

Anne Arundel County Department of Planning and Zoning
2664 Riva Road,
Annapolis, MD 21401

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**RE: Proposed Chick-fil-A Arnold
1500 Ritchie Highway, Arnold, Anne Arundel County, Maryland
Anne Arundel County, MD Tax Map 39 Grid 18 Parcel 292
Modification Request to Remove Twelve (12) Specimen Trees, Allow for Forest
Clearing Below the Break-Even Point, to Address Reforestation Requirement at an
Offsite Location, and to Disturb Steep Slopes**

Dear Sir or Madam,

On behalf of the project developer, Chick-fil-A, Eco-Science Professionals, Inc. would like to request that Anne Arundel County grant a Modification to Standards to the priority forest retention provisions specified in the Anne Arundel Forest Conservation Program. Specifically, we are requesting that the County grant a modification to allow for the removal of twelve (12) of twenty-six (26) specimen trees present on the subject site. We are also requesting that the County grant a modification to allow for clearing below the break-even point (BEP) and to allow reforestation to occur at an offsite location. Finally, we are requesting permission to disturb steep slopes. The site includes approximately 6.2 acres and is located at 1500 Ritchie Highway (MD Route 2) in the Arnold section of the County. The removal of the specimen trees and forest clearing levels are needed to allow for construction of a Chick-fil-A restaurant and associated infrastructure on the site.

Project History

The project site is identified on Anne Arundel County, Maryland Tax Map 39, Grid 18 as Parcel 292. The property is split zoned, with a majority of the site (3.93 acres \pm) zoned for Commercial use (C3) with the remainder of the site (2.27 acres \pm) zoned for Residential use. The northern end of the project site was improved with a one-story brick and block building which previously housed a furniture store. The furniture store was razed in 2014 and replaced by a CVS Pharmacy, associated infrastructure, and landscaping. The remainder of the property consists of a 4.10 acre mature tulip poplar forest dominated by tulip poplar (*Liriodendron tulipifera*) in the 18-26 inch diameter at breast (DBH) size class with a number of larger poplars also present. Occasional canopy associates include black walnut (*Juglans nigra*), American sycamore (*Platanus occidentalis*), and boxelder maple (*Acer negundo*). The understory is moderately well established and consists primarily of boxelder maple. The shrub layer is quite extensive and is dominated by spicebush (*Lindera benzoin*), with multiflora rose (*Rosa multiflora*), wineberry (*Rubus phoenicolasius*), and privet (*Ligustrum vulgare*) also present but in much lesser numbers. Vine cover is extensive throughout the stand and consists of numerous species, including English ivy (*Hedera helix*), poison ivy (*Toxicodendron radicans*), Virginia creeper (*Parthenocissus quinquefolia*), grape

(*Vitis* sp.), bittersweet (*Celastrus orbiculatus*), Japanese honeysuckle (*Lonicera japonica*), and porcelain berry (*Ampelopsis previpendunculata*). Herbaceous layer cover is heavy and includes Indian strawberry (*Duchesnea indica*), garlic mustard (*Alliaria officinalis*), English ivy, Japanese honeysuckle, and clearweed (*Pilea pumila*). The overall condition of the stand is generally fair, except in the eastern end of the stand where the condition is poor. A number of the poplars exhibit moderate to significant dieback. Heavy vine cover is smothering numerous trees and causing an overall decline in their condition, particularly in the eastern end of the stand, where canopy closure is significantly reduced as a result of vine cover. A number of large poplars have been blown over by the wind, resulting in additional canopy breaks. Invasive species cover in the herbaceous layer is extensive and is overwhelming the native community. The stand is not actively managed. The vast majority of stand is a moderate priority (Priority 2) for retention on the basis of its good structure rating. The remainder of the stand is a high priority (Priority 1) for retention due to its location on steep slopes. Twenty-six (26) specimen trees are present on the site, with an additional seven (7) present just beyond the limits of the property. A Forest Stand Delineation describing in detail this forest was prepared by our office in June 2012 and was approved by Anne Arundel County. An updated Forest Stand Delineation was prepared in June 2022 and is included with this submission. No wetlands or streams are present on or immediately adjacent to the project site. Runoff from the site eventually drains to an unnamed tributary to Chase Creek, which is a tributary to the Severn River. This tributary to Chase Creek is classified as Use I by the Maryland Department of the Environment (MDE). Waters with this use classification are suitable for water contact recreation.

A Final Forest Conservation Plan (FCP) for the property was prepared by our office in February 2014 and approved by Anne Arundel County. The FCP proposed the clearing of 0.12 acres of forest and the retention of 1.65 acres of forest in a conservation easement. This level of retention equaled the sum of the C3 and R2 break-even-points (BEPs) therefore no reforestation for full development of the site was or would be required. All forest retained in a conservation easement was located within the R2 zone of the property, which has the higher conservation threshold. A total of 2.33 acres of forest was retained outside of the conservation easement to accommodate additional site development as allowed by its zoning. No specimen trees were impacted by the original re-development though it was noted in the FCP that any future development that impacted specimen trees would require an approved Modification to Standards. The approved Forest Conservation Easement was recorded in the Land Records of Anne Arundel County, Maryland.

The current site development proposal involves the construction of a Chick-fil-A restaurant and associated infrastructure within the remaining unforested portions of the site as well as those portions of the forest which were not included in a conservation easement under the approved FCP. Twelve (12) specimen trees will be impacted by this additional development. As per the conditions of the approved FCP, a modification request to impact these trees must be prepared and submitted to the County for approval. Additionally, despite the fact that the County approved a Forest Conservation Plan for the site in 2014 and the easements established under the FCP were recorded in the Land Records, the County has decided that the plan is no longer valid since changes to the County Forest Conservation Ordinance in 2020 resulted in revised conservation thresholds and increased the required reforestation for clearing above the conservation threshold from 0.25 acre/acre cleared to 0.50 acre/acre cleared. Under the revised

worksheet, the retention of 1.65 acres of forest in a conservation easement no longer meets the combined BEP for the project and results in a reforestation obligation of 1.53 acres.

Below find a discussion of the requested modifications and the basis for these requests.

Modification Request No. 1 - Specimen Tree Impacts.

Construction of the Chick-fil-A Restaurant and associated infrastructure will require impacts to twelve (12) specimen trees: Tree ST-1, a 40 inch DBH American sycamore in poor condition; Tree ST-2, a 33 inch DBH American sycamore in fair condition; Tree ST-3, a 34 inch DBH tulip poplar in fair condition; Tree ST-4, a 39 inch DBH tulip poplar in fairly good condition; Tree ST-6, a 39 inch DBH tulip poplar in very poor condition; Tree ST-11, a 31 inch DBH tulip poplar in fair condition; Tree ST-21, a 35 inch DBH tulip poplar in very poor condition; Tree ST-22, a 31 inch DBH tulip poplar in fairly good condition; Tree ST-23, a 31 inch DBH American sycamore in fair condition; Tree ST-24, a 36 inch DBH Black walnut in fairly good condition; Tree ST-25, a 37 inch DBH tulip poplar in fairly good condition; and Tree ST-26, a 32 inch DBH Tulip poplar in good condition. The impacts to these specimen trees are appropriate for the following reasons:

1. Condition of the Trees: Tree ST-1, ST-6 & ST-21 are in poor and very poor condition and do not warrant retention. Trees ST-2, ST-3 & ST-11 are only in fair condition. The conditions of the trees rated fair are likely to further decline over time and present possible safety hazards.
2. Other Regulatory Requirements - Trees ST-24, ST-25 & ST-26 are located adjacent to the Ritchie Highway road frontage. Chick-fil-A is being required to make frontage improvements along Ritchie Highway to provide safe egress from the site. The three trees must be impacted in order to construct the acceleration lane. There is no way to avoid impacts to these trees and meet this requirement due to their location near the highway.
3. Lack of Uniqueness - None of the trees to be impacted possess a combination of unique characteristics (excellent health, unusually nice crownsread/habit, extremely large size) that warrant extraordinary retention efforts.
4. Impact on Development - The remaining specimen trees located away from the Ritchie Highway road frontage and their associated critical root zones cause a significant disruption to the development envelope. Failure to allow impacts to these specimen trees would preclude construction of this project since insufficient space would be available to locate the building, parking and associated infrastructure. More significantly, failure to allow these specimen tree impacts would preclude almost any additional commercial development onsite, since the remaining portion of the development envelope beyond the critical root zones would be too small and fragmented to support any cogent development. It is our opinion that this represents an inefficient use of this commercial property,

given the site's location along a major State Highway and at a major intersection adjacent to other commercial development.

5. Future Safety Concerns - It might be possible to retain Tree ST-2 since it is located near the western property boundary. However, fairly significant critical root zone impacts would be required. Assuming the tree is retained, there would be real concern that the tree would present a future safety hazard. The tree is only in fair condition and would most likely be negatively impacted by significant root pruning. Additionally, this tree, along with Trees ST-3, ST-4 & ST-21, are currently located within a small forested area and are not subject to direct wind stresses (buffered by other trees in the forest). Retention of these trees but removal of the surrounding forest would significantly increase the likelihood of windthrow, greatly increasing the risk of property damage or injury to people. American sycamore and tulip poplar are also very prone to limb breakage.
6. Expectation of Use - The FCP approved in 2014 allowed for development on this portion of the site, since the recorded forest conservation easement did not encompass this part of the forest.

In summary, it is our opinion that the removal of these trees is reasonable given the factors discussed. Mitigation for the removal of the above referenced specimen trees is proposed per Green Notice OPZ-20-01 and is detailed on the Forest Conservation Plan. The total required mitigation in off-site planting is 3.4 AC for the removal of the twelve specimen trees.

Modification Request No. 2 - Forest Retention Below the BEP

Construction of the restaurant and associated infrastructure will result in the removal of an additional 2.33 acres of forest. As previously noted, this forest was intentionally omitted from the forest conservation easement under the original approved FCP to allow for additional commercial development on the property. The 1.65 acres of retained forest in an easement met the combined BEP's and no reforestation was required. Under the revised 2020 regulations and worksheet, the combined BEP is no longer met. However, it is our opinion that the proposed level of forest clearing is appropriate for the following reasons:

1. Condition of the Forest - As noted in the Project History section, this tulip poplar forest is in fair to poor condition. Many of the canopy poplars, especially on the eastern end of the site, have been heavily impacted by vine cover, causing moderate to significant dieback. A number of large poplars have been blown over by the wind, causing further canopy disruption. The shrub, vine, and herbaceous layer are heavily impacted by non-native invasives. All of the stand within the development area, with the exception of a small area of steep slopes, is rated as a moderate priority for development since it does not occur within any environmentally sensitive areas and has only good forest structure. It is our opinion that the removal of a portion of this forest to accommodate this development is appropriate given these factors.

2. Geographic Position of Forest - The forest is located along Ritchie Highway at a major intersection (Arnold Road) adjacent to other commercial development. This type of development is consistent with Smart Growth policies. The forest is a somewhat isolated woodlot surrounded by residential development to the south and west, commercial development to the north, and Ritchie Highway to the east. The stand does not provide forest interior habitat. Impacts to the forest are appropriate given these factors.

3. Expectation of Use - As with the specimen trees, the FCP approved in 2014 allowed for development on this portion of the site, since the recorded forest conservation easement (that placed over a quarter of the property in a perpetual forest conservation easement) did not encompass this part of the forest which is primarily zoned for commercial development.

Modification Request #3 - Provide Reforestation at an Offsite Location

The project no longer meets the combined BEP as a result to the 2020 forest conservation worksheet changes even though the amount of forest retention has not changed. Development of the site now generates a 1.53 acre reforestation requirement for clearing past the BEP and 3.4 acre reforestation requirement for specimen tree removal. The project developer proposes to meet this reforestation obligation through purchase of credits in a forest mitigation bank. The use of an offsite planting area is appropriate for the following reasons:

1. No Planting Areas Available Onsite - The remainder of the site beyond the proposed limits of disturbance is entirely forested. Onsite reforestation is not physically possible.
2. Environmental Benefits - The offsite location will establish new forest with the potential that some of this forest to be established within environmentally sensitive areas (such as stream and wetland buffers).

Modification Request #4 – Disturbance of Steep Slopes

In accordance with Anne Arundel County Code Section 17-6-403, development may not occur within steep slopes or within 25 feet of the top of steep slopes where the onsite and offsite contiguous area of steep slopes is greater than 20,000 square feet unless development will facilitate stabilization of the slope or disturbance is necessary to allow connection to a public utility. Steep slopes are defined as a 25 percent or greater slope that has an onsite and offsite contiguous area that is greater than 5,000 square feet over 10 vertical feet as measured before development.

An approximately 32,000 square foot area of slopes in excess of 25 percent exists contiguously both on and offsite as depicted on the Existing Conditions and Resource Map located in the Preliminary Plan set. However, a much smaller portion of the area exceeds the 10-foot vertical measurement of more than 5,000 square feet, the County definition of steep slopes. 21,180 SF of steep slopes and 26,538 S.F. of steep slope buffers are proposed to be

impacted through the proposed development.

The steep slopes area is located just south of the CVS Pharmacy lease area and adjacent Sunoco gas station. There is a significant amount of fall across the site (approximately 25 feet from the CVS drive connection to the tie-in grade north of the forest conservation easement). To develop the remaining portion of the site with a viably graded pad, the steep slopes will need to be impacted. The grade drop across the site is made up through the driveway and parking areas and building placed toward the southern portion of the remaining developable area. Since the steep slopes are located upslope and north of the proposed Chick-fil-A, the grading of the area will result in stabilization of the steep slopes. Fill depths across the site exceed fifteen feet in some locations. Further, it is noted that the County advocates for parcel and site interconnectivity. In order to facilitate the connection to the existing CVS site area, the steep slopes must be impacted to make the driveway connection as well as to provide adequate parking for the Chick-fil-A employees (which can exceed 20 at peak times) and to allow for future dry well reserves for septic in non-steep slope areas.

Compliance with 17-2-08

The Planning and Zoning Officer may approve a modification if satisfies five criteria as outlined in 17-2-08. Below find a discussion of each criterion

1. Practical Difficulties and Unnecessary Hardship Will Result from Strict Application of this Article or, for a Modification Relating to Forest Conservation, Unwarranted Hardship Will Result Due to Special Features of the Site or Other Circumstances

As noted in the earlier narrative, a number of site features and conditions create an unwarranted hardship for the applicant. One factor is the location of the specimen trees. Three of the specimen trees are located near the Ritchie Highway road frontage. The applicant is being required to make road frontage improvements in order to provide safe egress from the site. There is no physical way to provide these frontage improvements without impacting the trees. The remaining nine trees to be impacted are scattered across the site. Avoidance of the trees and their critical root zones would create a disjunct development envelope which would preclude construction of this project and any other reasonable development proposal. Three of the specimen trees are in poor or very poor condition and do not warrant retention. The condition of the forest is another factor. This tulip poplar forest, while mature, has experienced significant windthrow, with numerous large poplars fallen over. Heavy vines cover has smothered a number of trees, causing moderate to significant dieback. Invasive species cover is prominent in the shrub and herbaceous layers. The overall condition of the forest varies from fair to poor. Failure to allow for clearing of this forest would prevent development of the site, which in our opinion is unwarranted hardship given the condition of the forest and its planned land use.

2. The Purposes of this Article, Including Minimization and Mitigation for Environmental Impacts Through the Use of Clustering or Other Available Design Alternatives to Preserve the Character of the Impacted Area, will be Served by an Alternative Proposal

The proposed site layout has been designed to concentrate development on the central portion of the site. This development configuration avoids impacts to the forest conservation easement, including the fourteen remaining specimen trees, which was established under the approved 2014 FCP. The proposed restaurant adjoins other commercial development at the Ritchie Highway-Arnold Road intersection and is in keeping with character of the road frontage. The purpose of this article is served by this site proposal.

3. The Modification is not Detrimental to the Public Health, Safety, or Welfare, is not Injurious to Other Properties, or, if the Modification Relates to Forest Conservation, does not Adversely Affect Water Quality

Sediment control in accordance with Anne Arundel County standards will be installed and maintained during construction to control runoff from the site. Stormwater management will be provided post-development to provide quality treatment of runoff from the site. None of the proposed development activities occur within or proximate to wetlands, streams, or associated buffers. The planting of 4.93 acres of offsite forest will, over time, provide water quality benefits through increased nutrient uptake and reduction of thermal measures. Given these measures, the granting of the modification will not adversely impact water quality.

4. The Modification does not have the Effect of Nullifying the Intent and Purpose of this Article, the General Development Plan, or Article 18 of this Code

The granting of the modification does not have the effect of nullifying the intent and purpose of the article. The proposed development complies with the forest conservation ordinance by providing a combination of onsite retention and offsite reforestation. Fourteen of the twenty-six specimen trees present on the property will be retained post-development. Mitigation will be provided for impacted specimen trees. The granting of the modification in no way reduces the recently enacted, additional forest conservation obligation for the project.

5. The Applicant has Submitted Written Verification of the Office of Planning and Zoning that the Requested Modification was Disclosed and Discussed at a Community Meeting Under this Article

The project engineer stated to attendees at the community meeting for the project on September 28, 2021 that modifications were being requested for the project therefore this standard has been met.

In summary, the proposed modification requests are needed to allow for some additional commercial development of the site. The proposed forest impacts are consistent with those approved under a previously approved and recorded FCP. No forest in good or better condition is impacted. Impacts are proposed to five specimen trees. These impacts are needed to address other regulatory requirements and to allow for some additional reasonable use of the property. None of the specimen trees to be impacted are of such large size and unique condition that they warrant extraordinary retention measures.

The County requires compensatory mitigation for the removal of specimen trees. The applicant proposes to mitigate for Trees ST-1, ST-2, ST-3, ST-4, ST-6, ST-11, ST-21, ST-22, ST-23, ST-24, ST-25, and ST-26. Mitigation will be provided in accordance with Anne Arundel County Bill 68-19 and Anne Arundel County Planning and Zoning Notice #OPZ-20-01, which requires 3.4 acres of off-site mitigation.

Please feel free to call me if you have any questions. I thank you for your consideration in this matter.

Sincerely,

Henry A. Leskinen