



February 27, 2020

Area 1 Division  
 Montgomery County Planning Department  
 M-NCPPC  
 8787 Georgia Avenue  
 Silver Spring, MD 20910 Attention: Stephen Peck

**Re: Forest Conservation Tree Variance Request**  
**8001 Wisconsin Avenue**  
**Preliminary Forest Conservation Plan # 120210140**  
**VIKA # VM1872H**

Dear Mr. Peck:

On behalf of the property owner and applicant, 8001 Wisconsin LLC (the "Applicant"), we are submitting this Tree Variance Request in compliance with Natural Resources, Title 5, Sections 5-1607 and 5-1611 of the Maryland Code ("State Law") and Sections 22A-12 and 22A-21 of the Montgomery County Code ("County Law"), which requires the Applicant to file for a variance to remove or impact any tree 30" in diameter-at-breast-height (dbh) or greater (a "Specimen Tree"); 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. As described below, this Tree Variance Request is being submitted for: (a) removal of two (2) Specimen Trees on the Subject Property; (b) removal of one (1) Specimen Tree that is located off-site; and (c) impacts to the Critical Root Zone (CRZ) of three (3) off-site Specimen Trees (collectively, the "Subject Trees") so that the Applicant can redevelop the Subject Property in a manner that fulfills the Approved and Adopted Bethesda Downtown Sector Plan (the "Sector Plan") recommendations for the northern portions of the Wisconsin Avenue Corridor and Eastern Greenway Districts. Most importantly, the granting of this Tree Variance Request is necessary for the Applicant to construct a segment of the Sector Plan envisioned park that runs along the western side of Tilbury Street (the "Eastern Greenway").

The site is comprised of 1.89 acres (the net tract area for forest conservation purposes), and is bounded by Highland Avenue to the north, Tilbury Street to the east, West Virginia Avenue to the south, and Wisconsin Avenue to the west in Bethesda, Montgomery County, Maryland (8001 through 8023 Wisconsin Avenue, 4700 through 4706 Highland Avenue and 4701 through 4705 West Virginia Avenue) (the "Subject Property"). The Subject Property is currently developed with four (4) single-family dwellings, commercial buildings totaling 30,717 square feet and three (3) ancillary surface parking lots, and it is proposed for redevelopment with a mixed-use project comprised of up to 375,000 square feet of combined multi-family residential and ground floor commercial uses, and a 70-foot wide park along the western side of Tilbury Street (the "Project"). The Project is consistent with current zoning for the Subject Property and it will be consistent with and implement the goals and objectives of the Sector Plan, including the construction of private and public open spaces and parkland that will comprise a segment of the Eastern Greenway, a strategically important transitional buffer created through the Sector Plan on the western edge of Tilbury

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Street between the urban redevelopment of Downtown Bethesda to the west, north and south and the well-established and preserved single-family East Bethesda community to the east. Most significantly, the Eastern Greenway and Sector Plan road improvements that front the Eastern Greenway cannot be implemented without removing three (3) Specimen Trees and causing minor impacts to the CRZs of three (3) other Specimen Trees. The Applicant is submitting this Tree Variance Request concurrent with Sketch Plan and Preliminary Plan of Subdivision applications and as part of the submission of the Preliminary Forest Conservation Plan #120210140 for the Project.

As further explained below, granting the Tree Variance Request is appropriate when considering and balancing the primary objectives of the forest conservation plan with the goals and objectives for successful implementation of the Sector Plan. The two (2) Specimen Trees on the Subject Property that are proposed to be removed are common White Mulberry species that are in fair condition and otherwise not of distinguishing importance under the forest conservation laws and regulations. Removal of the two (2) trees on the Subject Property, as well as the off-site trees that are proposed to be removed or otherwise impacted, is of significant importance in allowing the development of the Project, and especially the delivery of the visionary Eastern Greenway that will help create a new walkable environment and vibrant public realm including a newly planted park-like setting with consistent design and plantings. To this end, the Project's implementation of a 70-foot wide Eastern Greenway advances two of the Sector Plan's overarching goals, including the increase of parks and open space, and environmental innovation. (Sector Plan, p. 6).

The Assessment of existing trees as part of the preparation and submission of the Preliminary Forest Conservation Plan was performed by Douglas Koeser, RLA, ISA during a site visit in August of 2019. A visual at-grade-level inspection with no invasive, below grade, or aerial inspections was performed for each tree. Decay or weakness may be hidden out of sight for large trees.

As referenced on the Preliminary Forest Conservation Plan, the Subject Trees are defined as follows:

1. **Tree #2: 30" White Mulberry (*Morus alba*):** Tree #2 is located on-site along the eastern property near Tilbury Street.
  - **Field Condition:** Fair
  - **Proposed CRZ Impact:** 100%
  - **Disposition:** Tree #2 is specified to be removed.
2. **Tree #3: 34" White Mulberry (*Morus alba*):** Tree #3 is located on-site along the eastern property near Tilbury Street.
  - **Field Condition:** Fair
  - **Proposed CRZ Impact:** 100%
  - **Disposition:** Tree #3 is specified to be removed.
3. **Tree #1: 43" Red Maple (*Acer rubrum*):** Tree #1 is a street tree located off-site along the northeastern property line along Highland Avenue.
  - **Field Condition:** Good
  - **Proposed CRZ Impact:** Extensive at 47.35%
  - **Disposition:** Tree #1 is specified to be removed.



4. Tree #7: **48" Silver Maple (*Acer saccharinum*)**: Tree #7 is a street tree located off-site near the northeastern property line at the corner of Highland Avenue and Tilbury Street.
  - **Field Condition:** Fair
  - **Proposed CRZ Impact:** Minimal at 1.27%
  - **Disposition:** Tree #7 is specified to be saved.
5. Tree #11: **34" Tulip Poplar (*Liriodendron tulipifera*)**: Tree #11 is a street tree located off-site near the eastern property line along Tilbury Street.
  - **Field Condition:** Fair
  - **Proposed CRZ Impact:** Minimal at 17.56% as the disturbed CRZ is below Tilbury Street
  - **Disposition:** Tree #11 is specified to be saved.
6. Tree #12: **44" Silver Maple (*Acer saccharinum*)**: Tree #12 is a street tree located off-site near the eastern property line along Tilbury Street.
  - **Field Condition:** Fair-Poor
  - **Proposed CRZ Impact:** Minimal at 20.52% as the disturbed CRZ is below Tilbury Street
  - **Disposition:** Tree #12 is specified to be saved.

#### **Justification Narrative for Tree Removal**

Pursuant to Section 5-1607 of the State Law and Section 22A-12 of the County Law, the Specimen Trees are protected and can only be removed or impacted for the Project with the approval of the Tree Variance Request by the Montgomery County Planning Director or Planning Board pursuant to the standards established in Section 5-1611 of the State Law and Section 22A-21 of the County Law. Pursuant to Section 5-1611, variances may be granted:

- (a) ... where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an Applicant.
- (b) Variance procedures adopted under this section shall:
  - (1) Be designed in a manner consistent with the spirit and intent of this subtitle; and
  - (2) Assure that the granting of a variance will not adversely affect water quality.

Pursuant to Section 22A-21 (b), the Applicant for a tree variance must:

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

This Tree Variance Request is necessary for implementation of the Eastern Greenway in conjunction with a mixed-use development which includes below grade structured parking and related development. The 1.89-acre Subject Property is located along Wisconsin Avenue (Maryland Route 355), a major highway which serves as the western boundary for the Subject Property. The Project proposes a mixed-use development with up to 350 multifamily dwelling units, up to 15,000 square feet of ground-floor commercial uses, structured parking, public open space, streetscape improvements and private amenities. The Project will provide 15% MPDUs in accordance with one of the Sector Plan's primary objectives of increasing affordable housing opportunities in Downtown Bethesda. As noted above, the Project will deliver a 70-foot wide Eastern Greenway that accomplishes the Sector Plan priorities of increasing parks and open space and environmental innovation in Downtown Bethesda. The variances



sought for removal of the Subject Trees are necessary for the Applicant to construct and maintain a 70-foot wide Eastern Greenway for public use.

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

Restricting the Applicant's ability to impact or remove the Subject Trees would deprive the Applicant of the ability to redevelop the Subject Property as envisioned by the Sector Plan, and in a manner that is appropriate for an urban infill redevelopment of properties similarly located in the Bethesda Central Business District. The Subject Property is located in two (2) Sector Plan defined districts: (a) the northern portion of the Wisconsin Avenue Corridor District; and (b) the northern portion of the Eastern Greenway District. The Subject Property is located in the close proximity to the Bethesda and Medical Center metro stations as well as the planned Bus Rapid Transit ("BRT") station at the intersection of Cordell Avenue and Wisconsin Avenue. The land use recommendations and underlying Commercial Residential (CR) zoning for the Subject Property recommend "infill and reinvestment on underutilized commercial sites and private surface parking lots," and the provision of "a compatible transition between the higher density development along Wisconsin Avenue and the East Bethesda and Town of Chevy Chase neighborhoods." (Sector Plan, p. 97 and 133). The properties to the north and south of the Subject Property are similarly recommended for mixed-use development with a compatible transition to the east along Tilbury Street in the form of an Eastern Greenway. Several properties across Wisconsin Avenue to the west are approved and/or under construction for mixed-use redevelopments with building heights ranging from 143 to 199 feet. Absent the granting of the variances requested for removal and impacts to the Subject Trees, Applicant would be unable to implement the Eastern Greenway and a mixed-use infill redevelopment that creates a buffer between Wisconsin Avenue and the single-family neighborhood to the east. Most importantly, the retention of and prohibition of impacts to the Subject Trees would eliminate strategically important areas of the Subject Property that are necessary for delivering a 70-foot wide Eastern Greenway along the western portion of Tilbury Street. In summary, the redevelopment of the Subject Property with a mix of multifamily and ground-floor commercial uses that transition in building height, including a 70-foot wide Eastern Greenway serving as a buffer between the more intensely developed Wisconsin Avenue Corridor to the west and the single-family neighborhoods to the east, is strategically vital to fulfilling the Sector Plan goals for this segment of Downtown Bethesda.

**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. The Subject Trees are not located within a stream buffer, wetland or special protection area. In connection with site development described above, the Applicant is proposing improved stormwater management in compliance with current regulations. The concept stormwater management plan incorporates the State and 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 Project includes treatment through green roof and micro-bio retentions (planter-type) located on-site.

The current Maryland Department of the Environment (MDE) Stormwater Management regulations that Montgomery County has adopted require the use of environmental site design (ESD) techniques to treat the runoff from 1 inch of rainfall on all new developments, where stormwater management is



required. Per MDE's 2000 Maryland Stormwater Design Manual, "the criteria for sizing ESD practices are based on capturing and retaining enough rainfall so that the runoff leaving the site is reduced to a level equivalent to a wooded site in good condition." Therefore, the variance will not affect water quantity standards and no measurable degradation in water quality will be experienced because effective mitigation measures are being provided.

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

Protecting and preserving the Subject Trees would constrain and be detrimental to fulfilling the Sector Plan goals for a compatible transition and Eastern Greenway buffer between the Wisconsin Avenue Corridor and established single-family neighborhood to the east of Tilbury Street. Redevelopment of the Subject Property with a 70-foot wide Eastern Greenway is not viable without removal of the Subject Trees. Considering the substantial financial commitments made by the Applicant to acquire the properties comprising the this 70-foot wide Eastern Greenway and the important public benefits that will be created through this Project, protection of the Subject Trees would create unnecessary hardship to the point of rendering the Project and Sector Plan vision for an Eastern Greenway infeasible. In summary, balancing the positive that would result from preservation of the Subject Trees in their current state with the negative impacts that such preservation would have on redevelopment of the Subject Property clearly weights in favor of granting the requested variances, which will allow for the Sector Plan vision for this area of Downtown Bethesda to come to fruition to the benefit of all stakeholders.

Furthermore, the Tree Variance Request is in conformance with Section 22A-21(d) of the County Law because the granting of the variance:

*(i) will not confer a special privilege on the Applicant that would be denied to others;*

The granting of the Tree Variance Request will not a confer upon the Applicant a special privilege that would be denied to other applicants. The locations of the Subject Trees require removal and impacts for the type of development recommended by the Sector Plan for the Subject Property. As described above, the Sector Plan and underlying CR Zoning for the Subject Property encourage infill redevelopment along Wisconsin Avenue with a transition in building height and a buffered Eastern Greenway along Tilbury Street. Removal of and impacts to the Subject Trees is reasonably expected given the urban context of the Subject Property and associated Sector Plan recommendations, and applicants with similar circumstances and with property appropriate for redevelopment would equally be entitled to necessary variances to remove or impact specimen trees that substantially impair the ability to construct an urban redevelopment with public benefits.

*(ii) is not based on conditions or circumstances which result from the action of the Applicant;*

The Tree Variance Request is based upon the Subject Trees locations that conflict with the Sector Plan recommendation for construction of an Eastern Greenway as part of the Project. As referenced above, the Project is entirely consistent with the Sector Plan recommendations to encourage "infill and reinvestment on underutilized commercial sites and private surface parking lots," and provide for "a compatible transition between the higher density development along Wisconsin Avenue and the East Bethesda and Town of Chevy Chase neighborhoods." (Sector Plan, p. 97 and 133). In order to obtain optional method development approvals under the CR Zoning for the Subject Property, the Project must substantially conform with these Sector Plan recommendations and deliver a segment of the Eastern





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Greenway along Tilbury Street. Given that these Sector Plan recommendations cannot be satisfied without removing and impacting the Subject Trees, the Tree Variance Request is not based on conditions or circumstances that result from the Applicant's actions.

*(iii) is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property; and*

The Tree Variance Request is a result of the urban design of the Project as guided by the Sector Plan vision for the Subject Property, and the conflicting locations of the Subject Trees that require removal and impacts, as opposed to a condition related to land or building use, either permitted or non-conforming, on a neighboring property.

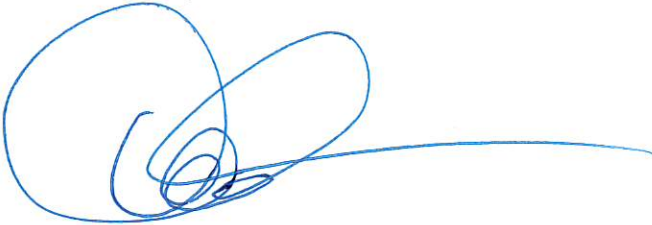
*(iv) will not violate State water quality standards or cause measurable degradation in water quality.*

As described in (3) above, the Tree Variance Request will not violate state water quality standards or cause measurable degradation in water quality.

Thank you for your consideration of this Tree Variance Request. We believe that the supporting information provided with this letter clearly demonstrate that the grant of the Variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If you have any questions or need more information, please do not hesitate to contact us so that we may discuss this matter further. We appreciate your consideration of this request.

Sincerely,

**VIKA Maryland, LLC**



*Douglas Koeser, RLA, ISA  
Senior Landscape Architect*

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