

July 5, 2023

Maryland National Capital Park and Planning Commission (M-NCPPC)
2425 Reedie Drive,
Wheaton, Maryland 20902

Re: Wisconsin Avenue Properties, LLC.
Request for Specimen Tree Variance
 NRI# - 420221760
 MNCPPC # 120230020, 820230020
 Bohler# MD202164

Dear Intake Division,

On behalf of the Wisconsin Avenue Properties, LLC. and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance to the removal of the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named County construction project:

Project Description: The proposed mixed-use building with underground garage is going to replace the existing lot 24 and parcel C, located at 7126 Wisconsin Avenue, in Bethesda, Montgomery County, Maryland. This is a total of 1.05-acre tract site that is owned by the Wisconsin Avenue Properties LLC. Proposed construction consists of a new mixed-use building with underground garage.

Requirements for Justification of Variance:

Section 22A-21(b) *Application requirements* states that the applicant must:

- (1) Describe the special conditions peculiar to the property or other conditions which would cause the unwarranted hardship;
- (2) Describe how enforcement of this Chapter 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.

Justification of Variance:

- (1) Describe the special conditions peculiar to the property or other conditions which would cause the unwarranted hardship;

Response: For Wisconsin Avenue Properties LLC. to implement the full program, they need to remove the large, poor conditioned specimen tree from the middle of the property. By leaving the specimen tree, it would restrict the development area by over 50%

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

Response: If the County were to require this development to keep all improvements outside the root zones of the specimen trees, the building, safe access drive aisles, stormwater facilities, and parking would fail to be built due to the close proximity of specimen trees and their associated critical root zones.

- (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;

Response: The proposed development will meet ESD to the MEP requirements per MDE design guidelines for the property. Under existing conditions, the subject property does not provide stormwater management. The removal of this Specimen Tree will not adversely affect water quality per the State of Maryland standards, as the proposed impervious surfaces will be treated with ESD quality measures.

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

Response: Due to the site development being a “zero lot-line” build, the proposed building and grading required extends to the existing lot lines on all sides of the property.

As further basis for its variance request, the applicant can demonstrate that it meets the Section 22A-21(d) *Minimum criteria*, which states that a variance must not be granted if granting the request:

- (1) Will confer on the applicant a special privilege that would be denied to other applicants;

Response: The applicant of this development would not be subject to special privilege that would be denied to other applicants but granting this variance request. Given the location of the specimen tree and significant trees on the subject property and their associated critical root zones, by not granting this variance request restricts development rights and opportunity to the landowners.

- (2) Is based on conditions or circumstances which are the result of the actions by the applicant;

Response: Wisconsin Avenue Properties LLC. has taken no actions leading to the conditions or circumstances that are the subject of this variance request.

- (3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

Response: The surrounding land uses do not have any inherent characteristics or conditions that have created or contributed to this particular need for a variance.

- (4) Will violate State water quality standards or cause measurable degradation in water quality.

Response: Granting this variance request will not violate State water quality standards

SPECIMEN TREE TABLE					
No.	Common Name	Scientific Name	DBH (inches)	Condition Rating	Condition/Comments
1	WHITE MULBERRY	MORUS ALBA	45	Poor	ROOT SYSTEM IMPACTED BY PARKING LOT. MULTI-STEM TRUNK. VERTICAL TRUNK FRACTURE

Conclusion: For the above reasons, the applicant respectfully requests that the Planning Board APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to remove the specimen trees in order to allow the construction of this project. The recommendations in this report are based on tree conditions noted at the time the NRI/FSD field work was conducted. Tree condition can be influenced by many environmental factors, such as wind, ice and heavy snow, drought conditions, heavy rainfall, rapid or prolonged freezing temperatures, and insect/disease infestation. Therefore, tree conditions are subject to change without notice. The site plans and plotting of tree locations were furnished for the purpose of creating a Forest Conservation Plan. All information is true and accurate to the best of our knowledge and experience. All conclusions are based on professional opinion and were not influenced by third party.

Sincerely,



Matthew Pohlhaus
Sr. Project Manager