



December 26, 2018

Forest Conservation Program Manager
Maryland National Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Kingsview Station - Variance Request
Local Map Amendment
Preliminary Forest Conservation Plan

On behalf of the applicant, Kingsview Station Joint Venture, we are requesting a variance of Section 22A-12.(b)(3)(c) of the Montgomery County Code.

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

- (C) Any tree with a diameter, measured at 4.5 feet above the ground, of:*
- (i) 30 inches or more; or*
 - (ii) 75% or more of the diameter, measured at 4.5' above ground of the current State champion tree of that species.*

This Variance request is being submitted in concurrence with Local Map Amendment which requests approval for the application of a Floating Zone to the Property, to rezone the Property from the R-200 and R-200/TDR 6.0 Zones to the CRNF-1.0, C-0.25, R-0.75, H-55' Zone.

The Property is located within the planning boundaries of the 1989 Germantown Master Plan which recommends PD-11 floating zoning for the property. However, applications can no longer be made for the PD-11 zone, and as a result, the current zoning ordinance identifies the CRNF as an equivalent Floating zone.

The subject property contains a net lot area of approximately 10.27 acres and is generally located in the Southeast quadrant, intersection of Clopper Road (MD 117) and Germantown Road (MD 118). The Germantown Commuter Parking Lot and Kingsview Village Center Commercial are located to the east of the Site with and Leaman Farm Road to the south. The site is comprised of six parcels which are undeveloped with an existing Forest Conservation

Easement that covers approximately 0.54 acres of the property. The only parcel not included in the application is parcel 168, located in the southwest quadrant of the intersection of Liberty Mill Road and Clopper Road, owned by Potomac Electric Power Co. ("Pepco"). The property is currently forested along the Northwest and Southeast portions of the site. Several specimen trees are located on the North side of the site. Liberty Mill Road, which is included in the proposed development, was built prior to current stormwater management regulations and do not provide any stormwater management treatment for the surface areas that flow to the Middle Great Seneca Creek.

Pursuant to the applicable provisions of Chapter 59 of the Montgomery County Code, the Local Map Amendment submitted with this variance request seeks approval for the proposed rezoning of the Property to provide 12,000 square feet of commercial use and 60 townhouse living units.

As part of rezoning of the Subject Property, the applicant is requesting a variance to affect the following trees that measures 30” or greater in diameter at breast height (dbh).

Request to remove the following trees:

<u>Tree #</u>	<u>Tree type</u>	<u>Dbh (In.)</u>	<u>Condition</u>	<u>Reason</u>
1	Mulberry	31”	Poor	Removed for construction of proposed Public Road ‘A’ and the adjacent townhouses.
5	Black Cherry	37”	Fair	Removed for construction of proposed Public Road ‘A’ and the adjacent townhouses.
9	Black Cherry	54.5”	Poor*	Removed for construction of the proposed Public Road ‘A’.

*: See Evaluation of Specimen tree #9 letter, dated June 19, 2018 for a detailed description of tree condition.

Section 22A-21 (b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship:

The proposed rezoning for development of commercial uses and residential townhouses on the Subject property will require new building construction, associated grading, utility installation, access/ road frontage improvements, parking lot construction, on site stormwater management and other associated improvements on the property. The proposed development was designed to utilize the existing segment of Liberty Mill Road to the extent practicable, preserve the existing forest along the Southeast portion of the site, while implementing the goals of the Master Plan.

By way of background, the Master Plan recommended a Village Center to be located in the Northwest portion of the site at the intersection of Clopper Road and Germantown Road. However, the Village Center was ultimately constructed in the center of the CL-6 Analysis area of the 1989 Germantown Master Plan; which is adjacent, to the east of subject site.

In accordance with the Master Plans recommendations mentioned above, the proposed development will include a mixed-use, pedestrian oriented development with one commercial building located in the Northwest corner of the site and one along Clopper Road, in combination with the residential townhouses to the South of the proposed public road that connects Germantown Road to Liberty Mill. Furthermore, the existing storm drain system that is located onsite and associated with existing Liberty Mill Road will be upgraded to provide stormwater management treatment per current regulations.

Removal of Tree #1, 5 & 9

- Tree #1 is in poor health and will be removed for construction of proposed Public Road ‘A’ and the proposed adjacent townhouses.
- Tree #5 will be removed for construction of proposed Public Road ‘A’ and the proposed adjacent townhouses.
- Tree #9 is in poor health and will be removed for construction of proposed Public Road ‘A’ and the proposed adjacent townhouses.

Not being allowed to remove these trees and obtain a Specimen Tree Variance would deprive the Applicant of the reasonable and substantial use of the Property and clearly demonstrate an unwarranted hardship. The ability to provide single family attached homes, commercial uses, parking, and site construction is allowed within the proposed zoning and within a reasonable and substantial use of the Property. Not allowing disturbance in these areas would deny the Applicant the ability to meet the goals of the Master Plan. If a Variance were to be denied, the Applicant would be deprived from developing the Property for a reasonable and significant use enjoyed by virtually all others similar property owners in the community.

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

The subject specimen trees are located on the Northwest portion of the site, south of existing Parcel 168. The proposed retail and residential additions, associated parking and utility improvements have been specifically designed to maximize the already improved areas of the site to maximize the development potential with the use of the existing access and utilities. The three (3) impacted Specimen trees are located in areas of road, utility, stormwater management, townhouse, and parking construction and denial of the variance would keep the applicant from fulfilling the county’s goal of avoiding sprawl and locating density in already developed areas, and providing additional housing including affordable housing in Montgomery County

Not granting the variance would cause undue hardship on the applicant because development would be very limited or not possible, and therefore will deny the applicant ability

to fully use the property. By denial of a Variance, it will deprive the landowner the significant and reasonable use on the property as allowed in the zone, and as shown in the Master Plan. Granting of the variance will ultimately allow the property to be developed in a safe and efficient manner as other property owners in the community.

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 variance will not violate state water quality standards or cause measurable degradation in water quality. All proposed land development activities in Montgomery County require Conceptual Storm Water Management Plan approval and detailed technical Sediment Control and Storm Water Management Plan approvals by Montgomery County Department of Permitting Services. A Storm Water Management Concept Plan will be approved by the Montgomery County Department of Permitting Service. The approval of these plans confirms that the SWM Concept Plan meets or exceeds all Montgomery County and State of Maryland storm water management regulations and water quality standards through the use of micro-bio filters and other similar treatment features and therefore verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur. In addition to providing state-of-the-art “Environmental Site Design” storm water management for a site that currently has virtually no storm water management and completely uncontrolled runoff, the proposed development will add significant stormwater management to the site while also be reducing the existing uncontrolled overland flow on adjacent properties, and provide forest cover through additional site afforestation.

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

The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant has taken great care to locate development in the buildable area of the site while trying to maximize usage of existing utility lines and minimize disturbance to the significant and specimen trees. The Applicant intends to implement tree preservation measures, potentially including standard tree protection fencing, signage, root pruning, vertical mulching and fertilization to further aid in mitigating disturbance and protecting the forest line. This will be explored and identified as part of the Final Forest Conservation Plan included with the upcoming Site Plan. The applicant recognizes the value and need for mature trees and will give special attention to any construction work that may impact the critical root zones of specimen trees as noted above.

The Applicant believes that the information set forth above is adequate to justify the requested variance to remove three (3) specimen trees on the Subject Property. Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21 (d) for the following reasons:

1. This Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant.

2. The variance request is not based on conditions or circumstances which result from the actions of the applicant. The applicant did not create the existing site conditions, including the random location of the specimen trees.
3. The variance is not based on a condition relating to the land or building use, either permitted or nonconforming on a neighboring property.
4. The impact to, or loss of the requested trees will not violate State water quality standards or cause measurable degradation in water quality.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Foster". The signature is stylized with a large, looped "K" and "F".

Kevin Foster, ASLA AICP