



June 8, 2021

Mary Jo Kishter, Environmental Planner Coordinator, Upcounty Planning
M-NCPPC
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

Re: Egan Property – Ashford Woods
Final Forest Conservation Plan – Variance Request
Site Plan #820210110

Dear Ms. Kishter,

On behalf of Ashford Woods, LLC, Soltesz is requesting a variance for the critical root zone (CRZ) impact to seven (7) trees 30 inches or greater in DBH, as required under Section 22A-21 of Montgomery County's Forest Conservation Law as well as recent revisions to the State Forest Conservation Law enacted by State Bill 666, where it notes the variance pertains to "trees having a diameter measured at 4.5 feet above the ground of 30 inches diameter or 75% of the diameter of the current state champion tree of that species as designated by the department." The impact to these trees results from a proposed residential project located in Clarksburg. These trees are affected by the existing demolition limit of disturbance (LOD) and/or proposed LOD and will be impacted or removed due to conflicts with existing element removal, grading, infrastructure, and building envelope.

Project Information

The site is bifurcated by Dwight D. Eisenhower Highway (I-270), resulting in two parcels comprising the area under application. One parcel is located east of I-270 and west of Frederick Road (MD 355) in Clarksburg, Maryland. The second parcel is located directly to the west of I-270, and has approximately 60 feet of frontage on Comus Road. The gross tract area is approximately 142.3016 acres, including off-site disturbance. The Site Plan proposes 364 dwelling units to be located east of I-270, and will include townhomes, 2 over 2 units, internal private roads, and improvements to Frederick Road. 80% of the area under application for development will be provided as rural open space.

Critical Root Impacts

The seven trees included in this variance request are located off-site and were identified by a survey conducted in April 2021 along the LOD for the proposed force main sewer connection. For this variance request, all trees are proposed to be impacted but saved. As no trees are proposed for removal, mitigation associated with these seven trees is not required.

ASHFORD WOODS SPECIMEN TREE ($\geq 30''$ DBH) LIST TO BE IMPACTED BUT SAVED				
TREE ID #	BOTANICAL NAME	COMMON NAME	DBH	CONDITION
T84	<i>Catalpa speciosa</i>	Southern Catalpa	35.8	Poor
T85	<i>Morus alba</i>	White Mulberry	30.2	Poor
T87	<i>Catalpa speciosa</i>	Southern Catalpa	35.2	Poor
T88	<i>Acer saccharinum</i>	Silver Maple	35.2	Poor
T90	<i>Catalpa speciosa</i>	Southern Catalpa	34.1	Fair
T91	<i>Acer negundo</i>	Boxelder	32.2	Very Poor
T92	<i>Morus alba</i>	White Mulberry	30.2	Poor

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 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.

Pursuant to "(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship":

The Project is required to construct a new WSSC pump station to service both the development site and the surrounding vicinity. The implementation of this station necessitates the addition of a force main sewer connection within the MD-355 right-of-way. As conditioned by Preliminary Plan Resolution No. 20-140, the Project must request a Variance for any specimen tree with a CRZ that is impacted by the LOD for such off-site improvements. Seven trees were identified as potentially having CRZ impact for the proposed LOD along the pipe extension. The placement of the force main sewer line down the center of Frederick Road reduces a potential higher impact to trees on either side of the road if the line were located closer to one side than the other or on a shoulder. The proposed alignment additionally allows for a more continuous connection to the existing sewer line.

It bears consideration that as both the identified specimen trees and MD-355's pavement width have been present for at least twenty years, it is not likely that the root systems of the trees extend far under the road paving. Therefore, while the standard CRZ formula has been utilized in impact calculations and is reflected on the Forest Conservation Plan, the actual impact on the trees' roots may differ from that which is quantified above. Moreover, the methods of construction for placing the sewer line will be optimized to reduce potential impact. The likely construction will consist of a relatively shallow 2-4' wide trench where the 4" force main pipe will be placed. Bracing is not anticipated as being necessary. Following placement of the line, a significant width of the road will be repaved. The minimal intrusion of saw-cutting through the existing road and digging a narrow trench for placing the line will reduce impact to the existing trees to the fullest extent practicable.

Considering the development requirements relevant to the site and the location of the specimen trees being impacted, it would cause **unwarranted hardship** to the Applicant if the variance request were to be denied. The Project's obligation to construct the force main sewer connection constitutes a **special condition peculiar to the property** which cannot be circumvented. Therefore, to prohibit impacts to the critical root zone of the specimen trees in question would unreasonably deprive the landowner of rights commonly enjoyed by others, as it would require extraordinary measures with questionable efficacy not typically required.

Pursuant to “**(2)** describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas”:

Enforcement of a prohibition of impacts to the specimen trees would **deprive the applicant of the rights commonly enjoyed by others** who are in similar areas that have many of the same features as the subject property. For example, the residential communities within a mile of the project site, Clarksburg Town Center and Woodcrest, were both approved for site improvement under the Forest Conservation Law regulations regarding afforestation, reforestation, and the impact of specimen trees.

Pursuant to “**(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”:

Because none of the above trees are proposed for removal, and actual root impacts will likely be limited, **no measurable degradation in water quality will occur as a result of granting this variance**. Furthermore, the placement of the sewer line will not significantly impact existing runoff patterns on Frederick Road. Sediment control facilities will be utilized as required to mitigate potential sedimentation generated by the construction effort.

Pursuant to “**(4)** provide any other information appropriate to support the request”:

The information set forth above is adequate to justify the requested variance to impact the applicable specimen trees. 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 request is not made based on conditions or circumstances that are the result of actions by the Applicant;*
- (3) the requested variance is not related in any way to a condition on an adjacent, neighboring property; and*
- (4) removal of the impacted trees will not violate State water quality standards or cause measurable degradation in water quality in fact a vegetated buffer is proposed along both of the streams on the site to further filter and enhance the water quality.*

For the justification described above, we believe it is appropriate to grant Applicant's request for a variance. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

SOLTESZ

Daniel Park
Landscape Architect

cc: Tom Natelli
Michael Natelli
Krista Davisson
Barbara Sears