

2023.10.27

M-NCPPC

Montgomery County Planning Department
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

**Re: Preliminary/ Final Tree Variance Request
#120230160 & #820230130
9801 Georgia Avenue
Preliminary/ Final Forest Conservation Plan
VIKA # VM50562C**

Dear Reviewer:

On behalf of our client, JLB Realty LLC (the "Applicant"), we are submitting this Tree Variance Request for the above-referenced property (the "Property") to comply with Natural Resources, Title 5, Section 5-1607 of the Maryland Code and Section 22A-21 of the Montgomery County Code that require the Applicant to file for a variance to remove or impact any tree greater than 30" in diameter-at-breast-height (dbh); 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. This Tree Variance Request is accompanying the submission of the Final Forest Conservation Plans F20240040.

The 3.86 acre Property is located in Silver Spring, Montgomery County, Maryland. It is currently developed with the Forest Glen Medical Center and associated surface parking lot. The remainder of the property is unimproved. The Property is located in the northeast quadrant of the intersection of Georgia Avenue and Forest Glen Road.

This request proposes to remove eight (8) specimen trees on-site.

Table 1 on the following page lists the eight (8) specimen trees as identified on the Forest Conservation Plan for which the Applicant seeks a variance to remove or impact the critical root zone (CRZ).



Table 1

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.)*	SPECIMEN	CONDITION	CRZ AREA	DISPOSITION	COMMENTS
3	Robinia pseudoacacia	Black Locust	34	✓	Poor	8,171	REMOVE	Canopy dieback, E. Ivy vines, 1/2 dead
7	Liriodendron tulipifera	Tulip poplar	33	✓	Good	7,698	REMOVE	Many P. Ivy vines
8	Acer saccharinum	Silver Maple	33	✓	Poor	7,698	REMOVE	
11	Acer saccharinum	Silver Maple	31	✓	Fair	6,793	REMOVE	Many vines
13	Prunus x yedoensis	Yoshino Cherry	31	✓	Poor	6,793	REMOVE	Canopy dieback, trunk rot.
15	Acer rubrum	Red Maple	31	✓	Good	6,793	REMOVE	
16	Acer rubrum	Red Maple	32	✓	Good	7,238	REMOVE	
17	Acer rubrum	Red Maple	30	✓	Fair	6,362	REMOVE	Some dead branches

Tree assessment was performed by Watershed Environmental LLC during a site visit in January of 2022. 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. Tree species information shown in the table above is based on the approved NRI/FSD.

- Tree #3: 34" Robinia pseudoacacia (Black Locust):** Tree #3 is located at the northeast corner of the Property along Woodland Drive.
 - Field Condition:** Poor (canopy dieback, many vines, ½ dead)
 - Proposed CRZ Impact:** 100%
 - Disposition:** to be removed
- Tree #7: 33" Liriodendron tulipifera (Tulip Poplar):** Tree #7 is located at the northwest corner of the Property along Georgia Avenue.
 - Field Condition:** Good (many vines cover tree)
 - Proposed CRZ Impact:** >90%
 - Disposition:** to be removed
- Tree #8: 33" Acer saccharinum (Silver Maple):** Tree #8 is located at the northwest corner of the Property along Georgia Avenue.
 - Field Condition:** Poor
 - Proposed CRZ Impact:** >80%
 - Disposition:** to be removed
- Tree #11: 31" Acer saccharinum (Silver Maple):** Tree #11 is located on the northern middle third of the Property
 - Field Condition:** Fair (many vines)
 - Proposed CRZ Impact:** 100%
 - Disposition:** to be removed
- Tree #13: 31" Prunus x yedoensis (Yoshino Cherry):** Tree #13 is located at the south end of the Property along Forest Glen Road.
 - Field Condition:** Poor (canopy dieback, trunk rot)
 - Proposed CRZ Impact:** 100%
 - Disposition:** to be removed



6. **Tree #15: 31" Acer rubrum (Red Maple):** Tree #15 is located at the southeast corner of the Property along Woodland Drive.
 - **Field Condition:** Good
 - **Proposed CRZ Impact:** 100%
 - **Disposition:** to be removed

7. **Tree #16: 32" Acer rubrum (Red Maple):** Tree #16 is located at the southeast corner of the Property along Woodland Drive.
 - **Field Condition:** Fair/ Good
 - **Proposed CRZ Impact:** 100%
 - **Disposition:** to be removed

8. **Tree #17: 30" Acer rubrum (Red Maple):** Tree #17 is located at the eastern half of the Property along Woodland Drive.
 - **Field Condition:** Fair (some dead branches)
 - **Proposed CRZ Impact:** >60%
 - **Disposition:** to be removed

Justification of Variance

Section 22A-21 of the County Ordinance authorizes the County to approve variances to the Forest Conservation Law allowing disturbances to certain trees, including specimen trees. An applicant seeking a variance must present a request in writing and the applicable approving authority must make certain findings and descriptions prior to approval. Applicant’s variance request satisfies the required findings as follows:

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

The Property is bordered on three sides by public streets and, as noted above, contains an existing office building with associated surface parking that is nearing the end of its useful life. Removal of the existing improvements and upgrades to adjoining streetscapes to comply with current County requirements alone would impact at least half of the variance trees. Additionally, the Property is currently bisected by significant sewer and storm drain lines that connect to infrastructure serving the adjacent areas. Per current WSSC and County regulations, no structures or improvements can be placed over these lines, and both require significant easement areas. Given site considerations, to allow for any significant redevelopment of the Property occur, the sewer line must be relocated to the north and the storm drain line to the south. The removal of these lines will impact a number of the specimen trees and their relocations will impact still more. In this regard, the property is unique in that any significant improvement to the property would, in and of itself, impact most of the trees.

Finally, given the Property’s proximity to transit, the recently adopted Forest Glen- Montgomery Hills Sector Plan identifies the Property as an important housing resource, and assigns it a density of up to 2.5 FAR. In accordance with the recommendations of the plan, the pending applications propose to add up to 390 dwelling units in a 6-story multi-family building with associated parking garage. Importantly, the plan will also result in the realization of several other recommendations of the Forest Glen-Montgomery Hills Sector Plan, including accommodation of the new tunnel to Metro and implementation of a Civic Green along the



south side of the property. Further, while redevelopment will remove a number of dead, dying, or damaged trees along the north side of the property, it proposes its replacement with a through-block connection that will significantly enhance circulation in and out of the adjacent neighborhood, and create a passive recreational space with a pathway, benches, and stratified vegetation on the Property.

Not granting the requested variance would create an unwarranted hardship because it would impede any significant redevelopment of the Property, and more particularly thwart the proposed level of redevelopment called for in the Sector Plan. Due to the property's numerous frontages and oblong lot shape, in combination with the significant utility lines bisecting the property that must be relocated and subjected to substantial easements free of structures, the proposed layout is the only feasible way to redevelop the Property and provide the housing called for in various County policies. The Sector Plan recommendations, including the proposed redevelopment of the Property, were found to be in the public interest in part because they will improve pedestrian and bicycle circulation in the Forest Glen Bicycle and Pedestrian Priority Area, increase mixed-use space near the planned Metro transit Station, and increase moderately-priced dwelling units. Denial of the variance would prevent the realization of these objectives.

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

Denial of the variance would also deprive Applicant of rights commonly enjoyed by others in similar areas. In numerous other instances where County policies have called for increased housing near metro, similar variances have been granted to allow such development to occur. Despite the constraints the existing features create for redevelopment of the property, the project proposes to create a significant housing resource, while also establishing compatible relationships between new development, existing buildings and future developments planned for in the Forest Glen-Montgomery Hills area. Strict protection of all variance trees would significantly inhibit the ability to maximize the proposed density and use the entire urban site for this multi-family project due to the unfortunate location of the trees and the extent of their CRZs. Denial in this instance would therefore treat the Applicant differently than those with similarly-situated properties, as well as properties that do not have the same degree of environmental constraints.

- (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 the granting of the variance;*

The granting of Applicant's variance request will not result in a violation of State water quality standards, nor will a measurable degradation in water quality occur as a result. The Project proposes to remove a large expanse of surface parking lot on a largely impervious property and redevelop it with a project that provides modern stormwater management and 35% green cover, consisting of a combination of tree canopy, micro-bioretenion, and solar panels. The site, which currently has few trees and a small poor quality forest stand, will be landscaped to provide a more high-quality tree canopy cover than currently exists. The Project will also provide stormwater management for Environment Site Design (ESD) to the Maximum Extent Practicable (MEP), utilizing Maryland Department of Environment and Montgomery County methodology. The Stormwater Management Concept proposes facilities consisting of eighteen (18) planter style micro-bioretenion facilities. The proposed SWM and green cover will improve the water quality, since there is no stormwater management currently on the site.

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



It should be noted that the proposed shade trees and planting areas will all serve to improve ecological quality in an urban environment. Focusing redevelopment on existing developed land, landscape plantings, and stormwater management design all combine to significantly improve water quality, carbon sequestration, and reduction in urban heat island effects.

Thank you for your consideration of Applicant's tree variance request. The supporting information provided in this letter establishes that denial of the variance would result in unnecessary hardship or practical difficulty, as well as demonstrates Applicant's extensive efforts to minimize impacts. Please contact me with any questions, or if you require additional information.

Sincerely,

VIKA Maryland, LLC

Eric Schlatter

Eric Schlatter, PLA
Project Manager

