



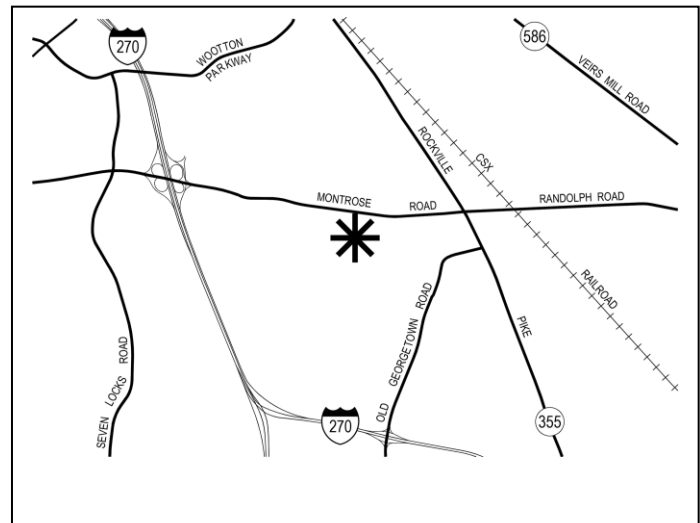
## Mid-Pike Plaza Phase 2 Sewer Extension (Montrose Parkway) FCP Amendment, MR2001806

- Steve Findley, Planner Coordinator, Area 2 Division, [steve.findley@montgomeryplanning.org](mailto:steve.findley@montgomeryplanning.org), 301.495.4727
- Khalid Afzal, Planner Supervisor, Area 2 Division, [khalid.afzal@montgomeryplanning.org](mailto:khalid.afzal@montgomeryplanning.org), 301.495.4650
- Glenn Kreger, Chief, Area 2 Division, [glenn.kreger@montgomeryplanning.org](mailto:glenn.kreger@montgomeryplanning.org), 301.495.4653

Completed: 8/29/14

### Description

- Amendment to Final Forest Conservation Plan MR2001806 (Montrose Parkway) for construction of the Mid-Pike Plaza (Pike & Rose) sewer extension to serve Phase 2 of the Pike & Rose development, Site Plan No. 820130120;
- Right-of-way of Montrose Parkway and E. Jefferson Street between Executive Boulevard and Tilden Woods Stream Valley Park;
- Area of disturbance: 0.43 acres;
- 1992 *North Bethesda/Garrett Park Master Plan*;
- Applicant: Federal Realty Investment Trust;
- Filing date: May 6, 2014.



### Summary

- Staff recommends **approval with conditions**.
- 0.38 acres of forest removed.
- Forest conservation requirements to be met through fee-in-lieu payment.
- Variance request for removal of three specimen trees and impacts to four specimen trees, included in the approval of the Final Forest Conservation Plan (FFCP) amendment.
- Additional restoration of disturbance for first sewer extension.
- The proposed project is in compliance with the *Environmental Guidelines*.

## Staff Recommendations and Conditions of Approval

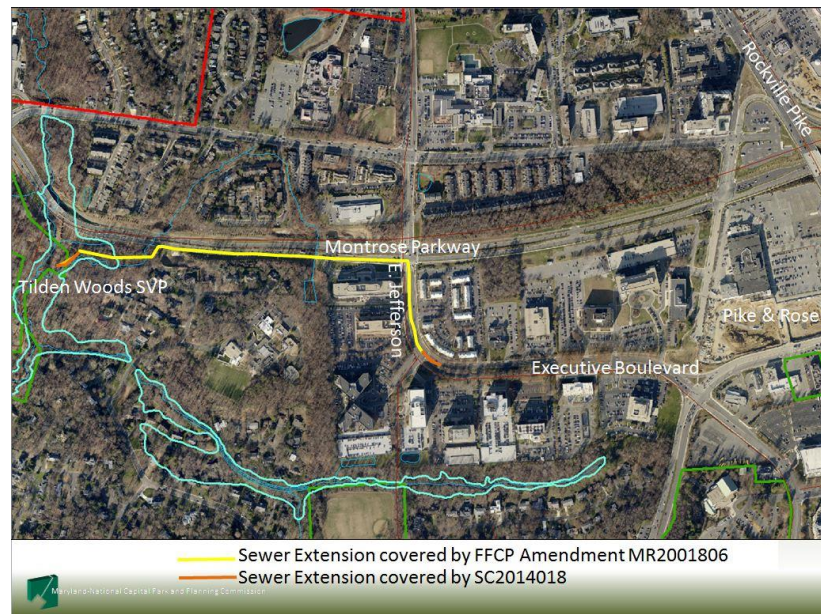
Staff recommends approval of the Final Forest Conservation Plan amendment subject to the following conditions:

1. Fee-in-lieu payment must be made prior to clearing and grading for Phase 2 sewer extension.
2. Prior to any land disturbance associated with the Phase 2 development, the Applicant must submit and obtain Planning staff approval a restoration plan for the restoration of that portion of the Old Farm Branch stream valley disturbed for construction of the Phase 1 sewer extension lying outside of the WSSC sewer easement. The restoration plan must include a reforestation plan and plans for control of invasive plant species.
3. By December 31, 2015, the Applicant must complete reforestation plantings and other requirements for restoration specified in the restoration plan.
4. The proposed development must comply with all of the conditions of the Final Forest Conservation Plan as amended.
5. Limits of disturbance shown on the Sediment Control Plan must match the limits of disturbance shown on the amended Final Forest Conservation Plan.
6. Site inspections must be performed my M-NCPPC inspectors as specified in section 22A.00.01.10 of the forest conservation regulations.

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

## Project Description

The 0.43-acre tract area lies within the right-of-way of E. Jefferson Street and Montrose Parkway, in the *North Bethesda/Garrett Park Master Plan* area. A sewer line extension is proposed within the road rights-of-way to serve the Phase 2 site plan of the Pike & Rose development in White Flint (Site Plan No. 820130120). Because the sewer extension disturbs forest within the area of an existing approved Final Forest Conservation Plan (FFCP) for Montrose Parkway, the FFCP



must be amended to reflect the new disturbance. The Applicant has obtained permission from the Montgomery County Department of Transportation (MCDOT) to construct the sewer extension within the road rights-of-way and to amend MCDOT's FFCP for the road (Attachment 1). A small additional area of disturbance, lying outside of the Montrose Parkway and E. Jefferson Street rights-of-way, is needed to complete the sewer connection on each end of the sewer line extension. These additional areas of disturbance are being covered by a separate FFCP (No. SC2014018) for the required Sediment Control Permit. FFCPs for Sediment Control Permits are approved at a staff level.

## **Analysis**

### **Environmental Guidelines**

Staff approved a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for this project on April 10, 2014. The 0.43-acre area of disturbance includes both paved road rights-of-way and forested areas. Some of the disturbance affects stream valley buffers, wetlands and wetland buffers. The project lies within the Cabin John watershed, which is a Use I-P area. The site is not within a Special Protection Area.

The *Environmental Guidelines for Environmental Management of Development in Montgomery County* state that “No buildings, structures, impervious surfaces, or activities requiring clearing and grading will be permitted in stream buffers, except for infrastructure uses (emphasis added), bikeways, and trails found to be necessary, unavoidable, and minimized by the Park and Planning environmental staff working closely with the utility or lead agency” (Section V.A.1.b). Because the sewer extension is being required by WSSC to serve the Pike & Rose development, this infrastructure qualifies as necessary and unavoidable. Staff finds that impacts have been minimized by keeping the sewer extension within the road and within open areas to the extent possible, and by balancing stream buffer and wetlands disturbance against efforts to preserve significant and specimen trees that prevent erosion and contribute to good water quality. Given these efforts, staff finds that the project is in compliance with the *Environmental Guidelines*.

### **Forest Conservation**

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) and an amendment to the existing Final Forest Conservation Plan for Montrose Parkway West (MR2001806) has been submitted for Planning Board approval (Attachment 2). The proposed sewer extension will require the clearing of 0.38 acres of forest. The Forest Conservation law requires infrastructure projects in a road right-of-way to plant one acre of forest for every acre cleared. The resulting forest planting requirement for this project is therefore 0.38 acres. The Applicant proposes to meet the planting requirement through a fee-in-lieu payment.

### **Forest Conservation Variance:**

Section 22A-12(b) (3) of County code identifies 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 requires a variance. The code requires no impact to trees that: measure 30 inches or greater diameter at breast height (dbh); are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

Variance Request – The Applicant submitted a variance request on May 6, 2014 because the plan would impact the Critical Root Zone of seven (7) trees that are considered high priority for retention under Section 22A-12(b) of the County code; three (3) of these are proposed for removal. A copy of the variance request letter, including a table identifying the variance trees on the plan and specifying the amount of Critical Root Zone impact and status of trees to be removed or saved, is appended to this report (Attachment 3).

In order to consider granting a variance, the Planning Board or Planning Director must find that denial of the variance would constitute a hardship to the Applicant. The Applicant has offered the following statement in support of the variance request:

“Not having the opportunity to connect the proposed sewer outfall to the sewer main within the stream valley would be an unwarranted hardship since a significant amount of redevelopment along the Mid-Pike District of the Approved and Adopted White Flint Sector Plan is dependent upon this improvement for additional capacity to the sewer service. If the variance is not granted, the envisioned development of the Mid-Pike District would not be able to be built since the existing infrastructure is inadequate. Specifically, the landowner would be deprived of the ability to develop the Mid-Pike Plaza (Pike & Rose) per the Approved and Adopted White Flint Sector Plan.”

The requested variance results from requirements imposed by WSSC as a condition of their approval for construction of the development as approved by the Planning Board. Denying the variance will prevent the Applicant from developing the project as approved consistent with the vision of the *White Flint Sector Plan*. Based on this finding, Staff recommends the Planning Board find that a variance can be considered.

Section 22A-21 of the County code sets forth the findings that must be made by the Planning Board in order to grant a variance. Staff has made the following determinations that granting the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

The impacts to the 7 variance trees are due to conditions imposed by the Washington Suburban Sanitary Commission to provide adequate infrastructure to support approved development. The Applicant has refined their project to minimize impacts to specimen trees; however, staff has determined that the remaining impacts to the trees subject to the variance requirement cannot be avoided. Staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant, but on WSSC requirements for sewer infrastructure improvements to serve approved development.

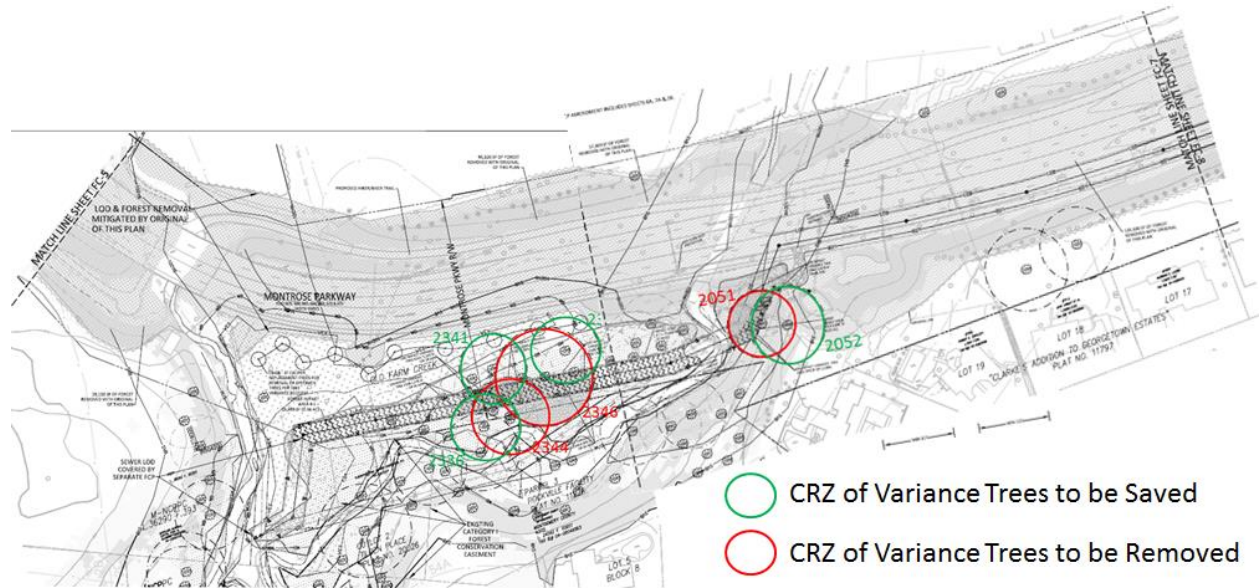
3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is not a result of land or building use on a neighboring property.

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

Additional trees will be planted within the area of disturbance to mitigate the loss of specimen trees. The new trees eventually will replace lost water treatment benefits of the specimen trees removed. Staff therefore finds that the proposed specimen tree removal will not adversely affect water quality in any measurable way, and the project will not violate State water quality standards or cause a measurable degradation in water quality.

County Arborist's Recommendation on the Variance - In accordance with County Code Section 22A-21(c), on May 19, 2014 the Planning Department sent 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 County Arborist issued a letter on June 3, 2014 with the recommendation that a variance can be granted (see Attachment 4).



**Mitigation for Trees Subject to the Variance Provisions**

Removal of the 3 variance trees will result in the loss of 108.5 caliper inches of mature trees. Planning Department policy requires replacement of variance trees at a rate of 1” replaced for every 4” removed, using replacement trees of no less than 3” caliper, to replace lost environmental functions performed by the trees removed. Based on this formula, the Applicant is required to plant 27.13 caliper inches of variance mitigation trees. The Applicant proposes to plant 10 3-inch caliper trees in mitigation, resulting in a total replacement of 30 caliper inches. The planting locations of the 10 mitigation trees are shown on the FFCP along the northern portion of the area disturbed for sewer construction.

**Variance Recommendation** – Staff recommends the variance be granted.

**Additional Restoration Requirement** – Phase 1 of the Pike & Rose Site Plan required a sewer extension beginning at the development and running west along Executive Boulevard approximately to the point where Executive Boulevard turns north and becomes E. Jefferson Street. From Executive Boulevard, the Phase 1 sewer extension turned south, crossed a private parking lot, and entered the Old Farm Branch stream valley to connect to an existing sewer line. The Phase 1 sewer extension will no longer be needed once the Phase 2 sewer extension is completed. At that point, the Phase 1 sewer extension will be closed off and abandoned at Executive Boulevard. This will leave the area cleared for the Phase 1 sewer extension in the Old Farm Branch stream valley unforested and open to colonization by invasive plant species. Staff recommends reforestation of this area to restore the stream buffer to a forested condition and to impede alien plant invasions. WSSC does not permit reforestation of their easement areas, so restoration plantings can only occur outside of the existing WSSC sewer easement.

### Area of clearing for Phase 1 Sewer Extension



Staff believes the requirement for additional restoration of the Phase 1 sewer construction area in the stream valley is justified because construction of the Phase 1 sewer was done at the option of the Applicant in order to proceed more quickly with construction of the first phase of their Site Plan. The Applicant had the option of constructing only the portion of the sewer extension along Executive Boulevard, E. Jefferson Street, and Montrose Road being considered by the Planning Board in the Phase 2 plan review. Had the Applicant opted to wait and construct only the Phase 2 sewer extension, clearing of the Old Farm Branch tributary stream valley for the Phase 1 sewer extension would have been unnecessary.

Afforestation/reforestation credit cannot be given for restoration of this area unless the forest is permanently protected within a Category I Forest Conservation Easement or given similar permanent protection. This area, cleared for the Phase 1 sewer extension in the Old Farm Branch stream valley, is largely on private property not owned by the Applicant, so the Applicant does not have authority to establish a Forest Conservation Easement on this property.

The Forest Conservation Plan for the Phase 1 sewer extension (SC2013002), approved on October 4, 2012, records that 0.30 acres of forest was cleared for construction of the sewer line. Staff recommends that portions of this area lying outside of the existing WSSC sewer easement be reforested by December 31, 2015.

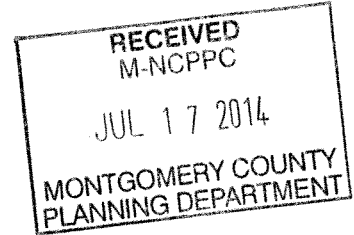
### **Conclusion**

Staff recommends that the Planning Board approve the Final Forest Conservation Plan Amendment with the conditions cited in this staff report. The variance approval is included in the Planning Board's approval of the amended Final Forest Conservation Plan.

### Attachments

1. Permission from MCDOT to Amend FFCP No. MR2001806
2. Final Forest Conservation Plan Amendment
3. Variance Application
4. Letter from County Arborist

# ATTACHMENT 1



DEPARTMENT OF TRANSPORTATION

Isiah Leggett  
County Executive

July 10, 2014

Arthur Holmes, Jr.  
Director

Steve Findley  
Environmental Planner Coordinator  
Area # 2  
M-NCPPC  
8787 Georgia Avenue  
Silver Spring, Maryland 20912

Re: Pike & Rose Phase II CIP 25.05 Sewer Extension  
Proposed Amendment to FCP MR2001806

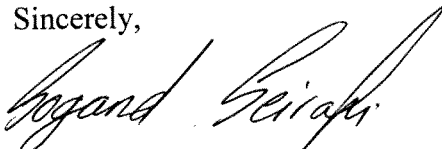
Dear Mr. Findley:

This letter is to confirm that Montgomery County Department of Transportation (MCDOT) authorizes Federal Realty Investment Trust (FRIT) to amend Forest Conservation Plan number MR2001806 for purposes of construction of the Pike and Rose Phase II CIP S25.05 Sewer Extension.

The Forest Conservation Plan sheets (undated and unsigned) FC-6A, FC-7A, and FC-16 were provided by FRIT's engineer VIKA. The sheets are attached for reference.

MCDOT will not be responsible for any mitigation required by the Forest Conservation amendment.

Sincerely,

*For*   
Bruce E. Johnston, P.E., Chief  
Division of Transportation Engineering

BEJ:gl

Division of Transportation Engineering

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www.montgomerycountymd.gov









# ATTACHMENT 3

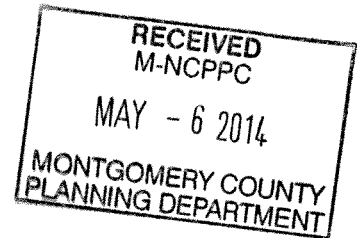
ENGINEERS ◊ PLANNERS ◊ LANDSCAPE ARCHITECTS ◊ SURVEYORS ◊ SUSTAINABLE DESIGN



April 28, 2014

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

RE: Forest Conservation Variance Request  
Mid Pike Plaza (Pike & Rose), Rockville, MD  
Phase II CIP Sewer Extension within Montrose Parkway Right-of-Way  
FCP Amendment MR2001806  
NRI/FSD # 420141150  
VIKA # VM1538M



Dear Mr. Findley:

On behalf of our client, Federal Realty Investment Trust, we are submitting this request for a Variance from the requirements of the Forest Conservation Law for the State of Maryland. The request is made under the variance provisions of Montgomery County Forest Conservation Ordinance to comply with the newly enacted Natural Resources, Title 5, Section 5-1607 of the Maryland Code which requires the Applicant to file for a variance to remove trees that have a diameter-at-breast-height (DBH) of 30" or greater, or trees that are 75% the diameter of the county champion for that species if a project did not receive Preliminary Forest Conservation Plan Approval prior to October 1, 2009. This report has been prepared by George R. Warholic, Jr., RLA.

The sewer project is considered an "Institutional Development Area" use and NRI/FSD #420141150 was approved 04/10/2014. This variance request is accompanying the submission of the amendment to FCP MR2001806 for the portion of the Mid-Pike Phase II CIP S25.05 sewer extension that falls within the Montrose Parkway Right-of Way. A total of seven (7) specimen trees with 30" DBH or greater will be impacted by the proposed sewer alignment with three (3) of the seven trees identified for removal.

Table 1 below lists the specimen trees as they are identified on the Forest Conservation Plan and provides the respective proposed impacts. The assessment of the field condition of the trees was performed by Ecotone, Inc. at the time of the preparation of NRI 420141150, as a visual, at grade level inspection with no invasive, below grade or aerial inspections performed at the time. Decay or weakness may be hidden out of sight for large trees.

## VIKA, Incorporated

20251 Century Boulevard, Suite 400 ◊ Germantown, Maryland 20874 ◊ 301.916.4100 Fax 301.916.2262  
8180 Greensboro Drive, Suite 200 ◊ McLean, Virginia 22102 ◊ 703.442.7800 Fax 703.761.2787

[www.vika.com](http://www.vika.com)

**Table 1**

Tree #	Species	Diameter at Breast Height (inches)	Field Condition	Disposition	CRZ Area (sf)	CRZ Impacts (sf)	CRZ Impacts (%)
2051	<i>Quercus alba</i>	30	Good	Remove	6,362	2,878	45.24
2052	<i>Quercus alba</i>	34	Good	Preserve	8,171	979	11.98
2336	<i>Liriodendron tulipifera</i>	30	Fair	Preserve	6,362	1,376	21.63
2341	<i>Liriodendron tulipifera</i>	30	Good	Preserve	6,362	1,243	19.54
2344	<i>Quercus rubra</i>	34.5	Good	Remove	8,413	2,849	33.86
2346	<i>Liriodendron tulipifera</i>	44	Poor	Remove	13,865	6,909	50.49
2348	<i>Liriodendron tulipifera</i>	30	Fair	Preserve	6,362	830	13.05

**Tree # 2051**

**30" White Oak (*Quercus alba*):** Tree 2051 is located within the right-of-way on the southern side of Montrose Parkway approximately 90 feet from the roadway and 1700 feet west of the intersection of Executive Boulevard and Montrose Parkway.

- **Field Condition:** Good
- **Proposed CRZ Impact:** Severe at 45.2% due to the tree's location directly adjacent to the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2051 is proposed for removal.

**Tree # 2052**

**34" White Oak (*Quercus alba*):** Tree 2052 is located approximately 35 feet east of tree 2051 within the right-of-way on the southern side of Montrose Parkway.

- **Field Condition:** Good
- **Proposed CRZ Impact:** Moderate at 11.98% as this tree is located approximately 35 feet from the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2052 is specified to be preserved.

**Tree # 2336**

**30" Willow Oak (*Quercus phellos*):** Tree 2336 is located approximately 400 feet west of tree 2051 just outside of the southern right-of-way for Montrose Parkway on undeveloped County Parcel N372 approximately 150 feet from the roadway.

- **Field Condition:** Fair with dead branches evident.
- **Proposed CRZ Impact:** Moderate at 21.63% as this tree is located approximately 20 feet from the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2336 is specified to be preserved.

**Tree # 2341**

**30" Tulip poplar (*Liriodendron tulipifera*):** Tree 2341 is located approximately 150 feet northeast of tree 2336 within the southern right-of-way for Montrose Parkway approximately 80 feet from the roadway.

- **Field Condition:** Good



- **Proposed CRZ Impact:** Moderate at 19.54% as this tree is located approximately 22 feet from the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2341 is specified to be preserved.

**Tree # 2344**

**34.5" Northern Red Oak (*Quercus rubra*):** Tree 2344 is located approximately 38 feet east of tree 2336 on the property line for the southern right-of-way for Montrose Parkway and undeveloped County Parcel N372 approximately 146 feet from the roadway.

- **Field Condition:** Good
- **Proposed CRZ Impact:** Severe at 33.86% as this tree is located approximately 13 feet from the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2344 is proposed for removal.

**Tree # 2346**

**44" Tulip poplar (*Liriodendron tulipifera*):** Tree 2346 is located approximately 100 feet northeast of tree 2336 within the southern right-of-way for Montrose Parkway approximately 104 feet from the roadway.

- **Field Condition:** Poor. Tree has twin trunks at 6' above the ground and one of the trunks is dead.
- **Proposed CRZ Impact:** Severe at 50.49% as this tree is located at the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2346 is proposed for removal.

**Tree # 2348**

**30.5" Tulip poplar (*Liriodendron tulipifera*):** Tree 2348 is located approximately 44 feet northeast of tree 2346 within the southern right-of-way for Montrose Parkway approximately 76 feet from the roadway.

- **Field Condition:** Fair with dead branches evident.
- **Proposed CRZ Impact:** Moderate at 13.05% as this tree is located approximately 28 feet from the limits of disturbance (LOD) for the installation of the proposed 24" sewer line.
- **Disposition:** Tree 2348 is specified to be preserved.

**Justification Narrative for Tree Disturbance**

This Mid-Pike Phase II sewer extension project is required to upgrade the existing sewer service to a 24" line that will tie into the sewer main that runs along Old Farm Creek. Due to the size and need for this project, it has been considered a Capital Improvement Project (CIP #S-25.05). The proposed project begins within the right of way of Executive Boulevard +/- 875 feet south of its intersection with Montrose Parkway. The proposed sewer line will run approximately 3,511 linear feet from the tie-in with the existing sewer line within the right-of-way for Executive Boulevard, along the right-of-way for Montrose Parkway and ties into an existing manhole on the existing sewer main on the Tilden Woods Stream Valley Park, County parkland Parcel P271. Approximately 75% of the sewer line or 2,623 linear feet is to occur within the pavement of Executive Boulevard and Montrose Parkway. The existing trees evaluated in this request are all located on the southern side of Montrose Parkway with six of the seven trees within the right-of-way and one just south of the right-of-way on undeveloped County Parcel N372. No specimen trees are impacted by the portion of the sewer located on County Parkland Parcel P271. In general to preserve a tree, the maximum recommended disturbance into the critical root zone is 30%, assuming the tree is healthy and has no additional root defects or other conditions that would predispose the tree to fail.



To grant the requested variance, the Planning Board must find that the request:

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.

We submit the following rationale in support of the request for a Forest Conservation variance:

1. The proposed disturbances to trees greater than 30" DBH are required in order to facilitate the proposed sanitary sewer outfall serving the Mid-Pike District development. This will be a linear utility project (Capital Improvement Project CIP S25.05) that proposes to provide additional sewer capacity for currently proposed and future development within the White Flint Planning Area.

Any Forest Conservation afforestation/reforestation requirements for the project will be met with fee-in-lieu as there are no opportunities nor is it recommended to provide any planting within the sewer easement area or road right-of-way. The project is not seeking any special privilege – only the minimal amount of relief necessary through the established variance process.

As part of the Hydraulic Planning Analysis (HPA), alternative alignments have been explored with the client and Washington Suburban Sanitary Commission (WSSC) along the same sewer main upstream from the proposed outfall to the intersection of Executive Boulevard and Old Georgetown Road. It was determined that the other alignments would require extensive disturbance to the existing forest, stream valley buffer and floodplain. It was found that this proposed alignment (utilizing the existing Executive Boulevard right-of-way and existing paved areas) has the least environmental impact.

Not having the opportunity to connect the proposed sewer outfall to the sewer main within stream valley would be an unwarranted hardship since a significant amount of redevelopment along the Mid-Pike District of the Approved and Adopted White Flint Sector Plan is dependent upon this improvement for additional capacity to the sewer service.

2. If the variance request is not granted, the envisioned redevelopment of the Mid-Pike District would not be able to be built since the existing infrastructure is inadequate. Specifically, the landowner would be deprived of the ability to develop the Mid-Pike Plaza (Pike & Rose) per the Approved and Adopted White Flint Sector Plan.
3. The installation of the proposed sewer outfall will be required to follow construction techniques and practices that have been established by both WSSC and Maryland Department of the Environment (MDE) for construction within environmentally sensitive areas. These practices include, but are not limited to minimization of grading and earth disturbance, perpendicular stream crossings and heavy-duty sediment control measures. The installation of the proposed outfall connection will be a temporary ground disturbance that will be re-vegetated to stabilize and mitigate the required clearing. We believe that the proposed impact to the critical root zones of

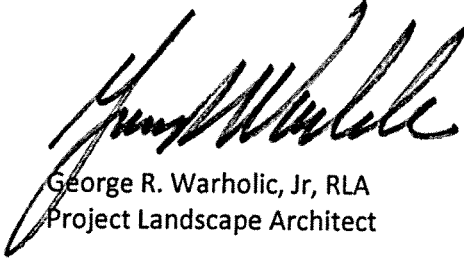


the seven specimen trees with the removal of three of them will not adversely affect water quality in any measurable way.

4. We believe that the information provided in the three outlined points above is adequate in support of granting the variance request.

Thank you for your consideration of this variance request. We believe that the supporting information provided with this letter justifies the variance to impact the critical root zone of these seven (7) specimen trees and the removal of three of them. If you have any questions or need more information, please do not hesitate to contact us so that we may discuss this matter further.

Sincerely,  
VIKA, Maryland, LLC



George R. Warholic, Jr, RLA  
Project Landscape Architect

cc. Mark Hendrickson, FRIT  
Evan Goldman, FRIT

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Amendment\VM1538M-PH II Sewer Ext Var Req final.doc

Outfall

FCP\Montrose

Parkway

FCP



# ATTACHMENT 4



## DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
*County Executive*

Robert G. Hoyt  
*Director*

June 3, 2014

Françoise Carrier, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Mid Pike Sewer Extension Phase II, MR 2001806, NRI/FSD application accepted on 1/30/2014

Dear Ms. Carrier:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law 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.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the

### Division of Environmental Policy & Compliance

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variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

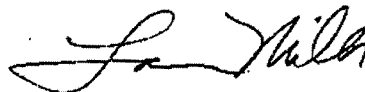
3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Steve Findley, Senior Planner