






ELP at Rock Spring, Forest Conservation Plan H-135

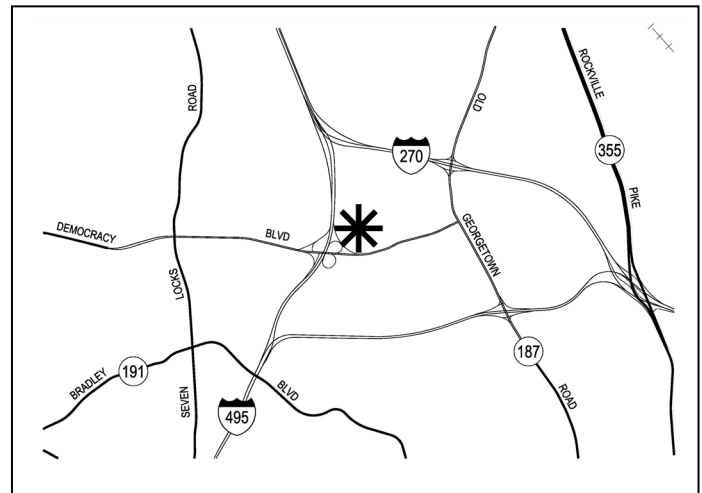
-  Steve Findley, Planner Coordinator, Area 2 Division, Steve.Findley@montgomeryplanning.org, (301) 495-4727
-  Patrick Butler, Supervisor, Area 2 Division, Patrick.Butler@montgomeryplanning.org, (301) 495-4561
-  Carrie Sanders, Chief, Area 2 Division, Carrie.Sanders@montgomeryplanning.org, (301) 495-4653

Completed: 3/16/20

Description

Request to rezone 33.64 acres from the CR-1.5, C-0.75, R-0.75, H-150 Zone to the CRF-1.5, C-0.75, R-1.5, H-150 Zone to construct a Continuing Care Retirement Community with up to 1,300 independent dwelling units, 210 assisted living/memory care units, 50 skilled nursing units, and up to 15,000 square feet of commercial space.

Location: 10400 Fernwood Road, Bethesda.
 Master Plan: Rock Spring Sector Plan.
 Applicant: ELP Bethesda at Rock Spring LLC.
 Application Accepted: December 20, 2019.
 Review Basis: Chapter 22A, Forest Conservation Law.



Summary

- Staff recommends approval of the Preliminary Forest Conservation Plan (PFCP) with conditions.
- The Applicant is requesting a variance for 35 trees, but Staff recommends approving a variance for only four trees with the PFCP due to the conceptual nature of the Floating Zone Plan.
- The Applicant must submit a new variance request for the remainder of the trees proposed for impact or removal at the time of Final Forest Conservation Plan.

SECTION 1: STAFF RECOMMENDATION

Staff recommends approval of the proposed development, including the Preliminary Forest Conservation Plan (PFCP) and associated Variance, with the following conditions:

1. The Applicant must obtain approval of a Final Forest Conservation Plan (FFCP), for the entire Property, concurrently with the first Site Plan approval.
2. The Final Forest Conservation Plan must:
 - a. be consistent with the approved PFCP;
 - b. show the planting locations of at least 36.1 total inches caliper of native shade trees, each at least three inches caliper, to mitigate the removal of variance trees number 15, 16, 17, and 18;
 - c. include measures to enhance the stream buffer function, including restoring areas where impervious surfaces are being removed, managing invasive species, and planting buffer areas with native species where not in conflict with other easements; and
 - d. include a new variance request to determine the disposition of the remaining variance trees
3. The Limits of Disturbance (LOD) on the FFCP must be consistent with the LOD on the Sediment and Erosion Control Plan.
4. Prior to the start of any clearing, grading, or demolition on the Property, the applicant must record a Category I Conservation Easement over all areas of forest planting, as specified on the approved FFCP. The Category I Conservation Easement approved by the M-NCPPC Office of the General Counsel must be recorded in the Montgomery County Land Records by deed and the Book and Page for the easement must be referenced on the record plat.
5. The Applicant must schedule the required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
6. Prior to any demolition, clearing, grading or construction on the project site, the Applicant must provide financial surety to the M-NCPPC Planning Department for the 0.41 acres of new forest planting and for the variance mitigation trees credited toward meeting the requirements of the FFCP on the Property.
7. Prior to the first Use and Occupancy Certificate, the Applicant must install the plantings for the required on-site afforestation of 0.41 acres as shown on the FFCP or as directed by the M-NCPPC Forest Conservation Inspection staff.
8. Prior to any demolition, clearing, grading or construction on the Property, the Applicant must submit a two-year Maintenance and Management Agreement (MMA) approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the FFCP.
9. The applicant must comply with all tree protection and tree save measures shown on the approved FFCP. Tree save measures not specified on the FFCP may be required by the M-NCPPC forest conservation inspector.
10. At the direction of the M-NCPPC forest conservation inspector, the applicant must install permanent conservation easement signage along the perimeter of the conservation easements. Exact locations of the signs to be determined by the M-NCPPC forest conservation inspector to best define the limits of the conservation easement.
11. No clearing, grading, or any demolition may occur prior to receiving approval of the FFCP and satisfying any off-site planting requirements.
12. The Applicant must amend the PFCP prior to certification to reflect the variance approval for only trees number 15, 16, 17 and 18.

SECTION 2: PROPERTY AND PROJECT DESCRIPTION

Vicinity

The 33.64-acre Property, identified as Lot N737 Rock Spring Park Part of Parcels 6 and 12 (“Subject Property” or “Property”), is the current location of Marriott International Headquarters. It is located at 10400 Fernwood Road and bordered by the I-270 spur to the west, Fernwood Road to the north and east, and an office park/hotel complex to the south. Two large office park complexes and a townhouse development are located on the north side of Fernwood Road, opposite the Property.

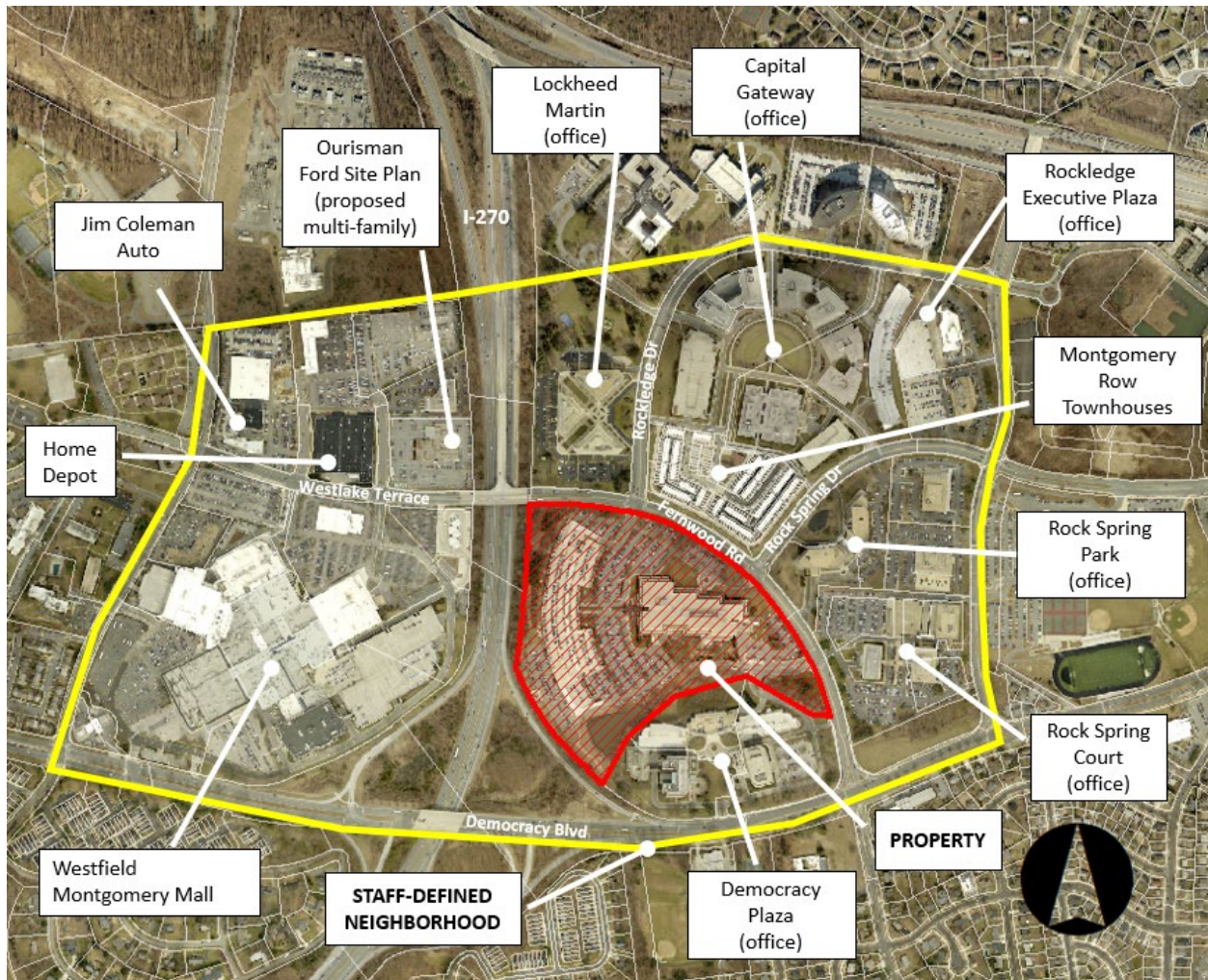


Figure 1: Vicinity Map

Property Description

The Property is improved with the 775,000-square-foot Marriott headquarters office building located towards the center of the Property, and a three level curvilinear structured parking garage located on the western side of the Property. Large surface parking lots cover much of the Property between the parking garage and the office building and along Fernwood Road. The Property contains approximately 2,718 vehicle parking spaces. A gravel road that transitions to dirt is located between the garage and the western Property line, along I-270. The Property has a number of WSSC, storm drain, and other types of existing easements.

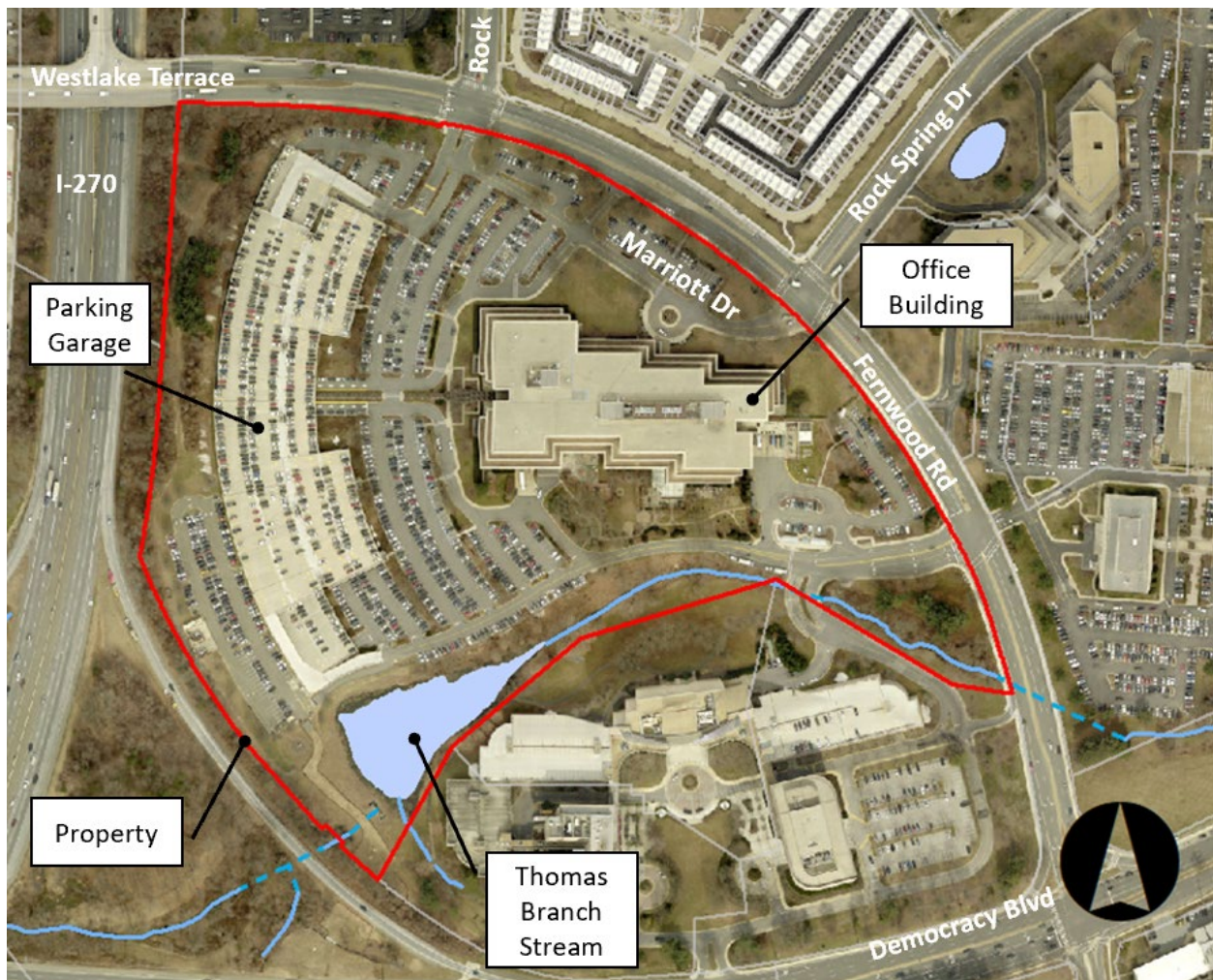


Figure 2: Aerial View of Property (Property outlined in red)

A Natural Resources Inventory/Forest Stand Delineation (No. 420200260) was approved on November 8, 2019. The Thomas Branch stream runs along the southern boundary of the Property which also contains areas of wetland and FEMA designated floodplain. There are no forested areas onsite, but the Property contains a number of specimen trees. There are areas of steep slopes, 25% and greater, located primarily on the south and west portions of the Property.

There are no known occurrences or habitats of rare, threatened, or endangered species on the property.

Proposal

The Applicant plans to demolish the existing office building and redevelop the Property with a Continuing Care Retirement Community (CCRC) as demonstrated in Figure 3. The existing parking garage will be retained and reused.

The proposed CCRC will include up to 1,300 independent dwelling units, 160-210 assisted living/memory care units, and 30-50 skilled nursing units. The facility will employ approximately 650 full-time staff. In addition to the residential units, a total of approximately 100,000 to 130,000 square feet of amenity space will be provided within the CCRC including food service, recreation areas, exercise rooms, and

medical support space. At the request of Staff, the Applicant has included 5,000- 15,000 square feet of commercial space to help activate the Fernwood Road Property frontage, with the final location to be determined at subsequent regulatory approvals.



Figure 3: Floating Zone Open Space Plan

SECTION 3: ANALYSIS AND FINDINGS

Environmental Guidelines

The existing development was built before stream valley buffers were applied to development plans. The southern entrance, access road, and other development amount to approximately 1.20 acres of existing stream valley buffer encroachment. A portion of the southern entrance road cannot be relocated out of the buffer because it also serves to provide access to Democracy Plaza, the property to the south of this Property.

The *Environmental Guidelines* state that “No buildings, structures, impervious surfaces, or activities requiring clearing or grading will be permitted in stream buffers, except for infrastructure uses, bikeways, and trails found to be necessary, unavoidable, and minimized by the Park and Planning Department environmental staff working closely with the utility or lead agency.” The Guidelines further state that “Only unavoidable road and utility crossings will be permitted in the stream buffer when it is clearly demonstrated that no feasible alternatives exist, and every effort is made to locate road alignment and/or utilities to create the least disturbance to existing vegetation, grade, wetlands, trout

spawning areas in Use III watersheds, etc.” As part of the review for this plan, Staff has worked with the applicant to relocate the portion of the southern access road west of the entrance to Democracy Plaza out of the stream buffer. An asphalt walking path for the benefit of the residents of the retirement community will be constructed on a portion of the previous road and parking area. The combined area of stream valley buffer encroachment created by the road and path is approximately 0.73 acres. This constitutes almost a half-acre reduction in the existing stream valley buffer encroachment. The *Environmental Guidelines* require that any approved stream valley encroachment must avoid sensitive areas, such as floodplains and wetlands; must minimize the area of encroachment; and must provide compensation for lost buffer function. This application reduces existing buffer encroachment and avoids sensitive areas. The Final Forest Conservation Plan must include measures to enhance the stream buffer function, including restoring areas where impervious surfaces are being removed, managing invasive species, and planting buffer areas with native species where not in conflict with other easements. With this Final Forest Conservation Plan condition, the submitted plan is in conformance with the *Environmental Guidelines*.

Preliminary Forest Conservation Plan (PFCP)

The Net Tract Area is 34.18 acres, and there is no forest on the Property. The afforestation threshold for the CR zone is 15% of the Net Tract Area, or 5.13 acres. The Applicant proposes to establish an afforestation area of 0.41 acres in the stream buffer north of the stream and south of the entrance road adjacent to Fernwood Road. Final determination of how the remaining afforestation requirement of 4.72 acres will be met will be determined at the Final Forest Conservation Plan. As submitted, and including approval of the accompanying variance request for removal of variance trees number 15, 16, 17, and 18, the PFCP plan is in compliance with Chapter 22A, Forest Conservation.

Variance Request

Section 22A-12(b) (3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater, DBH; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The Applicant submitted a variance request on November 22, 2019 to impact 35 trees that are considered high priority for retention under Section 22A-12(b) (3) of the County Forest Conservation Law (Attachment 2). Thirty-one of these trees are proposed for removal. The remaining four are proposed to be impacted but saved.

Variance Recommendation

The Forest Conservation Law requires that all zoning applications must include submission and approval of a PFCP. Variance requests are reviewed and approved as part of the PFCP review. At the zoning review stage, however, many elements of the development are conceptual, and the exact engineering and grading have not yet been designed. It is clear that many variance trees will need to be impacted, and some will need to be removed as a part of the development; however, Limits of Disturbance (LOD),

building footprints and amenity spaces may change as the plan moves through subsequent Preliminary Plan and Site Plan reviews. For this reason, exact impacts to many trees cannot be established; therefore, the disposition of many of the variance trees cannot reasonably be determined at this stage and the Applicant will be required to submit a new variance request at the time of the Final Forest Conservation and Site Plan reviews to justify any clearing truly necessary.

At this time, Staff recommends that the variance to impact and remove trees number 15, 16, 17, and 18 be granted because they are within the area where the southern access road must be relocated out of the stream buffer (Table 1).

Table 1: Variance Trees

Tree #	Botanical Name	Common Name	DBH	Condition	Impact
15	<i>Quercus phellos</i>	Willow Oak	39.6	Very good	Removal
16	<i>Quercus phellos</i>	Willow Oak	35	Good	Removal
17	<i>Quercus phellos</i>	Willow Oak	33.3	Good	Removal
18	<i>Quercus phellos</i>	Willow Oak	36.4	Fair	Removal

Staff cannot recommend approval to impact or remove the other 31 trees at this stage of the development review process, as requested by the Applicant, due to the conceptual nature of the Floating Zone Plan. The Applicant must submit a revised variance request at the time of Site Plan review/Final Forest Conservation Plan to justify impacts to, and/or removal of, the remaining variance trees. Staff's justification for this requirement is based on the following:

Variance trees number 3, 7, 37, 49, 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, and 63 lie along the Property frontage abutting Fernwood Road and Westlake Terrace. Frontage improvements may impact these trees. However, the Design Guidelines for Rock Spring recommend a road diet along this stretch, which would negate the need to move the curb or do significant disturbance near these trees. Portions of the existing sidewalk are already the recommended width, and it might be possible to employ tree save measures and use context-sensitive materials, such as one of the flexible paving products, that would enable some or all of these trees to be saved. Therefore, Staff cannot determine definitively at this time that these trees must be impacted or removed. The disposition of these trees should be reevaluated at Site Plan.

Variance trees number 4, 5, and 6 are shown as being impacted by a utility line tie-in to a connection in Fernwood Road. However, it might be possible to adjust the alignment of this utility line in later iterations of the plan, so Staff cannot determine definitively at this time that these trees must be impacted or removed. The disposition of these trees should be reevaluated at Site Plan.

Variance trees number 1, 2, 19, 20, 33, 50, 64, 65, and 66 are interior to the Property, and may be impacted by building footprints and/or circulation connections. However, these elements are conceptual at this stage of the review. Later iterations of the plan may change these development elements, and open opportunities to preserve some of these trees in open space areas interior to the

Property. Therefore, Staff cannot determine definitively at this time that these trees must be impacted or removed. The disposition of these trees should be reevaluated at Site Plan.

Tree number 21 lies in the stream valley on the south of the Property. The LOD is shown as intersecting the Critical Root Zone (CRZ) of this tree, but the proposed asphalt path alignment is not within this CRZ, and it does not appear to be in an area where existing pavement must be removed. Therefore, Staff cannot support justification for impacting the tree at this time.

Tree number 22 is along the western side of the Property. An asphalt path is shown crossing the edge of this tree's CRZ. However, it may be possible to adjust the alignment of the path to avoid the impact. Therefore, Staff cannot support justification for impacting the tree at this time.

Trees number 12 and 13 are in the stream buffer on the eastern side of the Property near Fernwood Road. They do not appear to be impacted by the proposed LOD. Therefore, no variance approval is required at this time.

Unwarranted Hardship

The proposed development is in accordance with both the intent and recommendations of the *Rock Spring Master Plan* and the proposed CRF zoning. The Property is constrained by the stream valley to the south and development of this Property requires relocating a portion of the southern access road out of the stream valley buffer. Trees number 15, 16, 17, and 18 lie within the area where the southern access road must be relocated out of the stream buffer.

Denying the variance request would deny the Applicant reasonable and significant use of the Property because removal of trees 15, 16, 17 and 18 is necessary to relocate a portion of the southern access road out of the buffer, as required by the Environmental Guidelines, while also providing safe and efficient access to the Property. Relocating the road will significantly reduce the amount of existing stream valley buffer encroachment. For these reasons, the Applicant has an unwarranted hardship to consider a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Variance Findings

To approve the Variance, the Planning Board must find that the Variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

As noted above, the proposed design responds to the multiple site constraints and is consistent with both the zoning and Sector Plan recommendations; thus, granting the variance will not confer a special privilege to the applicant.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is based on the constraints of the Property, access requirements and engineering challenges, rather than on conditions or circumstances which are the result of actions by the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the proposed design and constraints on the Subject Property and not as a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

Four variance trees will be removed. Mitigation must be provided for removal of these trees by planting at least 36.1 total inches caliper of native shade trees, with each tree at least three inches caliper, within the new development. This is based on Planning Department policy that requires replacement of variance trees at a rate of 1" replaced for every 4" removed, using replacement trees of no less than 3" caliper, to replace lost environmental functions performed by the trees removed. The mitigation trees must be shown on the Final Forest Conservation Plan. These mitigation plantings will provide sufficient tree canopy in a few years to replace the lost water quality benefits of the variance tree being removed. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

SECTION 4: CONCLUSION

As conditioned, the Preliminary Forest Conservation Plan is in compliance with Chapter 22A, and in conformance with the *Environmental Guidelines*.

ATTACHMENTS

1. Preliminary Forest Conservation Plan
2. Variance Request

LEGEND:

	SPECIMEN TREE (GREATER THAN OR EQUAL TO 30" DBH)
	SEMI-PALM TREE (BETWEEN 24-29" DBH)
	TREE LABEL - SIZE, TYPE, (T) TAG NUMBER
	TREES TO BE REMOVED
	LIMITS OF RETENTION
	PROPOSED CONTOUR
	EXISTING SOIL LINE
	EXISTING TREE LINE
	WETLAND BUFFER
	FLOODPLAIN
	AFFORESTATION AREA



50 SCALE PLAN

PRELIMINARY FOREST CONSERVATION PLAN
ELP BETHESDA AT ROCK SPRING
 ROCK SPRING PARK, PART OF PARCELS 6 & 12

OWNER/DEVELOPER/APPLICANT:
 ELP BETHESDA CENTER LAND MANAGEMENT, LLC
 10000 WOODBRIDGE DRIVE
 BETHESDA, MD 20814
 CONTACT: STEVEN HANCOCK
 PH: 301-484-9667

MIS UTILITY NOTE:
 THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR OBTAINING PERMITS OR LICENSES. THE APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES. THE APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES. THE APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND LICENSES.

PROJECT NO. 10000000

SHEET 2 OF 4

DATE: 10/20/2010

SCALE: 1" = 50'

PROJECT: PRELIMINARY FOREST CONSERVATION PLAN

SOLTESZ, INC.
 ROCKVILLE OFFICE
 2 Research Plaza, Suite 100
 Rockville, MD 20850
 P: 301-346-2750 F: 301-346-9667
 www.soltesz.com

Rockville
 Location
 Soltesz, Inc.
 10/20/2010

1-270



PLANNING DEPARTMENT (USE ONLY (E-PLANS))

		50 SCALE PLAN	
		PRELIMINARY FOREST CONSERVATION PLAN ELP BETHESDA AT ROCK SPRING ROCK SPRING PARK, PART OF PARCELS 6 & 12	
OWNER/DEVELOPER/APPLICANT ELP BETHESDA CENTER FOR LAND MANAGEMENT, LLC 10000 ROCK SPRING PARKWAY BALTIMORE, MD 21286 CONTACT: STEVE HUNTER/OWNER PHONE: 410-326-2882		MIS UTILITY NOTE THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR OBTAINING PERMITS. THE DESIGNER ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE USER OF THIS PLAN ASSUMES ALL LIABILITY FOR ANY SUCH ERRORS OR OMISSIONS.	
PROJECT DATA PROJECT NO.: 2019007 SHEET NO.: 3 OF 4 DATE: 10/15/2019		SCALE 1" = 50'	

SOLTESZ, INC.
 ROCKVILLE OFFICE
 2 Research Plaza, Suite 100
 Rockville, MD 20850
 P: 301-946-2799 F: 301-946-9667
 www.soltesz.com

PROJECT NO. 2019007
 SHEET 3 OF 4
 DATE 10/15/2019



OWNER/DEVELOPER/APPLICANT
 ELP BETHESDA CENTER FOR LAND MANAGEMENT, LLC
 10000 ROCK SPRING PARKWAY
 BALTIMORE, MD 21286
 CONTACT: STEVE HUNTER/OWNER
 PHONE: 410-326-2882

MIS UTILITY NOTE
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SCALE
 1" = 50'

PROJECT DATA
 PROJECT NO.: 2019007
 SHEET NO.: 3 OF 4
 DATE: 10/15/2019

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ATTACHMENT 2



November 22, 2019

Steve Findley, Planner Area 2
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: ELP Bethesda at Rock Spring
Preliminary Forest Conservation Plan - Variance Request
Local Map Amendment

Dear Mr. Findley,

On behalf of Erickson Living Management, LLC, Soltesz is requesting a variance for the critical root zone (CRZ) impact to thirty five (35) trees 30 inches or greater in DBH, as required under Section 22A-21 of Montgomery County's Forest Conservation Law. This variance request is additionally pursuant to recent revisions to the State Forest Conservation Law enacted by State Bill 666, where it notes that the variance pertains to "trees having a diameter measured at 4.5 feet above the ground of 30 inches diameter or 75% of the diameter of the current state champion tree of that species as designated by the department". The impact to these trees results from a proposed continuing care retirement community (CCRC) project located in Bethesda. These trees are within the proposed LOD and will be removed or impacted due to conflicts with grading, infrastructure, and building envelope.

Project Information

The site is located east of Dwight D. Eisenhower Highway (I-270), north of Democracy Boulevard, and bounded by Fernwood Road. The net tract area is approximately 33.64 acres, including offsite disturbance. The current zone is CR-1.5, C-0.75, R-0.75, H-150, and the proposed zoning classification is CRF-1.5, C-0.75, R-1.5, H-150.

The Preliminary Plan proposes 1,300 independent living units, 160-210 assisted living and memory care units, and 30-50 skilled nursing care units. The proposed development will also include improvements to Fernwood Road.

Critical Root Impacts

A NRI-FSD (#420200260) has been approved by MNCPPC. The trees below that will be removed or impacted as a result of the plan of development are shown on the NRI/FSD and are numbered accordingly for reference purposes. Four (4) specimen trees will be impacted but saved, while thirty one (31) specimen trees will be removed.

ELP BETHESDA SPECIMEN (≥ 30" DBH) TREE LIST TO BE IMPACTED BUT SAVED (4 TOTAL TREES)					
Tree #	BOTANICAL NAME	COMMON NAME	DBH	CONDITION	IMPACTS
12	<i>Acer rubrum</i>	Red Maple	30.7	Poor	3.8%
13	<i>Acer rubrum</i>	Red Maple	38.4	Poor	16.0%
21	<i>Platanus americana</i>	American Sycamore	33, 26, 34	Fair	9.2%
22	<i>Prunus serotina</i>	Black Cherry	32.5	Fair	4.4%

ELP BETHESDA SPECIMEN (≥ 30" DBH) TREE LIST TO BE REMOVED (31 TOTAL TREES)					
Tree #	BOTANICAL NAME	COMMON NAME	DBH	CONDITION	IMPACTS
1	<i>Quercus phellos</i>	Willow Oak	37.6	Very Good	100%
2	<i>Quercus phellos</i>	Willow Oak	31	Fair	100%
3	<i>Quercus phellos</i>	Willow Oak	33.1	Good	100%
4	<i>Quercus phellos</i>	Willow Oak	41.8	Good	100%
5	<i>Quercus phellos</i>	Willow Oak	35.6	Fair	100%
6	<i>Quercus phellos</i>	Willow Oak	34.2	Fair	100%
7	<i>Quercus phellos</i>	Willow Oak	38.1	Fair	100%
15	<i>Quercus phellos</i>	Willow Oak	39.6	Very Good	100%
16	<i>Quercus phellos</i>	Willow Oak	35	Good	100%
17	<i>Quercus phellos</i>	Willow Oak	33.3	Good	100%
18	<i>Quercus phellos</i>	Willow Oak	36.4	Fair	100%
19	<i>Quercus phellos</i>	Willow Oak	36.8	Good	100%
20	<i>Quercus phellos</i>	Willow Oak	35.6	Good	100%
33	<i>Quercus rubra</i>	Northern Red Oak	32.8	Fair	100%
37	<i>Quercus rubra</i>	Northern Red Oak	31.8	Poor	100%
49	<i>Quercus phellos</i>	Willow Oak	38.8	Very Good	100%
50	<i>Quercus phellos</i>	Willow Oak	33.9	Good	100%
51	<i>Quercus phellos</i>	Willow Oak	35.3	Good	100%
52	<i>Quercus phellos</i>	Willow Oak	44.5	Good	100%
53	<i>Quercus phellos</i>	Willow Oak	35.1	Good	100%
54	<i>Quercus phellos</i>	Willow Oak	40.8	Fair	100%
55	<i>Quercus phellos</i>	Willow Oak	40.5	Good	100%
56	<i>Quercus phellos</i>	Willow Oak	30.5	Fair	100%
57	<i>Quercus phellos</i>	Willow Oak	44	Fair	100%
58	<i>Quercus phellos</i>	Willow Oak	43.5	Fair	100%
61	<i>Quercus phellos</i>	Willow Oak	37.3	Good	100%
62	<i>Quercus phellos</i>	Willow Oak	39.8	Good	100%
63	<i>Quercus phellos</i>	Willow Oak	42.3	Fair	100%
64	<i>Quercus phellos</i>	Willow Oak	34.1	Fair	100%
65	<i>Quercus phellos</i>	Willow Oak	33.4	Fair	100%
66	<i>Quercus phellos</i>	Willow Oak	31.2	Fair	100%

Mitigation

All thirty one (31) of the trees listed above to be removed are outside of forest stand areas and equate to a conglomerated DBH of 1,137.7. This yields a requirement of ninety five (95) 3" caliper trees for mitigation at a rate of 1" caliper replacement for every 4" DBH removed. All of these replacement trees are provided onsite as indicated on the Forest Conservation Plan, throughout the linear park and along Fernwood Road as street trees. The following table lists the proposed mitigation trees for the site:

TREE VARIANCE PLANTING SCHEDULE					
Qty #	BOTANICAL NAME	COMMON NAME	CAL	B&B / CONT.	REMARKS
19	<i>Acer rubrum</i>	Red Maple	3-3½" cal.	B&B	Full, Limb to 7' from ground
19	<i>Quercus falcata</i>	Southern Red Oak	3-3½" cal.	B&B	Full, Limb to 7' from ground
19	<i>Quercus phellos</i>	Willow Oak	3-3½" cal.	B&B	Full, Limb to 7' from ground
19	<i>Quercus rubra</i>	Northern Red Oak	3-3½" cal.	B&B	Full, Limb to 7' from ground
19	<i>Prunus serotina</i>	Black Cherry	3-3½" cal.	B&B	Full, Limb to 7' from ground
95	Total 3" Cal. Trees Planted				
284	Total Cal. Replaced				

Additional Application Requirements

Per Montgomery County's Forest Conservation Law Section 22A-21(b) of the *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.

Pursuant to "(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship":

The recommendations for the Project site as stipulated in the applicable Master Plan (Rock Spring Sector Plan) and as supplanted by the Rock Spring and White Flint 2 Design Guidelines provide guidance that in turn restricts development on the site and necessitates the removal and impact of thirty five (35) specimen trees. The road improvements intended for Fernwood Road are directly related to the removal of a third of the specimen trees proposed to be removed from the site. The addition of a wider sidewalk under this application (and future construction of a bike lane) will cause insurmountable impacts to the critical root zone of eleven (11) trees. The remaining twenty (20) trees to be removed are part of existing general parking lot and site landscaping areas, on which, according to the new Design Guidelines, new development should be supported (Urban Design Guidelines for Rock Spring and White Flint 2 Sector Plans, p. 44).

As these development guidelines are recommended by the County, **it would cause an unwarranted hardship** to the developer to both maintain the 35 specimen trees without impact and meet the requests of the applicable Master Plan and Design Guidelines.

Pursuant to *“(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas”*:

Enforcement of a prohibition of impacting the specimen trees would **deprive the applicant of the rights commonly enjoyed by others** who are in similar areas that have many of the same features as the subject property. The recommendations of the Master Plan and Design guidelines apply to the Rock Spring Central area, which is characterized by office buildings containing similar form and planting patterns.

Pursuant to *“(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 applicant recognizes that the Cabin John Creek Watershed is in poor health and that in concept, the removal of 31 specimen trees may arouse concern for the potential further degradation of its waters, specifically of Thomas Branch. However, only two (2) of the trees to be removed are within the stream valley buffer, on the northern side of the shared access entrance drive. In addition, stormwater regulations have revolutionized since the 1980's when the trees were planted. The applicant is confident that the stormwater facilities installed in conjunction with the new development will not just protect the current water quality, but enhance it, and that **granting this variance will not violate state water quality standards.**

Pursuant to *“(4) provide any other information appropriate to support the request”*:

While the proposed development necessitates the impact to thirty five specimen trees, it will mitigate a portion of those trees on-site.

Minimum criteria for Variance

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;*
- (2) *is based on conditions or circumstances which are the result of actions by the applicant;*
- (3) *arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or*
- (4) *will violate State water quality standards or cause measurable degradation in water quality*

Pursuant to *“(1) will confer on the applicant a special privilege that would be denied to other applicants”*:

The use of this site for a continuing care retirement community (CCRC) is a permitted and approved use in the underlying CR zone for this project site. The Design Guidelines recommend acceptance of new development in the Rock Spring Central area, including infill buildings, adaptive reuse, and tear downs. In addition, the neighboring Montgomery Row property was approved to remove specimen trees in order to construct new development in accordance with the Rock Spring Sector Plan. As such, development of the site and the subsequent tree impact is **not a special privilege** to be conferred upon the applicant.

Pursuant to *"(2) is based on conditions or circumstances which are the result of actions by the applicant; and (3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property"*

The applicant has taken no **actions leading to the conditions or circumstances** that are the subject of this variance request. Furthermore, the surrounding land uses do not have any **inherent characteristics that have created** this particular need for a variance.

Pursuant to *"(4) will violate State water quality standards or cause measurable degradation in water quality"*

Per the previous response, the applicant restates its confidence that granting this variance request **will not violate State water quality standards or cause measurable degradation in State water quality standards.**

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 me.

Sincerely,

SOLTESZ



Keely D. Lauretti
Landscape Architect