

July 29, 2021

Graham Hubbard
Frederick County Division of Planning and Permitting
Department of Development Review and Planning
30 N. Market Street
Frederick, MD 21701

RE: Crestwood Manor
Request for FRO Modification – Specimen Tree Modification
Type I Site Plan #SP264018 and FRO # F264020

Dear Mr. Hubbard,

On behalf of the applicant, Osprey Property Company II, LLC, we are requesting a Modification from the provisions of § 1-21-40(B)(1)(e) of the Frederick County Code also known as the Forest Resource Ordinance (FRO) of Frederick County, to allow for the disturbance of trees, shrubs, and plants in priority areas which include nonhazardous trees that:

- (1) Are part of a historic site;
- (2) Area associated with a historic structure;
- (3) Have been designated by the state or the Department as a national, state, county, or municipal champion tree; and
- (4) Are specimen trees, or are 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

The Applicant is seeking a modification to permit the removal of one (1) nonhazardous specimen tree to accommodate the proposed improvements for a multifamily development that includes three proposed multi-family buildings and one existing single family detached unit to be converted to a community facility with various outbuildings to remain.

Pursuant to §5-1611 of the Natural Resources Article of the Maryland Annotated Code and §1-21-21 of the Frederick County Code, we respectfully submit this request for a Modification from Chapter 1-21 and provide the following justification explaining the special features, site circumstances or other information that demonstrates that enforcement of the Code would result in an unwarranted hardship to the Applicant.

This Variance is being submitted for review and approval in conjunction with Type I Site Plan SP264018 and Forest Resource Ordinance Plan #F264020.

Background

This Modification request accompanies the submission of a site plan that proposes 3 multi-family residential buildings, associated road network, parking areas and open space in addition to the preservation of an existing residence and outbuildings with questionable historical value (a total of 120

dwelling units). Located at 5614 New Design Road approximately 500’ south of Crestwood Boulevard, the Subject Property is identified on Tax Map 77 as Parcel 30, a 9.52 acre parcel.

In 1989 the property was rezoned from Agricultural to R-16 Residential as shown in Ordinance No. 89-39-570 with three conditions:

1. A maximum of 144 dwelling units may be constructed.
2. The maximum floor area for new construction (excluding the existing house and outbuilding that exist on the date of enactment of the ordinance) was limited to 100,000 square feet.
3. No more than 25% of the property shall be covered in building, parking area or access roads with the remaining area to be green areas or outdoor recreation areas.

In July 2014 Rezoning Case No. R-88-50 and subsequent adoption of Ordinance 14-11-666 deleted conditions 2 and 3 and added a new condition which requires the preservation of the existing farmhouse/residence and smokehouse on the property.

Variance Trees

This Variance requests the removal of one (1) nonhazardous specimen tree as described in the below table and as shown on the Forest Resource Ordinance Plan:

Tree#	Common Name	Scientific Name	DBH(in.)	Condition	Remarks	Proposed Action
4	Silver Maple	<i>Acer saccharinum</i>	34	Fair	Poison ivy, English ivy	To be Removed

Explanation of Proposed Disturbances to Individual Trees

Specimen Tree #4 (34” d.b.h. Silver Maple)

Tree #4 is located along the northern property line approximately 360’ west of New Design Road. Although the apparent health of this tree is considered Fair with structural defects that predisposes the tree to failure (enveloped in ivy, dead limbs, and poor limb structure) it has no apparent target. Because there is a lack of target, although there is a potential hazard to the adjacent landowners, the tree is considered non-hazardous. Due to the shape of the property and proposed lotting configuration, if this tree is to be preserved, it would require a significant area (CRZ) that would not be able to be graded and would thus impact the proposed vehicular network, require the relocation / shift of Building A to the south and impact the proposed sightline of the existing residence to be preserved. In addition, if the building were to be shifted to the south, the required setbacks would not be able to be provided to subdivide the project into the two proposed building lots and would likely eliminate Building A. This would reduce the overall density, thus impacting the project’s financial viability.

Pursuant to § 1-21-21 of the Fredrick County Code, a written request may be submitted to the Fredrick County Planning Commission (FCPC) to request a modification from the Chapter or any regulation adopted under it if it is demonstrated that enforcement would result in unwarranted hardship to the person. Under § 1-21-21(B) Required Information, states that an applicant for a modification 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 the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;**
- (4) Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;**
- (5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and**
- (6) Verify that the granting of a modification will not adversely affect water quality.**

As required, we provide the following justification:

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

The proposed removal of one (1) specimen tree is needed to implement the proposed Site Plan layout and provide the target density utilizing the preferred residential product. There are a number of special conditions peculiar to the property, which, if enforcement of the Chapter would result in an unwarranted hardship. As noted, the property currently is the site of an existing dwelling and outbuildings with some historical significance located on the western ¼ of the site, which per the conditions of approved Rezoning Ordinance 14-11-666, is to be preserved along with a portion of its surroundings. Also, in considering the current R-16 zoning and zoning approval of a maximum 144 dwelling units, the proposed 120 units is 16% less than allowed. If the tree is required to be preserved, the outcome would be the elimination of one of the three proposed multi-family buildings and affect the project's financial viability. In addition, when considering that the Zoning Ordinance requires a loop street system for the project since there was no provision to provide connection(s) through adjacent developments, greatly impacts the layout options for providing an efficient development. Providing the required street network, associated infrastructure, and acceptable fire access design within the rather restrictive width of the parcel makes it logical to site the parking, vehicular access and proposed residential buildings around the periphery of the site, while preserving the viewshed to the existing residence. Due to these conditions, if the request for the removal of the tree is denied, it would cause an unwarranted hardship to the applicant.

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

The preservation of one (1) specimen tree would require significant changes to the density and current Site Plan layout of which the applicant has worked with Staff on progression to this point. If the request is not granted, it will deprive the landowner of rights commonly enjoyed by others that develop similar properties with special conditions as this one.

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

The Planning Commission has previously granted requests for specimen tree removal to similar projects, therefore this will not confer the landowner a special privilege that would be denied to other applicants.

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

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March 10, 2021 (Revised May 5, 2021 & July 29)

As described in (1) above, this modification request is not based on conditions or circumstances that are the result of actions by the applicant, however due to conditions peculiar to the property. In addition, the applicant is adhering to the requirements of the Frederick County Zoning Ordinance in the development of the Site Plan.

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

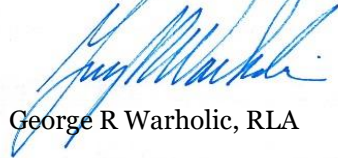
This request for the removal of one (1) specimen tree is based on the conditions peculiar to this property as described above and does not arise from a condition related to land or building use on a neighboring property.

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

The project is subject to the Frederick County Stormwater Management Ordinance and Sediment and Erosion Control Ordinance which both are in accordance with State regulations. The removal of the tree included in this request will not result in measurable degradation in water quality.

Thank you for your consideration of this Modification request. We believe that the supporting information presented with this letter provides adequate justification for the approval of the requested Modification to remove one (1) nonhazardous specimen tree. Please free to contact me at 301-337-2863 if you have any questions.

Respectfully Submitted,
Dewberry Engineers, Inc.



George R Warholic, RLA