Dear Sir or Madam:

Please accept this letter and the accompanying Preliminary/Final Forest Conservation Plan as a formal written request for a variance from section 22A-12(b)(3) of the Montgomery County Code. The referenced section addresses the requirement to not disturb “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 feet above ground of the current State champion tree of that species”.

The Ten Mile Creek Limited Master Plan Amendment dated July, 2014 uniquely limits the portions of the project site that can be developed through the use of an expanded stream valley buffer, a 6% impervious cap, an 80% open space requirement, and forest preservation requirements that exceed Chapter 22A. As a result, the area that remains to meet the requirements of the master plan is limited to an upland portion of the site in close proximity to Clarksburg Road in order to stay out of the stream valley buffer to the extent practicable and meet impervious cap and open space requirements. During the preparation of the NRI an NRI study area was delineated that conservatively inventories specimen trees in close proximity to upland areas. A total of fifty-three (53) specimen trees was inventoried on, or within 100’ of the study area for the proposed Creekside Project (“project”), as shown on the approved NRI/FSD. Three specimen trees are located within the upland area off Clarksburg Road described above. In order to develop the property in accordance with the 10 Mile Creek Area Limited Amendment Clarksburg Master Plan, unavoidable removal of five (5) specimen trees is required.

A. Project Background

The Creekside project is located to the south of Interstate I-270 and to the west of Maryland Route 121 in Clarksburg, MD. In accordance with the Ten Mile Creek Limited Area Master Plan Amendment and Zoning Ordinance, the Applicant proposes a project with a walkable, pedestrian-friendly, environmentally sensitive, residential community totaling 312 dwelling units, associated amenities, and parking.

Per the Master Plan, developable area includes non-forested open space and a 6% imperviousness limit. Development is concentrated in unforested upland areas, leaving expanded stream valleys and forested areas intact and undeveloped. As a result, the area that can be developed is limited and therefore cannot be re-designed to avoid impacts to specimen trees. All existing on-site forest is to be retained and either be placed into a forest conservation easement or dedicated to Montgomery County Parks. Additionally, 75.52 acres of afforestation will be established within un-forested portions of the stream valley buffer, enhancing the riparian buffer and increasing contiguous forest cover. A conservation management plan will be established for the entire site.
A field investigation was performed in accordance with the State Forest Conservation Technical Manual (DNR, 1997), Montgomery County Forest Conservation Law (2011), Montgomery County Environmental Guidelines (2000) and Limited Master Plan Amendment for Ten Mile Creek (2014). A survey for specimen trees was also conducted at this time using forest diameter tape to measure the diameter at breast height (dbh) at a height of 4.5 feet from the ground. Specimen trees are defined as any tree with a dbh of 30 inches or greater, or with a dbh that is 75% of the county or state champion of that species. During the preparation of the NRI an NRI study area was delineated that conservatively inventories specimen trees in close proximity to upland areas. The location of each specimen tree was surveyed and documented on NRI/FSD map. There were 53 specimen trees identified on and within 100' of the project boundary. Trees given a poor condition exhibited significant structural defects, disease, rot and/or decay.

B. Tree by Tree Analysis- Removals

Tree #'s 51 and 52

Tree’s 51 and 52 are both red mulberry (*Morus rubra*). Tree 51 has a dbh of 38” and was observed in fair health with broken branches. Tree 52 had a dbh of 30” and was observed to be in poor health as a result of a splitting trunk. Both trees are located in the middle of the upland area identified in the Ten Mile Creek Limited Master Plan Amendment for development and cannot be avoided.

Tree #54

Tree 54 is a 32” red mulberry (*Morus rubra*) in poor health with trunk cavities. Minor impacts to 23% of the CRZ will result from proposed grading and the proposed lot line as well as the proposed access to the stream restoration site. Although the amount of impact to the CRZ is minimal this tree is shown has removed due to the health of the tree and proximity of the tree to the proposed development. Due to the trees location downhill from the proposed development, this tree should be reevaluated in the field at time of construction to determine whether or not it poses a threat to life or property.

Tree #129

Tree 129 is a 38” red mulberry (*Morus rubra*) observed in fair health due to crown dieback and broken branches. It is located within the proposed new road and residential lots and therefore cannot be avoided.

Tree #130

Tree 130 is a 36” black cherry (*Prunus serotina*) in poor health. The tree is half dead and showing signs of a rotting trunk. Given the trees proximity to the development the tree poses a potential safety risk for the adjacent development. As a result, the tree is proposed to be removed.
C. Tree by Tree Analysis- Minor Impacts to Critical Root Zone Only

Tree #61

Tree 61 is a 34” red maple (Acer rubrum) observed in fair health due to broken branches. It is located downhill and outside of the proposed limits of disturbance. Unavoidable impacts to 8% of the critical root zone is necessary in order for the upland area identified in the Ten Mile Creek Limited Master Plan Amendment for development to tie out to existing grade.

Trees #'s 177, 179, 180, 181, 185, 187, 188, 190, 191, 192, 193, 196, 197, 199, 200, 201, 202, 204, 205, 206, 207 and 216

These trees are all specimen trees of varying species and sizes (30” dbh and greater) located within areas designated for stream restoration that is being proposed to comply with the requirements of the approved Ten Mile Creek Limited Master Plan Amendment. In coordination with the Montgomery County Planning Department, Montgomery County Parks Department and Montgomery County Department of Environmental Protection the areas that require stream restoration have been determined and a unique stream restoration limits of disturbance (LOD) has been shown on the Preliminary Forest Conservation Plan. As stated in the notes provided on sheet 1 of the Preliminary Forest Conservation Plan, “Stream restoration limit of disturbance (LOD) will not result in tree removal within or outside of forested areas and will be refined at the time of final engineering and permitting. Unforested areas within the LOD will be afforested following construction.” Minor impacts to the critical root zone these specimen trees may be required in order to implement the required stream mitigation. Impacts to the critical root zone will be minimized during final engineering to the extent possible. During construction actual impacts to the critical root zone will be minimized through field adjustments and root protection techniques in coordination with the M-NCPPC forest conservation inspector.

D. Requirements for the Granting a Variance Request

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

Per the amended Ten Mile Creek Master Plan, this project fulfills the countywide need for single-family housing with residential development between Shiloh Church Road and Clarksburg road. In order to develop the property in accordance with the master plan the development must occur within portion of the site that preserve the expanded stream valley buffer and existing forest to the extent practicable while also meeting the 6% impervious cap and 80% open space requirement. The specimen trees to be removed and impacted are located where proposed housing and roads are to be constructed and therefore cannot be saved. Additionally, the trees range from fair to poor health and retaining them could pose a safety risk for the proposed housing due to trunk rot and breaking branches. Denying the applicants request to remove these specimen trees will deny the applicant the ability to develop their property in accordance with the County’s master plan resulting in an unwarranted hardship.

(2) Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas:

Proposed activities are limited to areas of non-forested, upland open space in order to preserve
sensitive environmental resources. By not allowing the applicant to remove the specimen trees would prevent the project from being carried out due to the limited developable space as outlined in the approved Master Plan.
Not allowing the Applicant to redevelop their property in accordance with the County’s Master Plan would deprive the Applicant of a right enjoyed by others in similar areas.

(3) **Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting the variance.**

The development of the property will implement water quality conditions on-site and downstream through the provision of a comprehensively designed and integrated stormwater management system that relies on Environmental Site Design (ESD) practices. Additionally, the proposed development is subject to Chapter 19 of the Montgomery County Code, which has been determined by the Maryland Department of the Environment to be in conformance with the State’s water quality standards. Additionally, this property is located within the County designated Ten Mile Creek special protection area requiring the preparation and approval of a Water Quality Protection plan that requires redundancies to ensure water quality is protected.

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

This project satisfies the recommendation for development, detailed in the approved Ten Mile Creek Limited Master Plan amendment while preserving existing forest, preserving and improving the expanded stream valley buffer by afforesting the unforested portions of the stream valley buffer, staying within the 6% impervious cap and providing open space in accordance with the Limited Master plan amendment. Additionally, there are numerous specimen trees contained on the site that will be placed in parkland or within a forest conservation easement that were not inventories due to their distance away from the upland portions of the site remaining for development.

In addition to meeting the criteria of subsection (a), the granting of this variance:

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

Granting the variance will not confer a special privilege on the applicant. Failing to grant a variance would deprive the landowners’ ability to implement the specific recommendation for this property contained in the Ten Mile Creek Limited Master Plan Amendment, which would be an undue hardship.

(2) **Will not be based on conditions or circumstances which result from the actions by the applicant.**

This specimen tree variance request is based on the specific recommendations for this property contained within the Ten Mile Creek Limited Master Plan Amendment, the size, type and distribution of trees, and engineering constraints. It is not based on circumstances which result from the actions by the applicant.

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

This specimen tree variance request is based on the specific recommendations for this property contained within the Ten Mile Creek Limited Master Plan Amendment, the size, type and distribution of trees, and engineering constraints. In order to develop the property, unavoidable impacts to three
specimen trees are required. These circumstances are specific to the property and not a condition relating to land or building use on a neighboring property.

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

Environmental Site Design (ESD) planned for development of this property will create and maintain water quality standards. The proposed development is subject to Chapter 19 of the Montgomery County Code, which has been determined by the Maryland Department of the Environment to be in conformance with the State’s water quality standards. Additionally, this property is located within the County designated Ten Mile Creek special protection area requiring the preparation and approval of a Water Quality Protection plan that requires redundancies to ensure water quality is protected.

Please do not hesitate to contact me with any questions or comments concerning this application. I can be reached at (240) 912–2150 or mwessel@rodgers.com.

Sincerely,
Rodgers Consulting, Inc.

Matthew J. Wessel, PLA, ISA Certified Arborist
Environmental Director