disturbance

1) *Trees #1 and #27.*

Tree #1 is heavily inundated with invasive vine. Tree #27 is an invasive species that has been poorly maintained and has structural problems. Both trees are in poor condition and are located within the proposed right-of-way. A required bike master plan improvement and associated grading conflict with the trees and substantially impact the critical root zone, requiring removal of both trees.

2) *Trees #2, #3 & #25.*

Trees #2 and #3 are co-located with several existing utilities within the existing 10-foot WSSC and public utility easement that parallels Skymeadow Way. The master plan requires widening of the Skymeadow Way right-of-way in this area and the construction of a new 5-foot public sidewalk. There is also the potential additional impact of new trenching for services within the relocated PUE. The proposed public improvements create too great an impact on the critical root zone and therefore the trees should be removed. In addition, these trees, as well as other pin oaks on the site are showing severe die back due to what appears to be Oak Wilt. These impacts have been rapid and several limbs have died and fallen on surrounding pin oaks. Tree #2 has dead and dying limbs that are a safety hazard. For this reason alone, these trees should be removed.

Tree #25 is a pin oak located on the west side of Skymeadow Way. Its critical root zone falls within the project's limits of disturbance and utility relocation requirements mentioned above. This tree will remain.



Images of Tree #2 trunk taken on February 20, 2022.

3) *Tree #6.*

Tree #6 is multi-trunk silver maple located near the eastern boundary of the property. The proposed design minimizes impacts to this tree. The design also provides a permanent open space around the tree, providing long-term protection. Remedial actions, long-term care and protection strategies are specified on the forest conservation plan.

4) *Tree #9.*

Tree #9 is a silver maple located in the rear yard of existing lot 14. There is a proposed 5-foot path that will connect Branchwood Lane and Skymeadow Way, while at the same time providing access to existing play equipment. In order to do this, the path must pass through the critical root zone of this tree. The forest conservation plan provides special construction information in order to minimize impacts and avoid the loss of roots.

Minimum Criteria for Variance

As further basis for this variance request, the Applicant can demonstrate that it meets the Section 22-21(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.*

The locations of the Specimen Trees require removal and impacts for the type of infill development recommended by the Master Plan at the Property. No special privileges are being granted to the Applicant. The Applicant has followed all county planning and zoning regulations for this project, and applicants with similar circumstances and with property appropriate for redevelopment would equally be entitled to necessary variances to remove or impact specimen trees that substantially impair the ability to construct an infill redevelopment with public benefits

2) *Is based on conditions or circumstances which result from the action by the applicant.*

The Applicant has taken no actions leading to the conditions or circumstances that are the subject of this variance request. In order to obtain MPDU optional method of development approvals under the R-60 Zone, the Applicant must substantially conform to the Master Plan recommendations for the Property, which require the public infrastructure improvements conflicting with the Specimen Trees.

3) *Is based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

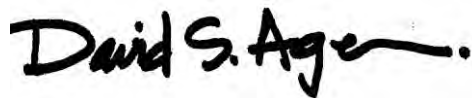
The variance request is a result of the urban design goals in the Master Plan, required public improvements, and the conflicting locations of the Specimen Trees require removal and impacts, as opposed to a condition relating to any land or building use on a neighboring property.

4) *Will violate State water quality standards or cause measurable degradation in water quality.*

The Applicant restates the reasoning in the previous response to requirement Sec. 22-12(c)(3), and reiterates that granting this variance request will not violate State water quality standards. The resulting development will implement storm water management practices where currently there are little to no practices in place, and thus the quality of the water leaving the site will be improved from existing conditions.

For the reasons stated above, it is appropriate to grant this request for a variance. Should you have any further questions or require additional information, please don't hesitate to contact our office.
Respectfully submitted,

Townscape Design LLC



David S. Ager, PLA, ASLA, AICP, LEED-ND
Principal

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