

May 23, 2025

**Exhibit 14
OZAH Case No: H-159**

M-NCPPC

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

**RE: Preliminary Tree Variance Request
#F20250680
Notley Road- 13704 New Hampshire Avenue, 13707, 13711, 13715, 13719, 13727,
and 13733 Notley Road, Silver Spring, Montgomery County, MD 20904
Preliminary Conservation Plan
VIKA # VM50728A**

Dear Reviewer:

On behalf of Notley Assemblage LLC, (the “Applicant”), we are submitting this Tree Variance Request for the above-referenced property (the “Property”) pursuant to the provisions of Section 22A-21 of the Montgomery County Code. The Property is recorded in the Land Records of Montgomery County as Lots 1-5, Price’s Subdivision on Plat No. 1767 and Parcels 1 and 2, Bealls Manor and is comprised of 390,812 square feet or 8.97 acres of land classified in the R-200 Zone. The Applicant is proposing to rezone the Property to CRNF-1.00, C-0.0, R-1.0, H-60, and redevelop the Property with 133 townhomes.

The Property contains no existing forest. A Simplified Natural Resources Inventory (No. 420251460) is currently under review by M-NCPPC. Forty-two (42) specimen trees (30” DBH and larger), twenty-eight (28) on-site and fourteen (14) off-site have been identified and survey-located on and adjacent to the subject property and are shown on the SNRI.

A Preliminary Forest Conservation Plan has been prepared to accompany the proposed Local Map Amendment. The plan proposes to remove all twenty-two (22) of the existing specimen trees on-site and five (5) existing specimen trees off-site. Additionally, the plan proposes to impact four (4) off-site specimen trees.

Table 1 below lists the thirty-one (31) specimen trees identified on the Preliminary Forest Conservation Plan for which the Applicant seeks a variance to remove or impact.

Table 1: Specimen Trees Variance List

TREE NO.	BOTANICAL NAME	COMMON NAME	D.B.H. (in.)*	CONDITION	RECOMMENDATION
41	<i>Acer rubrum</i>	Red Maple	43	Poor	REMOVE: 100% CRZ IMPACT
43	<i>Pinus strobus</i>	White Pine	30	Good	REMOVE: 67% CRZ IMPACT
48	<i>Pinus strobus</i>	White Pine	31.5	Fair	REMOVE: 40% CRZ IMPACT
49	<i>Liriodendron tulipifera</i>	Tuliptree	30	Fair	REMOVE: 91% CRZ IMPACT
50	<i>Quercus velutina</i>	Black Oak	34.5	Good	REMOVE: 87% CRZ IMPACT
51	<i>Juglans nigra</i>	Black Walnut	30	Good	REMOVE: 100% CRZ IMPACT
53	<i>Liriodendron tulipifera</i>	Tuliptree	41	Good	REMOVE: 100% CRZ IMPACT
66	<i>Juglans nigra</i>	Black Walnut	44	Good	REMOVE: 100% CRZ IMPACT
68	<i>Juglans nigra</i>	Black Walnut	30	Poor	REMOVE: 53% CRZ IMPACT
69	<i>Juglans nigra</i>	Black Walnut	30	Poor	REMOVE: 53% CRZ IMPACT
71	<i>Juglans nigra</i>	Black Walnut	34	Poor	REMOVE: 52% CRZ IMPACT
74	<i>Prunus serotina</i>	Black Cherry	30	Fair	REMOVE: 100% CRZ IMPACT
75	<i>Juglans cinerea</i>	Butternut	40	Fair	REMOVE: 77% CRZ IMPACT
76	<i>Ulmus rubra</i>	Slippery Elm	50	Fair	REMOVE: 43% CRZ IMPACT
77	<i>Pinus strobus</i>	White Pine	33	Good	REMOVE: 50% CRZ IMPACT
79	<i>Pinus strobus</i>	White Pine	37	Fair	REMOVE: 36% CRZ IMPACT
83	<i>Juglans nigra</i>	Black Walnut	30	Poor	REMOVE: 100% CRZ IMPACT
84	<i>Acer platanoides</i>	Norway Maple	31	Fair	REMOVE: 100% CRZ IMPACT
85	<i>Juglans nigra</i>	Black Walnut	39	Poor	REMOVE: 100% CRZ IMPACT
**88	<i>Prunus serotina</i>	Black Cherry	40	Poor	REMOVE: 52% CRZ IMPACT
**89	<i>Morus alba</i>	White Mulberry	40	Poor	REMOVE: 100% CRZ IMPACT
237	<i>Robinia pseudoacacia</i>	Black Locust	34	Poor	REMOVE: 100% CRZ IMPACT
OST-1	<i>Liriodendron tulipifera</i>	Tuliptree	43	Fair	REMOVE: 33% CRZ IMPACT
OST-2	<i>Liriodendron tulipifera</i>	Tuliptree	39	Poor	REMOVE: 51% CRZ IMPACT

OST-3	Liriodendron tulipifera	Tuliptree	38	Poor	SAVE: 29% CRZ IMPACT
OST-5	Liriodendron tulipifera	Tuliptree	32	Good	SAVE: 15% CRZ IMPACT
OST-6	Liriodendron tulipifera	Tuliptree	37	Good	REMOVE: 36% CRZ IMPACT
OST-7	Liriodendron tulipifera	Tuliptree	36	Good	REMOVE: 30% CRZ IMPACT
OST-9	Liriodendron tulipifera	Tuliptree	34	Good	REMOVE: 48% CRZ IMPACT
OST-10	Liriodendron tulipifera	Tuliptree	32	Good	SAVE: 29% CRZ IMPACT
OST-11	Liriodendron tulipifera	Tuliptree	35	Good	SAVE: 8% CRZ IMPACT

Tree assessment was performed by VIKA Maryland during a site visit in January of 2025.

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 submitted SNRI.

Tree #41, a 43" dbh Red Maple (Acer rubrum) in poor condition due to excessive crown dieback and deterioration is located approximately 58' from the southern property line and 118' from the western property line. The critical root zone (CRZ) for this tree #41 falls entirely within the limits of disturbance (LOD) and will be impacted due to the necessary site grading and utility design for the proposed density and street layout. This tree is proposed to be removed due to the one hundred (100) percent impact to the CRZ and its existing poor condition.

Tree #43, a 30" dbh White Pine (Pinus strobus) in good condition is located approximately 12' from the northernmost property line and 188' from the western property line. The CRZ for tree #43 will be impacted due to the necessary site grading and utility design for the proposed density and street layout. These impacts affect sixty-seven (67) percent of the CRZ. This tree is proposed to be removed due to the greater than thirty (30) percent impact to the CRZ.

Tree #48, a 31.5" dbh White Pine (Pinus strobus) in fair condition is located approximately 12' from the northernmost property line and 358' from the western property line. The CRZ for tree #48 will be impacted by the necessary site grading and utility design for the proposed density and street layout. These impacts affect forty (40) percent of the CRZ. This tree is proposed to be removed due to the greater than thirty (30) percent impact to the CRZ.

Tree #49, a 30" dbh Tuliptree (Liriodendron tulipifera) in fair condition is located approximately 99' from the northernmost property line and 335' from the western property line. The CRZ for tree #49 will be impacted by the necessary site grading and utility design for the proposed density and street layout. These impacts affect ninety-one (91) percent of the CRZ. Due to the greater than thirty (30) percent impact to the CRZ, this tree is proposed

to be removed.

Tree #50, a 34.5" dbh Black Oak (*Quercus velutina*) in good condition is located approximately 148' from the northernmost property line and 343' from the western property line. The CRZ for tree #50 will be impacted by the necessary site grading and utility design for the proposed density and street layout. These impacts affect eighty-seven (87) percent of the CRZ. This tree is proposed to be removed due to the greater than thirty (30) percent impact to the CRZ.

Tree #53, a 41" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located approximately 216' from the southern property line and 90' from the western property line. The CRZ for tree #53 falls entirely within the LOD and will be impacted by the necessary grading and utility design for the proposed density and street layout. These impacts affect one hundred (100) percent of the CRZ and, therefore, the tree is proposed to be removed.

Tree #66, a 44" dbh Black Walnut (*Juglans nigra*) in good condition is located approximately 81' from the northern property line and 365' from eastern property line. The CRZ for tree #66 falls entirely within the LOD and will be impacted by the necessary grading and utility design for the proposed density and street layout resulting in one hundred (100) percent impact. Due to the impact, this tree is proposed to be removed.

Tree #68, a 30" dbh Black Walnut (*Juglans nigra*) in poor condition due to its crown deterioration and is engulfed in English Ivy and Poison Ivy is located adjacent to the northern property line approximately 329' from the eastern property line. The CRZ for tree #68 will be impacted by the necessary site grading and utility design for the proposed density and street layout. These impacts affect fifty-three (53) percent of the CRZ. This tree is proposed to be removed due to the greater than thirty (30) percent impact to the CRZ.

Tree #69, a 30" dbh Black Walnut (*Juglans nigra*) in poor condition due to the excessive trunk rot is located adjacent to the northern property line approximately 310' from the eastern property line. Due to the necessary site grading and utility design of the proposed density and street layout, the CRZ of tree #69 will have fifty-three (53) percent impact. Due to the existing poor condition and the CRZ impact, this tree is proposed to be removed.

Tree #71, a 34" dbh Black Walnut (*Juglans nigra*) in poor condition due to trunk decay is located adjacent to the northern property line approximately 253' from the eastern property line. The CRZ impact of tree #71 will be impacted by the necessary site grading and utility design for the proposed density and street layout resulting in fifty-two (52) percent impact. Due to the existing poor condition, signs of deterioration, and CRZ impact, this tree is proposed to be removed.

Tree #74, a 30" dbh Black Cherry (*Prunus serotina*) in fair condition is located approximately 95' from the southern property line and 403' from the eastern property line. The CRZ of tree #74 falls entirely within the LOD and will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect one hundred (100) percent of the CRZ. This tree is proposed to be removed.

Tree #75, a 40" dbh Butternut (*Juglans cinerea*) in fair condition due to its non-existent crown and excessive trunk decay is located approximately 26' from the southern property line and 473' from the eastern property line. The CRZ of tree #75 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect seventy-seven (77) percent of the CRZ. Because of these impacts and existing poor condition, this tree is proposed to be removed.

Tree #76, a 50" dbh Slippery Elm (*Ulmus rubra*) in fair condition is located adjacent to the southern property line approximately 400' from the eastern property line. The CRZ of tree #76 will be impacted by the necessary site grading and utility design for the proposed density and street layout. These impacts affect forty-three (43) percent of the CRZ. This tree is proposed to be removed.

Tree #77, a 33" dbh White Pine (*Pinus strobus*) in good condition is located adjacent to the southern property line approximately 180' from the eastern property line. The CRZ of tree #77 will be impacted by the necessary site grading and utility design of the proposed density and street layout. The resulting impact to the CRZ is fifty (50) percent and due to this impact, this tree is proposed to be removed.

Tree #79, a 37" dbh White Pine (*Pinus strobus*) in fair condition is located in the southwestern corner of the property. The CRZ for tree #79 will be impacted by the necessary site grading and utility design for the proposed density and street layout. The CRZ impact is thirty-six (36) percent and this tree is proposed to be removed.

Tree #83, a 30" dbh Black Walnut (*Juglans nigra*) in poor condition due to its crown dieback is located approximately 129' from the northern property line and 234' from the eastern property line. The CRZ of tree #83 falls entirely within the LOD and will be completely impacted by the necessary site grading and utility design for the proposed density and street layout. Due to the complete impact and existing poor condition, this tree is proposed to be removed.

Tree #84, a 31" dbh Norway Maple (*Acer platanoides*) in fair condition is located approximately 157' from the northern property line and 249' from the eastern property line. Tree #84 along with its CRZ falls entirely within the LOD and will completely impacted by the necessary site grading and utility design for the proposed density and street layout. Due to its status as a non-native invasive species and its one hundred (100) percent CRZ impact, this tree is proposed to be removed.

Tree #85, a 39" dbh Black Walnut (*Juglans nigra*) in poor condition due to its non-existing crown and is engulfed in English Ivy and Poison Ivy is located approximately 132' from the northern property line and 157' from the eastern property line. The CRZ of tree #85 falls entirely within the LOD and will be impacted by the necessary site grading and utility design of the proposed density and street layout. The impacts affect one hundred (100) percent of the CRZ. Due to its poor condition and CRZ impact, this tree is proposed to be removed.

Tree #**88, a 40" dbh Black Cherry (*Prunus serotina*) in poor condition due to trunk rot and crown dieback is located adjacent to the northernmost property line approximately 303' from the western property line. The CRZ of tree #**88 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect fifty-two (52) percent of the CRZ. Due to this impact and its existing poor condition, this tree is proposed to be removed.

Tree #**89, a 40" dbh White Mulberry (*Morus alba*) in poor condition due to the tree being engulfed in invasive vines is located 115' from the northern property line and 500' from eastern property line. The CRZ of tree #**89 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect one-hundred (100) percent of the CRZ. Due to this impact, its poor condition, and status as a non-native invasive species, this tree is proposed to be removed.

Tree #237, a 34" dbh Black Locust (*Robinia pseudoacacia*) in poor condition due to its excessive decay is located 315' from the northern property line and 265' from the western property line. The CRZ of tree #237 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect one-hundred (100) percent of the CRZ. Due to this impact and its poor condition, this tree is proposed to be removed.

Tree #OST-1, a 43" dbh Tuliptree (*Liriodendron tulipifera*) in fair condition is located off the western property line in the adjacent Colesville Manor Neighborhood Park. The CRZ of tree OST-1 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect thirty-three (33) percent of the CRZ. Due to this impact, this tree is proposed to be removed.

Tree #OST-2, a 43" dbh Tuliptree (*Liriodendron tulipifera*) in poor condition is located off the western property line in the adjacent Colesville Manor Neighborhood Park. The CRZ of tree OST-2 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect fifty-one (51) percent of the CRZ. This tree is proposed to be removed.

Tree #OST-3, a 42" dbh Tuliptree (*Liriodendron tulipifera*) in poor condition is located off the western property line in the adjacent Colesville Manor Neighborhood Park. The CRZ of tree OST-3 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect twenty-nine (29) percent of the CRZ. This tree is proposed to be saved.

Tree #OST-5, a 32" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the western property line in the adjacent Lot 11. The CRZ of tree #OST-5 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect fifteen (15) percent of the CRZ. This tree is proposed to be saved.

Tree #OST-6, a 37" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the western property line in the adjacent Lot 11. The CRZ of tree #OST-6 will be impacted by

the necessary site grading and utility design of the proposed density and street layout. These impacts affect thirty-six (36) percent of the CRZ. Due to this impact, the tree is proposed to be removed.

Tree #OST-7, a 36" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the western property line in the adjacent Lot 11. The CRZ of tree #OST-7 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect thirty (30) percent of the CRZ. Due to this impact, this tree is proposed to be removed.

Tree #OST-9, a 34" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the northernmost property line in the adjacent neighboring Lot 5. The CRZ of tree #OST-9 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect forty-eight (48) percent of the CRZ. Due to this impact, the tree is proposed to be removed.

Tree #OST-10, a 32" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the northernmost property line in the adjacent neighboring Lot 6. The CRZ of tree #OST-10 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect twenty-nine (29) percent of the CRZ. This tree is proposed to be saved.

Tree #OST-11, a 35" dbh Tuliptree (*Liriodendron tulipifera*) in good condition is located off the western property line in the adjacent Colesville Manor Neighborhood Park. The CRZ of tree #OST-11 will be impacted by the necessary site grading and utility design of the proposed density and street layout. These impacts affect eight (8) percent of the CRZ. This tree is proposed to be saved.

Justification of Variance

A Chapter 22A variance is required in order to secure approval of the removal of these identified trees that are considered priority for retention and protection under the Natural Resources Article of the Maryland Annotated Code and the County Code. This variance request is submitted pursuant to Section 22A-21 of Chapter 22A of the County Code and Section 5-1607(c) and Section 5-1611 of Title 5 of the Natural Resources Article of the Maryland Annotated Code (the "Natural Resources Article").

Under the County Code, Section 22A-21(b) lists the criteria for the granting of the variance requested herein. The following narrative explains how the requested variance is justified under the set of circumstances described above.

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

Unwarranted hardship is demonstrated, for the purpose of obtaining a Chapter 22A variance when an applicant presents evidence that denial of the variance would

deprive the Applicant of the reasonable and substantial use of the property. Section 22A-21 of the County Code authorizes the grant of a variance under that chapter when an applicant “shows that enforcement would result in unwarranted hardship.”

Natural Resources Article Section 5-1611 authorizes the Planning Board to grant a forest conservation variance “where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to the applicant.” Those special features or other circumstances justifying granting of a variance are described below.

Strict adherence to the Forest Conservation Law would create an unwarranted hardship for the applicant. Preservation of all twenty-seven (27) specimen trees would preclude the reasonable development of the site into the proposed townhouse community, consistent with the land use recommendations of the White Oak Master Plan. The site’s existing infrastructure, necessary road and utility layouts, grading constraints, and stormwater management requirements make full preservation impractical. Without the requested variance, the property could not be developed in a manner that meets County zoning, subdivision regulations, or Master Plan objectives for providing increased housing opportunities in this important growth area.

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

The subject property lies within the White Oak Master Plan area, which contemplates the transition of legacy low-density residential parcels into more compact, diverse housing forms such as townhouse and multifamily communities. Properties of comparable size, condition, and context within the Master Plan boundary have been redeveloped in a manner that necessitates limited removal of existing trees, subject to appropriate mitigation measures. Without the requested variance, the Applicant would be effectively precluded from redeveloping the property in accordance with the County’s land use vision, thereby suffering a disproportionate hardship compared to similarly situated landowners. Such an outcome would constitute an inequitable and inconsistent application of the Forest Conservation Law, contrary to the principles of fair and uniform land use regulation.

- (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 has been designed in accordance with the Maryland Department of the Environment (MDE) Stormwater Management Act of 2007 and Montgomery County’s Stormwater Management Law (Chapter 19 of the County Code). The Stormwater Management Concept proposes facilities consisting of thirty-seven (37) planter style

micro-bioretention facilities, and ten (10) at-grade micro-bioretention facilities throughout the property to treat and manage stormwater runoff at its source. These ESD measures are specifically engineered to filter pollutants, promote infiltration, control runoff volumes, and mimic pre-development hydrologic conditions. By implementing these ESD measures, the Project will ensure that runoff from new impervious surfaces is effectively treated and managed, thereby protecting downstream water quality and maintaining compliance with all applicable State and local water quality standards. The use of micro-bioretention represents a best practice approach to stormwater management and will improve the water quality, since there is no stormwater management treatment currently on the site.

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

The information set forth above satisfies the criteria to grant the requested variance to allow the proposed development to impact thirty-three (33) protected trees as part of this proposed subdivision.

Furthermore, the Applicant's request for a variance complies with the "minimum criteria" of Section 22A-21(d) for the following reasons:

1. The Applicant will receive no special privileges or benefits by the granting of the requested variance that would not be available to any other applicant;
2. The configuration of the subject property, regulatory requirements, and the location of the protected trees are not the result of actions by the Applicant, since any similar development of Zoned properties, utilizing infill development would encounter the same constraints;
3. The requested variance is not related in any way to a condition on an adjacent, neighboring property; and
4. The removal of twenty-seven (27) trees will not violate State water quality standards or cause measurable degradation in water quality as shown by the information provided on the Stormwater Management Concept Plan.

Additionally, to offset the removal of twenty-seven (27) trees, the development is proposing to plant many shade and ornamental trees as shown on the Landscape/planting plan. The proposed mitigation will restore and enhance tree canopy coverage in a manner consistent with the environmental goals of the County and the White Oak Master Plan.

For all the above reasons, the Applicant respectfully requests approval of this request for a variance from provisions of Section 22A-21 of the Montgomery County Code.

Sincerely,

VIKA Maryland, LLC

Chanda Beaufort, RLA
Associate