TITLE: Landon House Complex
       (Removal of a Specimen Tree)

FILE NUMBER: SP-98-29 (AP# 18080)

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: Located on the north side of Urbana Pike at its junction
with MD 80, across from the site of the former Cracked
Claw/Peter Pan Inn, south and west of Worthington
Boulevard in Urbana
TAX MAP/PARCEL: TM 96; Parcel 38
COMP. PLAN: Village Center (VC)
ZONING: Village Center (VC)
PLANNING REGION: Urbana
WATER/SEWER: W-3; S-3

APPLICANT/REPRESENTATIVES:
APPLICANT: PCR Ventures, LLC
OWNER: - same -
ENGINEER: Terra Solutions Engineering, LLC
ARCHITECT: CMW Group, Inc.
ATTORNEY: N/A

STAFF: Graham T. Hubbard

RECOMMENDATION:

ATTACHMENTS:
EXHIBIT 1 – FRO Modification Plan
EXHIBIT 2 – Photos of Specimen Tree #1
EXHIBIT 3 – Arborist #1 Report (Jose Alvarez, Chapingo Tree Care Specialists)
EXHIBIT 4 – Arborist #2 Report (Tony Murdock, Fine Pruning)
EXHIBIT 5 – Justification Letter
STAFF REPORT

Modification Request
The Applicant is requesting approval of a modification to the Forest Resource Ordinance (FRO) to remove a specimen tree. The previously approved Site Plan for a mixed use Village Center project proposed to save the tree.

BACKGROUND

Recent Development History
The Site Plan for this project was approved on April 12, 2017 with the following condition concerning the disposition of the existing specimen trees:

1.) The Applicant shall demonstrate that all possible safeguards are in place to protect the five specimen trees planned for retention on the site before, during, and after construction of the project. The Applicant shall ensure that a licensed arborist conducts root pruning prior to any earth disturbance around the specimen trees identified in the FRO plan (AP 13839) including the 58” Northern Red Oak located directly behind the historic Landon House. [Emphasis added.]

Forest Resource Ordinance – Chapter 1-21:
The FRO review for this project was covered under AP 13839, which is the FRO plan covering the entire Landon House Complex project, and has been approved. The required mitigation included 0.21 acres of landscaping credits, the purchase of 0.65 acres of forest banking credits, and the protection of the five (5) specimen trees.

Existing Site Characteristics
The Site is currently occupied by a single structure known as the Landon House. The entirety of the Site is listed on the National Register of Historic Places (NR) (#F-7-3, Stancioff Property) for both its architectural character and for its association with events during the Civil War. All previously existing outbuildings have been demolished or disassembled during the past three years in preparation for renovation of the main structure which dates from the early 19th Century.

The Site contains five (5) specimen trees (trees that are 30 inches or greater in diameter). Previously approved plans proposed to retain and protect these trees.

ANALYSIS

Forest Resource Ordinance (FRO) – Chapter 1-21: The Applicant is seeking approval to remove specimen tree #1; a 58” Northern Red Oak. This tree is a specimen tree and is associated with a historic structure. Per §1-21-40(B)(1)(e) of the FRO, nonhazardous trees that part of a historic structure or are specimen trees must be retained unless a modification is approved by the Planning Commission.
§ 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)
The Applicant has hired two different arborists to evaluate the 58” Northern Red Oak (see Exhibits 3 and 4 for arborists’ reports). Both arborists found that the tree is in decline and recommend its removal. The Applicant’s main concerns are liability from injury and property damage incurred by falling branches.

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.

The Applicant’s justification letter (Exhibit 5) discusses why the tree should be removed and how they meet the six criteria for granting of a modification.
Findings/Conclusions

The 58” Northern Red Oak is a significant tree that contributes to the historic Landon House landscape. The tree is located atop one of the highest points in Urbana and is highly visible from the adjoining Villages of Urbana to the north and MD 80 to the east. Unfortunately two licensed arborists agree that the tree is in decline. Although one arborist provided some recommendations for improving the health of the tree, both recommended the tree be removed.

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 revised FRO plan must be approved prior to the removal of the specimen tree.
Exhibit 1: FRO Modification Plan
Exhibit 2: Photos of Specimen Tree #1
### Exhibit 3: Arborist #1 Report (Jose Alvarez, Chapingo Tree Care Specialists)

<table>
<thead>
<tr>
<th>Qty</th>
<th>Tree</th>
<th>Tree Risk Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Oak</td>
<td>(Quercus Rubra) tree with 187 inches of circumference located at rear of the building. The tree has about 20% of it's center main crown dead and infected with the Hypoxylon fungus, which most likely spread to other stressed stems. Plus, if there is any disturbance to the root system of the tree, it will contribute to it's destination of health and safety. <strong>Removal of the tree is highly recommended:</strong> Since the removal of the current diseased stems will create openings to the tree system that regarding their dimensions they won't close in the tree's life and it will be exposed to the Hypoxylon fungal spores and other pathogens enter in the system of the tree.</td>
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</tbody>
</table>
Northern Red Oak: Rear of building.

I inspected the above tree on the date above. It is a multi-stemmed tree with a DBH of approximately 6.5 ft. There is extensive rot and dead limbs in the center of the tree. There is extensive compaction in the root zone from about 20-30 ft outside the drip line. The age is between 100-150 years. The tree is going into a slow decline. There are several options:

1. Remove the dead wood, fertilize the roots and install drip irrigation to prolong its life as long as possible. The wounds left from pruning will not heal and therefore wood decaying organisms and insects will start to enter the tree. If this tree will continue to decline.

2. Take the tree down and after all live construction is done, replace it with a new specimen, considering the amount of dead wood and compaction. I would recommend its removal. Eventually the tree will have to go, so it’s better to remove it now before any new structures are in place making it more expensive to remove.

Tony Murdock
December 18, 2017

Frederick County Community Development Division
Department of Permitting and Development Review
30 North Market Street
Frederick, MD 21701
Attn: Graham Hubbard

RE:  Landon House Complex
Forest Resource Modification Request – Justification Letter
Hansen #18080
TSE Project No.: 051

Dear Mr. Hubbard:

The Frederick County Code (Forest Resource Ordinance), Chapter 1-21-21 – Modification Requests – allows for an applicant to request a modification to a previously approved Forest Conservation Plan. The Landon House Project received approval for the Forest Conservation Plan (AP# 13839) on November 21, 2014. That plan identified a specimen tree on the project site which is shown as Specimen Tree #1 (58” Northern Red Oak) on the Specimen Tree Table. The tree was originally proposed to be saved and various designs were done to eliminate as much impact as possible to the critical root zone (CRZ) of the tree. Since the date of approval (2014), the overall condition of the health of the tree has deteriorated to the point of being a danger to existing structures on the property and potentially dangerous to proposed improvements to the property. This danger could extend to not only physical improvements but to users of the property if the tree were not removed before occupancy of any of the proposed buildings. With all of these points in mind, the applicant is seeking modification of the approved plan by allowing removal of the tree. Per Frederick County Code, Chapter 1-21-21 (B), justifications for the request is are listed below:

1) **Special Conditions peculiar to the property that would cause unwarranted hardship**: The location of the specimen tree is such that all of the various engineering and architectural designs had to be done in order to lessen impact to the tree. There were no other alternatives.

2) **How would enforcement of these rules deprive the landowner of rights commonly enjoyed by others in similar areas**: The owner/applicant would not be able to proceed with development of the property with the tree still on the project site.

3) **Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied other applicants**: No special privileges would be granted by removal of the tree since any other potential applicant would ask for the same request under similar circumstances.

4) **Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant**: The property has actually been vacant for a number of years so no outward impacts have made by the owner/applicant that would have caused the tree to be in the dangerous state that it is in.
5) Verify that the modification does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property: The properties to the north and west were developed long before this request was made. Their locations are far away from the tree in question and did not impact the health of the tree.

6) Verify that the granting of a modification will not adversely affect water quality: The unhealthy specimen tree sits at about the highest point (elevation-wise) within the confines of the project area and adjoining properties to the west, north and east. It does not lie near any body of water so it has no impact upon water quality.

Please note that included with the FRO Modification Plan that was submitted to the county also contains the two arborists’ reports explaining their reasonings for recommending removal of the tree. If you have any questions or comments concerning this submission, please contact me at the phone numbers listed above. Thank you for your assistance with this project.

Sincerely,

Terra Solutions Engineering, LLC

[Signature]

J.T. Lebherz, LS, Forest Resource Qualified Professional

Cc: