

**esa**

March 6, 2013
Revised May 24, 2013

M-NCPPC
Environmental Planning Division
8787 Georgia Avenue
Silver Spring, MD 20910-3760
ATTN: Ms. Amy Lindsey

**RE: Poplar Run
FFCP Amendment
Forest Conservation Variance Request**

Dear Amy,

On behalf of Winchester Homes, I am writing to request a forest conservation variance to impact four trees which are 30 inches or greater in diameter at breast height (DBH), as required under Section 22A-21 of Montgomery County's Forest Conservation Law and the Amendment to the State Forest Conservation Law enacted by State Bill 666. The impacts to these trees are to accommodate the proposed extension of Tivoli Lakes Boulevard, which requires a culvert over Bel Pre Creek, for the replacement of a sanitary sewer line, and for the removal of existing golf course features.

Project Information

The Poplar Run property is approximately 310.37 acres. Two areas of off-site forest clearing are included on the forest conservation plan, which comprise approximately 0.38 acre, for a total site area of 310.75 acres. According to the FSD, the property contains 31.65 acres of forest. With the off-site forest clear areas the total forest is 32.03 acres. The offsite forest clear areas are located at the proposed extension of Tivoli Lakes Boulevard and near the Northwest Branch for a sanitary sewer connection and a pedestrian bridge.

The property is to the east of Layhill Road and is bounded on the north by single family residences of the Layhill View subdivision, on the east by the Northwest Branch stream valley parkland, and on the south and southwest by the subdivisions of Tivoli, Layhill Gardens and Middlebridge. The property is currently being developed for residential land use. This has necessitated revisions to the proposed Tivoli Lakes Boulevard culvert and roadway design and the replacement of a sanitary sewer line. As a result of these unavoidable revisions, three specimen trees which, per the original FFCP plan, were to be protected and saved must be removed to accommodate the roadway/culvert and sanitary sewer. One other specimen tree, which, per the original FFCP plan, was to be protected and saved must be further impacted to remove existing golf course features, which are a golf cart path bridge and a pond.

The trees identified in this variance request are shown on the Amended FFCP. The following table provides information about each tree to be removed and how much impact to the CRZ is proposed.

Trees to be Removed:

Tag #	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	% Impact
508	34	Tulip Tree	<i>Liriodendron tulipifera</i>	Good	100%
518	40	Tulip Tree	<i>Liriodendron tulipifera</i>	Good	100%
535	38	Red Oak	<i>Quercus borealis</i>	Good	100%

Trees #518 and #508 are located on the northeast side of the proposed culvert. Tree #518 is within the limit of disturbance (LOD). Tree #508 is on the LOD boundary line and approximately 50% of its CRZ is within the LOD. These two trees conflict with the grading of the roadway embankment, the culvert itself, and the supporting structures. The maximum slopes of the grading for the roadway embankment are set by DPS & DOT. The elevation of the road at the culvert was mandated by M-NCPPC to provide adequate clearance for a wildlife passage under the roadway.

Tree #535 is located on the southeast side of the proposed culvert. It is impacted by the roadway embankment and it has to be removed to facilitate the construction of the replacement sanitary sewer.

The following table provides information about the tree to be impacted and how much impact to the CRZ is proposed.

Tree to be Impacted:

Tag #	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	% Impact
554	30	Tulip Tree	<i>Liriodendron tulipifera</i>	Good	56%

Tree #554 is located on the northwest side of the proposed culvert. Impact to the tree's CRZ is necessary because an existing golf cart path bridge next to the tree must be removed. The bridge spans Bel Pre Creek on the eastern side of the tree. Grading of the stream bank is proposed to stabilize the bank once the bridge is removed, and to tie the bank's grades into the grades of a wetland creation area, which is in the existing pond adjacent to (northeast of) the tree. The entire area of the tree's CRZ is 6,361.7 square feet and the amount of LOD within the CRZ is 3,560.5 square feet, an impact of 56%. Per the original FFCP, approximately 38% of the CRZ of Tree #554 was to be impacted. Although additional impact is proposed, the additional impact to the CRZ occurs within the stream channel of Bel Pre Creek, where the tree's roots do not exist. The tree will be protected by root pruning, a temporary tree protection fence, and specimen tree protection signage. No canopy impacts to the tree are proposed.

Additional Application Requirements

Per Montgomery County's Forest Conservation Law Section 22A-21(b) of the *Application Requirements* states that the applicant must:

- (1) *describe the special conditions peculiar to the property which would cause unwarranted hardship;*
- and
- (2) *describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas*

The enforcement of the rules to not allow these trees to be removed would result in unwarranted hardship because the removal to these trees is necessary to create access to the Poplar Run community, via the extension of Tivoli Lakes Boulevard, which must cross Bel Pre Creek. The sanitary sewer line must be replaced to serve the Poplar Run community.

The enforcement of the rules to not allow Tree #554 to be impacted would result in unwarranted hardship because the existing golf cart path bridge must be removed. The site contained a former golf course and the MNCPPC Environmental Planning Division has requested that Winchester Homes remove all overt golf course features within the floodplain, afforestation areas, and environmental buffer. Grading to the bank is also necessary to accommodate the grades of an adjacent wetland creation area, which is located within an existing pond, which was a golf course feature. Creation of a wetland within the pond is necessary to remove the golf course pond.

The enforcement of the rules would deprive the landowner of rights commonly enjoyed by others because the use of this site for a multifamily residential subdivision is a permitted and Master Plan-recommended use.

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

The plan complies with all county and state storm water management requirements. The preservation of the trees was never part of the stormwater management plan and their removal and impact will not impact the water quality measures designed and approved for this development.

Minimum Criteria for Variance

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which states that a variance must not be granted if granting the request:

- (1) *Will confer on the applicant a special privilege that would be denied to other applicants;*

The use of this site for a multifamily residential subdivision is a permitted and Master Plan-recommended use and will operate in a manner consistent with that of surrounding residential

subdivisions in the area and in Montgomery County. As such, this is not a special privilege to be conferred on the applicant.

- (2) Is based on conditions or circumstances which are the result of actions by the applicant;*
and
(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property

The applicant has taken no actions leading to the conditions or circumstances that are the subject of this variance request. The neighboring properties do not have any land or building uses that have created this particular need for a variance.

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

The plan complies with all county and state storm water management requirements. The preservation of the trees was never part of the stormwater management plan and their removal and impact will not impact the water quality measures designed and approved for this development.

For these reasons listed above, we believe it is appropriate to grant this request for a variance. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Molly Ratz
Environmental Scientist

Cc: Mr. Mike Lemon, Winchester Homes
Mr. Bill Musico, Soltesz

Enclosures:

Amendment to Poplar Run FFCP, dated July 9, 2013 (1 set)
CD with PDF of variance request and plan drawing