Bay Engineering Inc.
Engineers, Planners and Surveyors

March 30, 2015
Revised May 21, 2015

Frank Biba, Chief of Environmental Programs
City of Annapolis
Department of Neighborhood & Environmental Program
145 Gorman Street, 3rd Floor
Annapolis, MD 21401

Re: **FOREST CONSERVATION ACT VARIANCE REQUEST**
FOR SPECIMEN TREE REMOVAL
ANNAPOLIS TOWNES AT NEAL FARM
FCP 2014-002

Dear Biba:

The purpose of this letter is to formally request a variance in accordance with the Natural Resources Article of Annotated Code of Maryland for the above referenced development. A copy of the approved Forest Conservation Plans is enclosed for your use in reviewing the variance request.

Natural Resources Article Title 5, Subtitle 16, Sections 5-1607 (c) (2) states that certain trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and that the applicant will need to demonstrate that they qualify for a variance in order to be removed. Any tree that is equal to or greater than 30" diameter, when measured at 4 feet above the base of the trunk, requires a variance for removal. Subsequently, based on the pending Forest Conservation Plan (FCP 2014-002) the applicant is requesting a variance to remove tree ID ST-22 and ST-91. Tree ST-22 is located inside the limit of disturbance (LOD) and will be impacted by proposed grading/development activities. Tree ST-91 while not located within the LOD, is in poor condition with a large cavity and would present a safety hazard to the development and surrounding trees slated for preservation, therefore the removal is included in our request.

A summary of each of the trees to be removed requiring a variance are as follows:

2661 Riva Road, Bldg 800 - Annapolis, MD 21401
Ph. 410-897-9290 Fax 410-897-9295
www.BayEngineering.com

TREE # ST-22

DESCRIPTION

33" Black Cherry

CONDITION

FAIR-POOR

Tree is vine covered (poison-ivy and english-ivy)

PHOTO

REASON FOR REMOVAL

- This tree is located in close proximity to the proposed access road and will be impacted by proposed grading and development activities including a micro-bioretention SWM facility.

ALTERNATIVES ANALYSIS

The sole access to the property is from Dorsey Drive at Old Solomon's Island Road. In locating the property entrance, key elements considered were:

1. Community desire for the development to utilize the access onto Dorsey Road and not access the existing roadway through the community.

In analyzing alternative entry points that would preserve tree #ST-22, the resultant impacts were far greater than the entry point selected and would go against the community desires to keep traffic flow off of the portion of Dorsey Drive in front of their houses.

In reviewing the options for accessing the site, the entry point selected is the most feasible entry location for the project and adheres to the communities desire to minimize impact to the existing roadways in the immediate vicinity.

TREE # ST-91

DESCRIPTION

33" Sweetgum

CONDITION

POOR/CRITICAL

Tree has a narrow crown, trunk decay and Basal decay.

PHOTO

PHOTO

REASON FOR REMOVAL

Although this tree is outside the LOD, due to its condition this tree is proposed to be removed by a qualified Arborist "by hand" (stump to remain) to minimize potential for damage to remaining trees and roots.

ALTERNATIVES ANALYSIS

N/A

The following describes the above requested variances in further detail and provides additional justification in accordance with COMAR 08.19.04.10:

A. An applicant may request a variance from this subtitle or the requirements of Natural Resources Article, §§5-1601---5-1612, Annotated Code of Maryland, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

B. An applicant for a variance shall:

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

Comment: Several conditions peculiar to this property would cause unwarranted hardship.

- **In an effort to preserve as much of the existing trees as possible development is being clustered and concentrated to the eastern end of the site.**

- **Trees #ST-22 is located in close proximity to the proposed main access road off of Dorsey Drive, which is the sole access to the property. Alternatives analysis has shown that this access point and approach is the least impactful routing to the surrounding community. The tree is in Fair-Poor Condition, and alternative routing of the access road would negatively affect the desires of the surrounding community.**

- **Tree #ST-91 is outside LOD but in Poor/Critical condition, is a safety hazard, and must be removed.**

- **Preservation of these specimen trees would also cause an unwarranted hardship through:**

    - **Restricting access to the Property**
    - **Preservation of trees that are in decline and a safety hazard**

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

Comment: The Applicant has completed alternatives analysis for each tree proposed to be removed, and has developed the most sensitive approach to preserving those trees that are worthy of preservation. Other similarly zoned properties that encounter trees in a similar condition and in a similar location on a site would be provided the same considerations during the review of the required variance application. Furthermore, trees with similar circumstances on other properties are routinely granted variance for removal.

(3) Verify that the granting of this variance will not confer on the applicant a special privilege that would be denied to other applicants;

Comment: Granting this variance is consistent with past grants of variances and thus will not confer a special privilege to the applicant as compared to others. The applicant is proposing to remove two (2) trees that are in fair or worse condition and that pose a risk to life and property, declining health and does not warrant preservation. One (1) tree is located within the development area while the second is a safety hazard and is proposed for removal. Therefore, no special privilege is afforded this applicant.

(4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

Comment: This variance is not the result of actions by the applicant. The removal of the two (2) trees is due to their condition and location on the site, as well as the limitations for site design based on other regulated environmental features.

(5) Verify that the variance request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

Comment: The request to remove the two (2) trees does not arise from any condition on a neighboring property.

(6) Verify that the granting of a variance will not adversely affect water quality.

Comment: To ensure that there are no adverse effects on waterways in the immediate area of the project or the watershed in general, all grading and construction will be in accordance with an MDE-approved Erosion and Sediment Control Plan that provides for adequate sediment and erosion control, and post disturbance stormwater management.

I trust that the above information will meet with your approval and a favorable variance decision can be issued to the applicant. If you should have any questions require any additional information please do not hesitate to contact me at 410-897-9290.

Sincerely,
Bay Engineering, Inc.

Terry Schuman, P.E.

Cc: Bruce Harvey – Williamsburg
Eliot Powell – Whitehall Dev
Mike Klebasko - WSSI