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~~May 23, 2025~~
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Exhibit 40
OZAH Case No: H-159

M-NCPPC
Montgomery County Planning Department
2425 Reedie 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 comprising 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 130 townhomes. The reasons for unavoidable specimen tree impacts and removals are summarized below.

PROPOSED REDEVELOPMENT

The proposed rezoning of the Property will accommodate redevelopment of the Property with a residential community providing much-needed housing along a major corridor, to help address the County's housing needs. This redevelopment will directly address several Key Recommendations of Thrive Montgomery 2050:

- Focus growth in downtowns, activity centers, and along major corridors – by focusing redevelopment along New Hampshire Avenue
- Prioritize racial equity and social justice – by providing MPDUs in an area with few affordable housing opportunities
- Build more housing to better match housing supply with demand – by providing smaller missing-middle housing in the face of great demand

Importantly, these goals can be met while addressing long-term environmental health. The redevelopment of this property, for example, will improve water quality conditions on-site through the integration of Environment Site Design ("ESD") where no stormwater facilities currently exist. The proposed redevelopment of this site includes measures to improve watershed quality through the provision of a comprehensively designed and integrated stormwater management system distributed and decentralized throughout the proposed community minimizing the accumulation of runoff by treating precipitation as close as possible to the point where it falls. The goal of ESD is to provide stormwater quantity and quality controls that are nearly equivalent to woods in good condition. As shown on the Floating Zone Plan, to meet this goal, every space available for stormwater management has been utilized.

The streetscapes and open spaces are designed for pedestrian comfort and livability. Many of the homes are rear-loaded so the garage doors are located away from the streetscape, and curb cuts for driveways are minimized. The sidewalks throughout the community will be shaded by new trees with a double row of trees on each side wherever possible. Further, block lengths are small and connected by this sidewalk system to encourage walking and enjoyment of the outdoors.

Numerous options for the proposed development were considered and alternatives were discussed with staff from the various agencies. Regardless of internal road and block layout, several issues drive the design:

- Given that the proposed redevelopment meets the requirements and standards for a rezoning, there are many solutions to implement a design. The infrastructure and regrading for any of these solutions, however, will impact most trees on site. The specimen trees are primarily located in three typical areas that any redevelopment would impact:
    - At the primary entrance that must be aligned with an opposing street and along the frontage where required ped/bike infrastructure, easements, and utility work will occur under any redevelopment scenario. (66, 74, 76 at entrance and 77 & 79 along proposed right-of-way)
    - Internal to the site where any grading, building location, or infrastructure necessitates removal. (49, 50, 51, 53, 75, 83, 84, 85, 89, & 237)
    - Near the perimeter impacted by grading necessary to drain the site properly and not increase run-off to abutting properties. And, while walls might allow protection of these, except for the white pine, they are all in poor shape and pose a threat to adjacent and proposed property and buildings even if disturbance was less than the typically allowed 30%. (43, 68, 69, 71, & 88)
- Building footprints have been broken up to create open space between them and, while creating a more harmonious design from a massing perspective, this layout results in spreading development out. In any iteration pursued, the blocks, streets, and sidewalks necessary to provide pedestrian circulation and minimal emergency access requires substantial modeling of the site.
- There is no storm drain system in Notley Road and as much run-off as possible should be directed toward New Hampshire Avenue. We understand there are flooding and

run-off concerns on properties to the west and south and this development can reduce run-off in that direction only be significant regrading. The site is currently split roughly evenly draining to the west and east and regrading this ridge and cutting up to 6' in some places is necessary for pipe and stormwater facility depth to meet engineering standards. This regrading to meet necessary ESD requirements is the cause of significant specimen tree removal.

- Relocation of the storm drain system was considered by pushing units further north on the site, which might have allowed the storm drain system and open space to be placed between the homes and Notley Road. This alternative, however, would not allow any additional tree protection because of the root damage created by the pipe network – there are several large water and sewer lines in Notley Road and certain setbacks would still be required for these new trenches.

EXISTING CONDITIONS

There are no streams, wetlands, or areas of steep slopes that need specific environmental protection. Thus, the strategy for the development is to focus on protecting off-site trees and providing open space where it can be most beneficial in the future. The existing specimen trees are scattered throughout the site in a manner typical of a residential setting.

The Property contains no existing forest. A Simplified Natural Resources Inventory (No. 420251460) was approved on May 22, 2025. Thirty-five (35) specimen trees (30" DBH and larger), twenty-two (22) on-site and thirteen (13) 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 impact all twenty-two (22) on-site specimen trees resulting in the removal of twenty-one (21) specimen trees. Additionally, the plan proposes to impact eight (8) off-site specimen trees. As noted in the table below 15 of the trees proposed for removal are in fair to poor health and, although not a specific criterion for evaluation, they are not species that provide the best ecological services – two of them are actually invasive species. As noted below, a long-term strategy for greater environmental benefit can be implemented by replacing these 21 trees with 63 new shade trees with greater species diversity enhancing on-site ecological services.

VARIANCE DESCRIPTION

Table 1 below lists the thirty (30) 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	Acer rubrum	Red Maple	43	Poor	REMOVE: 100% CRZ IMPACT
43	Pinus strobus	White Pine	30	Good	REMOVE: 56% CRZ IMPACT
48	Pinus strobus	White Pine	31.5	Fair	SAVE: 18% CRZ IMPACT
49	Liriodendron tulipifera	Tuliptree	30	Fair	REMOVE: 91% CRZ IMPACT
50	Quercus velutina	Black Oak	34.5	Good	REMOVE: 87% CRZ IMPACT
51	Juglans nigra	Black Walnut	30	Good	REMOVE: 100% CRZ IMPACT
53	Liriodendron tulipifera	Tuliptree	41	Good	REMOVE: 100% CRZ IMPACT
66	Juglans nigra	Black Walnut	44	Good	REMOVE: 100% CRZ IMPACT
68	Juglans nigra	Black Walnut	30	Poor	REMOVE: 53% CRZ IMPACT
69	Juglans nigra	Black Walnut	30	Poor	REMOVE: 53% CRZ IMPACT
71	Juglans nigra	Black Walnut	34	Poor	REMOVE: 52% CRZ IMPACT
74	Prunus serotina	Black Cherry	30	Fair	REMOVE: 100% CRZ IMPACT
75	Juglans cinerea	Butternut	40	Fair	REMOVE: 98% CRZ IMPACT
76	Ulmus rubra	Slippery Elm	50	Fair	REMOVE: 68% CRZ IMPACT
77	Pinus strobus	White Pine	33	Good	REMOVE: 84% CRZ IMPACT
79	Pinus strobus	White Pine	37	Fair	REMOVE: 70% CRZ IMPACT
83	Juglans nigra	Black Walnut	30	Poor	REMOVE: 100% CRZ IMPACT
84	Acer platanoides	Norway Maple	31	Fair	REMOVE: 100% CRZ IMPACT
85	Juglans nigra	Black Walnut	39	Poor	REMOVE: 100% CRZ IMPACT
**88	Prunus serotina	Black Cherry	40	Poor	REMOVE: 33% CRZ IMPACT
**89	Morus alba	White Mulberry	40	Poor	REMOVE: 100% CRZ IMPACT
237	Robinia pseudoacacia	Black Locust	34	Poor	REMOVE: 100% CRZ IMPACT
OST-1	Liriodendron tulipifera	Tuliptree	43	Fair	SAVE: 29% CRZ IMPACT
OST-2	Liriodendron tulipifera	Tuliptree	39	Poor	SAVE: <30% CRZ IMPACT
OST-3	Liriodendron tulipifera	Tuliptree	38	Poor	SAVE: 11 % CRZ IMPACT
OST-6	Liriodendron tulipifera	Tuliptree	37	Good	SAVE: 15% CRZ IMPACT
OST-7	Liriodendron tulipifera	Tuliptree	36	Good	SAVE: 7% CRZ IMPACT

OST-9	**Liriodendron tulipifera**	**Tuliptree**	**34**	**Good**	**SAVE: 25% CRZ IMPACT**
OST-10	**Liriodendron tulipifera**	**Tuliptree**	**32**	**Good**	**SAVE: 18% CRZ IMPACT**
OST-11	**Liriodendron tulipifera**	**Tuliptree**	**35**	**Good**	**SAVE: <1% CRZ IMPACT**

***NOT TAGGED*

NOTE: 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 removal of tree #41 is necessary to provide a second vehicular connection to Notley Road. Not providing the second vehicular connection is detrimental to the safety and circulation for community, as well as access to expanded open space along the existing park. Alternative road locations were studied, but any connection and expansion of the open space entails significant (>30%) impacts to the CRZ.

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 wester 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. Because increased open space is desired along Notley Road and near the existing park and forest, development has been pushed to the north and east of the site requiring impacts to this tree.

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 impact for tree #48 is eighteen (18) percent. It is proposed to be saved.

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. Because increased open space is desired along Notley Road and near the existing park and forest, development has been pushed to the north and east of the site requiring impacts to this tree.

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. Because increased open space is desired along Notley Road and near the existing park and forest, development has been pushed to the north and east of the site requiring impacts to this tree.

Tree #51, a 41” dbh Black Walnut (Juglans nigra) in good condition is located approximately 323’ from the southern property line and 104’ 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. As with tree #41, this tree is in line with a street connecting to Notley and cannot be shifted to maintain necessary horizontal alignment standards.

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. As with tree #41, this tree is in line with a street connecting to Notley and cannot be shifted to maintain necessary horizontal alignment standards.

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. This tree is located along the central road that must align with the confronting road for safe vehicular access.

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. Although an alternative design with a wall was considered to save this tree, it is in poor shape and pose a threat to adjacent and proposed property and buildings even if disturbance was less than the typically allowed 30%.

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.

Although an alternative design with a wall was considered to save this tree, it is in poor shape and pose a threat to adjacent and proposed property and buildings even if disturbance was less than the typically allowed 30%.

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. Although an alternative design with a wall was considered to save this tree, it is in poor shape and pose a threat to adjacent and proposed property and buildings even if disturbance was less than the typically allowed 30%.

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. This tree is located along the central road that must align with the confronting road for safe vehicular access.

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 ninety-eight (98) percent of the CRZ. Because of these impacts and existing poor condition, this tree is proposed to be removed. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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 sixty-eight (88) percent of the CRZ. This tree is proposed to be removed. This tree is located along the central road that must align with the confronting road for safe vehicular access.

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 eight-four (84) percent and due to this impact, this tree is proposed to be removed. This tree is directly on the proposed right-of-way line and any configuration of the required frontage improvements – trail, utility easement, and tree panels – requires its removal.

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 seventy (79) percent and this tree is proposed to be removed. This tree is directly on the proposed right-of-way line and any configuration of the required frontage improvements – trail, utility easement, and tree panels – requires its removal.

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 the complete impact and existing poor condition, this tree is proposed to be removed. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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. Because increased open space is desired along Notley Road and near the existing park and forest, development has been pushed to the north and east of the site requiring impacts to this tree.

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. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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. Any alternative redevelopment layout imposes the same impacts for such centrally-located trees regardless of configuration: streets, building footprints, utilities, grading, etc. and alterative designs do not allow for its preservation.

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 twenty-nine (29) percent of the CRZ. Due to this impact, this tree is proposed to be saved.

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 thirty (30) percent of the CRZ. This tree is proposed to be saved.

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 eleven (11) 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 fourteen (14) percent of the CRZ. Due to this impact, the tree is proposed to be saved.

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 seven (7) percent of the CRZ. Due to this impact, this tree is proposed to be saved.

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 twenty-five (25) percent of the CRZ. Due to this impact, the tree is proposed to be saved.

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 nineteen (19) 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 one (1) percent of the CRZ. This tree is proposed to be saved.

JUSTIFICATION OF VARIANCE

A Chapter 22A variance is required 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-one (21) specimen trees would preclude the reasonable development of the site into the proposed residential community, consistent with the land use recommendations of the White Oak Master Plan and Thrive 2050 and within the standards of the rezoning for which this site qualifies. The site's proposed 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.

As noted above, in any design solution pursued, the blocks, streets, and sidewalks necessary to provide pedestrian circulation and minimal emergency access requires substantial modeling of the site. This modeling requires significant regrading to meet engineering standards allowing the improvement of stormwater management and the local storm drain system. Regardless of the layout, redevelopment under the proposed zone requires these impacts.

(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 and is subject to more recent planning efforts such as Thrive 2050, both of which contemplate the transition of legacy low-density residential parcels along major corridors 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 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 numerous planter-style micro-bioretention facilities, and 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.

As mitigation for removal of these 21 trees, at least 63 3" caliper trees will be planted, as well as numerous other trees that do not count toward mitigation. These trees will extend the longevity of the tree canopy far beyond the current trees' lifespans – especially given the poor condition of many of them – and provide more diversity and better ecological services than the existing trees. These new plantings will continue to improve air and water quality for many years after they are planted.

(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 remove twenty-one (21) 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) *Will not confer on the applicant a special privilege that would be denied to other applicants.*

As previously noted, other applicants under similar circumstances have had variances approved. Without the variance, the project could not be developed in a safe and efficient manner and would not achieve current planning objectives, including those set forth in the Area Plan, Thrive 2050, and other housing policies. Efforts to minimize impacts to the specimen trees were explored and modifications were made to the extent feasible, especially for off-site trees. Given the distribution of the specimen trees on the property, failing to grant a variance would deprive the landowners' ability to utilize their property for redevelopment under the rezoning for which it qualifies and cause an unwarranted hardship and prevent the addition of residential uses compatible with the surrounding area.

(2) *Will not be based on conditions or circumstances which result from the actions by the applicant.*

The variance request is not made after removal or impacts to any trees

by actions of the applicant. Instead, this variance request is based on following the regulations and policies of the County under which this site qualifies for a rezoning. This rezoning, in turn, requires redevelopment to adhere to numerous codes and standards and any such configuration of the property implementing these rules would require a variance. The location and disposition of each tree has been thoroughly analyzed and alternatives have been vetted. The necessary grading, utility work, infrastructure, and programming of redevelopment establish the base conditions of this variance request.

(3) *Will not be based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is not related in any way to a condition on an adjacent, neighboring property.

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

As noted above, the removal of twenty-one (21) 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 and also noted above, to offset the environmental impacts of removing these trees, the development is proposing to plant many shade and ornamental trees as shown on the planting plan, which will be detailed with the site plan submission. 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