

CPJ Charles P. Johnson & Associates, Inc.

Civil and Environmental Engineers • Planners • Landscape Architects • Surveyors

Silver Spring, MD • Gaithersburg, MD • College Park, MD • Frederick, MD • Fairfax, VA

Planning Board

Maryland National Capital Park and Planning Commission

2425 Reddie Drive

14th Floor

Wheaton, MD 20902

Re: Preliminary Forest Conservation Plan #F20230420 – Tregoning Property
Residential development of Parcels 104 & 617
Request for Tree Variance

Dear Planning Board:

On behalf of our client, ESC Tregoning LC (the "Applicant"), we hereby request a Tree Variance in connection with Preliminary Forest Conservation Plan No.F20230420 and Preliminary Plan No.120230120, that is being submitted concurrently with the Preliminary Forest Conservation Plan, for the properties identified as Parcels 104 (the "Subject Property") & 617 pursuant to Section 22A-12 of Chapter 22A of the Montgomery County Code (the "County Code").

I. Background Information

In order to secure approval of the removal or disturbance of certain identified trees that are considered priority for retention and protection under State law and the Montgomery County Code, Charles P. Johnson & Associates (CPJ), hereby requests a Tree Variance for the of the property identified as Parcels 104 & 607.

The Applicant proposes developing on the two parcels using the MPDU optional method to create a yield of 46 units on 37.6 acres. Per the approved Pre-Preliminary Plan No. 72020020, the Applicant will cluster 44 units and six MPDU's on the 17.81 acre Subject Property. The development rights for the remaining two units will be retained by the Tregoning family on the 19.80 acre of Parcel 617.

The development of the 44 units by this subdivision application will require the removal of one (1) tree and the disturbance of the critical root zones of an additional six (6) trees. The individual trees are all depicted on the approved Natural Resources Inventory/ Forest Stand Delineation No.420220450.

II. Tree Removal and Critical Root Zone Disturbance

The 46-unit development proposed by this subdivision application requires approval of a Tree Variance pursuant to Section 22A-21 of Chapter 22A of the County Code. Approval of the requested Tree Variance will allow the removal of one (1) tree and the disturbance of the critical root zones of six (6) additional trees. Approval of the Tree Variance Request will enable the Applicant to develop the Subject Property in a manner consistent with the

1994 Clarksburg Master Plan recommendation that this property developed for residential use since the Subject Property is considered part of the Ridge Road Transition Area.

III. The Variance Requirements

Section 5-1607 of the Natural Resources Article requires a variance for the removal or disturbance of trees having a diameter of 30 inches when measured at 4.5 feet above the ground. Section 5-1611 of the Natural Resources Article authorizes a local jurisdiction to grant a variance:

"where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant."

Chapter 22A of the County Code specifies the circumstances when a Tree Variance, a variance from Chapter 22A, is required. Section 22A-21(a) of the County Code establishes the "minimum criteria" for securing a Specimen Tree Variance. Applicants seeking a variance from any Chapter 22A requirement must:

- (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 and that a measurable degradation in water quality will not occur as a result of granting the variance; and
- (4) provide any other information appropriate to support the request.

A Tree Variance that meets the "minimum criteria" set out in Section 22A-21(a) of the County Code may not be approved 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 result from the actions by the applicant;
- (3) is based on 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

The following paragraphs illustrate the factual basis supporting the approval of this Tree Variance by the Planning Board. Technical information for this request has been provided by CPJ.

A. The special conditions that are peculiar to the Subject Property that would cause the unwarranted hardship are described as follows:

A requirement, as communicated by Staff during the Planning Board Meeting, was to provide a connection from the existing dead-end Hoffman Drive public road. Staff communicated the need for connectivity of "all kinds of" transportation users and encouraged integration between existing homes and the proposed development. The seven (7) total trees that are impacted by development are the only obstacle to a development proposal that meets the requirements for the RE-1 optional MPDU method and the recommendations made by Staff.

The Applicant would suffer unwarranted hardship if the removal and disturbance of the designated trees were not allowed to construct the proposed Hoffman Drive connection and development of the lots in the southwest

portion of the Subject Property. Unwarranted hardship is demonstrated for the purpose of obtaining a Tree Variance when an applicant presents evidence that denial of the Variance would deprive the Applicant of the reasonable and substantial use of the property. The development of 46-units is clearly within the class of reasonable and substantial uses that justify the approval of a Tree Variance for the Subject Property. If the requested Variance were denied the Applicant would be precluded from developing the Subject Property for a reasonable and significant use commonly enjoyed by virtually all other property owners in the community.

B. The following paragraphs describe how enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas.

If the requested Variance were denied, the Applicant would suffer unwarranted hardship and would be deprived of rights commonly enjoyed by other property owners in the RE-1 zone and adjoining areas similar to the location of the Property. If the requested variance were denied, the Applicant would be denied the right enjoyed by other similarly situated property owners to develop their RE-1 zoned property in a manner permitted by the zoning ordinance that is consistent with the development history of the neighborhood, block and subdivision.

If the variance were not granted for the trees identified on the attached chart, those trees would have to remain and be undisturbed and the Applicant would be unable to develop the property, and construct the Hoffman Drive connection, as required by Staff, and would result in the disparate treatment of the Applicant in comparison the exercise of rights commonly enjoyed by others in the same area and in similar RE-1 zoned areas.

C. State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variances.

A Stormwater Management Concept Plan has been submitted for the Subject Property using environmental site design techniques to the maximum extent practicable and the proposed development will meet State water quality standards. The approval of the requested Variance will not result in any measurable degradation in water quality standards.

A copy of the approved Stormwater Management Concept Plan is included in the submission of the Preliminary Plan.

D. Other information that supports the requested variances:

The Approved and Adopted Trees Technical Manual lists several factors for consideration when reviewing applications for clearing that now require the approval of a Tree Variance. Generally, the Technical Manual recognizes that clearing is appropriate for street and driveway construction to provide access to new development and to create a building envelope for development. In order to provide the Hoffman Drive connection, Tree #10 will need to be removed.

The Technical Manual also acknowledges that well planned clearing balances the public policies of preserving forest and funneling development into appropriate locations. The Technical Manual provides that one factor to be considered.

"The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees."

The proposed Subject Property development of 46-units, utilizing the RE-1 optional MPDU method, fully complies with the specific regulations of the Zoning Ordinance and the land use recommendations and intentions of the Master Plan.

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;

Response: The development was specifically zoned RE-1, with the option for Optional MPDU method per the zoning ordinance. As such, this is not a special privilege to be conferred on the applicant.

(2) Is based on conditions or circumstances which are the result of the actions by the applicant;

Response: The Property Owner has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on neighboring property; or

Response: The surrounding land uses (residences) do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

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

Response: Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

Below is a list of variance trees with a status that indicates impacts, but saved or variance trees to be removed.

VARIANCE TREES TO BE REMOVED

Tree	Common Name	Tree Species	DBH	Condition	Variance Request
#10	Tree of Heaven	Ailanthus altissima	26"	Good	Yes

(cont.)

Tree	Comments	% CRZ Impacts	Disposition
#10	Severe impact from construction of Hoffman Drive connection.	100%	Remove

CRITICAL ROOT ZONES OF VARIANCE TREES TO BE DISTURBED

Tree	Common Name	Tree Species	DBH	Condition	Variance Request
#9	Chesnut Oak	Quercus montana	36"	Good	Yes
#14	Tulip Poplar	Liriodendron Tulipifera	30"	Good	Yes
#21	Red Maple	Acer rubrum	30"	Good	Yes
#31	Tulip Poplar	Liriodendron Tulipifera	36"	Good – lean	Yes

(cont.)

Tree	Comments	%CRZ Impacts	Disposition
#9	Minor grading impacts from Hoffman Drive connection.	10%	Retain and protect tree
#14	Minor grading impacts from Hoffman Drive connection.	1%	Retain and protect tree
#21	Minor impacts from grading on Lot 23A.	9%	Retain and protect tree
#31	Minor impacts from grading on Lot 25A.	12%	Retain and protect tree

Conclusion:

For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact/remove the variance trees in order to allow the construction of this vital project.

The recommendations in this report are based on tree conditions noted at the time the field work was conducted and updated for specific construction measures prior to the submittal of the forest conservation plan. Tree condition can be influenced by many environmental factors, such as wind, ice and heavy snow, drought conditions, heavy rainfall, rapid or prolonged freezing temperatures, and insect/disease infestation. Therefore, tree conditions are subject to change without notice.

The plans and plotting of tree locations were furnished for the purpose of creating a detailed Preliminary Forest Conservation Plan. All information is true and accurate to the best of my knowledge and experience. All conclusions are based on professional opinion and were not influenced by any other party.

Sincerely,

Michael J. Loe, PLA, ASLA