

December 18, 2013

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**Re: RNRF - Grosvenor; Revised FCP/Tree Variance Application Letter for Preliminary and Site Plan Applications**

Dear Ms. Knaggs,

Our client, 5400 Grosvenor, LLC (the “Applicant”), the applicant for the above-referenced Preliminary Plan and Site Plan Applications (the “Applications”) hereby requests a variance from the provisions of Maryland Code (1973, 2012 Repl. Vol.), § 5-1607(c)(2)(ii) &(iii) of the Natural Resources (N.R.) Article pursuant to Section 22A-21(b) of the Montgomery County Code (the “Code”).

Specifically, Applicant seeks a variance from N.R. § 5-1607(c)(2)(ii) to remove 50 trees and permit the disturbance to the Critical Root Zones (CRZ) to 43 trees on the subject property’s 8.9 acre Historic Environmental Setting described below. On the remaining 26.53 acres of the subject property outside the Historic Environmental Setting, Applicant seeks a variance from N.R. § 5-1607(c)(2)(iii) to remove 79 trees and permit the disturbance to the CRZ to 13 trees of 30 inch caliper or greater. There are also 5 Mockernut Hickory trees in this area that are at least 75% of the size of the state champion tree (28 inch caliper) that need to be included with this variance request. Two of these trees are proposed to be removed, and three will have their CRZ disturbed. In summary, there are a total of 131 variance trees proposed to be removed within the entire site and a total of 59 variance trees proposed to have their CRZ impacted within entire site. In addition, this variance is requesting disturbance to the CRZ of 5 specimen trees on the west side of Fleming Avenue. The plan shows that the limit of disturbance will impact the CRZ of these trees. However, all the work on the west side of Fleming Avenue will consist of pavement mill and overlay only. Roots will not need to be cut in order for this work to be performed. Nonetheless, it is necessary for these trees to be included with this variance request.

The subject property is located at 5400 Grosvenor Lane in Bethesda, contains 35.43 acres, and is bounded by Fleming Avenue to the west, Grosvenor Lane to the North, Interstate 495 to the

south and Interstate 270 to the east (the "Property"). Applicant is the contract purchaser of the Property, which is currently owned by the Society of the American Foresters ("SAF") and the Renewable Natural Resources Foundation ("RNR"). The Property contains, among other improvements discussed below, three structures (a mansion house, garage, and a caretaker's house originally part of the Gilbert Grosvenor's Wild Acres Estate) that have been designated as a historic resource and are surrounded by a 8.9 acre Historic Environmental Setting.

The mansion house is the former Grosvenor family residence. This Tudor style house was built in 1928 by Gilbert Grosvenor and his wife Elise May Bell. The detached four car garage was added at a later date. The caretaker's house is also located on the Property. As noted above, these structures have been designated as a single historic resource and are contained on an 8.9 acre Historic Environmental Setting. In addition to the mansion house, garage, and caretaker's house, the Property is improved with two three-story office buildings and associated parking lots. All structures are surrounded by an undeveloped forest to both the north along Grosvenor Lane and to the south and east adjacent to I-495 and I-270. The Property also contains associated landscaping and tree cover, including a non-jurisdictional wetland/pond created for storm water management and a small wetland area that was created by the Grosvenor family as a skating pond that has since filled with sediment.

The undeveloped portion of the Property consists of four forest stands, a perennial stream, an intermittent stream, a wetland and several ephemeral streams. On January 17, 2008, the Planning Board designated a portion of the Property as a Legacy Open Space Natural Resource and recommended dedication through the development review process. This area is in the southern and eastern portions of the Property adjacent to Interstates 495 and 270. As part of the Applications, Applicant has proposed dedicating approximately 11 acres of the Property as Legacy Open Space.

As explained more fully below, retention of the trees proposed to be removed as well as the disturbances to the CRZ identified on the Forest Conservation Plan, which is attached hereto as Exhibit "A", would result in undue hardship to the Applicant. The conditions of the Property and the nature of the proposed improvements justify the granting of the variance pursuant to Section 22A-21(b) of the Code. Removal of the subject trees would satisfy the variance requirements of Section 22A-21(b) as follows:

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

The proposed development included in the Applications is in accordance with both the intent and recommendations of the North Bethesda/Garrett Park Master Plan and the optional method of development with MPDUs in the R-90 Zone, both of which recommend more intensive development. The Application reflects the Master Plan's recognition of the Property's capacity to support further development and fit into the context of the surrounding neighborhoods.

There are a number of special conditions peculiar to the property that would cause unwarranted hardship. As noted above, the Property contains a historic resource, which is comprised of the

mansion, garage, and caretaker's house, and the 8.9 acre Historic Environmental Setting. Additionally, the Planning Board has recommended the dedication of a portion of the Property as Legacy Open Space. As a result of the Historic designation and Historic Environmental Setting, the Planning Board's designation of a portion of the Property as a Legacy Open Space Natural Resource (pursuant to which Applicant is proposing to dedicate approximately 11 acres of the Property as Legacy Open Space), and the dispersal of the subject trees throughout the site, the type of development proposed in the Applications and supported by the Master Plan simply could not be realized if the subject trees could not be removed.

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

Retention of all trees on the Historic Environmental Setting having a diameter of one inch or more and of all trees on the remaining portion of the Property having a diameter of 30 inches or more would require major changes to the development program, which would preclude implementation of almost any development on the Property. The potential inability to remove the subject trees would therefore deprive the Applicant of the opportunities enjoyed by similar properties that are developed with more intense uses, without protected trees located in the most developable areas of their properties.

*(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 current Maryland Department of the Environment (MDE) Stormwater Management regulations that Montgomery County has adopted require the use of environmental site design (ESD) techniques to treat the runoff from 1 inch of rainfall on all new developments, where stormwater management is required. Per MDE's 2000 Maryland Stormwater Design Manual, "[t]he criteria for sizing ESD practices are based on capturing and retaining enough rainfall so that the runoff leaving the site is reduced to a level equivalent to a **wooded site in good condition**[.]" Therefore, the variance will not affect water quality standards and a measurable degradation in water quality will not occur because ESD measures are being provided as per MDE and Montgomery County's regulations.

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

Fulfilling the objectives of the North Bethesda/Garrett Park Master Plan and the optional method of development with MPDUs in the R-90 Zone do not allow the trees in question to be maintained. In the 8.9 acre Historic Environmental Setting, there are 47 trees that are 30 inch DBH or larger. Of these 47 trees, only 6 are proposed to be removed. Of these 6 trees 30+ inch DBH to be removed, 5 are Tulip Poplars, and 1 is Black Cherry: (37, 62, 63, 64, 93 and 98, as charted on the attached FCP). There are 9 trees with 30+ inch DBH which will have CRZ disturbed and will be protected by special Sediment and erosion control measures as well as signage and fencing (please see attached FCP Plans for greater details on these and other measures). In the 8.9 acre Historic Environmental Setting, there are 43 significant trees that are

24 inch to 29 inch DBH. Of these 43 trees, 1 Slippery Elm is proposed to be removed, while 10 will have their CRZ disturbed. Additionally, the improvements to the existing entrance and parking lot will cause the loss of 43 trees that are one inch caliper to 24 inch diameter and disturbances to the CRZ of 24 trees. Of the 43 trees to be removed, 2 are Mockernut Hickory trees with diameters greater than 75% of the state champion (1077 & 1082). Of the 24 trees with disturbances to the CRZ, 1 is a Mockernut Hickory with a diameter greater than 75% of the state champion (1018). All of the above disturbed trees will have their CRZ protected by special sediment and erosion control measure, signage, and fencing (please see attached FCP Plans for greater details on these and other measures).

In the approximately 11 acre proposed Legacy Open Space, there are 62 trees of 30 inch caliper. Of these 62 trees, 13 need to be removed. Of these 13 trees with 30+ inch DBH to be removed, 8 are Tulip Poplars, 4 are Red Hickory, and 1 is White Oak: (183, 184, 188, 189, 212, 226, 248, 252, 271, 275, 284, 285, and 287) as charted on the attached FCP. Of the 62 trees, 11 will have their CRZ disturbed and will be protected by special sediment and erosion control measure, signage, and fencing (please see attached FCP Plans for greater details on these and other measures). Within this area, 1 Mockernut Hickory with a diameter greater than 75% of the state champion is shown to be removed (1229) with the installation of the noise wall, and another is shown to have CRZ disturbance (190).

In the remaining area of the Property that is outside the proposed Legacy Open Space and the Historic Environmental Setting, there are 68 trees of 30 inch caliper. Of these 68 trees, 66 are proposed for removal. Of the 66 trees 30+ inch DBH to be removed, 47 are Tulip Poplar, 1 is White Pine, 2 are White Ash, 2 are Northern Red Oak, 6 are White Oak, 7 are Black Oak, and 1 is Red Hickory: (91, 94-97, 101, 102, 104, 106-109, 113-114, 116, 119-120, 123-125, 133, 140, 141, 143-145, 148-154, 157-159, 160-164, 167-173, 177-178, 181-182, 213, 216-217, 229, 250, 290, 292-294, 318, 320, 328, 334 and 405 as charted on the attached FCP.) Of the 68 trees, 2 will have their CRZ disturbed and will be protected by special sediment and erosion control measure, signage, and fencing (please see attached FCP Plans for greater details on these and other measures). Within this area, 1 Mockernut Hickory with a diameter greater than 75% of the state champion is shown to be removed (146) with the installation of the noise wall, and 2 are shown to have CRZ disturbance (129 & 136).

In the adjacent off-site area to the west of Fleming Avenue, there are 5 trees (1301-1304 & 1306) that are included in this variance request. As mentioned previously, all the work on the west side of Fleming Avenue will consist of pavement mill and overlay only. The root systems of these

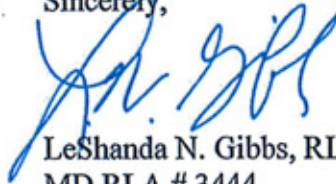
trees will not be exposed or disturbed. Again, these trees must be included in this variance request even though disturbance to the roots or limbs will not occur.

To mitigate the loss of the subject trees, the Applicant is proposing 13.69 acres of the Property's existing forest to remain, all of which is in the proposed Legacy Open Space area or the Category I Easement. The existing forest in the Environmental Setting will be placed within a Category I Easement. The total number of specimen and significant trees to remain on the Property is 220, and at least 203 3"-4" DBH trees are proposed for site plantings.

Finally, in conformance with Section 22A-21(d) of the Code, the variance will not confer a special privilege on the Applicant that would be denied to others, but rather, as discussed above, will prevent the deprivation of Applicant's rights.

We believe the foregoing, as well as the information contained in the Final Forest Conservation Plan and Applications materials, clearly demonstrate that the grant of the variance pursuant to Section 22A-21(b) of the Code is appropriate in this case. If, however, you have any questions or concerns or require any additional information for your review of this request, please contact us.

Sincerely,



LeShanda N. Gibbs, RLA – Applicant  
MD RLA # 3444  
Axiom Engineering Design



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Date:



First Received: 11/10/2017; Last Revised: 11/10/2017; Accepted: 12/06/2017



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