TITLE: Kyde & Snitzer Property  
(Removal of a Specimen Tree)

FILE NUMBER: M3217 (AP# 19205)

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

PROJECT INFORMATION:
ADDRESS/LOCATION: 12501 Spruce Run Road, approximately 2,100’ north of Wolfsville Road  
TAX MAP/PARCEL: Tax Map 30, Parcel 193  
COMP. PLAN: Natural Resource  
ZONING: Resource Conservation (RC)  
PLANNING REGION: Middletown  
WATER/SEWER: NPS

APPLICANT/REPRESENTATIVES:
APPLICANT: Kerrie L. Kyde & John L. Snitzer  
OWNER: Kerrie L. Kyde & John L. Snitzer  
ENGINEER: VanMar Associates, Inc.  
ARCHITECT: N/A  
ATTORNEY: N/A

STAFF: Graham T. Hubbard

RECOMMENDATION:

ATTACHMENTS:
EXHIBIT 1 – Photos of Specimen Tree  
EXHIBIT 2 – Justification Letter
Modification Request
The Applicant is requesting approval of a modification to the Forest Resource Ordinance (FRO) to remove a specimen tree.

BACKGROUND
Existing Site Characteristics

The property consists primarily of forest, with the exception of an existing driveway and a small clearing. Significant environmental constraints, including the presence of specimen trees (trees that are 30 inches or greater in diameter) abound the property. To minimize environmental impacts and save as many specimen trees as possible, the proposed house site is located in the south-central portion of the property in an area with fewer specimen trees. Unfortunately, one specimen tree (Tree #5, a 31" diameter Black Oak) is situated in close proximity to the limit of disturbance. The Applicant has indicated in their justification letter that the removal of this tree cannot be avoided due to the disturbance associated with the proposed home construction.
ANALYSIS

Forest Resource Ordinance (FRO) – Chapter 1-21:
The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan (AP 19205). The plan outlines the forest conservation mitigation requirements for the project. The property contains 28.72 acres of existing forest. To meet the “break-even point” and avoid planting forest or provide off-site mitigation, the Applicant proposes to place 17.24 acres of forest under FRO easements. It should be noted that although the FRO permits 11.49 acres of forest clearing without additional mitigation, the Zoning Ordinance does not allow more than 40,000 sf of forest removal in the Resource Conservation Zoning District. A note regarding this clearing restriction must be added to the FRO plan.

The site contains twenty-seven (27) specimen trees (trees 30” or greater in diameter). The Applicant is proposing to remove three (3) specimen trees. The remaining twenty-four (24) specimen trees will be retained and protected. 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. Hazardous trees may be removed without an FcPc modification. Of the three (3) specimen trees to be removed, two (2) trees exhibit structural defects and significant health issues that make them predisposed to failure. Their removal is approved by staff. One (1) specimen tree (Tree #5, a 31” diameter Black Oak) is considered non-hazardous by staff. As such, this tree will require Planning Commission approval to remove. The Applicant is seeking a modification of the Forest Resource Ordinance (FRO) to permit the removal of a specimen tree under the provisions of §§1-21-21 and 1-21-40.

§ 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’s FRO Modification Request (Exhibit 2) discusses the tree’s condition and why its removal is proposed.

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, 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 tree should be removed and how they meet the six criteria for granting of a modification.

Findings/Conclusions

As argued by the Applicant in Exhibit 2, the proposed removal of Specimen Tree #5 is necessary and unavoidable for this custom home project to be sustainable, 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 recommends that the following conditions be added to the approval:

1. Address all agency comments as the plan proceeds through to completion.
2. The FRO plan must be approved prior to the removal of the specimen tree.
3. Add a note to the plan restricting forest clearing to no more than 40,000 sf in accordance with 1-19-7.200(C)(1) of the Zoning Ordinance.
ST #5. WINTER 2019.

FAIR CONDITION, SIGNIFICANT CANOPY CROWD. 65% ROOT ZONE IMPACTED BY CONSTRUCTION OF HOME AND DRIVEWAY. WOOD INTENDED FOR BEAMS IN THE HOME. REMOVAL RECOMMENDED.
Mr. Graham Hubbard  
Principal Planner  
Department of Development Review  
30 North Market Street  
Frederick, Maryland 21702  

April 11, 2019

Re: Kyde/Snitzer Property at 12501 Spruce Run Road  
FRO Submission  
AP# 19205

Dear Mr. Hubbard,

We respectfully submit a request for a Modification from the provisions of §1-21-40 (B)(1)(e)4 of the Frederick County Code, known as the Forest Resource Ordinance (FRO) of Frederick County, to permit the removal of a non-hazardous specimen tree. We provide the following justification explaining the special features, site circumstances and other information that demonstrates that enforcement to the Code would result in an unwarranted hardship for us.

Background
In June 2014, we purchased two parcels along Spruce Run Road outside Myersville totaling 28.93 acres. Our intention was to protect the existing forest and creek, and to build a retirement home with as low an environmental impact as possible. We are working with a natural building architect on a design for a timber-frame, strawbaie, energy-independent house. Our hope is to use, as much as possible, on-site or local materials in the construction process. We have chosen a site for the house well away from the Spruce Run floodplain and below the greenstone cliffs, on a fairly level terrace adjacent to an existing historic gravel roadway.

Specimen Tree Description and Proposed Disturbance
The specimen tree is ST#5 on the attached plan rendering, marked with a green circle. It is a black oak, 31” DBH, described as in Fair condition by David Adams, Landscape Architect of VanMar Associates, Inc., with whom we are working on our FRO submission. Mr. Adams had recommended removal due to the declining state of the tree’s canopy.

We would like permission to harvest this oak (in combination with four non-specimen canopy trees, under a Minor Logging Permit to be submitted after FRO approval), in order to have it milled to make the long timbers -- plates, purlins and ridge beam -- for the timber frame of the house (see attached photograph for examples). No soil disturbance or excavation would be done during this harvest.

Special Conditions Peculiar to the Property
ST#5 is squarely within the anticipated limits of disturbance for the eventual house construction. A sizable percentage of its CRZ to the north is currently impacted by an existing historic gravel road. This road will get regular and heavy traffic during construction, and we would have no access to the house site if we could not use this road. Nor could plumbing and electrical lines easily be connected to the house site if we needed to go around the root zone of the tree. The tree is within 12’ of the planned front foundation wall of the house. If we relocated the house footprint farther south to protect the southern half of its CRZ, we would be less than the allowable 50’ setback from the property boundary.

We chose this house site because of: 1) its distance from the Spruce Run floodplain and lack of wetland impacts; 2) the relatively few live trees located within its proposed footprint at
that location, most of which are younger, fast-growing yellow poplar (Liriodendron tulipifera) of which there are many throughout the parcel; 3) the natural terrace and lack of steep slopes that exist at that location, allowing minimal grading during construction; 4) the southerly dip of the cliff face to the east which will allow the earliest sunlight to reach the house and the planned solar thermal hot water system; and 5) the spectacular view of 600 million year-old Catoctin greenstone cliffs, which we would forgo if we relocated the house.

Deprivation of Rights Commonly Enjoyed by Others
We’d really like to be able to build a house on our own land. Construction of that house will be substantially more difficult if we are not permitted to remove ST#5.

Due to the nature of the forested property, with stands designated as Appalachian Cove and Mixed Hardwood associations, and many conditions “characteristic of old growth forest” (see attached Forest Stewardship Plan, 2014), there are few acceptable locations on the property where a home could be safely and ecologically located without affecting specimen trees. The plan rendering we’ve submitted shows specimen trees primarily within the floodplain, plus five east of the floodplain but within Proposed Easement #3, but there are more specimen trees throughout the property. Any other house site would require the removal of additional forest, and would likely impact one or more of those trees.

In addition, there are no other suitable locations within close proximity of the existing well and approved septic field.

Finally, we plan to protect all trees surrounding the proposed house site during construction using the guidelines suggested by certified arborist Shawn Walker of Trees 101 (see attached site visit report by email). If we were to retain ST#5 and work around it, using these guidelines, we would expect either 1) significantly increased construction time and expense, or 2) the likelihood of relatively rapid tree death following construction, based on 40 years of John Snitzer’s observations while designing gardens for properties where tree protection either was or was not used.

There is a particular bond that ties us to the land when the house we will live in is constructed using materials from the site – stone, clay and wood. We also gain significant advantage in construction timing and reduction of expense if we are permitted to harvest ST#5 and use it to build framing members for the house.

Modification Will Not Confer a Special Privilege
We believe that we have provided adequate justification to allow for this removal request. As long as proper justification is offered, and we adhere to legal and specific conditions imposed by the Planning Commission or County Staff, we do not believe that this request would confer a special privilege to us that would be denied to any other County resident.

Conditions or Circumstances Resulting from Applicant’s Actions
This request is not based on any conditions or circumstances resulting from our actions. ST#5 already exists on the property. No construction or destruction of any specimen trees has occurred on the property as a result of this planned house construction.

Conditions Resulting from Neighboring Land or Building Use
This request is based on conditions existing on our land and not on any land use, or structure on any neighboring property. In particular, the property immediately to the south, belonging to Lee DeLauter (Liber 2342, Folio 729) has no structures on it near the property boundary or within our viewshed and is not in active use.
Modification Will Not Adversely Affect Water Quality

ST #5 stands over 500’ away in straight-line distance from the closest edge of the 100-year FEMA floodplain, with mature mixed hardwood forest between it and the floodplain. We plan to remove only the bole of the tree, and no root ball or soil disturbance will occur as a result of this harvest. Further, the arborist whom we have contracted to carry out the removal has a very specific felling plan that will in no way affect water quality, and which minimizes any effects on adjacent trees that we want to retain and protect.

Thank you for your consideration of this Modification request. We believe that the supporting information presented here provides adequate justification for the approval of our request to remove one non-hazardous specimen tree and use it in the construction of the framing for our eventual house.

Sincerely,

Kerrie L. Kyde
Landowner
terradara@comcast.net
410-279-1847

John L. Snitzer
Landowner