

January 14, 2018

**Erin E. Girard**  
egirard@linowes-law.com  
301.961.5153

Marco Fuster  
Planner Coordinator, Planning Area 1  
M-NCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Forest Conservation Tree Variance Request; Westwood Shopping Center  
Preliminary Forest Conservation Plan 120170170

Dear Mr. Fuster:

On behalf of our client, Equity One (Northeast Portfolio), LLC (“Applicant”), we are submitting this Tree Variance Request in accordance with Natural Resources, Title 5, Section 5-1607 of the Maryland Code, as well as Section 22A-21 of the Montgomery County Code, that both require the Applicant to apply for a variance to remove or impact any tree greater than 30” in diameter-at-breast-height (dbh), any tree with a dbh equal to or greater than 75% of the current state champion, trees that are part of a historic site or associated with a historic structure, any tree designated as the county champion tree, and any tree, shrub, or plant identified on the rare, threatened or endangered list of the U.S. Fish and Wildlife Service of the Maryland Department of Natural Resources, if a project did not receive Preliminary Forest Conservation Plan Approval prior to October 1, 2009.

This Tree Variance Request is accompanying the submission of a revised Preliminary Forest Conservation Plan 120170170. NRI 420161340 was approved on September 2, 2016.

The approximately 20 acre property that is the subject of this request is located in Bethesda, Montgomery County, Maryland along both sides of Westbard Avenue between Ridgefield Road and Westbard Circle, and the northeast quadrant of the intersection of Westbard Avenue and Ridgefield Road (the “Property”). It is currently developed with commercial uses and surface parking facilities. The proposed project will redevelop the Property with a mixed-use development consisting of commercial, townhouse, and multi-unit residential uses as envisioned by the Westbard Sector Plan (the “Project”). The Project as currently envisioned has been reduced in scope and density since the submission of the original Preliminary Plan and Preliminary Forest Conservation Plan in December 2016. As a result, the revised Project significantly lessens the proposed impacts to specimen trees on the Property and adjacent areas. This request, therefore, proposes allowing impacts to four (4) specimen trees to be preserved (as

opposed to the eight requested in the original submission) and removal of six (6) specimen trees (as opposed to the eight requested in the original submission). As further detailed below, of the six trees to be removed, two are in poor condition and two in only fair condition.

Table 1 below lists the impacted specimen trees as they are identified on the revised Preliminary Forest Conservation Plan and provides their respective proposed impacts and the project phase in which such impacts would occur.

**Table 1**

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.)*	CONDITION	CRZ (SF)	CRZ IMPACT (SF)	CRZ IMPACT %	DISPOSITION
<b>ON-SITE TREES (TAGGED)</b>								
12	Quercus palustris	Pin Oak	38"	Good	10,207	10,207	100.00	Remove/Phase 2
13	Quercus palustris	Pin Oak	30"	Fair/Poor	6,362	6,362	100.00	Remove/Phase 1
14	Quercus palustris	Pin Oak	30"	Poor	6,362	6,362	100.00	Remove/Phase 1
37	Quercus palustris	Pin Oak	34"	Good	8,171	7,166	87.70	Remove/Phase 2
1014	Prunus serotina	Black cherry	40"	Fair	11,310	11,310	100.00	Remove/Phase 2
1018	Robinia pseudoacacia	Black locust	30"	Fair	6,362	1,476	23.20	Save Phase 2
3**	Quercus palustris	Pin Oak	31"	Good	6,793	1,712	25.20	Save/Phase 1
4**	Quercus palustris	Pin Oak	30"	Good	6,362	1,917	30.13	Save/Phase 1
22**	Quercus palustris	Pin Oak	36"	Good	9,161	392	4.28	Save/Phase 1
1006**	Robinia pseudoacacia	Black Locust	30"	Fair	6,362	3,522	55.36	Remove Phase 2

\* Diameter at breast height in inches

\*\*Off-site

The Assessment of the existing trees below was performed by Doug Koeser, ISA at the time of the field work for the NRI as a visual and 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.

1. **Tree # 12: 38" Pin Oak (*Quercus palustris*):** Tree 12 is a street tree located along Westbard Avenue near Ridgefield Road.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** Extensive at 100% as the tree lies entirely within the Project's limits of disturbance for the construction of Westbard Avenue at the proposed 110' right-of-way and the new Ridgefield Road intersection.
  - **Disposition:** Tree 4 is specified to be removed.
  
2. **Tree # 13: 30" Pin Oak (*Quercus palustris*):** Tree 13 is a street tree located along Westbard Avenue.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** Extensive at 100% as the tree lies entirely within the Project's limits of disturbance for the construction of Westbard Avenue and the proposed 110' right-of-way and Westbard Circle which is adjacent to proposed Building 3.
  - **Disposition:** Tree 13 is specified to be removed.
  
3. **Tree # 14: 30" Pin Oak (*Quercus palustris*):** Tree 14 is a street tree located along Westbard Avenue.
  - **Field Condition:** Poor
  - **Proposed CRZ Impact:** Extensive at 100% as the tree lies entirely within the Project's limits of disturbance for the construction of Westbard Avenue and the proposed 110' right-of-way
  - **Disposition:** Tree 14 is specified to be removed.
  
4. **Tree # 37: 34" Pin Oak (*Quercus palustris*):** Tree 37 is a street tree located along Westbard Avenue near 5101 Ridgefield Road.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** Extensive at 87.70% as the tree lies almost entirely within the Project's limits of disturbance for the construction of the new alignment of Ridgefield Road adjacent to the new townhouses at the corner of Ridgefield Road and Westbard Drive.
  - **Disposition:** Tree 37 is specified to be removed.

5. **Tree # 1014: 40" Black Cherry (*Prunus serotina*):** Tree 1014 is a street tree located along the existing Ridgefield Road near River Road.
  - **Field Condition:** Fair
  - **Proposed CRZ Impact:** Extensive at 100% as the tree lies entirely within the Project's limits of disturbance for the construction of the new townhouses on the Manor Care site.
  - **Disposition:** Tree 1014 is specified to be removed.
  
6. **Tree # 1018: 30" Black Locust (*Robinia pseudoacacia*):** Tree 1018 is located between River Road and Westbard Avenue near one of the Springhouse parking lots.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** 23.20%. The tree lies near the Project's limits of disturbance adjacent to the parking lot which is being removed south of River Road.
  - **Disposition:** Tree 1018 is specified to be saved.
  
7. **Tree # 3: 31" Pin Oak (*Quercus palustris*):** Tree 3 is a street tree located on the eastern side of Westbard Avenue.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** While 25.20% of the critical root zone is shown to be disturbed by the construction of the center median in Westbard Avenue, all area of disturbance is within existing roadway pavement, so impacts will be limited.
  - **Disposition:** Tree 3 is specified to be saved.
  
8. **Tree # 4: 30" Pin Oak (*Quercus palustris*):** Tree 4 is a street tree located on the eastern side of Westbard Avenue.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** While 30.13% of the critical root zone is shown to be disturbed by the construction of the center median in Westbard Avenue, all area of disturbance is within existing roadway pavement, so impacts will be limited.
  - **Disposition:** Tree 4 is specified to be saved.
  
9. **Tree # 22: 36" Pin Oak (*Quercus palustris*):** Tree 22 is located along the southern side of the entry drive to Kenwood Place.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** Minimal at 4.28% as the tree lies predominantly outside the Project's limits of disturbance for the construction of a private street near the property line.

- **Disposition:** Tree 22 is specified to be saved.

**10. Tree # 1006: 30" Black Locust (*Robinia pseudoacacia*):** Tree 1006 is located in the storage yard of American Plant Nursery near the HOC building parking lot.

- **Field Condition:** Fair
- **Proposed CRZ Impact:** Extensive at 55.36% as the tree lies on the Project's disturbance line for construction of the new multi-family building along Westbard Avenue which will have a below-ground parking garage.
- **Disposition:** Tree 1006 is specified to be removed.

#### **Justification Narrative for Tree Disturbance**

Pursuant to the requirements of MD Code, Natural Resources Section 5-1607 and Section 22A-21 of the Montgomery County Code, we submit the following rationale in support of the request for a Forest Conservation Tree Variance:

**For approval, the Variance Request must:**

- 1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;**

The requested tree variance is necessary for implementation of the proposed mixed-use Project and the realization of several recommendations of the Westbard Sector Plan, approved and adopted July 2016 ("Sector Plan"). A number of Sector Plan recommendations involve the reconstruction of various components of Westbard Avenue to realign a portion at the Ridgefield Road intersection and improve the remainder into a multi-modal right-of-way. Six of the ten variance trees are impacted by these Sector Plan recommendations due to their location within or directly adjacent to existing and proposed rights-of-way. These Sector Plan objectives cannot be accomplished without the proposed impacts to the various specimen trees.

Additionally, unlike many sites, this Property is comprised of largely paved, single use parcels with low-rise, aging buildings. Any redevelopment of these properties to improve them would necessitate the same or similar tree impacts as those proposed. For example, Tree 1018 will be disturbed, but saved, as a result of the removal of an existing surface parking lot.

The existing conditions, the location of the existing trees on the Property and adjacent areas, and the Sector Plan's specific recommendations for the Property and adjacent rights-of-way therefore represent conditions peculiar to the Property. Denial of the requested variance would restrict the Applicant's ability to implement the development and improvements envisioned by the Sector Plan, causing unwarranted hardship. The Sector Plan recommendations, including the proposed redevelopment of the Property, were found to be in the public interest in part because they will improve pedestrian, bicycle and vehicular circulation in the area, increase housing near major employment centers, result in improved stormwater management, and mitigate other environmental impacts through new plantings. Denial of the variance would thwart these objectives.

**2. Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;**

The requested variance is based on plans developed under the zoning and Sector Plan recommendations approved through the County planning process, not conditions or circumstances resulting from actions by the Applicant. There are ten (10) specimen trees impacted or removed by the proposed mixed-use redevelopment on a site of approximately 20 acres. Strict protection of all variance trees would deprive the Applicant the ability to make any significant changes to the site due to the unfortunate location of the trees and the extent of their critical root zones. Additionally, the Sector Plan's vision of a realigned, walkable, tree-lined Westbard Avenue could not be realized without the specified tree impacts. Denial of the variance would therefore deprive the Applicant of the redevelopment and improvement opportunities enjoyed by neighboring and similar properties that do not have protected trees located in areas slated for improvement in the Sector Plan

**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**

The site's existing condition includes a retail shopping center, senior care facility, commercial buildings, and two gas stations, along with associated parking. There are no known stormwater facilities on-site and stormwater is currently conveyed via a closed system (storm drain pipe) to the Willett Branch stream, which runs along the eastern portion of the site. The concept stormwater management plan incorporates the State's / County's Environmental Site Design (ESD) to the maximum extent practicable (MEP), according to the latest revision to Chapter 5 of the MDE Stormwater Management Design

Manual. The proposed development includes treatment via green roof and micro-bio retention (both at-grade facilities as well as planter-type). Given the lack of existing stormwater infrastructure, coupled with the reduction of imperviousness throughout the site, granting the requested variance will not adversely impact the water quality standards. In fact, water quality will be significantly improved through the use of these ESD facilities.

**4. Provide any other information appropriate to support the request.**

The Project proposes minimal development in the forested areas of the Property and will, in fact, increase pervious areas and tree canopy and improve water quality on the Property and in the surrounding area. The specimen tree impacts are due to redevelopment of the property in line with Sector Plan recommendations for the Westbard Avenue District and will assist in transforming the area from surface parking lots to an “inviting, livable and walkable village with stores and apartments.” As noted above, six of the ten impacted variance trees (3, 4, 12, 13, 14, and 37) are located within the existing or planned right-of-way and must be removed to implement the new road layout and expanded cross-section to improve multi-modal connectivity, as called for in the Sector Plan. Of those six, two are in poor condition. Additionally, the impacts to the trees not slated for removal have been minimized to the extent possible.

Thank you for your consideration of this Tree Variance Request. We believe that the supporting information provided with this letter justifies the variance to impact four (4) specimen trees to be preserved and remove six (6) specimen trees. If you have any questions or need more information, please do not hesitate to contact us so that we may discuss this matter further.

Very truly yours,

**LINOWES AND BLOCHER LLP**



Erin E. Girard