



8787 Georgia Avenue, Preliminary Forest Conservation Plan and Mandatory Referral, MR2014047



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PAK

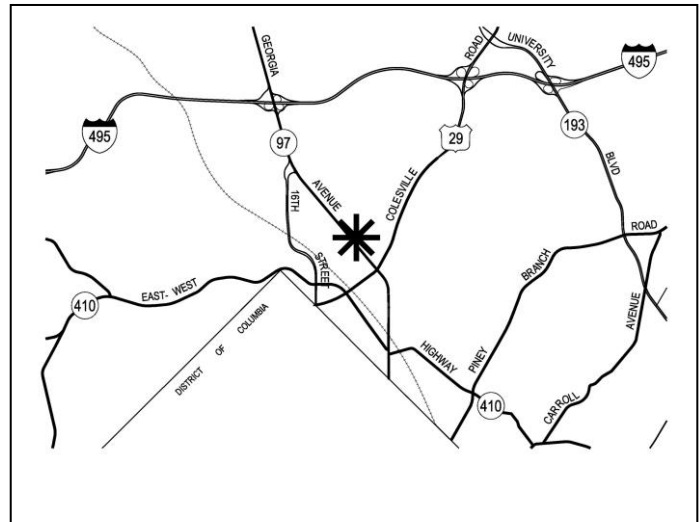
Robert Kronenberg, Chief, Area 1, Robert.kronenberg@montgomeryplanning.org, 301.495.2187

Date of Report: 5/23/14

Description

- Preliminary Forest Conservation Plan and Tree Variance concurrent with a Mandatory Referral
- 8787 Georgia Avenue, Silver Spring, MD
- Approximately 3.24+/- acres
- Removal of five (5) specimen trees
- Zoned CBD-1: Optional method redevelopment pursuant to impending CR zone
- Application submitted on April 28, 2014
- Silver Spring CBD Sector Plan

Applicant: Montgomery County Department of Transportation (MCDOT)



Summary

- Staff recommends **approval** of the Preliminary Forest Conservation Plan and tree Variance with conditions.
- Staff recommends **approval** of the Mandatory Referral for the disposition of County property.
- The applications are in response to an RFP for the relocation of the M-NCPPC headquarters from its current site to Parking Lot #13 at 11143 Grandview Avenue in Wheaton.
- The schematic development proposes approximately 360 apartment homes (including 46 MPDUs), 26,200± square feet of retail and 575 underground parking spaces.
- The Variance requests the removal of five (5) specimen trees. One specimen tree, a Willow oak (#2) is 75% of the State champion. Details of the applicant’s justifications are provided in the report.
- The Applicant proposes the removal of Royce Hansen Park.
- The development will be limited to five (5) stories of wood frame construction over a concrete podium.

Site Description and Summary

The Property is comprised of 3.23+/- acres located in the southeast quadrant of the intersection of Georgia Avenue and Spring Street in the Silver Spring Central Business District (in the CBD-1 zone). It is the subject of a public/private partnership through a Request for Proposal (“RFP”) process overseen by the Montgomery County Department of Transportation (“DOT” or “County”) that will result in the relocation of the Maryland-National Capital Park and Planning (“M-NCPPC”) Headquarters currently located on the Property to the Wheaton Central Business District (“Wheaton CBD”).

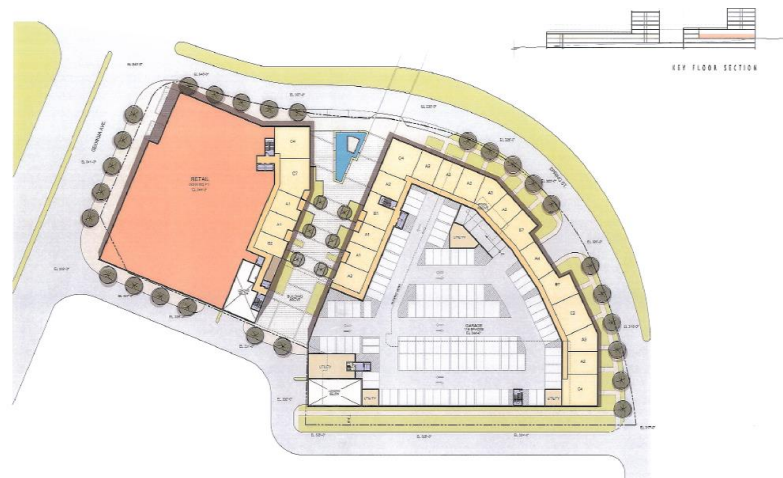
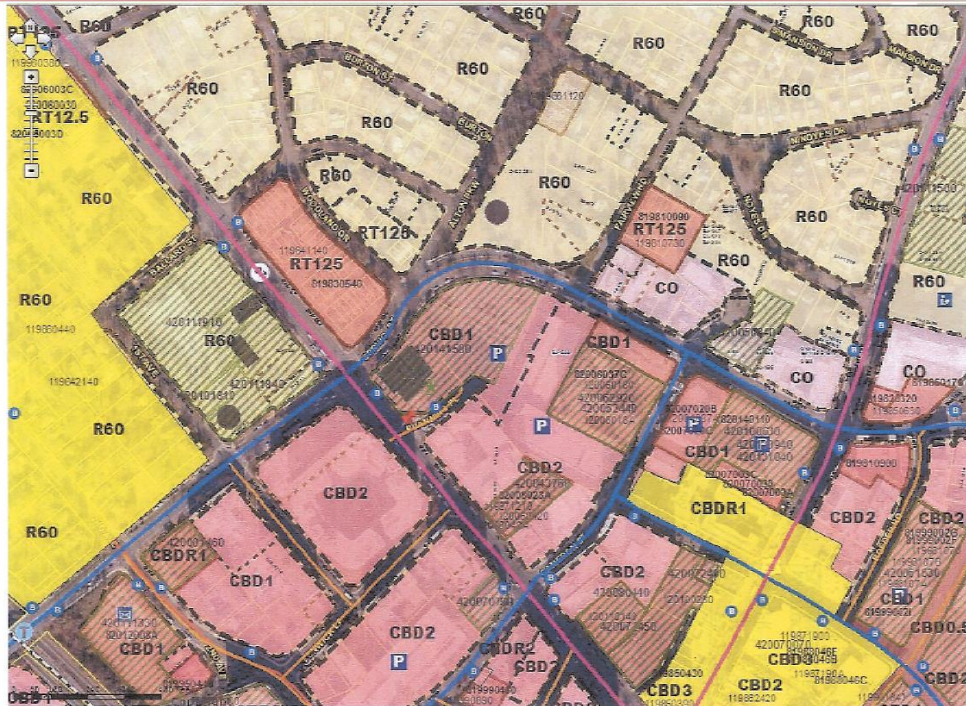


The topography slopes from the west to the east with an elevation change of approximately 22 feet. Approximately 80 percent of the site is impervious with over half of the site covered in surface parking.

In June 2013, the Department of Transportation issued the Request for Proposal (RFP) to achieve specific redevelopment priorities for County-owned properties in the “Wheaton Triangle” area of the Wheaton CBD and for the Property (currently owned by the M-NCPPC). Consistent with the RFP, the Developer will construct improvements for governmental uses, including County agencies, the new M-NCPPC Headquarters, and public uses and amenities on the Wheaton Property. In return, the Subject Property will be redeveloped for approximately 360 apartment homes and 26,200 square feet of retail. Five (5) existing specimen trees are proposed for removal along with three (3) significant trees.

A complete application for any new optional method of development on the Property will need to be submitted for review as a Sketch Plan, Subdivision and Site Plan after a decision is rendered for the mandatory referral and preliminary forest conservation plan.

General Location Map - 8787 Georgia Avenue, Silver Spring, MD



8787 GEORGIA AVENUE



STONERIDGE CARRAS
REAL ESTATE INVESTMENT

RFP WINNING PROPOSAL
PODIUM LEVEL

MONTGOMERY COUNTY, MD
REVISED 2012-08-28

Architecture+Planning
6008 Walkwood Center Dr.
Suite 300
North, N.A. 22162
703.992.8116
ktgy.com



Plan View of the Ground Floor Retail and Podium Level



8787 GEORGIA AVENUE

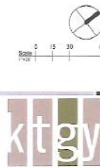


STONEBRIDGECARRAS
REAL ESTATE INVESTMENT

RFP WINNING PROPOSAL
FIRST LEVEL

MONTGOMERY COUNTY, MD

Architecture+Planning
8825 Westwood Center Dr.
Suite 300
Vienna, VA 22182
703.992.8116
ktpgy.com



First Level View of the Retail and Residential



REDEVELOPMENT OF 8787 GEORGIA AVENUE



STONEBRIDGECARRAS
REAL ESTATE INVESTMENT

Architecture+Planning
8825 Westwood Center Dr.
Suite 300
Vienna, VA 22182
703.992.8116
ktpgy.com



Renderings and Images of the Proposed Development

PRELIMINARY FOREST CONSERVATION PLAN

Staff Recommendation

Staff reviewed the Preliminary Forest Conservation Plan, and tree Variance for a mixed-use development with approximately 360 apartment homes (including 46 MPDUs), and 26,200± square feet of retail, and underground parking. Staff recommends approval of the Preliminary Forest Conservation Plan with the following conditions:

Conditions:

1. The Final Forest Conservation Plan must include the planting of two (2) 4-6" caliper Willow oaks (*Quercus phellos*) in the proposed open space courtyard on the Property. Each of the two Willow oak trees must have a soil volume of at least 1,000 cubic feet to allow trees to reach maximum growth and maturity.
2. As part of the optional method application, the applicant must make commercially reasonable efforts to preserve specimen trees 4 and 7 within the right-of-way along Georgia Avenue and Spring Street, balancing the benefits of tree preservation and enhancing the "Green Downtown" goals of the Silver Spring CBD Sector Plan with the other goals of the Sector Plan including the need for sound urban redevelopment and the delivery of an adequate pedestrian and vehicular circulation system along with other public benefits appropriate for this property in this location.
3. As mitigation for the proposed loss of specimen trees (total caliper loss of 197"), sixteen (16) 3-inch caliper trees must be planted onsite.
4. The Final Forest Conservation Plan must include planting details for the Variance tree mitigation.

Pursuant to Chapter 22A of the County Code, the Board's actions on Forest Conservation Plans, are regulatory and binding.

DISCUSSION

The purpose of this memorandum provides staff's review and recommendations on the Preliminary Forest Conservation Plan (PFCP) for 8787 Georgia Avenue, in Silver Spring, Maryland. The Board will also be reviewing a concurrent Mandatory Referral for this project. Unlike the review of the Mandatory Referral, the Board's actions on the PFCP are regulatory and binding. The Planning Board must act on the PFCP before it can act on the Mandatory Referral.

The Applicant proposes to optimize the economic viability of the site and maximize fiscal benefits to the County by providing approximately 360 multi-family units, 26,200 square feet of retail, and 575 underground parking spaces. The development as currently proposed will be limited to five (5) stories of wood frame construction above an underground parking garage covering nearly the entire site. The PFCP has a net impact of 3.24 acres. The Applicant is proposing the removal, grading and clearing of the entire site plus impacts to the specimen trees within the right-of-way along Georgia Avenue and Spring Street. The Variance request includes the removal of five (5) specimen trees, including one Willow oak (*Quercus phellos*) (#2) which is 75% of the State champion.

The design concept for this property did not consider the loss of two centrally located Willow oak (*Quercus phellos*) specimen trees. This will be an undeniable canopy, habitat, community, and even a

historic loss since the trees are well over 80 years in age. While no effort was made to protect the two trees, the site is located in a central urban environment. Although the project proposes removing these two trees, the applicant is seeking to facilitate the goals of the County's RFP process while balancing site constraints such as site elevations, grading and current impacts to trees.

The Applicant is proposing to provide parking responsive to market conditions, estimated at this point in time to be approximately 575 underground spaces (470 residential and 105 retail). As the site is within the Silver Spring Parking Lot District, a tax would be required for all spaces not accommodated on-site to provide assistance to maintain the public parking facilities that residents and patrons use in lieu of on-site parking facilities. Additionally, the on-site parking will accommodate the new residents and potentially alleviate spill-over into the neighboring communities.

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #420141580) was approved by staff on May 8, 2014. The site contains individual specimen, significant, and numerous smaller trees ranging from 6-12 inches in diameter. There are no stream valleys, streams, forests, wetlands, floodplains, or rare, threatened or endangered species on site. The Property is within the Sligo Creek watershed and Lower Sligo Creek subwatershed; a Use I watershed.

Forest Conservation

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). While there is no forest on the Property, there is a 0.49-acre afforestation requirement. The Preliminary Forest Conservation Plan proposes to meet the afforestation requirement through offsite banking or payment of fee-in-lieu.

The proposed Plan is currently showing the limits of disturbance (LOD) along the property edge. As noted above, the PFCP submitted on April 25, 2014 proposes the clearing of all five (5) existing specimen trees; one is within the right-of-way of Spring Street. There are three specimen trees on-site; two Willow oaks are over 45" in diameter. One, (#2) is a 54-inch mature and healthy oak that provides an abundance of ecological performances in an urban ring. Another specimen tree straddles the M-NCPPC property and the right-of-way and was documented for removal in 2010 due to the health of the tree (Attachment B). Also proposed for removal are three (3) significant trees onsite, and two within the right-of-way of Spring Street. The plan preparer has indicated that future efforts will be made to protect the trees along the property perimeter during the site planning design phase. This project is subject to Chapter 22A of the County Code (Forest Conservation law), Section 22A-21. Variance.

FOREST CONSERVATION VARIANCE

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the

required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that:

- a. measure 30 inches DBH or greater diameter at breast height (DBH);
- b. are part of a historic site or designated with a historic structure; or
- c. are designated as national, state, or county champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or to trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Applicant Request

The Applicant submitted a Variance request on April 25, 2014. Revisions to the Variance were resubmitted on May 8th, 2014, May 14th, 2014, and May 15th, 2014 and May 20th, 2014. The Variance was forwarded to the DEP Arborist on May 8th, 2014 with final corrections on May 20th, 2014.

The Applicant proposes to remove five (5) specimen trees, with critical impacts to an additional three (3) within the median along Spring Street. Under Section 22A-12 (b) (3) (C) of the County Forest Conservation Law the trees proposed for removal are considered *priority for retention and protection* since they measure 30-inches or more as measured at 4.5-feet above ground.

OFF-SITE SPECIMEN TREES

#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	STATUS	PROTECTION MEASURES	PERCENT CRZ IMPACTED
59	31.5"	PIN OAK	QUERCUS PALUSTRIS	GOOD	TO REMAIN	TREE PROTECTION FENCE, ROOT PRUNING, ROOT AERATION MATTING	7%
60	36"	PIN OAK	QUERCUS PALUSTRIS	GOOD	TO REMAIN	TREE PROTECTION FENCE, ROOT PRUNING, ROOT AERATION MATTING	8%
61	31"	PIN OAK	QUERCUS PALUSTRIS	GOOD	TO REMAIN	TREE PROTECTION FENCE, ROOT PRUNING, ROOT AERATION MATTING	2%

ON-SITE SPECIMEN TREES

#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	STATUS	PROTECTION MEASURES	PERCENT CRZ IMPACTED
1	46.75"	WILLOW OAK	QUERCUS PHELLOS	GOOD/FAIR	TO BE REMOVED	NONE	96%
2	54"	WILLOW OAK	QUERCUS PHELLOS	GOOD	TO BE REMOVED	NONE	100%
3	32.5"	TULIP POPLAR	LIRIODENDRON TULIPIFERA	GOOD	TO BE REMOVED	NONE	100%
4	34.5"	PIN OAK	QUERCUS PALUSTRIS	GOOD	TO BE REMOVED	NONE	68%
7	33"	PIN OAK	QUERCUS PALUSTRIS	FAIR	TO BE REMOVED	NONE	50%

Staff Recommendation

Staff recommends approval of the tree Variance for the removal of trees 1-4 and 7, and impacts to the critical root zones for trees #59-61 in the County right-of-way, but conditions that commercially reasonable efforts be made by the Applicant to preserve trees #4 and #7 during the optional method of development process.

Unwarranted Hardship

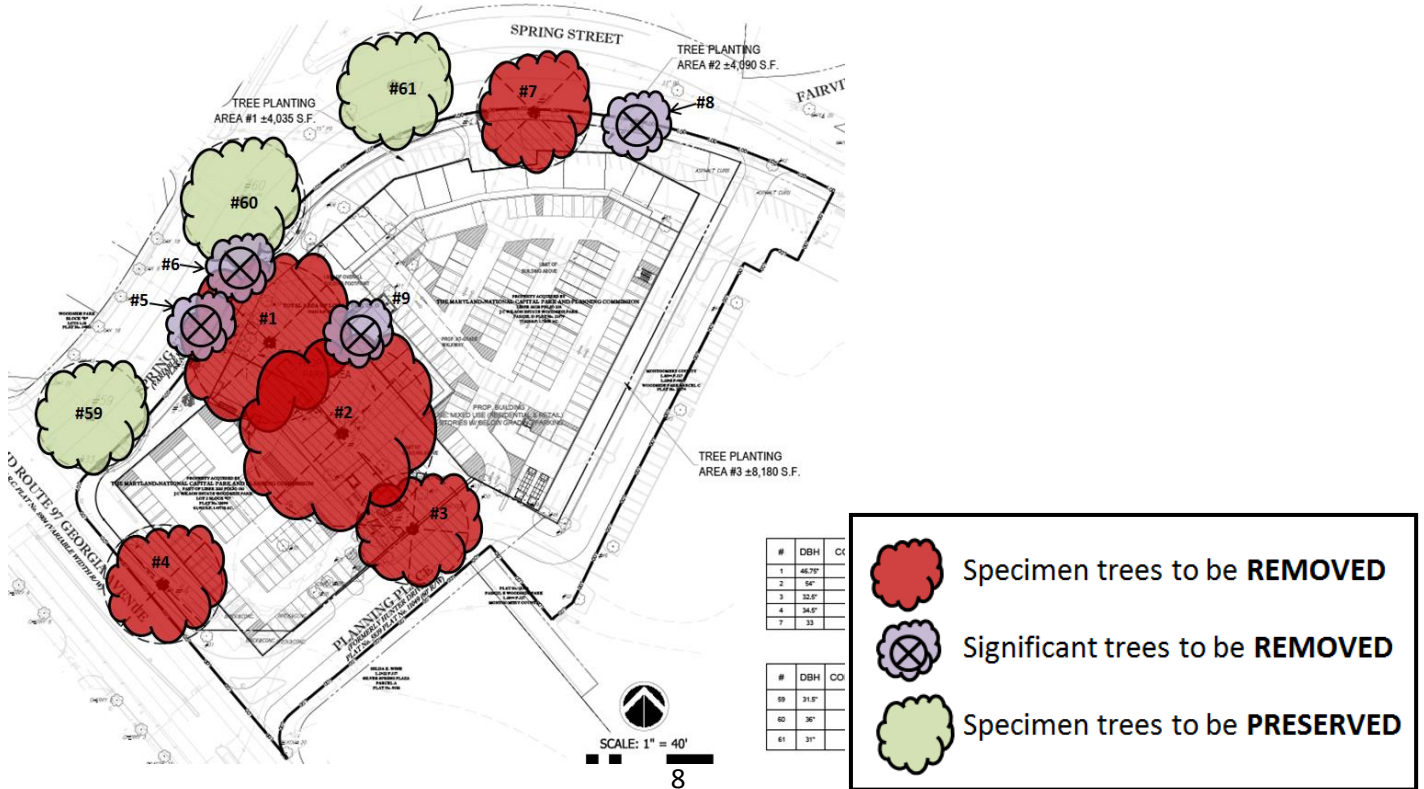
As per Section 22A-21, a Variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship. The Maryland Court of

Appeals has defined “unwarranted hardship” in the context of variances for development of environmentally sensitive areas as “equivalent to the denial of reasonable and significant use of the property”.

The Applicant has stated that the Variance is necessary to foster efficient land use, increase density while promote compatibility, and maximizing the value of the RFP Properties, as well as stimulating economic development in and around the Silver Spring CBDs. Further, the applicant highlights the fact that the Property is an urban site that the master plan envisioned for redevelopment.

In the figure below, the location of the five (5) specimen trees proposed for removal are shown. Of those, two specimen trees (#4 and #7) are located on the edge of the limit of disturbance lines. Concurrently, it may be possible to retain an additional two significant trees (#6 and #8) within the right-of-way along Spring Street. For example, the limits of disturbance can be tightened, and if the sidewalk is proposed for improvements it could be removed with care to protect the tree roots. Grading could be avoided, tree protection measures could be applied, and the laying of the new sidewalk could actually prolong the trees health and wellbeing provided soil amendments are made.

In evaluating efforts to preserve these trees during the later stages of the development process, all goals and objectives and recommendations of the Silver Spring CBD Sector Plan, February 2000 should be considered (discussed more on page 9 below), including on page 22 of the Plan that promotes a “Green Downtown” and that “Shaded, tree-lined streets punctuated by parks can convey the image of success and security. A green CBD can also improve the overall environment, improving air and water quality.” Therefore, staff believes that further consideration (and commercially reasonable efforts to retain) should be given to retention of the existing trees along Spring Street and Georgia Avenue facilitates considering all of the goals and objectives of the Sector Plan.



Variance Findings – Based on the review of the variance request and the proposed preliminary forest conservation plan, staff makes the following findings:

1. ***Granting this Variance will not confer on the applicant a special privilege that would be denied to other applicants.***

The variance for the trees on the Property will not confer upon the County a special privilege that would be denied to other applicants. The removal of the trees, in conjunction with the proposed application was anticipated during the RFP process and is supported by the Sector Plan. The urban conditions support the redevelopment of the site and removal of the specimen trees. The disturbance and removal of specimen trees #4 and #7, which are in the County right-of-way, have not been shown to be necessary and unavoidable. The Applicant proposed the removal of these two trees because the limit of disturbance is greater than 30% of the critical root zone in consideration of anticipated streetscape, pedestrian, and circulation improvements. Therefore, staff believes that commercially reasonable efforts during the future optional method of development process should be explored and exercised to try and preserve these trees.

2. ***The need for the Variance is not based on conditions or circumstances which are the result of the actions by the applicant.***

The requested Variance and PFCP as designed and written by the Applicant is not based on conditions or circumstances which are the result of the actions by the Applicant. The proposed application is designed to clear the entire site to accommodate urban redevelopment that is supported by the Sector Plan and the goals of the Property redevelopment. Staff realizes the need for providing an economically viable project however; the peripheral specimen and significant trees (#4, #6, #7, and #8) can potentially be protected during the construction process. While Staff accepts the removal of the trees within the Property boundary, efforts to protect the trees within the county right-of-way should be accommodated. With the application of sophisticated tree protection measures and careful construction methods these trees can live for decades to come providing ongoing sustainability benefits, improved quality of life, increased property value, and fulfil the goals of the Sector Plan by maintaining a “Green Downtown”.

3. ***The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

The Variance is a result of the proposed layout of the facility on the Subject Property and not a result of land or building use on a neighboring property.

4. ***Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.***

The requested Variance will not violate State water quality standards or cause measurable degradation in water quality. The site presently has no stormwater management other than the small patches of trees. The new State and local stormwater regulations will require stormwater

management above the existing conditions and will therefore improve water quality relative to the existing discharge rates.

County Arborist's Recommendation on the Variance - In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the Variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The Applicant submitted a Variance request on April 25, 2014. Revisions to the Variance were resubmitted on May 8th, 2014, May 14th, 2014, and May 15th, 2014 and May 20th, 2014. The Variance was forwarded to the DEP Arborist on May 8th, 2014 with final corrections on May 20th, 2014.

Stormwater Management

A Stormwater Management *Concept* approval from the Department of Permitting Service is not required at this preliminary stage but will be evaluated with future applications for preliminary and site plan.

Mandatory Referral Review

The application for the disposition of the Property (8787 Georgia Avenue) requires the Mandatory Referral review process consistent with the Montgomery County Department of Park and Planning Uniform Standards for Mandatory Referral Review. This regulation requires all federal, state, and local governments and public utilities to submit proposed projects for a Mandatory Referral review and approval by the Commission. The law requires the Planning Board to review and approve the proposed location, character, grade and extent of any road, park, public way or ground, public (including federal) building or structure, or public utility (whether publicly or privately owned) prior to the project being located, constructed or authorized.

The application is the result of a public/private partnership through a Request for Proposal ("RFP") process overseen by the Montgomery County Department of Transportation ("DOT") that will result in the relocation of the Maryland-National Capital Park and Planning ("M-NCPPC") Headquarters currently located on the Property to the Wheaton Central Business District ("Wheaton CBD").

The M-NCPPC has approved a resolution conveying the Property to the County and Applicant. While the Property has a number of parks located in the immediate neighborhood, one of which is opposite Spring Street and the other is proximate to the intersection of Georgia Avenue and Spring Street, the Parks Department will need to address the relocation of Royce Hanson Park that is currently sited on the Property to a more appropriate site.

Master Plan

The 2000 Approved and Adopted Silver Spring CBD Sector Plan ("Sector Plan") articulates six themes as a vision for the downtown. The following themes: transit-oriented development, commercial downtown, residential downtown, civic downtown, green downtown and pedestrian friendly downtown serve as guides to evaluate development proposals in the central business district. This proposal would meet five of the six themes, with civic downtown being removed from the current conditions. The application

is within a 10-minute walk of the metro station, and is proposing ground floor retail with residential above. A pedestrian connection that extends Fenton Street to Spring Street is proposed with a linear public space to facilitate the linkage and activate the space, as specifically recommended in the Sector Plan (p. 72). This application achieves many of the urban design goals in the Sector Plan (pg. 73) such as to “create an attractive pedestrian environment by creating a system of short blocks, and defining streets with buildings, open spaces, and streetscaping at a human scale created by street-front retail, frequent doors and windows, architectural detail, and appropriately scaled buildings.” Staff is also recommending that the trees be preserved to the extent possible along Georgia Avenue and Spring Street to further articulate the green downtown and pedestrian friendly themes.

While the Sector Plan did not contemplate the relocation of the M-NCPPC headquarters, the proposed uses are substantially consistent with the land use recommendations of the Sector Plan, identifying residential and public/semi-public uses on the Property. The uses proposed are consistent with the current CBD-1 zone and future conversion to the CR family of zones, both of which allow a greater degree of flexibility.

Public Meetings

After the release of the RFP, the County and their development partner held a number of public meetings on both the Wheaton CBD development application and the Silver Spring CBD redevelopment. Meetings regarding the subject Property were held on June 3, 2013 and September 16, 2013, which provided adjacent residents the opportunity to review and comment on proposed application. The County has the meeting dates, proposals and goals for the redevelopment applications highlighted on their website: www.montgomerycountymd.gov The M-NCPPC also adopted a resolution (Attachment A) approving the relocation of the current headquarters on the Property to the Wheaton CBD. Public notices for the current applications for a Preliminary Forest Conservation Plan and Mandatory Referral for the disposition of the Property were mailed on May 5, 2014 identifying the date for the public hearing. Staff communicated with a number of residents who wanted more information about the application and more specifically, about the flagging that was associated with the trees on the site.

Conclusion

Staff recommends that the Planning Board approve the Preliminary Forest Conservation Plan with the conditions cited in this staff report and the Mandatory Referral for the disposition of the Property. The variance approval is assumed into the Planning Board’s approval of the Preliminary Forest Conservation Plan.

ATTACHMENTS:

- Attachment A: Resolution approving conveyance of 8787 Georgia Avenue
- Attachment B: Documentation for Removal of the Willow Oak-2010
- Attachment C: Final Variance request, May 14th, 2014
- Attachment D: Preliminary Forest Conservation Plan (FCP) (last submittal), May 20nd, 2014
- Attachment F: Correspondence

MNCPPC No. 13-05

RESOLUTION
(Transfer / Exchange Property)

WHEREAS, The Maryland-National Capital Park and Planning Commission (“Commission”) is authorized under the Annotated Code of Maryland, Land Use §17-205 to transfer any land held by it and deemed by the Commission not to be needed for park purposes or other authorized purposes; and

WHEREAS, the Commission owns two parcels of property, collectively known as 8787 Georgia Avenue, located in Silver Spring, Maryland, containing a total of 3.2 acres, more or less, further described as Lot 2, Block “C” of J. C. Wilson Estate, WOODSIDE PARK, as per plat thereof recorded among the Land Records of Montgomery County, Maryland at Plat #11049, and Parcel D, Block “C” of J. C. Wilson Estate, WOODSIDE PARK, as per plat thereof recorded among the aforesaid Land Records at Plat #21574 (the “Commission Property”); and

WHEREAS, the Commission Property is improved with a building of approximately 49,500 square feet with ancillary surface parking that is currently used as the Montgomery County Regional Headquarters, which houses the Montgomery County Planning Department, offices for the Montgomery County Planning Board, the Montgomery County Planning Board Chair’s office, and the Montgomery County Land Use Team of the Office of General Counsel; and

WHEREAS, the Commission and Montgomery County, Maryland (“County”) desire to enter into a Memorandum of Understanding (“MOU”) whereby, through issuance of County General Obligation Bonds, the County will fund the design, development, and construction of a new building of approximately 142,000 square feet that will be owned by the Commission with perpetual right to the land necessary for the building and will be suitable for use in lieu of the Commission Property; and

WHEREAS, the Commission has reviewed the terms and conditions set forth in the MOU as proposed; and

WHEREAS, no less than 132,000 square feet of the new building will be dedicated to serve as the Montgomery County Regional Headquarters, which in addition to housing the current functions at the Commission Property, will house a portion of the Montgomery County Parks Department and certain shared services; and

WHEREAS, any available space above the 132,000 square feet dedicated to Commission use will be made available to the County’s Wheaton Regional Services Center, the Wheaton Urban District, and other County Departments as a tenant of the Commission; and

WHEREAS, as consideration for the new building, and subject to strict compliance with the MOU, the Montgomery County Planning Board has recommended that the Commission transfer the Commission Property to the County or its lawful designee determined according to the MOU, together

with all buildings, improvements, ways, easements, rights, waters, privileges, covenants, and appurtenances to the same belonging, benefiting or in any way appertaining, and all estate, title, right, interest and claim of the Commission pertaining to the Commission Property.

NOW, THEREFORE, BE IT RESOLVED that, subject to the County's strict compliance with the MOU and the various definitive agreements required thereunder, the Commission has determined that the Commission Property will not be needed for park purposes or other authorized purposes, and authorizes and approves the transfer of the Commission Property to the County or its lawful designee determined according to the MOU; and

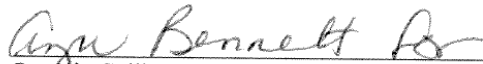
BE IT FURTHER RESOLVED that, prior to the execution and delivery of any deed necessary or appropriate to convey the Commission Property as contemplated herein, the Montgomery County Planning Board shall evaluate and determine the County's compliance with the MOU and the various definitive agreements required thereunder; and

BE IT FURTHER RESOLVED, that in connection with the transactions contemplated herein, the Executive Director is authorized to execute and deliver, on behalf of the Commission, any and all such certificates, documents, and/or instruments, and to do or cause to be done, any and all such acts, as the Executive Director deems necessary or appropriate to make effective or to implement the intended purposes of the foregoing resolution, without limitation, and the taking of such actions shall be deemed conclusively to be authorized hereby.

* * * * *

Commission Certification

This is to certify the foregoing is a true and correct copy of a resolution adopted by the Maryland-National Capital Park and Planning Commission on motion of Commissioner Washington, seconded by Commissioner Presley, with Commissioners Anderson, Carrier, Dreyfuss, Geraldo, Hewlett, Presley, Shoaff, Washington, and Wells-Harley, voting 9-0 in favor of the motion at a special telephonic meeting held on May 30, 2013, by conference call, with Commissioner Bailey being absent.


Patricia Colihan Barney
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 5/30/13



MONTGOMERY COUNTY DEPARTMENT OF PARKS
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Horticulture, Forestry and Environmental Education Division

November 23, 2010

Willow Oak Located at 8787 Georgia Avenue
M-NCPPC Main Regional Office
Documentation for Removal

Background

Several years ago, the Willow Oak located on the property of the M-NCPPC Main Regional Office, 8787 Georgia Avenue, Silver Spring, Maryland, was the target of a lightning strike. The most recent inspection on November 1, 2010 is documented on the following pages.

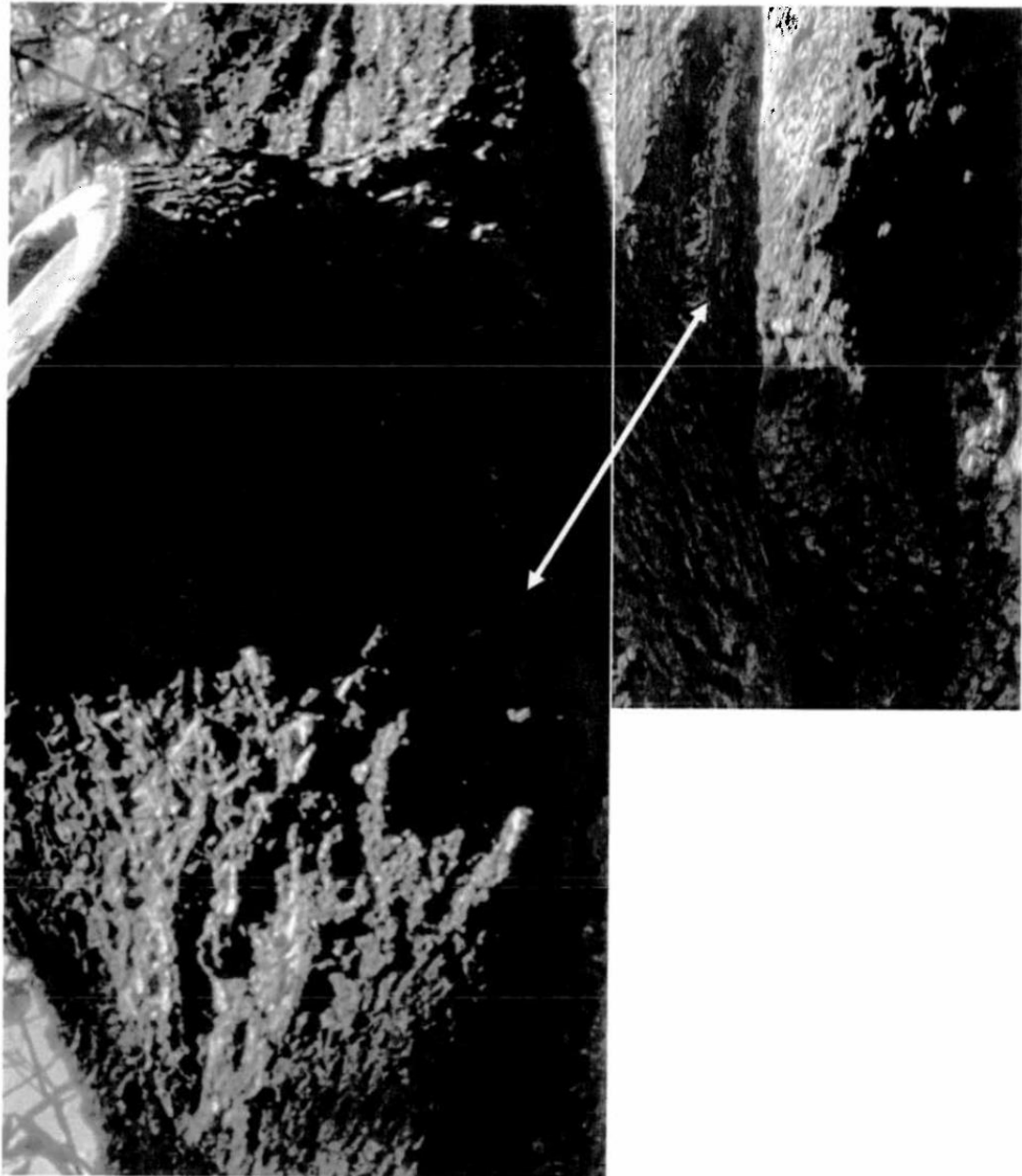
The Willow Oak (*Quercus phellos*) on the grounds of the M-NCPPC Main Regional Office at 8787 Georgia Avenue, Silver Spring, Maryland, was evaluated on November 1, 2010. The following pictures indicate the extent of the progressive decay found during the inspection. The tree was inspected in 2008 and again in 2009. During the 2009 inspection, Tree Climber Richard Mallette took the Resistograph up in the aerial lift and inspected the crown. At each of these inspections, the results indicated that the tree could remain standing.

On November 1, fruiting structures were observed in the stem and in the root flare area. The photos on the following pages describe the findings.



Sapwood decay is indicated by the fruiting bodies in the area of the lowest pruning wound and in the vertical cracks, shown in the close-up below.

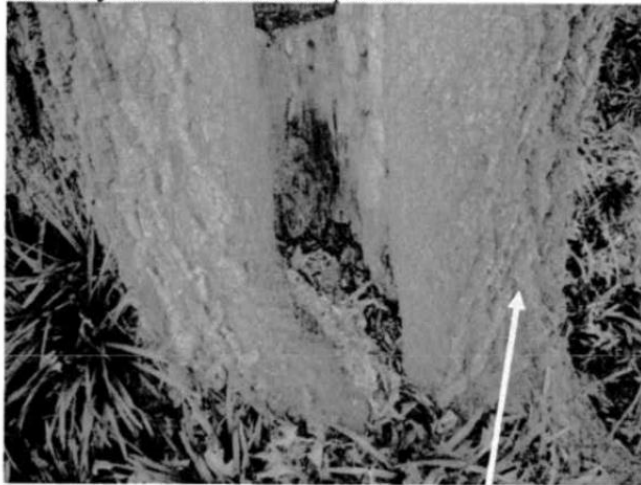
Jeanne Kavinski
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16641 Crabbs Branch Way, Rockville, Maryland 20855
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(301) 650 - 2634



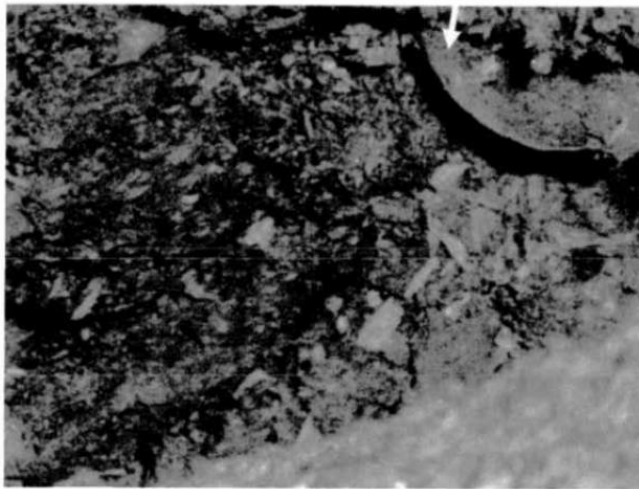
The photo to the right is a close-up of the decay at this old pruning site shown

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linked by the arrow in these photos.



This fruiting structure visible from the outside.



This fruiting structure is located inside right root flare picture above.

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Decay is present in the plane in which most of the crown weight lies. The tree stands within the target impact area of the pedestrian walkway along Spring Street and the MRO parking lot. Fencing is often used as an option to separate the tree and the target; however, in this case, the sidewalk, Spring Street and the MRO parking lot area would need to be closed, which is not feasible. The size of the defective stem is 42 inches diameter breast height (d.b.h.). The root flare is compromised, due to the decay in the root system being greater than 33 percent of the total root collar area.

Therefore, due to the multiple defects in the tree and the high probability of target impact because of its location it is my professional opinion, that the tree should be removed.

This letter serves as notification that the Park's Tree Crew will be removing the tree in the near future and that they have been notified that it is a priority removal.

Respectfully submitted,

Jeanne Kavinski
Urban Forester
Montgomery Parks

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(301) 650 - 2634

**Attachment C
Variance Request**



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

May 14, 2014

Tina Schneider, MLA
Senior Planner
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 8787 Georgia Avenue, Silver Spring, Maryland (the "Property") - Application for
Variance for the Removal of Specimen Trees

Dear Ms. Schneider:

The Property, comprised of 3.23+/- acres located in the southeast quadrant of the intersection of Georgia Avenue and Spring Street in the Silver Spring Central Business District (in the CBD-1 zone), is the subject of a public/private partnership (through a Request for Proposal ("RFP") process overseen by the Montgomery County Department of Transportation ("MCDOT")) that will result (among other results) in the relocation of the Maryland-National Capital Park and Planning ("M-NCPPC") Headquarters currently located on the Property to the Wheaton Central Business District ("Wheaton CBD"). As part of the public/private partnership, upon M-NCPPC vacating the Property and relocating to Wheaton, the Property will be conveyed to Montgomery County ("County") and then to an affiliate of Bozzuto/StonebridgeCarras (the "Developer") for optional method redevelopment pursuant to impending CR zoning for the Property (as guided by the Silver Spring CBD Sector Plan (the "Sector Plan")). The material terms of the public/private partnership governing (among other things) the above-described transaction are set forth in a General Development Agreement ("GDA") between Wheaton/Silver Spring, LLC (an affiliate of the Developer) and the County, which GDA is in the final stages of negotiation and is anticipated to be executed by the parties shortly. The proposed ultimate disposition of the Property by the County pursuant to the GDA is also the subject of a request by the County for Mandatory Referral review (the "Mandatory Referral"), which is being processed concurrent with this Variance Application. As part of the Mandatory Referral, and to allow the disposition of the Property pursuant to the material terms of the GDA, it has been determined by the County that in order for the Property to be redeveloped as contemplated by the impending CR zoning and the Sector Plan, a variance (the "Variance") from Chapter 22A (FOREST CONSERVATION – TREES) of the Montgomery County Code ("County Code") is necessary to allow the removal from the Property of five (5) "specimen" trees having a diameter, measured at 4.5 feet above ground, of 30 inches or more (the "Subject Trees"). As such, pursuant to § 5-1607(c)(2)(iii)(1) of the Natural Resources Article of the Annotated Code of Maryland and Section 22A-21(b) of the County Code, and for reasons described herein, the County hereby

**L&B 2848738v5/00299.0032

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requests approval of the Variance by the Planning Board in conjunction with the review of the Mandatory Referral for the disposition of the Property.

As explained more fully below, retention of the Subject Trees, shown on the chart attached hereto as Exhibit "A" and the Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD") recently reviewed and approved by M-NCPPC staff attached hereto as Exhibit "B", would result in unwarranted hardship.¹ The criteria for the granting of the Variance as set forth in Section 22A-21(b) of the County Code and the manner in which each of these criteria are satisfied is as follows:

- (1) *describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

In June 2013, MCDOT issued the RFP to achieve specific redevelopment priorities for County-owned properties in the "Wheaton Triangle" area of the Wheaton CBD (the "Wheaton Properties") and for the Property (currently owned by M-NCPPC) (collectively, the "RFP Properties"). The Developer was selected through the RFP process, and the GDA is being finalized to document the public/private partnership that will work together in developing the RFP Properties. Per the RFP (and GDA), the Developer will construct improvements for governmental uses (including County agencies and the new M-NCPPC Headquarters) and public uses and amenities on the Wheaton Properties and in return will (upon M-NCPPC vacating the Property) be deeded the Property for private redevelopment (collectively, the "Overall RFP Project"). Fostering efficient land use, increasing density while promoting compatibility, and maximizing the value of the RFP Properties, as well as stimulating economic development in and around the Wheaton and Silver Spring CBDs, were underpinning goals of the RFP. The obvious intent of the RFP was to have the economic value of the private redevelopment of the Property by the Developer serve to subsidize the public uses being constructed by the Developer for the County and M-NCPPC (and the general public) on the Wheaton Properties. The location of the Subject Trees are such that retention would create a glaring and insurmountable obstacle to having the Property developed as part of the Overall RFP Project in a manner consistent with the economic goals and objectives of the RFP. The unique circumstances involving the Property as part of the RFP Properties and the importance of the Developer being able to achieve appropriate redevelopment of the Property in the overall scheme of the RFP (and GDA), along with site constraints already presenting challenges to the redevelopment of the Property, are special conditions peculiar to the Property, and the debilitating impacts that retention of the Subject

¹ There are several other specimen trees on the Property that are not requested by the County for removal in conjunction with the disposition of the Property. These specimen trees will be evaluated in conjunction with the Developer's more specific development plans (including a final Forest Conservation Plan) at a subsequent time.

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Trees would have on the redevelopment of the Property given these unique and special conditions peculiar to the Property would unquestionably cause unwarranted hardship. Accordingly, the granting of the Variance is necessary and appropriate.

The winning RFP proposal offered by the Developer envisions the redevelopment of the Property with a highly-integrated, mixed-use urban development that embodies the vision of the Silver Spring CBD Sector Plan to enhance the prominence, and the dynamism, of the Property's gateway location (the "Proposed Project"). Consistent with ongoing planning discussions with the community, the Proposed Project embraces the concept of a residential downtown with interconnectivity, an enhanced pedestrian environment, improved accessibility, and high-quality public spaces that are at the core of planning priorities in this area. Conceptual plans illustrating the general intent of the Proposed Project are attached hereto as Exhibit "C."

In order to ensure a project with design excellence, the Developer's Proposed Project incorporates elements that make it urban in spirit with approximately 360 apartment homes (including 46 MPDUs), 26,200± square feet of neighborhood-anchored retail, and associated parking and site amenities. In consideration of community input and other factors relevant in achieving compatibility with surrounding land uses, including the residential neighbors, the Developer has proposed that the Proposed Project will be limited to five (5) stories of wood frame construction over a concrete podium. With a significant (24-foot±) grade change across the Property, generally sloping down from west (Georgia Avenue) to east, this type of construction allows for a stepped podium building taking advantage of the site's topography and ensuring that structured parking will never define the public realm (with parking at the upper level - along Georgia Avenue - being entirely below grade and at the lower level - towards the adjacent residential uses - being wrapped with liner apartment units effectively screening the parking).

Through thoughtful analysis and careful planning that incorporates the site constraints, the Developer is proposing site design that optimizes the economic viability of the Proposed Project, maximizes fiscal benefits to the County, provides new civic infrastructure of place and streetscape, respects neighboring residential and park uses, and implements design principles consistent with the Sector Plan, the impending CR zoning, and sound urban planning and development. Importantly, the Proposed Project also provides the economic engine that motors the Overall RFP Project.

The retention of the Subject Trees would cause unwarranted hardship as it would cause the Proposed Project (described above) integral to the success of the Overall RFP Project to be infeasible. The economic viability of the Overall RFP Project is entirely premised upon the ability of the Developer to redevelop the Property as envisioned throughout the RFP process (and consistent with the Sector Plan guidance and zoning for the Property). In order to replace the

density that would be lost in the Proposed Project (to try to replace the corresponding lost economic value) with the Subject Trees retained, the resulting project would have additional building height with either a hybrid metal frame or concrete construction, inefficient and fragmented structured parking, and an overall plan that would lack compatibility and design excellence and running afoul of Sector Plan guidance for the Property (and for these reasons likely would not receive optional method approval). Conversely, maintaining wood frame construction (5-story over podium) in order to retain the Subject Trees and still attempt to achieve the urban design principles important to compatible redevelopment as discussed above would result in significant reductions in both residential dwellings and retail square footage, as well as compromise the circulation and efficiency of the parking garage (and compromise the urban screening techniques described above for screening the structured parking), thereby destroying the economic viability of the Proposed Project and thus the Overall RFP Project.

The locations of the Subject Trees are such that even the demolition of existing improvements and necessary site preparation for any level of redevelopment would put the trees at risk. Even assuming, however, that appropriate measures could be installed to ensure the protection and preservation of the Subject Trees through demolition and grading and excavation for redevelopment of the Property, the resulting redevelopment project would fail all tests of good, sound urban redevelopment. This result, standing on its own, justifies the granting of the Variance given the special conditions peculiar to the Property and the resulting unwarranted hardship caused by retention of the Subject Trees. When the totality of the circumstances of the Property and its essential role in the economic viability of the Overall RFP Project is factored in, and considering the significant compromising results that tree retention would have on the design of the Proposed Project, the special conditions peculiar to the Property are magnified exponentially, as is the unwarranted hardship.

- (2) *describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Retention of the Subject Trees would deprive the landowner of the Property of the ability to redevelop the Property in accord with the type of project appropriate under the optional method of development for properties similarly located in the Silver Spring CBD (and as envisioned in the Sector Plan and in a manner consistent with the impending CR zoning). Properties located similar to the Property could be developed with a multi-family, mid-rise residential development project with ground level retail, structured parking, well-designed pedestrian and vehicular connectivity, recreational and public use spaces and amenities, stormwater management through environmental site design and other related urban design features. This same type of development would be unavailable to the landowner of the Property if the Subject Trees are retained. Because retention of the Subject Trees would carve out strategically vital areas of the Property and disallow any land disturbing activity within the

protected areas around the trees, redevelopment of the Property (including demolition and site preparation) in a manner that is desirable and appropriate for an urban gateway location would be significantly compromised in a way that similar gateway properties to the County's CBDs would not be.

- (3) *verify that State water quality standards will not be violated and that a measureable degradation in water quality will not occur as a result of granting the variance; and*

While the specific methods for managing stormwater runoff associated with the redevelopment of the Property, including the ways in which water quality standards will be satisfied, will be part of the entitlement review processes that will take place much later in the build-out of the Overall RFP Project, it can be stated that the granting of the Variance to allow the removal of the Subject Trees will not negatively impact water quality. In fact, to the contrary, because the existing improvements on the Property were constructed prior to the current Maryland Department of the Environment (MDE) stormwater and sediment control regulations (with little to no stormwater management in place to treat water quality and a largely impervious Property), redevelopment of the Property in conformance with the current regulatory requirements by providing a managed stormwater system will significantly improve the water quality of the stormwater runoff from the Property. The granting of the Variance will allow the entire Property to be comprehensively evaluated and designed with a stormwater management system utilizing environmental site design to the maximum extent possible (ESD to the MEP), including pervious pavement, micro-bioretenion and other structural and non-structural methods (meeting current MDE regulations as implemented by Montgomery County). If required to retain the Subject Trees, the Proposed Project, along with ESD to the MEP, is unlikely to occur anytime soon, thus creating unwarranted hardship to the detriment of the general public.

- (4) *provide any other information to support the request*

Protecting and preserving the Subject Trees, given the location of the trees and the extent of the no disturbance areas that would be required, would have a chilling effect on the ability to achieve a well-designed project worthy of the urban location of the Property to the point of making redevelopment of the Property extremely questionable (including great concerns in even being able to demolish and remove existing improvements). Factoring in that the redevelopment of the Property through the RFP process adds the additional consideration of the Proposed Project bearing considerable weight in the economic visibility of the Overall RFP Project, the degradation of economic value to the Property if the Subject Trees are required to be protected and preserved (given the substantial impacts this would have on the type of redevelopment project that could be implemented) would create unnecessary hardship to the point of rendering the Overall RFP Project infeasible. In short, balancing the good that would result from the preservation of the Subject Trees with the negative impacts that it would have on the

redevelopment of the Property clearly weights out in favor of the granting of the Variance, especially in light of the uniqueness of this proposed redevelopment serving as the anchor for achieving the public benefits expressly sought out through the RFP. This conclusion is so apparent that it merits the County gaining the assurances that the Subject Trees can be lawfully removed in conjunction with the redevelopment of the Property as a prerequisite to the successful completion of a GDA establishing the public/private partnership that will deliver the Overall RFP Project. It is for this reason that the Variance must be approved by the Planning Board concurrent with the County's request for Mandatory Referral review of the disposition of the Property.

The granting of the Variance (pursuant to Section 22A-21(d)):

1. *Will not confer upon the Applicant a special privilege that would be denied to other applicants;*

The Variance will not confer upon the County a special privilege that would be denied to other applicants. The centralized locations of the Subject Trees, as well as the Property's location within the Silver Spring CBD, require removal for the type of development recommended by the Sector Plan and supported by the Property's impending CR zoning that permits an optional method of development allowing significant density supported by important public benefits. Impacts to the Subject Trees are anticipated given the urban nature of the envisioned development, and applicants with similar circumstances and with property appropriate for redevelopment would similarly be entitled to necessary variances to remove specimen trees that significantly impede the ability to achieve urban redevelopment.

2. *Will not be based upon conditions or circumstances which result from the actions by the Applicant;*

The Variance is based upon the centralized location of the Subject Trees that preclude the Proposed Project. The Proposed Project is consistent with the Sector Plan recommendations to revitalize Silver Spring's CBD with urban, mixed-use, pedestrian oriented development that provides new housing on the Property, as well as the Property's impending CR zoning, which, among other things, promotes sustainable development patterns in close proximity to transit options, targets opportunities for redevelopment of surface parking lots, and allows for an optional method that supports incentive density through the provision of needed public benefits. The Variance is also needed to fulfill the public benefits of the Overall RFP Project, as described above. Thus, the Variance is not based on any conditions or circumstances that result from the actions of the County as the Applicant.

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3. *Will not be based upon a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and*

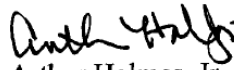
The requested Variance is a result of the design of the Proposed Project and the conflicting locations of the Subject Trees requiring removal, as opposed to a condition related to land or building use, either permitted or non-conforming, on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality:*

See above.

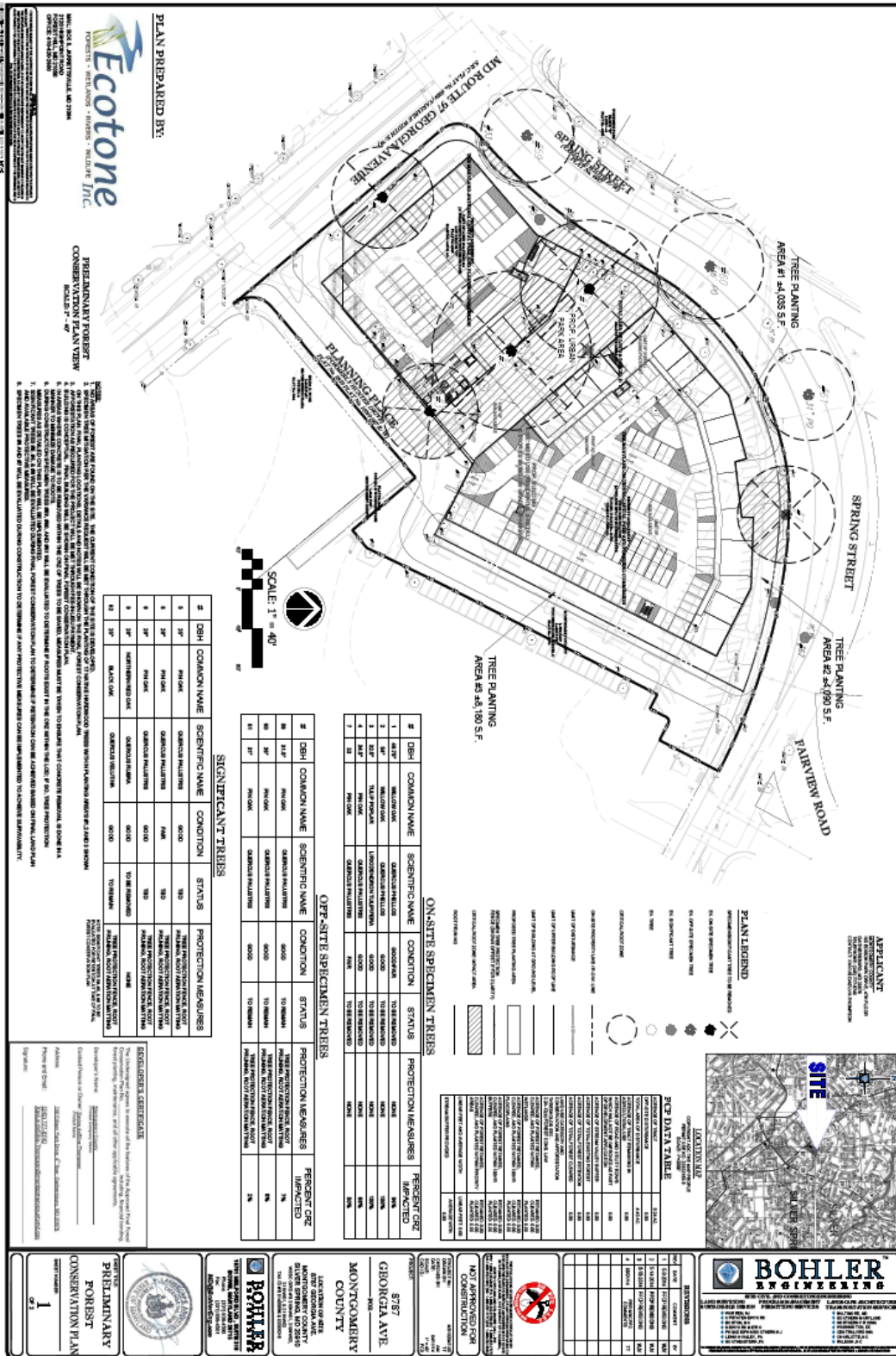
For all of these reasons, and in satisfaction of the criteria established by Section 22A-21 of the Code and Maryland law, the County requests that the Planning Board approve the Variance, thereby allowing the disposition of the Property pursuant to the impending GDA and as contemplated in the Mandatory Referral.

Respectfully,

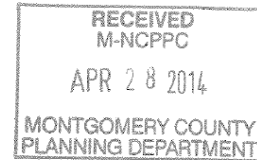

Arthur Holmes, Jr.
Director

Enclosures

cc: Gwen Wright, M-NCPPC
Carol Rubin, M-NCPPC
Robert Kronenberg, M-NCPPC
Laura Miller, MCDEP
Al Roshdieh, MCDOT
Rick Siebert, MCDOT
Xavius DaSilva-Thompson, MCDOT



**Attachment F
Correspondence**



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

April 25, 2014

Ms. Françoise M. Carrier
Planning Board Chair
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Mandatory Referral for Disposition of 8787 Georgia Avenue

Dear Ms. Carrier:

As related to the Wheaton / Silver Spring redevelopment project, the Montgomery County Department of Transportation ("DOT") is hereby requesting an administrative mandatory referral review (the "Review") for the disposition of Maryland-National Capital Park and Planning Commission ("M-NCPPC") property located at 8787 Georgia Avenue in Silver Spring (the "Property").

Montgomery County is committed to fostering efficient land use, increased density, mixed-use, appropriate levels of affordable housing and maximizing the value of its properties. The disposition of the Property is part of this planning.

In June 2013, DOT issued a Request for Proposal ("RFP") seeking proposals from developers interested in developing the Wheaton Parking Lot District's Parking Lot # 13 located at 11143 Grandview Avenue and the Regional Services Center located at 2406 Reddie Drive. Both of these properties are located in the area commonly referred to as the "Wheaton Triangle." Also part of the RFP is the Property, currently owned by the M-NCPPC. As a result of the RFP, the County has selected StonebridgeCarras/Bozzuto ("Developer") to be the developer for these properties (the "Project") and will be entering into a General Development Agreement ("GDA") with them. For informational purposes only, and to provide some context for a "variance" under Chapter 22A (Forest Conservation-Trees) of the Montgomery County Code ("Code") that is being requested by the County concurrent with this Referral (which "variance" is discussed more fully below), a concept plan demonstrating how the Property might be developed by the Developer is attached hereto as Exhibit "A".

PROPERTY

The M-Property that the County will dispose of and that is the subject of this Review is described in the attached Exhibit "B".

**L&B 3059663v2/00299.0032

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BACKGROUND

The Developer will construct a new M-NCPPC headquarters on county owned land that is the current location of the Wheaton Triangle properties. The Project will include a government office building to house M-NCPPC headquarters and several County agencies, retail space for the County, a turnkey below grade parking garage with approximately 400 parking spaces to be owned by the County and a Town Square that will be used for recreation space and public programming.

The County will retain the land and parking garage and M-NCPPC will own the building and air rights required for the portion of 11143 Grandview Avenue required to construct the government office building. In exchange for the County's transfer of the office building and the air rights to the M-NCPPC, the M-NCPPC will transfer the Property and Veteran's Park (located near Wheaton Triangle) in fee simple to the County. The County will immediately dispose of the Property by transferring it in fee simple to the Developer for the private redevelopment of the Property into a mixed-use project. The County will retain Veteran's Park and continue to use it as a Veteran's Park.

The Developer will have exclusive right to purchase the Property once a Certificate of Use and Occupancy has been issued for the new office building (including the new M-NCPPC headquarters). M-NCPPC has agreed to sell the Property as part of the transaction for the Project.

The Property must go through administrative mandatory referral for disposition to the County and then from the County to the Developer, as required. A redevelopment plan for the Property will be submitted subsequently and under a traditional optional method application process (for the CR zone that will be in place for the Property) by the Developer pursuant to the Zoning Ordinance. This notwithstanding, it has become obvious through the RFP process and in the negotiations of the GDA for the Project that the ability of the Developer to develop the Property consistent with the Silver Spring CBD Sector Plan ("Sector Plan") and as allowed under the optional method of development under both the current CBD-1 zoning and the proposed CR zoning (pursuant to the impending Zoning Ordinance re-write and comprehensive rezoning) will be substantially compromised without the removal of certain trees from the Property. Pursuant to the provisions of Chapter 22A of the Code, certain of these trees needing to be removed to allow the Property to be meaningfully redeveloped in the context of the Project are considered "specimen trees", thereby requiring that a variance pursuant to Section 22A-21 be approved by the Planning Board or Planning Director before removal of the trees will be permitted (pursuant to the criteria also set forth in Section 22A-21 of the Code).

Because the economic viability of the entire public/private Project is premised upon the Developer being able to redevelop the Property as envisioned in the Sector Plan and as allowed under the optional method of development in both the CBD and CR zones, which redevelopment cannot occur without the removal of these certain trees, the County has determined that the ability of the Developer to lawfully remove these trees must be ascertained in a legally binding

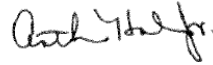
Françoise M. Carrier
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manner in conjunction with this Review of the disposition of the Property. As such, the County is applying for the necessary variance under Chapter 22A concurrent with (but with a separate application from) this Review of the disposition of the Property.

We request that the M-NCPPC process this Review and the companion variance application expeditiously in order to allow the completion of the GDA for this important public/private Project to continue in an uninterrupted manner.

Please feel free to contact me at 240-777-7170 should you have any questions.

Sincerely,



Arthur Holmes, Jr.
Director

Enclosures

cc: Catherine Conlon, M-NCPPC
Al Roshdieh, MCDOT
Rick Siebert, MCDOT



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

April 25, 2014

François Carrier, Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: 8787 Georgia Avenue, Silver Spring, Maryland (the "Property") - Application for
Variance for the Removal of Specimen Trees

Dear Ms. Carrier and Members of the Planning Board:

The Property, comprised of 3.23+/- acres located in the southeast quadrant of the intersection of Georgia Avenue and Spring Street in the Silver Spring Central Business District (in the CBD-1 zone), is the subject of a public/private partnership (through a Request for Proposal ("RFP") process overseen by the Montgomery County Department of Transportation ("DOT")) that will result (among other results) in the relocation of the Maryland-National Capital Park and Planning ("M-NCPPC") Headquarters currently located on the Property to the Wheaton Central Business District ("Wheaton CBD"). As part of the public/private partnership, upon M-NCPPC vacating the Property and relocating to Wheaton, the Property will be conveyed to Montgomery County ("County") and then to an affiliate of Bozzuto/StonebridgeCarras (the "Developer") for optional method redevelopment pursuant to impending CR zoning for the Property (as guided by the Silver Spring CBD Sector Plan (the "Sector Plan")). The material terms of the public/private partnership governing (among other things) the above-described transaction are set forth in a General Development Agreement ("GDA") between Wheaton/Silver Spring, LLC (an affiliate of the Developer) and the County, which GDA is in the final stages of negotiation and is anticipated to be executed by the parties shortly. The proposed ultimate disposition of the Property by the County pursuant to the GDA is also the subject of a request by the County for Mandatory Referral review (the "Mandatory Referral"), which is being processed concurrent with this Variance Application. As part of the Mandatory Referral, and to allow the disposition of the Property pursuant to the material terms of the GDA, it has been determined by the County that in order for the Property to be redeveloped as contemplated by the impending CR zoning and the Sector Plan, a variance (the "Variance") from Chapter 22A (FOREST CONSERVATION – TREES) of the Montgomery County Code ("County Code") is necessary to allow the removal from the Property of three (3) "specimen" trees having a diameter, measured at 4.5 feet above ground, of 30 inches or more (the "Subject Trees"). As such, pursuant to § 5-1607(c)(2)(iii)(1) of the Natural Resources Article of the Annotated Code of Maryland and Section 22A- 21(b) of the County Code, and for reasons described herein, the County hereby requests approval of the Variance by the Planning Board in conjunction with the review of the Mandatory Referral for the disposition of the Property.

Office of the Director

**L&B 2848738v4/00299.0032

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As explained more fully below, retention of the Subject Trees, shown on the Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”) recently reviewed and approved by M-NCPPC staff and attached hereto as Exhibit “A”, would result in unwarranted hardship.¹ The criteria for the granting of the Variance as set forth in Section 22A-21(b) of the County Code and the manner in which each of these criterion is satisfied is as follows:

- (1) *describe the special conditions peculiar to the property which would cause the unwarranted hardship;*

In June 2013, DOT issued the RFP to achieve specific redevelopment priorities for County-owned properties in the “Wheaton Triangle” area of the Wheaton CBD (the “Wheaton Properties”) and for the Property (currently owned by M-NCPPC) (collectively, the “RFP Properties”). The Developer was selected through the RFP process, and the GDA is being finalized to document the public/private partnership that will work together in developing the RFP Properties. Per the RFP (and GDA), the Developer will construct improvements for governmental uses (including County agencies and the new M-NCPPC Headquarters) and public uses and amenities on the Wheaton Properties and in return will (upon M-NCPPC vacating the Property) be deeded the Property for private redevelopment (collectively, the “Overall RFP Project”). Fostering efficient land use, increasing density while promoting compatibility, and maximizing the value of the RFP Properties, as well as stimulating economic development in and around the Wheaton and Silver Spring CBDs, were underpinning goals of the RFP. The obvious intent of the RFP was to have the economic value of the private redevelopment of the Property by the Developer serve to subsidize the public uses being constructed by the Developer for the County and M-NCPPC (and the general public) on the Wheaton Properties. The location of the Subject Trees are such that retention would create a glaring and insurmountable obstacle to having the Property developed as part of the Overall RFP Project in a manner consistent with the economic goals and objectives of the RFP. The unique circumstances involving the Property as part of the RFP Properties and the importance of the Developer being able to achieve appropriate redevelopment of the Property in the overall scheme of the RFP (and GDA), along with site constraints already presenting challenges to the redevelopment of the Property, are special conditions peculiar to the Property, and the debilitating impacts that retention of the Subject Trees would have on the redevelopment of the Property given these unique and special conditions peculiar to the Property would unquestionably cause unwarranted hardship. Accordingly, the granting of the Variance is necessary and appropriate.

¹ There are several other specimen trees on the Property that are not requested by the County for removal in conjunction with the disposition of the Property. These specimen trees will be evaluated in conjunction with the Developer’s more specific development plans (including a final Forest Conservation Plan) at a subsequent time.

The winning RFP proposal offered by the Developer envisions the redevelopment of the Property with a highly-integrated, mixed-use urban development that embodies the vision of the Silver Spring CBD Sector Plan to enhance the prominence, and the dynamism, of the Property's gateway location (the "Proposed Project"). Consistent with ongoing planning discussions with the community, the Proposed Project embraces the concept of a residential downtown with interconnectivity, an enhanced pedestrian environment, improved accessibility, and high-quality public spaces that are at the core of planning priorities in this area. Conceptual plans illustrating the general intent of the Proposed Project are attached hereto as Exhibit "B."

In order to ensure a project with design excellence, the Developer's Proposed Project incorporates elements that make it urban in spirit with approximately 360 apartment homes (including 46 MPDUs), 26,200± square feet of neighborhood-anchored retail, and associated parking and site amenities. In consideration of community input and other factors relevant in achieving compatibility with surrounding land uses, including the residential neighbors, the Developer has proposed that the Proposed Project will be limited to five (5) stories of wood frame construction over a concrete podium. With a significant (24-foot±) grade change across the Property, generally sloping down from west (Georgia Avenue) to east, this type of construction allows for a stepped podium building taking advantage of the site's topography and ensuring that structured parking will never define the public realm (with parking at the upper level - along Georgia Avenue - being entirely below grade and at the lower level - towards the adjacent residential uses - being wrapped with liner apartment units effectively screening the parking).

Through thoughtful analysis and careful planning that incorporates the site constraints, the Developer is proposing site design that optimizes the economic viability of the Proposed Project, maximizes fiscal benefits to the County, provides new civic infrastructure of place and streetscape, respects neighboring residential and park uses, and implements design principles consistent with the Sector Plan, the impending CR zoning, and sound urban planning and development. Importantly, the Proposed Project also provides the economic engine that motors the Overall RFP Project.

The retention of the Subject Trees would cause unwarranted hardship as it would cause the Proposed Project (described above) integral to the success of the Overall RFP Project to be infeasible. The economic viability of the Overall RFP Project is entirely premised upon the ability of the Developer to redevelop the Property as envisioned throughout the RFP process (and consistent with the Sector Plan guidance and zoning for the Property). In order to replace the density that would be lost in the Proposed Project (to try to replace the corresponding lost economic value) with the Subject Trees retained, the resulting project would have additional building height with either a hybrid metal frame or concrete construction, inefficient and

fragmented structured parking, and an overall plan that would lack compatibility and design excellence and running afoul of Sector Plan guidance for the Property (and for these reasons likely would not receive optional method approval). Conversely, maintaining wood frame construction (5-story over podium) in order to retain the Subject Trees and still attempt to achieve the urban design principles important to compatible redevelopment as discussed above would result in significant reductions in both residential dwellings and retail square footage, as well as compromise the circulation and efficiency of the parking garage (and compromise the urban screening techniques described above for screening the structured parking), thereby destroying the economic viability of the Proposed Project and thus the Overall RFP Project.

The locations of the Subject Trees are such that even the demolition of existing improvements and necessary site preparation for any level of redevelopment would put the trees at risk. Even assuming, however, that appropriate measures could be installed to ensure the protection and preservation of the Subject Trees through demolition and grading and excavation for redevelopment of the Property, the resulting redevelopment project would fail all tests of good, sound urban redevelopment. This result, standing on its own, justifies the granting of the Variance given the special conditions peculiar to the Property and the resulting unwarranted hardship caused by retention of the Subject Trees. When the totality of the circumstances of the Property and its essential role in the economic viability of the Overall RFP Project is factored in, and considering the significant compromising results that tree retention would have on the design of the Proposed Project, the special conditions peculiar to the Property are magnified exponentially, as is the unwarranted hardship.

- (2) *describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;*

Retention of the Subject Trees would deprive the landowner of the Property of the ability to redevelop the Property in accord with the type of project appropriate under the optional method of development for properties similarly located in the Silver Spring CBD (and as envisioned in the Sector Plan and in a manner consistent with the impending CR zoning). Properties located similar to the Property could be developed with a multi-family, mid-rise residential development project with ground level retail, structured parking, well-designed pedestrian and vehicular connectivity, recreational and public use spaces and amenities, stormwater management through environmental site design and other related urban design features. This same type of development would be unavailable to the landowner of the Property if the Subject Trees are retained. Because retention of the Subject Trees would carve out strategically vital areas of the Property and disallow any land disturbing activity within the protected areas around the trees, redevelopment of the Property (including demolition and site preparation) in a manner that is desirable and appropriate for an urban gateway location would

be significantly compromised in a way that similar gateway properties to the County's CBDs would not be.

- (3) *verify that State water quality standards will not be violated and that a measureable degradation in water quality will not occur as a result of granting the variance; and*

While the specific methods for managing stormwater runoff associated with the redevelopment of the Property, including the ways in which water quality standards will be satisfied, will be part of the entitlement review processes that will take place much later in the build-out of the Overall RFP Project, it can be stated that the granting of the Variance to allow the removal of the Subject Trees will not negatively impact water quality. In fact, to the contrary, because the existing improvements on the Property were constructed prior to the current MDE stormwater and sediment control regulations (with little to no stormwater management in place to treat water quality and a largely impervious Property), redevelopment of the Property in conformance with the current regulatory requirements by providing a managed stormwater system will significantly improve the water quality of the stormwater runoff from the Property. The granting of the Variance will allow the entire Property to be comprehensively evaluated and designed with a stormwater management system utilizing environmental site design to the maximum extent possible (ESD to the MEP), including pervious pavement, micro-bioretenion and other structural and non-structural methods (meeting current Maryland Department of the Environment (MDE) regulations as implemented by Montgomery County). If required to retain the Subject Trees, the Proposed Project, along with ESD to the MEP, is unlikely to occur anytime soon, thus creating unwarranted hardship to the detriment of the general public.

- (4) *provide any other information to support the request*

Protecting and preserving the Subject Trees, given the location of the trees and the extent of the no disturbance areas that would be required, would have a chilling effect on the ability to achieve a well-designed project worthy of the urban location of the Property to the point of making redevelopment of the Property extremely questionable (including great concerns in even being able to demolish and remove existing improvements). Factoring in that the redevelopment of the Property through the RFP process adds the additional consideration of the Proposed Project bearing considerable weight in the economic visibility of the Overall RFP Project, the degradation of economic value to the Property if the Subject Trees are required to be protected and preserved (given the substantial impacts this would have on the type of redevelopment project that could be implemented) would create unnecessary hardship to the point of rendering the Overall RFP Project infeasible. In short, balancing the good that would result from the preservation of the Subject Trees with the negative impacts that it would have on the redevelopment of the Property clearly weights out in favor of the granting of the Variance,

especially in light of the uniqueness of this proposed redevelopment serving as the anchor for achieving the public benefits expressly sought out through the RFP. This conclusion is so apparent that it merits the County gaining the assurances that the Subject Trees can be lawfully removed in conjunction with the redevelopment of the Property as a prerequisite to the successful completion of a GDA establishing the public/private partnership that will deliver the Overall RFP Project. It is for this reason that the Variance must be approved by the Planning Board concurrent with the County's request for Mandatory Referral review of the disposition of the Property.

The granting of the Variance (pursuant to Section 22A-21(d)):

1. *Will not confer upon the Applicant a special privilege that would be denied to other applicants;*

The Variance will not confer upon the County a special privilege that would be denied to other applicants. The centralized locations of the Subject Trees, as well as the Property's location within the Silver Spring CBD, require removal for the type of development recommended by the Sector Plan and supported by the Property's impending CR zoning that permits an optional method of development allowing significant density supported by important public benefits. Impacts to the Subject Trees are anticipated given the urban nature of the envisioned development, and applicants with similar circumstances and with property appropriate for redevelopment would similarly be entitled to necessary variances to remove specimen trees that significantly impede the ability to achieve urban redevelopment.

2. *Will not be based upon conditions or circumstances which result from the actions by the Applicant;*

The Variance is based upon the centralized location of the Subject Trees that preclude the Proposed Project. The Proposed Project is consistent with the Sector Plan recommendations to revitalize Silver Spring's CBD with urban, mixed-use, pedestrian oriented development that provides new housing on the Property, as well as the Property's impending CR zoning, which, among other things, promotes sustainable development patterns in close proximity to transit options, targets opportunities for redevelopment of surface parking lots, and allows for an optional method that supports incentive density through the provision of needed public benefits. The Variance is also needed to fulfill the public benefits of the Overall RFP Project, as described above. Thus, the Variance is not based on any conditions or circumstances that result from the actions of the County as the Applicant.

3. *Will not be based upon a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and*

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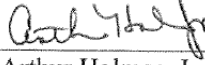
The requested Variance is a result of the design of the Proposed Project and the conflicting locations of the Subject Trees requiring removal, as opposed to a condition related to land or building use, either permitted or non-conforming, on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality:*

See above.

For all of these reasons, and in satisfaction of the criteria established by Section 22A-21 of the Code and Maryland law, the County requests that the Planning Board approve the Variance, thereby allowing the disposition of the Property pursuant to the impending GDA and as contemplated in the Mandatory Referral.

Respectfully,

 [Applicant]
Arthur Holmes, Jr.
Director, Montgomery County
Department of Transportation

Enclosures

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April 25, 2014
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cc: Gwen Wright, Director
Carol Rubin, Esquire
Robert Kronenberg
Laura Miller, MCDEP
Al Roshdieh, MCDOT
Rick Siebert, MCDOT
Xavius DaSilva-Thompson, MCDOT