



August 30, 2023

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

Treeman Property
Forest Conservation and Conditional Use
Request for Specimen Tree Variance
MNCPPC NRI-FSD# 420230180

On behalf of the property owner and pursuant to Section 22A-21 *Variance provisions* of the Montgomery County Forest Conservation Ordinance and revisions to the State Forest Conservation Law enacted by S.B. 666, we are writing to request a variance(s) to allow impacts to, or the removal of, the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation for the above-named Landscape Contractor Conditional Use request.

Project Description:

The Subject Properties

The subject property is 2.10 acres. The site is currently developed with one single family detached house, shed and gravel parking and is going through the conditional use process for a landscape contractor. The site is bordered by residential property to the west side landscape contractor conditional use to the east side and north. Across Spencerville Road, to the south is commercial and institutional (Church).

Forest Conservation

Natural Resources Inventory/Forest Stand Delineation has been approved for the Subject Property. A Final Forest Conservation Plan is filed with this application. There is no forest on the Subject Property.

There is one freestanding specimen tree located along the north property line that is co-owned. The tree is proposed to be saved, however will be impacted for removal of existing gravel and minor grading.

The following specimen tree requires a variance:

Significant/Specimen Tree Summary 24" +									
Tree #	Species (Scientific Name)	Species (Common Name)	D.B.H (inches)	CRZ (SF)	Impact (SF)	Impact (%)	Tree Condition	Comments	Disposition
7	ACER SACCHARINUM	SILVER MAPLE	33	7698	3621	47%	GOOD	CO-OWNED, IN FENCE	SAVE/PROTECT

Exhibit 16
OZAH Case No: CU 24-09



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 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.

Justification of Variance

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

Response: The property is constrained by the Special Protection Area (SPA) covering about a third of the site, which has a strict limit on imperviousness, along with a portion of the Patuxent Management Area (PMA) in the northeast corner of the property. The property is a long, thin rectangular parcel that will require impervious surface close to property lines to allow for efficient truck circulation and daily operation of unloading woodchips with a backhoe.

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

Response: If the requested Variance were denied, the Applicant would not be able to operate its business on site as proposed, depriving it of rights commonly enjoyed by other property owners in the RE-2 zone and adjoining areas similar to the location of the Property. A large landscape contractor operates to the north and west of the property and is partially within the PMA and SPA.

- (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: Tree removals have been minimized by careful design of the layout ensuring the preservation of as many trees as possible. In addition, this property will be developed in accordance with the latest Maryland Department of the Environment criteria for stormwater management. This includes Environmental Site Design to provide for protecting the natural resources to the Maximum Extent Practicable. This includes removing excess impervious areas and providing on-site stormwater management systems. A Stormwater Management Concept is currently under review by the Montgomery County Department of Permitting Services to ensure that this criterion is enforced. Therefore, the proposed activity will not degrade the water quality of the downstream areas and will not result in *measurable degradation in water quality*.

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

Response: The Approved and Adopted Trees Technical Manual lists factors for consideration when reviewing applications for impacts that now require the approval of a Specimen Tree Variance.

The Technical Manual acknowledges that well planned clearing balances the public policies of preserving forest and funneling development into appropriate locations. The Technical Manual identifies the following as one factor to be considered:

“The extent to which the actual or intended use of the property, as developed or as proposed to be developed in accordance with the regulations of the Zoning Ordinance and/or area master plans, require clearing of trees.”

The actual and intended use of the property for a landscape contractor business is consistent with the regulations of the Zoning Ordinance and the area master plan, as detailed in the submitted Conditional Use Statement of Justification. As noted above, operating the use as proposed requires impacts to the specimen tree in question due to the placement of gravel for vehicular maneuvers.

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 zoning allows for a landscape contractor under a conditional use. As such, this is not a *special privilege* to be conferred on the applicant.

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

Response: The Applicant has taken no *actions leading to the conditions or circumstances* that are the subject of this variance request. The Applicant purchased the subject property with its current size and shape, and the specimen tree in question was already in place. Through design, the utilities are being located and ESD measure provided.

- (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 or cause measurable degradation in water quality. The specimen tree is proposed to be saved.

Conclusion:

For the above reasons, the applicant respectfully requests that the MNCPPC Staff APPROVE its request for a variance from the provisions of Section 22A of the Montgomery County Forest Conservation Ordinance, and thereby, GRANTS permission to impact the one specimen tree 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 detailed Tree Protection Plan. All information is true and accurate to the best of my knowledge and experience. All conclusions are based on professional opinion and were not influenced by any other party.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Norton', written in a cursive style.

Michael Norton