TITLE: Boyer’s Mill Road – South Section  
(Removal of 5 Specimen Trees)

FILE NUMBER: CIP# C28412, SP-15-01 (AP# 19299)

REQUEST: FRO Modification Approval  
The Applicant is requesting approval of a modification to the Forest Resource Ordinance (FRO) to remove five (5) specimen trees.

PROJECT INFORMATION:
ADDRESS/LOCATION: Road improvements along Boyer’s Mill Road, south of Lake Linganore to Old National Pike
TAX MAP/PARCEL: Tax Map 79 (multiple parcels – see map)
COMP. PLAN: (multiple land use designations – see map)
ZONING: (multiple zones – see map)
PLANNING REGION: New Market
WATER/SEWER: N/A

APPLICANT/REPRESENTATIVES:
APPLICANT: Frederick County DPW
OWNER: (multiple land owners)
ENGINEER: Wallace Montgomery & Associates
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Graham T. Hubbard

RECOMMENDATION:

ATTACHMENTS:
EXHIBIT 1 – Photos of Specimen Trees
EXHIBIT 2 – Justification Letter
Modification Request

The Applicant is requesting approval of a modification to the Forest Resource Ordinance (FRO) to remove five (5) specimen trees along a 2.5-mile stretch of Boyer’s Mill Road.
BACKGROUND

Existing Site Characteristics

Boyer’s Mill Road is designated as a Minor Arterial and currently has 2 lanes of traffic (1 lane in each direction). The intent of this Capital Improvement Project (CIP) is to provide upgrades to meet increasing traffic demands and address safety and maintenance concerns. Significant environmental constraints, including the presence of specimen trees (trees that are 30 inches or greater in diameter) adjoin this 2.5-mile stretch of roadway. Unfortunately, five (5) specimen trees are situated in close proximity to the limit of disturbance. The Applicant has indicated in their justification letter that the removal of these trees cannot be avoided due to the construction of these upgrades.
ANALYSIS

Forest Resource Ordinance (FRO) – Chapter 1-21:
The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan (AP 16873). The plan sets out the forest conservation mitigation requirements for the 2.5-mile project. The 19.12 acres of disturbance (site) contains 2.29 acres of existing forest. The Applicant proposes to clear the entire 2.29 acres of forest and mitigate by the purchase of forest banking credits.

The site contains numerous specimen trees (trees 30” or greater in diameter). The Applicant is proposing to remove 5 specimen trees; the remaining specimen trees will be retained and protected.

The Applicant is seeking a modification of the Forest Resource Ordinance (FRO) to permit the removal of the following five specimen trees under the provisions of §§1-21-21 and 1-21-40:

<table>
<thead>
<tr>
<th>Tree ID #</th>
<th>Size and Species</th>
<th>Location</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>33.5” White Oak</td>
<td>(see map)</td>
<td>Fair</td>
</tr>
<tr>
<td>9</td>
<td>30.8” Red Oak</td>
<td>(see map)</td>
<td>Good</td>
</tr>
<tr>
<td>14</td>
<td>33.7” Red Oak</td>
<td>(see map)</td>
<td>Good</td>
</tr>
<tr>
<td>32</td>
<td>35.2” White Oak</td>
<td>(see map)</td>
<td>Good</td>
</tr>
<tr>
<td>35</td>
<td>66.8” White Oak</td>
<td>(see map)</td>
<td>Good</td>
</tr>
</tbody>
</table>

The Applicant’s FRO Modification Request (Exhibit 2) discusses each tree, its condition, and why its removal is proposed:

§ 1-21-40. CONSERVATION AND FORESTATION PRIORITIES.
(B) Priority areas for on-site conservation.
(1) Trees, shrubs, and plants in priority areas shall be retained and protected and shall be left in an undisturbed condition. The applicant must demonstrate to the satisfaction of the Department that reasonable efforts have been made to protect them and that the plan cannot reasonably be altered. Priority areas include:

(e) Nonhazardous trees that:
1. Are part of a historic site;
2. Are 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.
Modification Request (as submitted by the applicant)

Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that that the requirements for granting a modification have been met. The Applicant has prepared a justification letter to describe the constraints posed by these five (5) specimen trees and how alternative alignments to save them would not be practical or sustainable.

Per §1-21-21 of the FRO, the Planning Commission may grant a modification to allow the removal of a specimen tree if the Commission finds that six criteria are met and that enforcement would cause unwarranted hardship.

§ 1-21-21. MODIFICATIONS.

(A) Modification requests. A person may submit a request to the Frederick County Planning Commission (FCPC) for a modification from this chapter or the requirements of Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

(B) Required information. An applicant for a modification shall:

(1) Describe the special conditions peculiar to the property that 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.

(C) Modification approval. The FCPC must make a finding that the applicant has met the requirements in subsection (B) of this section and that enforcement would cause the applicant unwarranted hardship before the FCPC may approve any modification. [Emphasis added.]

In order for the FCPC to grant a modification to allow the removal of specimen trees, the FCPC must find:

- that reasonable efforts have been made to protect the specimen trees and that the plan cannot reasonably be altered (in accordance with § 1-21-40 (B)(1), and;
- that the Applicant meets the six criteria outlined under §1-21-21 (B) (a detailed discussion of the six criteria is provided in the Applicant’s modification request)

The Applicant’s justification letter (Exhibit 2) discusses why the specimen trees should be removed and how they meet the six criteria for granting of a modification.

Findings/Conclusions

Based on the justification letter provided by the Applicant, the proposed removal of these five (5) specimen trees is alleged to be necessary and unavoidable for this road improvement project to be sustainable, more efficient, better designed, less costly, and more successful overall.
RECOMMENDATION

Staff recommends that the Planning Commission review the Applicant’s justification letter and determine if the proposal meets the criteria for granting a modification under 1-21-21 of the FRO. Should the Planning Commission grant approval of the modification request, Staff recommend the following conditions be added to the approval:

1. Address all agency comments as the plan proceeds through to completion.
2. The FRO plan (AP 16873) must be approved prior to the removal of any specimen trees.
Exhibit 1: Photos of Specimen Trees

Tree #4
Tree #32
Exhibit 2: Justification Letter

February 14, 2019

Mr. Graham Hubbard
Principal Planner
Office of Development Review
30 North Market St.
Frederick, MD 21702

RE: Boyers Mill Road – South Section
CIP #: C28412
AP Project No.: 16873

Dear Mr. Hubbard:

Frederick County Office of Transportation Engineering (FCOTE) is 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 of 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, or the current state champion tree of that species as designated by the Department of Natural Resources

FCOTE is seeking a modification to permit the removal of five (5) nonhazardous specimen trees to accommodate the proposed roadway widening and/or improvements to Boyers Mill Road – South Section.

Pursuant to § 5-1611 of the Natural Resources Article of Maryland Annotated Code and § 1-21-40 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 AP No. 16873.

Background
This Modification request is in conjunction with the construction of the Boyers Mill Road From S. of Lake Linganore to Old National Pike (AP# 16873) Capital Improvement Project. The purpose of the project is to upgrade Boyers Mill Road to meet increasing traffic demands in the area with a focus on safety and maintenance concerns.

Variance Trees
This Variance requests the removal of five (5) nonhazardous specimen trees as described in the below table and as shown on the Forest Resource Ordinance Plan. These trees are listed as the result of either direct roadway design impacts or significant removal of the tree’s root system (>50%) that would commonly lead to the death of the tree.
<table>
<thead>
<tr>
<th>Tree #</th>
<th>Common Name</th>
<th>Species Name</th>
<th>DBH</th>
<th>Condition</th>
<th>Landowner</th>
<th>Mailing Address</th>
<th>Parcel</th>
<th>Tax Map</th>
<th>Acreage</th>
<th>Tax ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>white oak</td>
<td>Quercus alba</td>
<td>33.5</td>
<td>Fair</td>
<td>Oakdale Investments LLC</td>
<td>1355 Beverly Rd Ste 240 Mc Lean Va 22101-3849</td>
<td>94</td>
<td>79</td>
<td>40.0</td>
<td>27519199</td>
</tr>
<tr>
<td>9</td>
<td>red oak</td>
<td>Quercus rubra</td>
<td>30.8</td>
<td>Good</td>
<td>Oakdale Investments LLC, Carroll &amp; Laura Sparkman</td>
<td>1355 Beverly Rd Ste 240 Mc Lean Va 22101-3649; 6431 Boyer Mill Road New Market Md 21774</td>
<td>161</td>
<td>69</td>
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</tr>
<tr>
<td>14</td>
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<td>Quercus rubra</td>
<td>33.7</td>
<td>Good</td>
<td>Patricia Ann Nash</td>
<td>5524 Boyer Mill Road New Market Md 21774-6220</td>
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</tr>
<tr>
<td>32</td>
<td>white oak</td>
<td>Quercus alba</td>
<td>35.2</td>
<td>Good</td>
<td>Louis C. Hasslinger, Jr</td>
<td>517 Boyer Mill Road New Market Md 21774</td>
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<td>white oak</td>
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<td>155</td>
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<td>09239782</td>
</tr>
</tbody>
</table>
Explanation of Proposed Disturbances to Individual Trees

Specimen Tree #4 (33.5" DBH, white oak)
Tree #4 is located at STA. 1089+30 RT. The tree condition has been identified as fair. Additional roadway widening is required in order to accommodate the northbound bypass lane along Boyer's Mill Road. Due to this roadway widening, the existing manhole at Sta. 1089+12, RT needed to be relocated further west to stay outside of the proposed shoulder. The roadway alignment cannot be shifted further to the east to avoid the tree because, at this location, the roadway is pinned next to a bedrock outcrop and steep slope. Shifting the alignment east would require two trees to be removed instead of just one. This relocation would increase utility costs and require additional land to be purchased from multiple landowners to accommodate widening of the road and intersection.

Specimen Tree #9 (30.8" DBH, red oak)
Tree #9 is located at STA. 1099+03 LT. The tree condition has been identified as good. The County has requested for a dedicated right turn/deceleration lane along northbound Boyer's Mill Road to turn onto Pinehurst Drive. Due to this roadway widening, 50 feet of additional side slope is required. The ditch backslope cannot exceed its current 2:1 slope. Closed section is not a practical option as it will require an additional 75 feet of storm drain pipes, and additional 300 feet of curb and gutter, another inlet, and will still require extensive grading to tie into the existing grade. The costs for this alternative design are prohibitive. Shifting the design south would increase utility costs and require additional land to be purchased from multiple landowners to accommodate the road.

Specimen Tree #14 (33.7" DBH, red oak)
Tree #14 is located at STA. 1157+54 RT. The tree condition has been identified as good. The primary reasons for the disturbance to specimen tree #14 are a shift in roadway alignment and widening to provide a shoulder. The proposed roadway was shifted as far west as possible in order to minimize impacts to the forest and Specimen Tree #13 on the east side (which has a larger diameter). Curb and gutter was proposed along this segment to minimize grading impacts to the surrounding trees. Saving both specimen trees is not feasible due to the nature of the roadway improvements.

Specimen Tree #32 (35.2" DBH, white oak)
Tree #32 is located at STA. 1203+77 LT. The tree condition has been identified as being in good condition. The roadway alignment cannot be shifted to the north or south for avoidance because it would require multiple full property takes in order for the roadway alignment to properly connect with the newly constructed bridge over Lake Linganore. Due to the traffic study and volume of vehicles at the intersection of Boyer's Mill Road and Old National Pike, an additional deceleration lane is required to improve the intersection. In addition, a driveway culvert/inflet section is required to be constructed at the tree location to prevent trapping water on the high side of the driveway. Closed section is not a practical option as it will require an additional 250 feet of storm drain pipes, an additional 400 feet of curb and gutter, and multiple inlets for the drainage system. This alternative would significantly increase the cost of the overall project.

Specimen Tree #35 (66.8" DBH, white oak)
Tree #35 is located at STA. 1162+13 LT. The condition of this tree has been identified as good. The tree currently creates a sight distance obstacle thus causing a driving hazard. The road would have to be significantly realigned to save the tree and provide proper sight distance as required by AASHTO. According to § 1-21-5 of the Frederick County Code, this tree meets a requirement (#2) necessary to be considered unsafe under the County definition of a “Nonhazard Tree”.

“NONHAZARDOUS TREE. A tree that is not considered unsafe due to 1 of the following:
(2) Interference with routine activities of people or built structures, such as, but not limited to, obstructing motorists’ vision, raising sidewalks, attracting lightning, and disrupting utilities.

This tree is a “hazard” because “Interference with routine activities of people or built structures, such as, but not limited to, obstructing motorists’ vision, raising sidewalks, attracting lightning, and disrupting utilities. Avoidance is not feasible because the roadway design must include an adjacent inline storm drain system to handle roadway stormwater; as well as the location of the nearby stormwater retention facility at
STA. 1164+50, L.T. Relocating the storm drain system to the south would still impact the tree enough that it would require removal because of grading and fill needed to accommodate the new roadway embankment. Furthermore, relocating the storm drain system cannot be done at this point since it will exceed the maximum allowable drainage area designed for the stormwater retention facility at STA. 1163+50, RT. This will require a redesign of a larger stormwater facility with even greater grading impacts. Shifting the design south would also require additional real estate to be negotiated and purchased to accommodate this design shift.

Pursuant to §1-21-21 of the Frederick County Code, a written request may be submitted to the Frederick 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 an unwarranted hardship to the person. Under §1-21-21(D) Required Information, states that an applicant requesting a modification shall:

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

The proposed removal of the five (5) specimen trees described above is necessary to meet the goals of the CIP project; which is to meet increasing traffic demands with a focus on safety and maintenance. There are a number of special conditions peculiar to the project, which would result in an unwarranted hardship if a modification is not granted. FCOTE does not stand to gain monetarily from this project, only to provide citizens safe and effective transportation corridors; by keeping up with demand and area growth. Avoidance and minimization methods have been incorporated into the roadway design to the most practical extent taking into account and balancing impacts to properties, SWM needs and project cost. The corridor has significant residential properties on both sides of the road and design has balanced the needs of residents, protecting as many trees as possible, without any displacements. Not granting a variance to all the mentioned specimen trees would cost FCOTE a considerable amount of money. A redesign of the roadway would most likely be required since the proposed specimen tree impacts are spread out along the corridor at five different locations. These locations are close enough to each other that the redesign of one segment would have a cascading effect to the other locations resulting in a possible redesign of the entire roadway. Unfortunately, there are landowners that have shown resistance to the project because of costly, but necessary land acquisitions by the County to accommodate the roadway improvements. It would be a great hardship to FCOTE and all adjacent stakeholders if it was necessary for FCOTE to shift the roadway and cause displacements to avoid tree impacts.

2. **Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others.**

We feel that a balance between impacts to properties, SWM needs and project cost has been achieved with this roadway design. At this point, if the variance is not granted, FCPC will be
depriving FCOTE and the surrounding public the necessary roadway improvements that are commonly required and constructed for the same amount of local increased development and travel demand. The preservation of the five (5) specimen trees would require a redesign of the roadway at five (5) separate areas along the project corridor. This would impose a considerable cost increase to FCOTE, project delay, possible loss of funding, and continued public transportation issues along this corridor. If this variance request is not granted, it will deprive the County of rights that have been granted to other County Government Departments to make necessary improvements to infrastructure.

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

FCPC has previously granted specimen tree removal requests to other roadway projects if proper justification is provided. The FCOTE feels that we have provided adequate justification to allow for this request and that as long as proper justification and avoidance and minimization measures are shown this project if presented by another person or entity would 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.

As described in (1.) above, this modification request is not based on conditions or circumstances that are the result of actions by the applicant. The request is based on current natural conditions that already exist on the property. No construction or destruction of any specimen trees have occurred yet along the corridor as a direct result of this project.

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.

This request for the removal of five (5) trees is based on the conditions described above and are not due 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 Ordinance and Sediment and Erosion Control Ordinance. Both are in accordance with State regulations. The removal of the five (5) specimen trees 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 in this letter provides adequate justification for the approval of the requested Modification to remove five (5) nonhazardous specimen trees. Please feel free to contact me if you have questions or require additional information.

Sincerely,

Ian Sekol
Project Manager