

October 23, 2013

Mr. Mark Pfefferle

Environmental Planning Division
Maryland National Capital Park and Planning Commission (M-NCPPC)
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Brookside Gardens
Plan No. **PP1995001**
AMT File No. 111-755.001

Dear Mr. Pfefferle:

On behalf of the M-NCPPC Park Development Division and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and Md. Code Ann., Natural Resources, §5-1602 et seq., we are writing to request a variance to allow disturbance in the critical root zones of the following specimen trees for the above-named construction project:

Tree #	Species	D.B.H (inches)	Tree Condition	% CRZ Impact	Comments	Reason for Disturbance
TA-31	<i>Liriodendron tulipifera</i>	39	Good	45.41	On bank	Helical piers for boardwalk, construction access for bridge deck removal
TA-37	<i>Liriodendron tulipifera</i>	36	Good	34.06		Construction of asphalt path, helical piers for boardwalk
TA-39	<i>Liriodendron tulipifera</i>	33.3	Fair	28.65	Twin, average form, vines on trunk	Construction of asphalt path, helical piers for boardwalk
TA-41	<i>Liriodendron tulipifera</i>	30	Good	66.46		Construction of asphalt path, helical piers for boardwalk
TA-43	<i>Liriodendron tulipifera</i>	31.2	Fair	79.39	Twin, Poison Ivy on trunk	Construction of asphalt path, helical piers for boardwalk
TA-78	<i>Liriodendron tulipifera</i>	30	Good	68.16	Poison Ivy on trunk	Construction of entry drive, construction of mulch access path
TA-164	<i>Liriodendron tulipifera</i>	36	Fair	30.49	Split leader	Construction of Flexi-Pave path, grading

T-101	<i>Liriodendron tulipifera</i>	30	Fair	37.99		Construction of entry drive and pipe outfall
T-137A	<i>Liriodendron tulipifera</i>	33	Good	23.15		Construction of South Terrace and Flexi-Pave path
T-138	<i>Liriodendron tulipifera</i>	32.5	Good	11.44		Construction of Flexi-Pave path
T-139	<i>Liriodendron tulipifera</i>	32	Good	31.94		Construction of Flexi-Pave path
T-140	<i>Liriodendron tulipifera</i>	32	Good	61.69		Construction of South Terrace and Flexi-Pave path
T-141	<i>Liriodendron tulipifera</i>	33	Good	69.97		Construction of South Terrace and Flexi-Pave path
T-143	<i>Liriodendron tulipifera</i>	32	Good	26.57		Construction of accessible parking, pedestrian sidewalk, gabion wall, Flexi-Pave path, and earthwork
T-147	<i>Liriodendron tulipifera</i>	30	Fair	31.30	Broken limbs, included bark, weak union	Construction of parking lot and gabion wall, earthwork
T-152	<i>Liriodendron tulipifera</i>	39	Poor	40.20	Branch decay, broken limbs	Construction of parking lot and gabion wall, earthwork
T-154	<i>Liriodendron tulipifera</i>	33	Fair	7.21	Broken limbs	Earthwork
T-156	<i>Liriodendron tulipifera</i>	35	Fair	16.48	Full crown, large DW (3"+)	Construction of parking lot and earthwork
T-160	<i>Liriodendron tulipifera</i>	30	Fair	1.75	Full crown, large DW (3"+)	Construction of parking lot and earthwork
T-165	<i>Liriodendron tulipifera</i>	36	Good	9.12		Construction of parking lot and earthwork
T-169	<i>Liriodendron tulipifera</i>	33	Good	3.54		Earthwork
T-176	<i>Liriodendron tulipifera</i>	30	Fair	0.98	Full crown, large DW (3"+)	Construction of Flexi-Pave path
T-177	<i>Liriodendron tulipifera</i>	30	Fair	12.39	Full crown, trunk decay	Construction of Flexi-Pave path

T-179	<i>Liriodendron tulipifera</i>	32	Good	50.56		Construction of Flexi-Pave path, grading
T-181	<i>Liriodendron tulipifera</i>	30	Fair	27.37	Full crown, trunk decay	Construction of Flexi-Pave path, grading

As well as removal of the following specimen trees for the above-named construction project:

Tree #	Species	D.B.H (inches)	Tree Condition	% CRZ Impact	Comments	Reason for Disturbance
TA-106	<i>Acer rubrum</i>	41	Good	36.75	Included bark	Significant earthwork within CRZ
T-127	<i>Liriodendron tulipifera</i>	32	Fair	99.77		Location of pedestrian concrete, structural walls for underlook

This project consists of updating the entrance and parking at Brookside Gardens, Montgomery County's public display garden. These trees have been evaluated by certified arborists who work for **AMT and The Davey Resource Group**¹. The construction will require disturbance in the critical root zones of the following trees: TA-31, TA-37, TA-39, TA-41, TA-43, TA-78, TA-164, T-101, T-137A, T-138, T-139, T-140, T-141, T-143, T-147, T-152, T-154, T-156, T-160, T-165, T-169, T-176, T-177, T-179, and T-181. Root pruning will be performed and tree protection fencing and root aeration matting installed to protect the remaining area of critical root zone as needed.

Impacts to tree TA-31 are related to the construction of the boardwalk; critical root zones will be protected by tree protection fencing. Impacts to trees TA-37, TA-39, TA-41, and TA-43 are related to the construction of the boardwalk and asphalt pedestrian path; critical root zones will be protected by tree protection fencing and root pruning. Impacts to tree TA-78 are related to the realignment of the property entrance, construction of a path leading to the gatehouse, and concrete walkway; critical root zones will be protected by tree protection fencing, root pruning, and root aeration matting. Impacts to tree TA-164 are from the construction of a Flexi-Pave path and grading; critical root zones will be protected by tree protection fencing.

Impacts to tree T-101 are related to the realignment of the property entrance, the parking lot, concrete walkway, and dry-laid boulder retaining wall; critical root zones will be protected by tree protection fencing and root aeration matting. Impacts to trees T-137A and T-138 are related to the construction of the South Terrace and a Flexi-Pave path; critical root zones will be protected by tree protection fencing and root pruning. Impacts to tree T-139 are related to the construction of a Flexi-Pave path; critical root zones will be protected by tree protection fencing. Impacts to trees T-140 and T-141 are related to the construction of the South Terrace and a Flexi-Pave path; critical root zones will be protected by tree protection fencing, root pruning, and root aeration matting. Impacts to tree T-143 are related to the construction of accessible parking, pedestrian sidewalk, gabion wall, a Flexi-Pave path, and earthwork; critical root zones

¹ Andrew Streagle, ISA #MA4826-A, Chris Cowles, ISA

will be protected by tree protection fencing and root pruning. Impacts to trees T-147 and T-152 are related to the construction of parking lot and gabion wall, and earthwork; critical root zones will be protected by tree protection fencing and root pruning. Impacts to tree T-154 are related to earthwork; critical root zones will be protected by tree protection fencing and root pruning. Impacts to trees T-156, T-160, and T-165 are related to the construction of parking lot and earthwork; critical root zones will be protected by tree protection fencing and root pruning. Impacts to tree T-169 are related to earthwork; critical root zones will be protected by tree protection fencing. Impacts to trees T-176 and T-177 are related to the construction of a Flexi-Pave path; critical root zones will be protected by tree protection fencing. Impacts to trees T-179 and T-181 are related to the construction of Flexi-Pave path and grading; critical root zones will be protected by tree protection fencing.

The construction will require the removal of trees TA-106 and T-127. Remedial arboriculture practices would not be practicable or sufficient to prevent the trees from experiencing intolerable levels of stress due to adjacent earthwork associated with entry drive and parking lot, which would lead to their immediate decline and ultimate death. In their current location, the trees would constitute a serious hazard to the health, safety and general welfare of the visitors to Brookside Gardens who would enter the area. The attached "Exhibit 1," "Exhibit 2," "Exhibit 3," "Exhibit 4," "Exhibit 5," and "Exhibit 6" show the project site and its surroundings.

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

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

Pursuant to "(1) *Describe the special conditions peculiar to the property which would cause the unwarranted hardship*, Brookside Gardens are located near Pine Lake. Wheaton Regional Park surrounds Brookside Gardens to the south and east. As a public display garden, it is unlike any other facility in the Montgomery County Parks system. The proposed re-design of the property entrance, entry plaza and surrounding gardens hosts a variety of stormwater management strategies ranging from different types of pervious pavement to microbioretention. Because of topography, the parking lot has been located in the most efficient area for stormwater management while allowing for safe pedestrian access to the visitor's center. This helps preserve the high quality forest surrounding the parking lot.

The site and programmatic constraints described above are **special conditions peculiar** to this site. Were the applicant to be denied the requested variance to disturb the critical root zone of trees TA-31, TA-37, TA-39, TA-41, TA-43, TA-78, TA-164, T-101, T-137A, T-138, T-139, T-140, T-141, T-143, T-147, T-152, T-154, T-156, T-160, T-165, T-169, T-176, T-177, T-179, and T-181, and remove trees TA-106 and T-127, the applicant would be unable to achieve the facilities necessary to meet its programmatic requirements and unable to proceed with stormwater

management facility improvements. As such, this would cause an **unwarranted hardship** to the Brookside Gardens employees and guests.

Pursuant to “(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas,” the public display garden is a permitted use in the R-90 zone, and has occupied this site and served the surrounding community in this capacity since the 1960's. It is an established, integral element of the area, providing necessary and suitable benefits and services to residents and visitors alike. Enforcement of a prohibition on disturbing the critical root zone of the specimen trees would **deprive the M-NCPPC Park Development Division, Brookside Gardens and the public of rights commonly enjoyed by others** who are served by similar facilities that have many of the same features as the subject property.

Pursuant to “(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” the specimen trees are located near a perennial stream and the Gude Garden ponds and are part of an environmental buffer. The trees that are proposed for removal would become unsafe once the design for the updated entry drive and parking were installed. The majority of specimen trees are not being removed, and the surrounding green space that is to remain will continue to provide water quality and quantity benefits comparable to existing conditions. For the above reasons, the disturbance of the critical root zone of these specimen trees **would not violate the aforementioned standards, nor would it result in a measurable degradation in water quality**. Furthermore, the proposed improvements will address stormwater management with permeable paving, microbio retention, and planting of approximately 280 additional trees.

Pursuant to “(4) Provide any other information appropriate to support the request” the proposed site work is consistent with the Brookside Gardens Master Plan which has been present to and approved by the Montgomery Planning Board. Much care has been taken to preserve the high quality forest that surrounds the parking lot. The forested areas that are proposed to be removed are of a lesser quality and are not aesthetically pleasing or add to the visitor's garden experience. In the high quality forest, select trees are proposed for removal to help continue the health and aesthetic value of the forest.

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;
- (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

Pursuant to “(1) Will confer on the applicant a special privilege that would be denied to other applicants, the use of this site for a public display garden is an established use, permitted in the R-90 zone, and operated in a manner consistent with that of the other public display garden/park facilities. As such, this is not a **special privilege** to be conferred on the applicant.

Pursuant to “(2) Is based on conditions or circumstances which are the result of the actions by the applicant, the applicant has taken no **actions leading to the conditions or circumstances** that are the subject of this variance request.

Pursuant to “(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property, the **surrounding land uses** (parkland) do not have any **inherent characteristics that have created** this particular need for a variance.

Finally, pursuant to “(4) Will violate State water quality standards or cause measurable degradation in water quality, the applicant cites the reasoning previously provided in response to requirement 22A-21(b)(3), and restates its belief that granting this variance request **will not violate State water quality standards or cause measurable degradation in water quality.**

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 Md. Code Ann., Natural Resources, §5-1602 et seq., and thereby, GRANTS permission to disturb the critical root zones of trees TA-31, TA-37, TA-39, TA-41, TA-43, TA-78, TA-164, T-101, T-137A, T-138, T-139, T-140, T-141, T-143, T-147, T-152, T-154, T-156, T-160, T-165, T-169, T-176, T-177, T-179, and T-181, and remove trees TA-106 and T-127 in order to allow construction of this project.

Sincerely,

A. MORTON THOMAS and Associates, Inc.

Steven Torgerson, RLA
Senior Project Landscape Architect