



STRATEGIES FOR TODAY. INSIGHT FOR TOMORROW.

August 18, 2021

Revised: May 3, 2022

Planner Coordinator

M-NCPPC

RE: Miles Coppola
 Preliminary Forest Conservation Plan – Request for Tree Variance
 Preliminary Plan #120220010
 SOLTESZ Project #14540600

Dear Ms. Kishter,

On behalf of the Applicant, Brookfield properties, we are requesting a tree variance pursuant to the provisions of Section 22A-21 of the Montgomery County Code from Section 22A-12(b)(3) for removal impacts to specimen trees. More specifically, Section 22A-12(b)(3) provides for the nondisurbance of “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 Property is located to the northeast of Interstate I-270, northwest of MD 121 and to the west of MD 355, in Clarksburg, MD. The Property includes of four parcels, identified as Parcel A (P033, on tax map EW21) totaling 17.91 acres, Parcel B (P303) totaling 63.41 acres, Parcel C (P570) totaling 15.82 acres and Parcel D (P484) totaling 1.21 acres for a total property area of 98.36 acres. The existing conditions include a mix of woodlands and farm fields, with forest covering much of the stream valleys. The Property is split zoned R-90, R-200 and CRT 2.0, C 2.0, R-2.0, H-120. The Property is also located within Clarksburg East Environmental Overlay Zone (CEE Zone), the Ten Mile Creek Area Limited Amendment Master Plan (“Ten Mile Creek”), which was adopted and approved in July 2014, as well as the Ten Mile Creek special protection area (SPA).

The Applicant proposes to develop a walkable, pedestrian-friendly, environmentally sensitive residential community totaling 336 dwelling units, and associated amenities and parking on the subject property located at Clarksburg, Maryland.

I. APPLICANT’S PROPOSAL

The Applicant has submitted a Preliminary Forest Conservation Plan for the Project, ‘Miles Coppola’ #120220010. The Plan presents a combined townhouse/triplex residential neighborhood that both embraces the guidelines for environmental protection and housing unit mix where the residences are clustered away from environmentally sensitive resources. As proposed by the Ten Mile Creek Plan, Zoning Ordinance, and the CEE Overlay Zone, a minimum of 80% of the Property area will be protected as Rural Open Space. This will include forest preservation and afforestation areas, and other environmentally sensitive features. The impervious cover will also be limited to 15% of the site. The plan clusters development in a central portion of the site that is primarily an open field, as well as in a separate area to the south which is also primarily an open field.

There are a total of 76 specimen trees on the Property and the Applicant proposes impacts to or the removal of 15 trees. Of these 15 trees, 4 trees have unavoidable impacts to less than 30 percent of their critical root zone ("CRZ"), allowing them to be saved. Thus, a variance is requested for the removal of 11 specimen trees.

II. EXPLANATION FOR NEED TO REMOVE THE TREES THAT IS IDENTIFIED IN STATE LAW FOR PROTECTION

The Natural Resource Inventory (NRI) and Forest Stand Delineation (FSD) for this Project was approved on 04/13/21. The specimen trees which will be impacted by the proposed improvements, subject of this variance request, are shown on the Preliminary Forest Conservation Plan.

The proposed disturbance of trees 30" DBH or greater (specimen trees) is being requested to allow the proposed development which is limited to a developable area. The developable area is based on not only the existing environmental features but also the Rural Open Space and Impervious Area requirements per the recommendations of the CEE Overlay Zone. Essentially, the development footprint must be compact, limiting the reconfiguration of the development to other areas of the site, thus necessitating the removal of variance trees. However, the proposed layout significantly minimizes CRZ impacts to existing specimen trees by minimizing limits of disturbance, limiting impervious areas, and preserving a majority of Priority Forest on the Property.

For reasons described in Sections III and IV below, the Applicant respectfully requests the removal of the variance trees listed, in order to construct this residential development and its associated open space, amenities, and infrastructure.

III. GENERAL DESCRIPTION AND JUSTIFICATION FOR TREES FOR WHICH A VARIANCE IS REQUESTED

This Forest Conservation Plan variance request is for eleven (11) on-site specimen trees to be removed and four (4) on-site specimen trees being impacted by construction and demolition activities. The trees identified in this variance request for removal or CRZ impacts are shown on the Forest Conservation Plan. The trees to be removed are either wholly located within the limits of disturbance (LOD), or the LOD impacts to their critical root zones are too large to expect tree survival.

Trees for Removal

The specimen trees proposed for removal are either directly within areas that will be graded to accommodate the development or within the limits of disturbance to provide necessary facilities and infrastructure needed for functionality of this development.

Trees subject to this variance request include; **Tree #415** (34" Chestnut Oak) in Good condition, **Tree #1048** (32" Chestnut Oak) in Good condition, **Tree #1052** (32" Tulip Poplar) in Good condition, **Tree #1059** (30" Tulip Poplar) in Good condition, **Tree #1118** (34" Red Oak) in Poor condition, with fungus and rot, **Tree #1119** (43" Red Oak) in Poor condition, with rot, **Tree #1132** (32" Tulip Poplar) in Good condition, **Tree #1139** (50" Tulip Poplar) in Fair condition, with base rot and broken branches, **Tree #1140** (30" Chestnut Oak) in Poor condition, **Tree #1141** (38" White Oak) in Fair condition, **Tree #1147** (26,30,24,16" American Elm) in Fair condition. All are requested to be removed due to direct impact from development, road and access alignment, and facilities and amenities required for the development to function.

VARIANCE TREES REMOVAL									
Tree #	Forest	Common Name	Scientific Name	DBH (inch)	CRZ Area	CRZ Impacted	Total % Impacted	Cond.	Remove/Save
415	X	Chestnut Oak	<i>Quercus prinus</i>	34.4	8360	8360	100.0%	Good	Remove
1048	X	Chesnut Oak	<i>Quercus prinus</i>	32	7235	7160	99.0%	Good	Remove
1052	X	Tulip Poplar	<i>Liriodendron tulipifera</i>	32	7235	7235	100.0%	Good	Remove
1059	X	Tulip Poplar	<i>Liriodendron tulipifera</i>	30	6359	6359	100.0%	Good	Remove
1118	X	Northern Red Oak	<i>Quercus rubra</i>	34	8167	8167	100.0%	Poor	Remove
1119	X	Northern Red Oak	<i>Quercus rubra</i>	43	13063	13063	100.0%	Poor	Remove
1132	X	Tulip Poplar	<i>Liriodendron tulipifera</i>	31.7	7100	7100	100.0%	Good	Remove
1139	X	Tulip Poplar	<i>Liriodendron tulipifera</i>	49.6	17381	15648	90.0%	Fair	Remove
1140	X	Chesnut Oak	<i>Quercus prinus</i>	30.2	6444	6080	94.4%	Poor	Remove
1141	X	White Oak	<i>Quercus alba</i>	38.3	10364	7542	72.8%	Fair	Remove
1147		American Elm	<i>Ulmus americana</i>	26,30,24,16	21113	21113	100.0%	Fair	Remove

Critical Root Zone (CRZ) impacts

There are four (4) variance trees being impacted by the limit of disturbance. The trees below show potential impact to their Critical Root Zone, ranging from 5.0% to 17.4%. The impacts associated with these trees are the result of the grading and development on the property. Tree protection measures will be adopted to protect them from being damaged during and after construction.

VARIANCE TREES IMPACT									
Tree #	Forest	Common Name	Scientific Name	DBH (inch)	CRZ Area	CRZ Impacted	Total % Impacted	Cond.	Remove/Save
1055	X	Northern Red Oak	<i>Quercus rubra</i>	53	19846	1394	7.0%	Fair	Save
1064	X	Northern Red Oak	<i>Quercus rubra</i>	31	6789	1180	17.4%	Good	Save
1100	X	Bitternut Hickory	<i>Carya cordiformis</i>	38	10202	513	5.0%	Fair	Save
1143	X	Northern Red Oak	<i>Quercus rubra</i>	36	9156	895	9.8%	Good	Save

IV. SATISFACTION OF THE CRITERIA LISTED IN SECTION 22A-21(b) OF THE MONTGOMERY COUNTY CODE

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. This Forest Conservation Plan variance request is for eleven (11) on-site specimen trees being removed and four (4) specimen trees being impacted, but not requiring removal.

“(1) describe the special conditions peculiar to the property which caused the unwarranted hardship.”

There are a number of special conditions peculiar to the Property which would cause unwarranted hardship, absent the variance.

- Forest area on the Property - The 98.36 acre Property includes extensive existing environmental features, including 73.94 acres of forest area, accounting for 75% of the site being forested.
- Stream Valley Buffer area on Property - The Property is covered by 45.76 acres of Stream Valley Buffer area, of which 6.25 acres is outside forest area.
- Combination of Forest and Stream Valley Buffer Area – Approximately 45.76 acres (46%) of the entire Property is not available for development, with encroachments into the forest and Stream Valley Buffer areas limited to essential utilities/infrastructure only.
- Rural Open Space and Impervious limitation- limitations required by the Ten Mile Creek Master plan and the requirement to meet Chapter 50 for road sections while maintaining the 15% impervious cap and meeting the 80% rural open space has proven to be a major obstacle for the functionality of the proposed development.
- Priority Forest – All forest stands within the Stream Valley Buffer are considered Priority Forest. As noted on the NRI Stand #4, #6, and #8 are considered high priority where within stream valley buffer and low quality forests outside the SVB. The consideration for limited forest removal especially with the priority forest was a major design factor for this development, consequently, the extra limitations were superimposed by this fact.

“(2) Describe how enforcement of these rules will deprive the owner of rights commonly enjoyed by others in similar areas.”

Without the allowance of variance tree removals, the Applicant would not be able to meet the requirements of the Rural Open Space and impervious area per the recommendations of the CEE Overlay Zone, while achieving a scale of development to support and sustain the community economically. Given the distribution of the specimen trees, priority forest and stream valley buffer, precluding the removal of the trees will severely restrict the development of the Property. As noted, only approximately 54% of the property can be considered usable area for development. As such, the ability to develop the Property for use and the density allowed by the Master Plan would be eliminated.

Without granting the variance, many of the environmental benefits conferred by the proposed development would be lost. These include the establishment of new permanent environmental protection areas; and providing mitigation through additional tree plantings, afforestation and reforestation, by replacing trees to be removed, and will ultimately grow into stronger specimen trees. The new forest areas established will be protected by easements and offer a lifetime of environmental benefits for the entire local community.

Denial of this request would deprive this development of rights commonly enjoyed by others with similar properties where tree variances have been granted for the purposes and intent provided above.

“(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.”

Overall, the proposed plan exceeds the forest conservation worksheet requirement. A total of thirty (30) inches (DBH) are being removed outside of the forested area and (8) inches (1/4 x 30 inches) are required for mitigation. Eight (8) inches (caliper), or (3) 3" caliper trees ($8" / 3" = 3$ trees), of new tree plantings are proposed in an area separate from the required reforestation area within the stream valley buffer. The requirement will be fulfilled through planting 0.03 acres at a density of one hundred (100) 3" caliper trees per acre, as directed by the Planning Board (8" needed at a rate of 300" per acre = $8"/300" = 0.03$ acres). All forest plantings will be protected by easement and provide long term enhancement of the water quality.

The proposed stormwater management design will meet current State and local stormwater management standards. The state water quality standards will not be violated. A measurable degradation in water quality will not occur as a result of the granting of the variance. A stormwater management plan has been submitted to the Department of Permitting Services. It is anticipated that with the additional plantings, and stormwater management ESD's, water quality will be improved.

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

The Applicant believes the information set forth above is adequate to justify the requested variance to remove the specimen trees on the subject property. However, it is important to also emphasize the mitigation efforts that the Applicant is proposing, as follows:

- Exceeding the Forest Conservation requirements - While no additional forest is required per Forest Conservation Worksheet and the development is subject to 36.96 acres credit for retention above the conservation threshold, the Applicant is proposing 4.12 acres of additional forest to be placed in Category I Forest Conservation Easement as part of required afforestation of the Stream Valley Buffer.
- Additional Plantings – The Applicant proposes additional tree planting, reforestation, afforestation, and natural regeneration of forest to protect water quality and expand contiguous forest.
- Reduction of Grading - In order to respect the Priority Forest, the development reduced the grading at and around SVB, thus minimizing disturbance of specimen trees within these priority forest areas. The location of buildings and roads were purposefully located to limit disturbance and construction impacts on the variance trees and the priority forest areas.

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. As discussed above, the removal of the trees is necessary to support a viable project.
2. The variance is not based on conditions or circumstances which result from the actions by the applicant. As discussed above, the location and configuration of the existing physical features of the Property necessitate the removal of the identified specimen trees in order to accommodate the proposed facilities.
3. The requested variance is not related in any way to a condition on an adjacent, neighboring property.



STRATEGIES FOR TODAY. INSIGHT FOR TOMORROW.

4. Removal of the impacted trees will not violate State water quality standards or cause measurable degradation in water quality. In fact, the design intent is to enhance the water quality by protecting the stream valley buffer, introducing stormwater management practices, and providing additional tree planting on the Property.

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 us.

Respectfully submitted,

Soltesz, Inc.

A handwritten signature in blue ink, appearing to read "D. Park".

Daniel Park, PLA, ASLA
Director of Planning