April 21, 2026

Bay St. Louis Planning and Zoning Commission
598 Main Street
Bay St Louis, Mississippi

Re: Appeal of Tree Removal Permit Denial (APP - 1377) for 115 Demontluzin Avenue, Bay St. Louis, MS 39520

Members of the Planning and Zoning Commission:

The purpose of this letter is to summarize our position and formal appeal of the denial of a tree removal permit application concerning 115 Demontluzin Avenue, Bay St. Louis, Mississippi (APP-1377). Additionally we would like to highlight for the Planning and Zoning Commission (the "Commission") the relevant findings and information found in appellants' Supplemental Appeal Packet, attached hereto as Exhibit "A", which is not currently reflected on the Commission's April 28, 2026 meeting agenda.

I. Procedural History

On January 28, 2026, applicants submitted a Tree Removal Permit Application (APP-1377) through the City's MGO Connect portal for the removal of two (2) Live Oak trees at 115 Demontluzin Avenue, Bay St. Lous, Mississippi (the "Subject Property"). The next day, Mrs. Anne Dauphin (Building Clerk) requested additional documentation through the portal, which was thereafter submitted by applicants on the same day, January 29, 2026, and the application was therefore complete. Importantly, applicants submitted a detailed arborist report by Mr. David Garitty (ISA Certified Arborist, MS Licensed Arborist, LA Licensed Arborist, LA Licensed Horticulturist) which recommended removal of both trees at the Subject Property due to their hazardous nature and location.

On February 10, 2026, applicants posted an inquiry through the portal regarding their application status. Applicants noted that the statutory seven-day period of review had expired (discussed in more detail below) and requested confirmation that the application was approved by default under the applicable ordinance. Forty minutes later, Mrs. Dauphin posted a comment through the portal that the trees should be "rebalanced and pruned to mitigate potential problems" and that "[t]hese trees do not need to be cut down." Applicants responded to note the procedural concerns with Mrs. Dauphin's response. On February 11, 2026, Mr. Drew Boxx (Building Inspector) posted a comment issuing a formal denial of APP-1377.

Applicants then submitted a formal appeal packet on February 24, 2026, within the prescribed fifteen (15) day period. *See* Bay St. Louis, MS. Code of Ordinances, Ch. 22, Art. III. § 22-94.

II. Summary of Appeal

a. The denial of APP – 1377 was procedurally defective and moot, as the application was approved by default under § 22-116.

As outlined in the formal appeal packet, § 22-116 of the Bay St. Louis Code, which discusses tree removal permits, requires that site plans for tree removal permits be submitted prior to the removal of any tree. Bay St. Louis, MS. Code of Ordinances, Ch. 22, Art. III. § 22-116. This documentation was properly submitted by applicants on January 29, 2026. Section 22-116 also states that:

> "If the applicant is not notified of approval or disapproval **within seven working days, such plans shall be considered approved,** and **such permit shall be considered issued** by the tree protection advisor through the building official."

Id. (emphasis added).

The City code thus clearly provides for scenarios where no decision is rendered within the seven-day period prescribed by the rules – the application is considered approved by default. This provision is directly applicable here. Applicants submitted their application in full on January 29, 2026. The seven-day review period expired on February 9, 2026 – seven working days after January 29, 2026. At that time, **a de-facto approval was deemed issued under the law.** The first communication from Mrs. Dauphin was not received until February 10, and the subsequent denial by Mr. Boxx was not issued until February 11, 2026.

Mr. Boxx's subsequent denial was moot. The application had already been approved pursuant to the City code after the expiration of the seven-day period on February 9, 2026.

b. The denial of APP – 1377 was procedurally defective because it was not issued by a tree protection advisor as required by § 22-116.

Section 22-92 requires that the "tree protection advisor" be a arborist or horticulturist. Bay St. Louis, MS. Code of Ordinances, Ch. 22, Art. III. § 22-92.

Section 22-116 states that "[n]o building permit shall be issued until the tree site plan has been reviewed and approved in writing **by the tree protection advisor[.]**" Bay St. Louis, MS. Code of Ordinances, Ch. 22, Art. III. § 22-116 (emphasis added). The only communications applicants received through the MGO Connect portal were from Mrs. Dauphin (Building Clerk) and Mr. Boxx (Building Inspector). No credentials of any reviewer or references to an arborist or horticulturist license number were cited. The City has provided no evidence that a licensed arborist or horticulturist reviewed this application. Further, the denial of APP – 1377 was issued by Mr. Boxx, the Building Inspector, not the tree protection advisor.[1]

Although Section 22-116 states that the "building official" has concurrent authority with the tree protection advisor to enforce the regulations in Article Three of the Code, Section 22-116 clearly states that it should be the *tree protection advisor* who reviews the initial permit application

[1] Applicants are unaware of the individual(s) who served as the City's tree protection advisor at the time their application was submitted.

and issues a determination. Regardless, the building official is listed as Mr. Rickey Ladner on the City's staff directory. Mr. Ladner did not issue the formal denial of APP – 1377.

As stated previously, the application was deemed approved after the expiration of the seven-day review period. However, even if the Commission finds that the application was not approved by default, the subsequent denial of APP – 1377 was also procedurally improper because it was not issued by a tree protection advisor as required by § 22-116.

c. The denial of APP – 1377 directly contradicts licensed arborist and horticulturist findings and results in a hazardous risk at the Subject Property.

The denial of APP – 1377 conflicts with the findings and written recommendation of Mr. David Garitty, who holds the following qualifications:

- ISA Certified Arborist (International Society of Arboriculture)
- Louisiana State Licensed Arborist
- Louisiana State Licensed Horticulturist
- State of Mississippi Licensed Arborist
- Over 30 years of experience evaluating Live Oaks along the Mississippi Gulf Coast

Mr. Garitty's report and qualifications were included in APP – 1377. **Mr. Garrity recommended that the trees at the Subject Property be removed as soon as possible** due to active disease and decay at the base of the trees. He found that the trees were in fair to poor condition and both represented a hazardous condition.

Additionally, photo evidence submitted with the application documents the recent failure of a nearby Live Oak exhibiting codominant stem structure and basal decay. That failure resulted in property damage and occurred in the absence of extreme weather conditions on December 2, 2025. Mr. Garrity found in his report that it was evident that this 2025 Live Oak failure occurred due to **the same issues** of decay and disease at the base of the tree as he noted for the trees in APP – 1377.

A comment was posted on the MGO Connect portal stating that the trees "have some damage from previous hurricanes, but mostly the trees have not had any maintenance pruning in many years" and that they "can be rebalanced and pruned to mitigate any potential problems." However, the record does not identify:

- The qualifications of the individual rendering the determination
- Whether a licensed arborist or horticulturist conducted a professional evaluation in connection with the denial
- Any inspection report, supporting photographs, or professional credentials
- Written findings addressing the documented disease and structural defects

The denial of APP – 1377 was in direct contradiction to the findings of Mr. Garrity and the City has provided no explanation as to its disagreement with Mr. Garrity (an experienced horticulturist and arborist). Should the Commission deny this appeal, the hazardous risk will persist on the Subject Property.

III. Supplemental Appeal Packet

In addition to the aforementioned points and cumulative record already before the Commission, the Applicants wish to highlight some of the relevant findings and information found in appellants' Supplemental Appeal Packet, attached hereto as Exhibit "A", which is not currently reflected on the Commission's April 28, 2026 meeting agenda.

a. Supplemental Arborist Report

Subsequent to the original application, applicants documented the full extent of basal decay, caused by wood decay fungi, on the 43-inch DBH Live Oak through detailed photography and circumferential measurement. These photographs are included in the initial appeal packet as Exhibit H. On March 4, 2026, Mr. Garrity issued a supplemental report based on these photographs, which is included in applicant's supplemental appeal packet. Mr. Garrity, based on his review of the 43-inch DBH Live Oak, issued the following supplemental findings:

- Escalated status of the tree from "fair to poor" (original report) to "POOR" (supplemental report)
- Escalated removal recommendation from "as soon as possible" to "IMMEDIATELY"
- Found that approximately 65% of the circumference of the base of tree was affected by wood decay fungi
- Found that the lack of root flare significantly increases the risk of structural failure and tree collapse
- Found that the tree would not be a good candidate for tree preservation

b. Mississippi State University Extension Service Publication FO468, Tree Protection Standards in Construction Sites

Exhibit I to applicant's supplemental appeal packet identifies applicable standards from the Mississippi State University Extension Service Publication FO468, Tree Protection Standards in Construction Sites, published by MSU's College of Forest Resources and the Mississippi Forestry Commission., the relevant page reference, and its direct application to findings of Mr. Garitty in reports dated January 23, 2026 and March 4, 2026. A summary of these applications is represented by the below chart:

SUMMARY

MSU Standard	Page(s)	Finding at 115 Demontluzin Ave.
Trees classified as susceptible — should not be saved	12	All three MSU defect criteria present
Critical root radius — 43" tree = 53.75 ft	5–6	Residence approx. 16 ft — inside CRZ
Removal only option for susceptible trees near structures	14–15	Removal is the only viable option
Declining stage — beyond help	9–10	Dead scaffold branch confirms decline
Pruning insufficient for susceptible trees	7, 10	65% basal decay — mitigation does not apply
Known hazard + inaction = liability exposure	3	City has documented notice on record

The application of these standards to Mr. Garrity's findings further reiterates that the acceptable industry standards would require removal of the trees at the Subject Property and that mitigation would not resolve the issues presented.

For the reasons set forth herein, and as outlined in applicants' appellate filings, we respectfully request that the Planning and Zoning Commission, after a review of the record and public hearing, find that APP – 1377 was approved after the expiration of the seven-day review period in accordance with § 22-116 and issue a permit in accordance with this finding. In the alternative, we request that the Commission overturn the denial of APP – 1377 and grant the requested tree removal permit consistent with the evidence in the record.

Thank you for your attention to this matter. Please do not hesitate to contact us if you have any questions or need any additional information.

Sincerely,

Kevin Kernion and Laurie Norman
Appellants/Applicants

Submitted By:

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Gulfport, Mississippi 39501
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khood@balch.com

Office of the Lieutenant Governor
State of Louisiana

BILLY NUNGESSER
LIEUTENANT GOVERNOR

P.O. Box 44243
BATON ROUGE, LOUISIANA 70804-4243
(225) 342-7009

March 3, 2026

The Honorable Mike Favre
Mayor of Bay St. Louis
688 Hwy. 90
Bay St. Louis, MS 39520

Dear Mayor Favre:

I am writing on behalf of Kevin Kernion and Laurie Norman, who reside in Bay St. Louis, to respectfully ask that you give their pending tree removal appeal your personal attention and consideration.

Kevin and Laurie purchased their home at 115 Demontluzin Avenue in part because of the beauty of the Live Oak trees on and around the property. They are genuine lovers of oak trees who are currently working to preserve a large oak on their property in Metairie. That makes their decision to seek removal nothing short of heartbreaking for them. It is not a decision they arrived at lightly.

In December 2025, a large Live Oak on the neighboring property failed without a weather event, causing property damage and narrowly missing their residence. Luckily, there was no loss of life or injury. At that point, they engaged David Garitty, a respected, licensed arborist and horticulturist with extensive experience along the Gulf Coast, whose work has been retained by universities, municipalities, major insurance carriers, and courts across Louisiana, Mississippi, and California as both consultant and expert witness, hoping he would find the two remaining trees on their property salvageable. He did not. His evaluation found both trees in fair to poor condition with advanced structural decay at the root flare and recommended removal as soon as possible. The risk they pose is significant to the residence, the entrance and exit of an adjacent apartment complex, the street, sidewalks, and a heavily trafficked public pedestrian area all fall within the area of concern.

EXHIBIT "A"

Kevin and Laurie submitted a removal permit application to the City, in good faith, including the full arborist report. The permit was denied without a qualified review of the arborist's findings. They have since filed a formal appeal with Planning and Zoning. In the meantime, they are taking reasonable precautionary steps, such as, notifying adjacent property owners, posting visible hazard warning signs, and consulting with their homeowners insurance carrier — because they feel a responsibility to the public as much as to themselves.

I recognize this is a local matter and have full confidence in Bay St. Louis's process. I simply ask that the appeal receive fair and expedited consideration given the documented safety concern, the expert credentials behind the evaluation, and the prior comparable failure on the neighboring property.

Should you wish to discuss the matter directly, Kevin and Laurie can be reached at (504) 616-7964 or lauriegnorman@gmail.com.

Thank you for your time and service to the community.

Sincerely,

Billy Nungesser
Lieutenant Governor

BN/pb

CC: Kevin Kernion & Laurie Norman

EXHIBIT "A"

EXHIBIT I

INDEPENDENT TECHNICAL AUTHORITY

Mississippi State University Extension Service
Tree Protection Standards in Construction Sites
Publication FO468

Authors: Stephen G. Dicke, Extension Forestry Professor, Mississippi State University
Britt Hubbard, Urban Forester, Mississippi Forestry Commission

Submitted in Support of Appeal — Application No. APP-1377
115 Demontluzin Avenue, Bay St. Louis, Mississippi 39520
Kevin Kernion and Laurie Norman

The following excerpts are drawn directly from Mississippi State University Extension Service Publication FO468, Tree Protection Standards in Construction Sites, published by MSU's College of Forest Resources and the Mississippi Forestry Commission. Each section identifies the applicable MSU standard, the relevant page reference, and its direct application to the trees at 115 Demontluzin Avenue as documented by David Garitty, Licensed Arborist and Horticulturist, in reports dated January 23, 2026 and March 4, 2026.

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1. TREES CLASSIFIED AS "SUSCEPTIBLE" — MSU PUBLICATION PAGE 12

MSU Standard (Page 12):

> *"Avoid trying to save trees classified as susceptible to damage. These trees are unhealthy, old, of a susceptible species or may have a serious to fatal defect. Problems make susceptible trees less valuable and much more difficult to keep alive and healthy."*

MSU identifies the following defects as indicators of susceptible trees that should not be saved (Page 12, Figure 6):

- Dead top and/or dieback in larger top branches
- Narrow branch angles and/or codominant stems
- Cracks, cavities, rotten wood, fungal conks

Application to 115 Demontluzin Avenue:

- Dead scaffold branch documented in upper canopy — February 21, 2026 photographs (Garitty Supplemental Report, March 4, 2026)
- Codominant stem/included bark documented on both trees (Garitty Original Report, January 23, 2026)
- Wood decay fungi (rotten wood/fungal disease) documented at base/root flares of both trees (both reports)

EXHIBIT "A"

Both trees at 115 Demontluzin Avenue exhibit all three MSU-identified defects for susceptible classification. Under MSU standards, these trees should not be saved.

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2. CRITICAL ROOT ZONE CONFLICT WITH RESIDENCE — MSU PAGES 5, 6, 14, 15

MSU Standard — Critical Root Radius Formula (Pages 5–6):

> *"The area is defined as a circle with a radius that is 1.25 feet for every inch in stem diameter. Thus, the distance from the tree stem you would like to stay away from a tree is called the critical root radius."*

Critical Root Zone Calculations — 115 Demontluzin Avenue:

Tree	DBH	MSU Formula	Critical Root Radius	Distance to Residence
Large Live Oak	43 inches	43 x 1.25 ft	53.75 feet	Approx. 16 feet
Street Live Oak	25 inches	25 x 1.25 ft	31.25 feet	Street / Sidewalk

MSU Standard — Minimum Distance Requirements (Pages 14–15, Table 4):

> *"Structures must be kept outside the critical root radius of damage-susceptible trees. Generally when a tree is closer to a structure than the minimum distance above, your options are to remove the tree or move the structure."*

The residence at 115 Demontluzin Avenue is approximately 16 feet from the base of the 43" DBH Live Oak — well within the MSU-established critical root radius of 53.75 feet. Per MSU standards, the only options for a susceptible tree in this proximity are removal of the tree or relocation of the structure. No mitigation alternative is identified by MSU for susceptible trees.

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3. MORTALITY SPIRAL — TREES "BEYOND HELP" — MSU PAGES 9–10

MSU Standard — Mortality Spiral and Declining Stage (Pages 9–10):

> *"The process of tree death following injury is termed a 'mortality spiral.' The further a tree falls down the mortality spiral the harder it is to get back up to Healthy. Once a tree reaches the Declining stage, they are considered beyond help."*

Application to 115 Demontluzin Avenue:

- Garitty supplemental report (March 4, 2026) escalated condition from “fair to poor” to “POOR”
- Dead scaffold branch in upper canopy is consistent with MSU Declining stage criteria
- MSU states Declining stage trees are “considered beyond help” — pruning is not a viable option
- City’s denial citing pruning as a sufficient alternative is inconsistent with MSU’s published standards

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4. KNOWN HAZARD AND MUNICIPAL LIABILITY — MSU PAGE 3

MSU Standard — Liability for Ignoring Standards (Page 3):

> *"If you ignore these standards and a tree is injured, then you could be held liable for thousands of dollars in damage. Tree damage may also lead to structural failure, ranging*

EXHIBIT "A"

> *from the dropping of dead limbs to the entire tree falling over. This structural failure has the potential to injure people and property, which could also be your responsibility."*

The City of Bay St. Louis has received formal documented notice of conditions that MSU independently classifies as hazardous and beyond remediation. Under MSU's published standards, once a hazardous condition is known and documented, failure to act creates potential liability exposure for all parties with notice.

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5. PRUNING DOES NOT ADDRESS STRUCTURAL FAILURE — MSU PAGES 7, 10

MSU Standard — Susceptible Tree Survival (Page 7):

> *"The survival rate drops below 50/50 once 25% of the critical roots are injured for susceptible trees. Any kind of root damage reduces the survival of susceptible trees significantly."*

- 65% circumferential basal decay far exceeds the 25% threshold at which susceptible tree survival drops below 50/50
- MSU makes no provision for pruning as mitigation for susceptible trees with structural root and basal decay of this extent
- Garitty reports confirm: "mitigation requirements do not apply" given the documented condition

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SUMMARY

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Known hazard + inaction = liability exposure	3	City has documented notice on record

Source: Mississippi State University Extension Service, Tree Protection Standards in Construction Sites, Publication FO468. Authors: Stephen G. Dicke, Extension Forestry Professor, MSU; Britt Hubbard, Urban Forester, Mississippi Forestry Commission. Published 2008.

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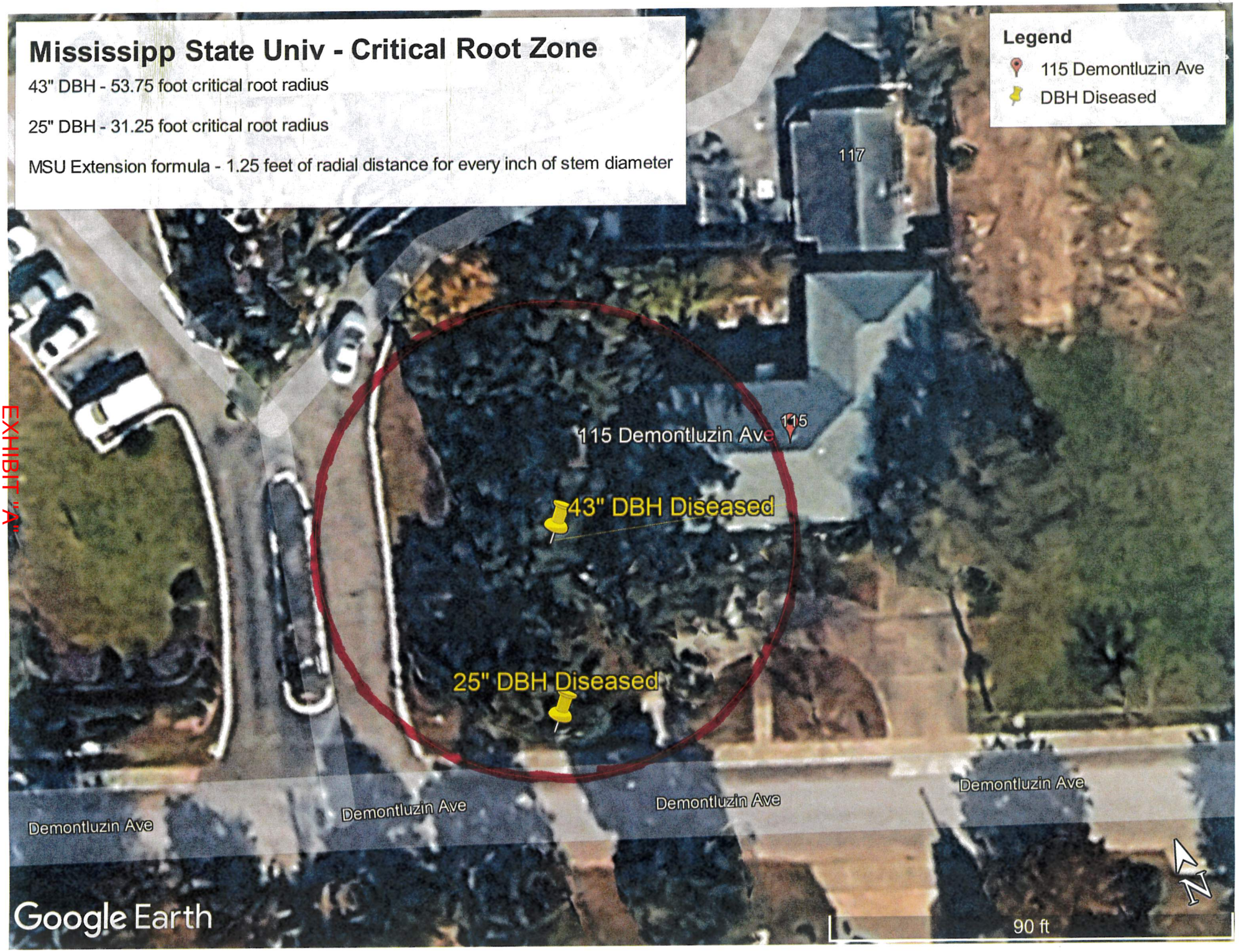
Mississipp State Univ - Critical Root Zone
43" DBH - 53.75 foot critical root radius
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MSU Extension formula - 1.25 feet of radial distance for every inch of stem diameter
Legend
115 Demontluzin Ave
DBH Diseased
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EXHIBIT "A"

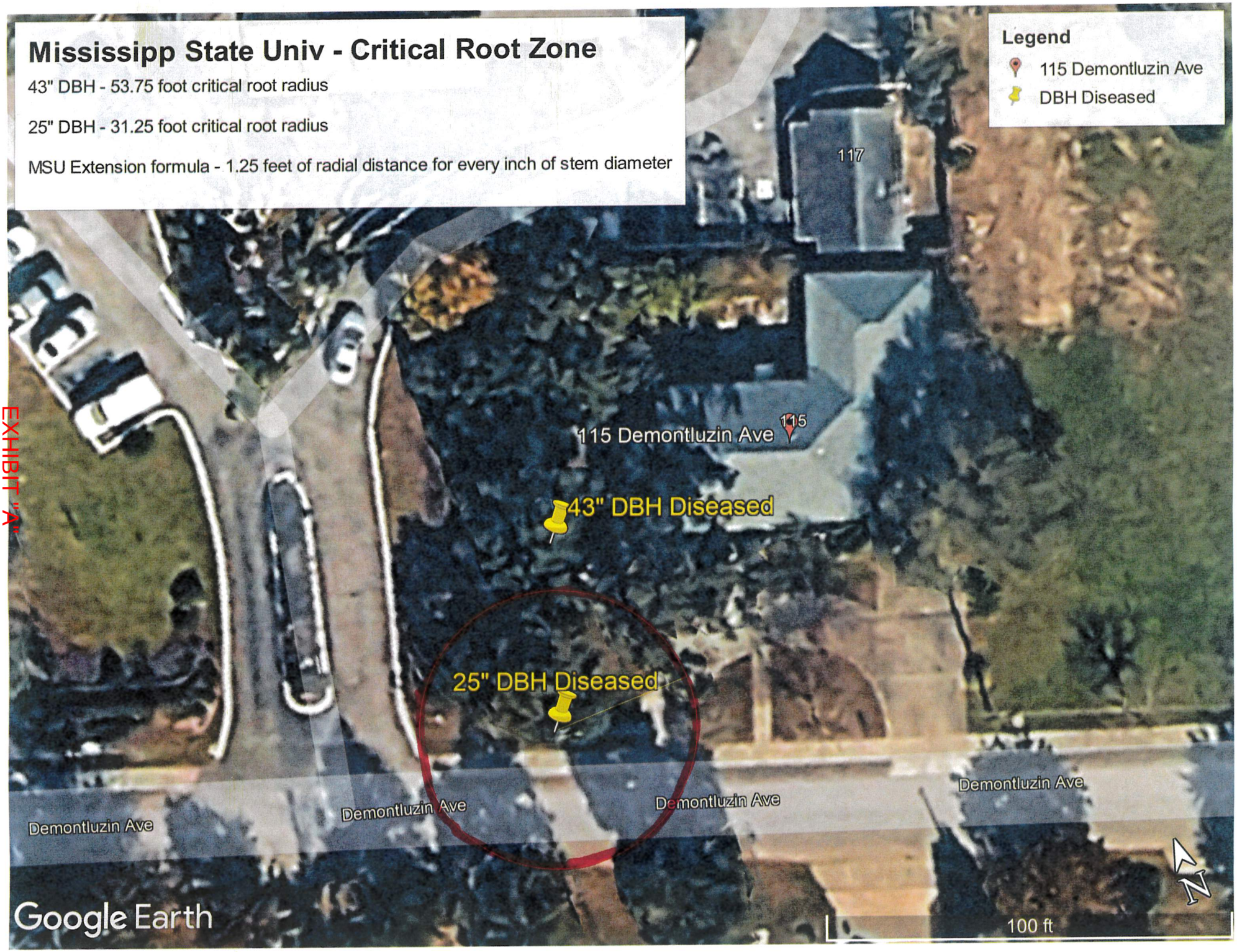
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EXHIBIT "A"

Tree Protection Standards in Construction Sites

"To exist as a nation, to prosper as a state, and to live as a people, we must have trees."

- President Theodore Roosevelt

EXHIBIT "A"

Contents

PLEASE TAKE THIS GUIDE WITH YOU TO THE CONSTRUCTION SITE.

EXHIBIT "A"

Why Should I Follow This Guide?

This guide gives your trees the best chance of survival both during and after construction. You are following advice from professional arborists combined with published standards and practices (Coder 1996, 2000, Elmendorf et al 2005, Johnson 2001, and Matheny and Clark 1998). Use these standards to show a reasonable effort on your part to protect trees from damage. We cannot guarantee 100% success, but if standards are followed and a tree dies, then it is not your fault.

If you ignore these standards and a tree is injured, then you could be held liable for thousands of dollars in damage (Table 1). Tree damage may also lead to structural failure, ranging from the dropping of dead limbs to the entire tree falling over. This structural failure has the potential to injure people and property, which could also be your responsibility.

Table 1. *Approximate loss in property value caused by injury to a tree. Actual loss may be higher or lower based on a plant appraisal and what can be determined in court.*

Stem Diameter[1] (in.)	Loss in Property Value[2] ($)	
	Sicken Tree	Kill Tree
5	131	350
10	525	1400
15	1181	3150
20	2100	5600
25	3281	8750

1 Diameter of tree stem measured at 4.5 feet above ground
2 Appraisal of loss using the trunk formula method (Gooding et al 2000)
Assumptions: tree is a desirable species in good condition, properly located in the front yard of a well landscaped $100,000 residential home.

EXHIBIT "A"

Trees and Roots

Tree roots are not like carrots. Roots spread out over a large area and are concentrated at the soil surface. A tree actually looks like a wine glass setting on a dinner plate (Figure 1). A wine glass represents (1) leaves and branches, (2) tree stem, and (3) the structural root plate. A large dinner plate (4) represents the transport and feeder roots that spread out farther than the branches.

***Figure 1**. A tree looks like a wine glass on a dinner plate.*

Roots hairs are so small and prolific they essentially are one with the soil. So any little activity that compacts or moves soil can kill roots. Fortunately not all roots are created equal. Tree roots closest to the stem are more essential than others for survival (Figure 2).

***Figure 2**. Tree roots most important for survival are the structural root plate (red area) and the critical root area (green area).*

To estimate the size of the structural root plate and the critical root area, we used a common tree measurement, **Stem Diameter** at 4.5 feet above the ground. Stem diameter can be measured directly with calipers or a diameter tape. Or you may measure stem circumference and divide by pi (3.14) to calculate diameter.

The most essential roots form the **Structural Root Plate** (Figure 2 red area). These large strong roots extend up to 11 feet from the stem in larger trees (Table 2). Damaging these roots in any way is usually fatal and may leave a tree unable to hold itself up. This could spell disaster.

Second in importance is the **Critical Root Area** located under the reach of the branches (Figure 2 green area). This area contains about 85% of the root mass. Any damage to the transport and feeder root system in this area will likely reduce tree health and survival. The size of the critical root area is estimated again using stem diameter (Table 2). The area is defined as a circle with a radius that is 1.25 feet for every inch in stem diameter. Thus, the distance from the tree stem you would like to stay away from a tree is called the **critical root radius**.

Tolerance to Damage

To ensure tree survival the entire critical root area should be protected from construction damage (Figure 3). This is especially true for trees classified as **Susceptible** to damage. These are trees in poor health, very old, or a susceptible species (Table 3). Any kind of root damage reduces the survival of susceptible trees significantly. The survival rate drops below 50/50 once 25% of the critical roots are injured (Figure 3).

Table 2. *Critical root radius and critical root area increases with tree size (Coder 1996).*

Tree Stem Diameter (in.)	Structural Root Plate Radius (ft.)	Critical Root Radius (ft.)	Critical Root Area ($ft.^2$)
2	2	2.5	20
4	3	5	79
6	4	7.5	177
8	5	10	314
10	6	12.5	491
12	7	15	707
14	7	17.5	962
16	8	20	1256
18	8	22.5	1590
20	9	25	1963
22	9	27.5	2375
24	10	30	2826
26	10	32.5	3317
28	10	35	3847
30	10	37.5	4416
32	10	40	5024
34	10	42.5	5672
36	10	45	6359
38	11	47.5	7085
40	11	50	7850

Trees classified as **Resistant** to construction damage are healthy, young to middle aged, and of a resistant species (Table 3). Resistant trees generally are able to tolerate some root damage, at least until it approaches 1/3 of the critical root area (Figure 3).

Trees **Moderate** in their tolerance to injury include those in fair health, past middle aged to old, or a moderate species (Table 3). These trees fall between resistant and susceptible in their survival of critical root damage.

Roots outside of the critical root area are the least important for tree health (Figure 2). A tree can lose all these roots with minimal problems. But to compensate for this root loss, extraordinary care must be given to roots within the critical root area.

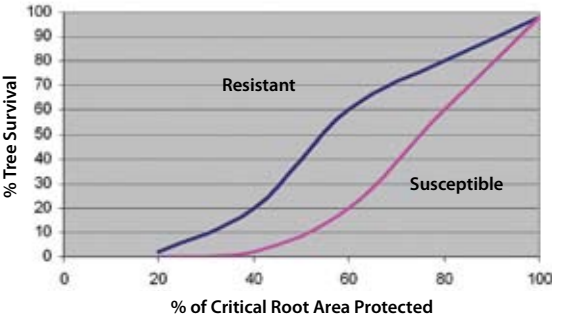

***Figure 3**. Tree survival depends on the amount of critical root area protected and the tolerance of a tree to damage. (Coder 1996).*

Table 3. *Ranking of common tree species in tolerance to construction damage. Survival rates are high for resistant species and low for susceptible species with the same level of damage (Matheny & Clark 1998).*

Species Resistance to Construction Damage		
Resistant	**Moderate**	**Susceptible**
Ash - Green	Ash - White	Basswood
Bald Cypress	Dogwood - Flowering	Beech
Birch - River	Hickory - Pignut, Shagbark, Mockernut	Chinkapin - Allegheny
Elm - most species	Hophornbeam - Eastern	Maple - Silver
Gum - Black, Tupelo	Hornbeam - American	Sourwood
Hickory - Water, Pecan	Magnolia - most species	Sugarberry (Hackberry)
Holly - American, Dahoon, Gallberry, Yaupon	Maple - Florida	Walnut - Black
Maple - Red, Boxelder	Pine - Shortleaf	Yellow - Poplar
White Oaks - White, Swamp Chestnut, Overcup, Bur	Sweetgum	
Red Oaks - Water, Willow, Shumard, Nuttall, Northern Pin	Sycamore - American	
Pines - Loblolly, Longleaf, Slash		
Willow		

Construction Damage

Most people are not aware that tree roots are on the soil surface and very vulnerable to injury. That is why damage to the root system is the number one killer of trees. Unfortunately, any activity under a tree is a potential root killer, including the storage of equipment or supplies as well as minor vehicle and foot traffic. Injury to roots within the critical root area is capable of slowly killing **Healthy** trees (Figure 4). The process of tree death following injury is termed a "mortality spiral". The further a tree falls down the mortality spiral the harder it is to get back up to Healthy. So, if restorative treatments are to be effective they need to be applied immediately after damage occurs. Do not wait until the tree is **Stressed** or **Declining**.

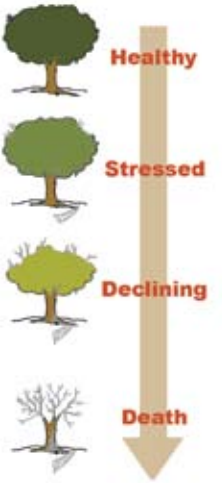

***Figure 4**. Construction damage to roots begins a mortality spiral that can kill healthy trees in 1 to 10 years. (Matheny & Clark 1998).*

Stressed

Construction damage weakens a tree and sets it up to be injured by another stress that normally would not cause damage. Thus, drought and insect/disease attacks can be deadly when combined with construction. As stressors accumulate, a tree becomes weaker and weaker. The tree does not usually show any signs of a problem, except maybe the foliage appearing a little sparse and off color. The severity and longevity of these stressors determines if tree health can be restored.

Declining

Upper growing points in the tree cannot be supported and die. Signs of decline include very low leaf density and leaves may appear yellow and small. Many dead branches and twigs are in the top portion of tree. Wood borers and bark beetles may attack. Once a tree reaches this stage, they are considered beyond help.

Death

A tree usually dies from a fatal combination of structural failure, health degradation, and pest infestation. Pine trees will typically die within a year following severe root damage. Generally, hardwoods are slower to die. After a fatal blow, hardwoods may live for another 2-10 years.

Fences

Figure 5a. *Placing a protective fence around the critical root area assures tree survival.*

To prevent root damage, construction activity needs to be diverted away. One of the best tree protectors is a fence placed around the critical root area (Figure 5a). Fences should be erected before construction begins and kept intact until final inspection. This temporary fence should be at least three feet high, clearly visible and supported by steel T-bar or similar stakes. Warning signs as shown in Figure 5a should be prominently displayed. Assign someone the job of monitoring the fences. To further prevent fence removal and injury to critical roots add a penalty clause in contracts. See Table 1 for reasonable penalties.

Protecting groups of trees instead of individuals is recommended when possible. To protect a group of trees, determine the critical root radius for each individual tree. Place a protective fence outside the critical root area of all trees in the group (Figure 5b).

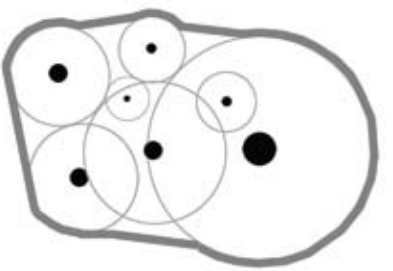

Figure 5b. *Overhead view of a tree protection zone (gray fence) for a group of trees. Dots represent tree stems and light circles are each tree's critical root area.*

Which Trees to Save?

Trees classified as resistant to construction damage should be a high priority for saving. These healthy, young to middle-aged trees of a resistant species (Table 3) have the highest likelihood of survival. Avoid trying to save trees classified as susceptible to damage. These trees are unhealthy, old, of a susceptible species or may have a serious to fatal defect (Figure 6). Problems make susceptible trees less valuable and much more difficult to keep alive and healthy.

***Figure 6**. Avoid trying to save trees with serious to fatal defects. 1- dead top and/ or dieback in the larger top branches, 2- narrow branch angles and/or co-dominant stems, 3- history of damage from lightning, insects, and/ or equipment, 4- lean and/ or soil heaving, and 5- cracks, cavities, rotten wood, fungal conks, termites, carpenter ants, and cankers. (Elmendorf et al 2005).*

The size of trees should be compared to ownership goals and finances. Large trees may be desired and extremely valuable to a property but they are also very difficult and expensive to save. Construction activity may have to be adjusted considerably to protect a large tree's root system. The owner must have the willingness to pay for construction adjustments before a big tree can be saved. Owners with moderate budgets may have to concentrate on saving smaller trees. These are much easier and cheaper to protect and save.

Some species of trees are a better long-term investment. Live oaks for example tend to grow into

large extremely valuable trees. Strong wood in their branches, stem, and roots resists breakage during storms. Live oaks also have a long life span and display few pest problems. Species of trees that display these kinds of characteristics are more desirable for saving than others.

Four Steps to Protecting Trees

1. Mapping and Prescription

Planning is needed up front to keep trees and construction activities separated from each other. Begin with an initial walk-through to identify which trees to save. Mapping these trees before development of the construction plan is very important (Figure 7). Compromises and adjustments made up front to protect trees are easier, cheaper and more effective at saving trees. Incorporate the exact location of each tree's stem and its critical root area into the construction plan. Determine where construction conflicts will occur. Predict the extent of damage each tree's critical root area will receive. Prescribe how to adjust construction activities to protect tree roots and improve survival.

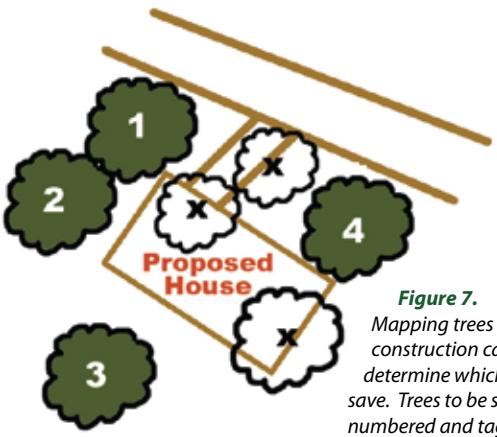

Figure 7. *Mapping trees before construction can help determine which trees to save. Trees to be saved are numbered and tagged. Trees to be removed are marked with an x.*

How close can trees get to structures?

The ideal distance between a tree stem and structures is the critical root radius plus at least 10 feet (Table 4). This distance allows a protective fence around the entire critical root area and leaves enough room for normal construction activity.

Whenever a tree is closer than ideal to a structure, the protective fence may have to be moved closer to the tree, which exposes some of the critical root area to construction activity. An additional **Root Buffer** is needed to protect the exposed critical root area outside the fence. To create a root buffer, begin by covering the exposed critical root area with wood chips to a minimum 6-inch depth. Overlay this with quarry gravel to stabilize a working surface and place ¾ inch plywood or mats on top. The root buffer should be maintained throughout the construction process.

Damage-resistant trees can be located within 20 feet of buildings and 10 feet of sidewalks. A combination of fencing and a root buffer will be needed to protect the roots (Table 4).

Structures must be kept outside the critical root radius of damage-susceptible trees (Table 4). Use a stem wrap to protect scaffold branches or the stem itself whenever they are exposed to construction injury. Wrap exposed tree parts with 2 inches of plastic orange fencing as padding and then securely bind 2x4s on the outside. During installation avoid damaging any bark or branches.

Table 4. *Minimum distances between structures and trees and required tree protection.*

Type of structure	Tolerance of tree to damage[1]	Minimum distance	Tree protection required
All	All	CRR[2] + 10 ft	Fence[3]
All	Susceptible	CRR[2]	Fence[3] + Root Buffer[4]
Buildings	Resistant	Lessor of 20 ft or CRR[2]	Fence[3] + Root Buffer[4] + Stem wrap[5]
Sidewalk or Driveway	Resistant	10 ft.	Fence[3] + Root Buffer[4] + Stem wrap[5] + Adjust construction

[1]Trees tolerance to construction damage classified using health, age, and species (see page 8 and Table 3)
[2]CRR=Critical root radius (see page 6 and Table 2)
[3]Fence protecting CRR (see page 11)
[4]Buffer protecting roots outside fence (see page 14)
[5]Stem wrap to prevent a direct hit to stem

What if a tree is too close?

Generally when a tree is closer to a structure than the minimum distance above your options are to remove the tree or move the structure. But in some situations you may consider alternative construction techniques. This includes ramping a walking surface over roots on a lifted slab. Or you could substitute driveway concrete with interlocking pavers or flexible paving, elevate porches on posts and brick or create flagstone walkways on sand. Seek out professional advice from an arborist on how to install these alternatives and still protect critical tree roots.

Trenching

Trenching is any linear excavation for utility lines, foundations, roads, sidewalks and irrigation. Foremost, protect the structural root plate from trenching. This plate can extend up to 11 feet from a tree stem (Table 2). Protecting the critical root area is also very important. Its size is also predicted using the stem diameter measurement (Table 2). No trenching machinery should ever be allowed in the critical root area.

Utility lines may be placed under the roots by digging a tunnel using a soil auger (Figure 8). Tunneling within the critical root area at a minimum depth of 2 feet will avoid most roots. Tunnel at least one foot deeper if utility is located directly under the stem.

Another option is to dig a trench that leaves the roots intact. This can be done with a pneumatic air excavator. Another option is careful hand digging below the roots from the side for short distances. Avoid trenching on hot, dry, or windy days. Protect exposed roots by immediately wrapping with wet burlap and keep moist. Do not leave the trench open for very long (1 hour is best), quickly replace the soil and soak with water to pack. If a root is severely damaged it heals quicker if a clean cut is made above the damage. Cut with a reciprocating saw or small pruning saw.

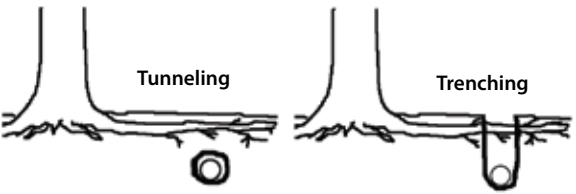

***Figure 8**. Utility lines may be placed near trees without root injury by tunneling underground. An alternative is trenching with a pneumatic air excavator or careful hand digging.*

Grade Changes

Ideally all grade changes (raising or lowering the level of the soil) should occur outside the critical root area (Figure 9). Large cuts and fills may require retaining walls to keep the original grade around a tree. Try to avoid any grade change that will drastically alter the water table or how water drains around trees. Add drains where the critical root area now collects water and provide extra watering to areas that are now excessively dry. Also do not allow machinery on the critical root area when changing grade, this will compact the soil.

Fill can damage root systems primarily by cutting off the oxygen and water supply. Within the critical root area the maximum depth of fill that will be allowed depends on the texture of the fill material. Up to 8 inches of sand may be added without much damage to the roots. With the help of an arborist, you may be successful with fill mixtures up to 4 feet deep. But no fill should ever be allowed to touch the tree stem. That means either slowly taper down the fill or build a wall around the stem to protect it.

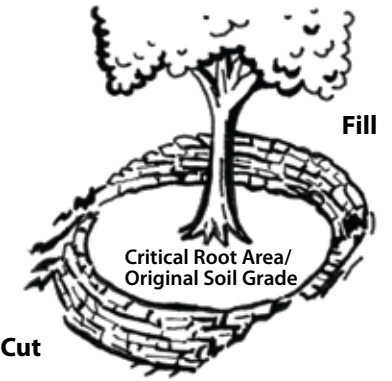

***Figure 9**. Retaining walls can keep original soil grade within the critical root area and allow deep cuts and/or fills to achieve the grade changes needed for construction.*

Cuts in the critical root area can easily damage roots. Therefore we do not recommend lowering the grade in this area. A retaining wall outside the critical root area will allow cutting a lower grade for construction needs (Figure 9).

2. Preconditioning

Remove competition from weeds, vines, and grasses by clipping, not pulling. Spraying with Glyphosate is also effective. Correctly prune and remove all branches that will likely conflict with construction activities. This prevents ripped or broken branches (Johnson 2001).

Before construction begins, improve the soil conditions within the protected critical root area. The goal is to "bait" new roots into the protected

Figure 10. *Aeration of soil to relieve compaction in critical root area.*

area and away from unprotected soil. If the soil is already compacted then aerate on a regular basis, not just one time (Figure 10). Aeration applications can be made twice a year for two years, then once a year thereafter. Apply a low nitrogen, slow release fertilizer to stimulate root growth not more foliage (use a soil test to determine the amounts of N-P-K). The most important soil treatment is mulching the protection zone to a depth of 4 to 6 inches. Aged pine, cypress, and hardwood chips (wood and bark) are good mulches to add organic matter to the soil and hold water. Avoid placing mulch against the tree stem. If you plan to remove the mulch, place a synthetic weed free barrier fabric down before mulching to make removal much easier.

Watering is very effective in maintaining tree vigor. Use soaker hoses or another technique to apply one inch of water weekly on the critical root area during droughts. When trees are damaged and more frequent watering is needed, use a tensionmeter to determine when soil moisture is less than adequate. Do not use a timer to schedule watering, this usually provides too much water. An early application of paclobutrazol to the soil before construction begins also has been effective at encouraging trees to produce new roots and maintain health during construction. Evaluate the herbicides and soil sterilants that will be used near trees. Read the labels to make sure their application will not harm trees.

3. Supervision

Meet with all contractors. Express your desire to save trees and review the penalty clause for tree damage. Tell them your expectations, everyone is to leave intact the protective fencing and soil buffers. Assign someone the job of monitoring the fences daily. If any damage occurs immediately repair or mediate the injury.

4. After-Care

One of the most common soil disturbances during construction is soil compaction. Several treatments are available to ameliorate compaction and increase aeration.

1. Maintain and refresh the mulch layer of 4 to 6 inches annually.
2. Use a high pressure air spade or injector to create holes and fractures in the soil to provide air space (Figure 10). This should be done at least twice a year for several years.
3. Dig trenches one to two feet deep oriented like spokes of a wagon wheel around a tree. Pneumatic air excavators do this well. Replace the soil with a porous material.
4. Apply vertical mulching by drilling 2–3 inch diameter holes 12 inches deep using a power auger. Start beyond the tree's structural root plate and drill on 18 x 18 inch and up to 24 x 24 inch grid within the critical root zone. If large woody roots are encountered, avoid root damage by slightly moving the drill hole. Backfill the holes with compost, mulch, or other organic material.

To receive full benefits from a treatment apply immediately following damage. Do not let compaction move a tree down the mortality spiral before treating. These treatments can be effective individually and in combination with the tree growth regulator paclobutrazol.

Need Help?

Expertise in tree care can be provided by arborists certified by the International Society of Arboriculture. A list of local certified arborists can be queried by zip code or city at www.isa-arbor.com. You may also contact the local office of the Mississippi Forestry Commission (www.mfc.state.ms.us) or Mississippi State University Extension Service (msucares.com), both have certified arborists on staff.

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EXHIBIT "A"

Checklist

1. Mapping and Prescription

- ☐ Determine what the client desires and the relative importance of preserving trees.
- ☐ Inventory the construction site and prepare a map that identifies the soil, trees, vegetation, and other resources. Determine which trees are healthy, structurally sound, and located away from construction.

Include in the Construction Plan:

- ☐ A map showing where protection fences are to be located and areas off limits to construction activity.
- ☐ List what alterations in construction are needed to protect important trees.

2. Preconditioning

- ☐ Build access roads and staging areas for construction workers. Ideally these should be part of the final site design. Confirm that soil sterilants to be used are safe for trees.
- ☐ Review with utility personnel the location of lines, trenching, and tunneling activities required.
- ☐ Cut and remove (do not pull) unwanted trees and vegetation in protected areas. Fertilize and mulch the protected root zone of trees to be saved.
- ☐ Install protective fences, drainage, and irrigation (if needed).
- ☐ Determine where to hold topsoil and where construction spoil will be piled.

3. Supervision

- ☐ Meet with the general contractor and agree on construction limits, sites for material storage, parking areas for workers, and location of trailer and portable toilets.

- ☐ Agree on material disposal, especially cement, paint, and plastic.
- ☐ Agree on water management. This includes erosion, storm-water run-off, and cleaning cement trucks.
- ☐ On the first day make sure someone is charged with protecting fences from encroachment.
- ☐ Install utility lines first, second driveways, walks, and parking, and third buildings.
- ☐ Check all last minute changes against the plan to ensure tree protection.
- ☐ Inspect the site twice a day.
- ☐ Provide extra water, fertilizer, and insect and disease control to protected trees.
- ☐ Prune/repair injured trees. Reestablish favorable soil conditions following any disturbance.
- ☐ Maintain mulch.

4. After-Care

- ☐ Remove temporary fences and irrigation systems.
- ☐ Rehabilitate compacted and eroded areas.
- ☐ Provide extra water, fertilizer, and insect and disease control to trees protected.
- ☐ Maintain mulch.

By Stephen G. Dicke, Extension Forestry Professor, Mississippi State University Central Mississippi Research and Extension Center, Raymond, MS and Britt Hubbard, Urban Forester, Mississippi Forestry Commission, Hattiesburg, MS. Funded by a Hurricane Supplemental 2006 grant by the Mississippi Forestry Commission.

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EXHIBIT "A"

EXHIBIT J

SUPPLEMENTAL ARBORIST REPORT

David Garitty | Garitty Tree Care, L.L.C.
ISA Certified Arborist
Louisiana State Licensed Arborist
Louisiana State Licensed Horticulturist
State of Mississippi Licensed Arborist

Supplemental Report Date: March 4, 2026
Original Report Date: January 23, 2026
RE: 43" DBH Live Oak Tree — 115 Demontluzin Avenue
Based on Review of Photographs Taken February 21, 2026

KEY FINDINGS — SUPPLEMENTAL REPORT

Finding	Detail
Condition Escalation	Escalated from "fair to poor" (original report) to "POOR" (supplemental report)
Removal Recommendation	Escalated from "as soon as possible" to "IMMEDIATELY"
Basal Decay	Approximately 65% of the circumference of the base of tree affected by wood decay fungi
Root Flare Deficiency	Lack of proper root flares documented — root flares act as buttress anchoring tree in ground
Arborist Statement	"I feel compelled to submit a supplemental report" — 45 years Live Oak preservation experience
Preservation Candidate	"Would not be a good candidate for tree preservation"

EXHIBIT "A"

FULL TEXT OF SUPPLEMENTAL REPORT

Kevin Kernion

From: David Garitty <david@garittytreecare.com>
Sent: Wednesday, March 4, 2026 7:33 PM
To: Kevin Kernion
Subject: Supplemental Report to original report dated January 23, 2026

March 4, 2026

Mr. Kevin Kernion
Ms. Laurie Norman
115 Demontluzin Avenue
Bay St. Louis, MS 39520

RE: Supplemental Report to Original Report dated January 23, 2026 - (2) Live Oak Trees - Evaluation

Dear Mr. Kernion and Ms. Norman:

Upon receiving the (5) additional photographs of the 43" DBH Live Oak Tree dated February 21, 2026 and located on your property at 115 Demontluzin Avenue, Bay St. Louis, MS 39520; I feel compelled to submit a supplemental report to the original report dated January 23, 2026.

I photographically inspected the base of the 43" DBH Live Oak Tree located on your property. The photos reveal more extensive disease, wood decay fungi, at the base of the Tree and lack of proper root flares (approximately 65% of the circumference of the base of Tree). The disease, wood decay fungi, weakens the load bearing structural wood reducing resistance to upper tree weight and wind events; while lack of root flares that act as a buttress, distributing the weight of the tree and anchoring it firmly in the ground, significantly increases the risk of structural failure and tree collapse.

In my 45 years of Live Oak Tree preservation experience, the 43" DBH Live Oak Tree would not be a good candidate for tree preservation. In fact, in my professional opinion, I consider the 43" DBH Live Oak Tree to be in poor condition, hazardous and recommend removing the Tree immediately.

If I can be of further assistance, please do not hesitate to call, text or email.

Sincerely,

David Garitty
Garitty Tree Care

EXHIBIT "A"

EXHIBIT K

THIRD-PARTY ARBORIST REPORT
Professional Disclaimer and Mitigation Standards

Arborist: Vanessa Benson
ISA Certified Arborist SO-11008A
ISA TRAQ Tree Risk Assessment Qualification
Licensed Tree Surgeon TSL 46241 | Louisiana Licensed Arborist #186198
Pass Christian, MS — Hancock County

Report Date: April 16, 2025 | Inspection Date: April 10, 2025

This exhibit presents two excerpts from a third-party licensed arborist's report filed in a prior tree matter. Both excerpts are directly relevant to the present appeal of Application APP-1377 and are submitted to demonstrate that (1) industry-standard arborist disclaimers acknowledge that tree failure cannot be prevented and that removal is the only way to eliminate all risk, and (2) under accepted arboricultural standards, mitigation options are at the discretion of the tree owner — not the City.

EXCERPT 1 — INDUSTRY STANDARD ARBORIST DISCLAIMER

The following disclaimer appears in the Vanessa Benson arborist report and represents the standard professional acknowledgment used by ISA Certified Arborists regarding the limits of tree management and the inherent risk of retaining trees:

> *"Trees can be managed, but they cannot be controlled. To live near a tree is to accept some degree of risk. The only way to eliminate all risks is to eliminate all trees. Arborists and urban foresters are tree specialists who use their education, knowledge, training and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living near trees."*

This standard disclaimer, authored by an ISA Certified Arborist with TRAQ (Tree Risk Assessment Qualification), directly supports the position that:

- Tree management measures — including pruning — reduce but cannot eliminate risk
- The only way to eliminate all risk from a hazardous tree is removal
- Living near a tree requires accepting some degree of risk — a standard that is not acceptable where documented structural failure risk is present in the target zone of an occupied residence, adjacent apartment complex, and public pedestrian area

EXHIBIT "A"

EXCERPT 2 — MITIGATION OPTIONS ARE THE TREE OWNER'S DECISION

The same report contains the following language regarding mitigation options and the decision-making authority of the tree owner:

> *All Mitigation options are up to the tree owner to decide which options they will choose according to the level of risk they are willing to accept.*

This language, drawn from accepted arboricultural professional standards, directly supports the position that:

- The decision to accept or reject mitigation alternatives rests with the property owner, not with the City
- The applicants at 115 Demontluzin Avenue, as tree owners, have evaluated the mitigation options presented by the City and, consistent with the recommendation of their licensed arborist and horticulturist, have determined that the level of risk associated with retention is not acceptable
- The City's denial — which substitutes the City's judgment for the tree owner's judgment on acceptable risk — is inconsistent with accepted arboricultural standards as reflected in this third-party professional report

---

COMBINED RELEVANCE TO APPEAL APP-1377

Read together, these two excerpts from an independent ISA Certified Arborist's report establish that:

Point	Standard	Application
1	Pruning reduces but cannot eliminate tree failure risk	City's pruning suggestion does not eliminate the documented hazard
2	Only removal eliminates all risk	Garitty's removal recommendation is consistent with industry standard
3	Mitigation decisions belong to the tree owner	Applicants have exercised their right to reject inadequate mitigation
4	Professional arborist opinion governs	Garitty holds both arborist and horticulturist credentials; City reviewer does not

EXHIBIT "A"

Arborist Report

Date: 4-16-25
Date of Inspection: 4-10-25

Arborist: Vanessa Benson
ISA Certified Arborist SO-11008A
ISA TRAQ Tree Risk Assessment Qualification
Licensed Tree Surgeon TSL 46241
Louisiana Licensed Arborist # 186198
1395 Kiln Delisle Rd
Pass Christian Ms 39571
Hancock County
O: 228-547-3861

Client: *William Raines*

Address: Parcel Number 149M-1-29-051.000

Tree Species: *Quercus virginiana* **(Live Oak) Age: mature Health: Fair-good**

Request: Mr.Raines would like to remove the Live Oak Located almost in the center of his property. His concern is that the location of this tree is too close in proximity to the new house he will be building.

Health categories
Very Good
Good
Fair
Poor
Very Poor

Arborist Level 2 Assessment: Based on my observation this tree is in fair to good health. It has natural lion tailing due to too much shade. Underside of the crown has dead branches due to too much shade. The foliage appears to be of good color and density. Two main leaders are Codominant with a narrow u shape union. U shape unions are known to have included bark. Included bark is a weak union that could split more easily than a wide U or L shape. The amount of dead wood and foliage adds weight on this the tree and can cause this type of union to fail.
According to Best Management Practices, Root Management second edition, The Tree Protection Zone (TPZ) is the area which certain activities are prohibited or restricted to prevent or minimize potential injury to designated trees, especially during construction or development.
In my opinion, barriers should be place around the drip line.
Construction under this crown should be prohibited from trunk to drip line. Root cutting and pruning should also be prohibited to maintain the health of the tree.
In my observation, the stakes in the ground marking the four corners of where the house will be located, according to those markings, construction in that area, will kill the tree. I was also able to observe from the ground that the tree had a branch with a fungi. More may be seen using an aerial lift.

Recommendations and Mitigation options:

To retain-
Pruning: Reduction cut pruning of no more than 15-20 % live tissue, cuts no bigger than 2-3 inches in diameter around perimeter of tree.. Prune dead wood. This will reduce weight on unions and allow sun to get to branches to encourage sprouts. Prune diseased and crossing branches. If larger cuts are needed they should be inspected by an ISA Certified Arborist before hand.

Restrictions: My observation was done through a visual inspection only, from the ground.
If retaining
No Lion tail pruning. No cuts larger than 2-3 in in diameter until approved by arborist. No interior live tissue to be pruned.

RCX: Root Crown excavation using a high powered air spade to keep from causing damage to the roots.

Fertilization. Spring and Fall:

EXHIBIT "A"

Treat for Wood Destroying Insects: Call an exterminator with experience of how to treat for WDI without causing harm to the tree.

Removal

My observation was limited to visual inspection only, from the ground.

Trees should be assessed by an ISA Certified Arborist annually.

Know and follow all instructions of the Tree Ordinance and laws that apply to trees in your local area.

Trees that are to remain should be protected during construction. Fencing and signage with verbiage warning people to keep out of Tree Protection Zone/ Critical Root Zone should be put in place at drip line to protect remaining trees. Random inspections should be performed by an ISA Certified arborist ,documented, and turned in to the person overseeing the project.

Time Frame 1 year

Disclaimer: Trees can be managed, but they cannot be controlled. To live near a tree is to accept some degree of risk. The only way to eliminate all risks is to eliminate all trees. Arborists and urban foresters are tree specialists who use their education, knowledge, training and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living near trees. Vanessa Benson, Stump N Grind LLC, Tree Specialist Arborist Group, LLC, and its arborists do not certify the safety or health of any tree for any period of time. Clients may choose to accept or disregard the opinions of the arborist or seek additional advice. Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that may fail in ways we do not fully understand. Conditions are often hidden within trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe, or fail for that matter, under all circumstances, or for a given period of time. Construction activities are hazardous to trees and cause many short and long-term injuries, which can cause trees to die or fail. Even when every tree is inspected, inspections involve sampling; therefore, some areas of decay or weakness may be missed. Weather, winds and the magnitude and direction of storms are not predictable, and some failures may still occur despite the best application of high professional standards. Likewise, remedial treatments, like any medicine, cannot be guaranteed. Treatments, pruning and removal of trees may involve considerations beyond the scope of the arborist's services such as property boundaries, property ownership, sight lines, disputes between neighbors, landlord-tenant matters, etc. Arborists cannot take such issues into account unless complete and accurate information is given to the arborist. The person hiring the arborist accepts full responsibility for authorizing the recommended treatment or remedial measures. All Mitigation options are up to the tree owner to decide which options they will choose according to the level of risk they are willing to accept. Tree and site conditions are current conditions and are subject to change any time due to trees being exposed to nature and outdoor elements. This report reflects current condition of tree only. The assessment and recommendations are subjective and reports are based on arborist opinions.

Please see following pages for pictures.

EXHIBIT M

POST-HOC JUSTIFICATION
Unauthorized Site Visit and Retroactive Assessment

Submitted in Support of Appeal — Application No. APP-1377
115 Demontluzin Avenue, Bay St. Louis, Mississippi 39520
Kevin Kernion and Laurie Norman

This exhibit documents an unauthorized site visit to 115 Demontluzin Avenue on March 23, 2026 — approximately six weeks after the permit was denied and four weeks after the formal appeal was filed — and presents the argument that any assessment or report arising from that visit constitutes post-hoc justification that cannot cure the procedural and substantive defects in the original denial.

PART I — DOCUMENTED TIMELINE

Date	Event	Significance
January 28, 2026	Permit Application APP-1377 submitted with full arborist report from ISA Certified Arborist and Licensed Horticulturist David Garitty	Complete professional expert opinion submitted at time of application
January 29, 2026	Ann Dauphin (Building Clerk) requests supporting documentation. Applicants upload full package same day.	Application complete as of January 29, 2026
February 9, 2026	Statutory seven-working-day deadline elapses	Permit automatically approved under plain language of Sec. 22-116(b)
February 10, 2026	Ann Dauphin posts denial comment stating trees "can be rebalanced and pruned" without any arborist credentials, inspection report, or professional basis	Denial rendered by unqualified Building Clerk with no expert opinion in the record
February 11, 2026	Drew Boxx (Building Inspector) formally confirms denial	No Tree Protection Advisor identified at any point in the record
February 24, 2026	Formal appeal filed by Amanda P. Traxler identifying three independent procedural violations including the absence of a qualified Tree Protection Advisor under Sec. 22-92(b)	Appeal formally places the credential deficiency on the record
March 4, 2026	David Garitty submits supplemental report escalating condition to poor and recommending immediate removal	Expert record further strengthened after appeal
March 16, 2026	Permit department officially closes out the application	City represented the matter as administratively closed
March 23, 2026	Unauthorized group visits the property. Individual believed to be the city's reviewer returns with an outside tree expert (Dr. Malcolm) to assess the	Post-hoc assessment conducted outside the formal record after application was closed

EXHIBIT "A"

Date	Event	Significance
	trees — approximately six weeks after the denial and four weeks after the appeal was filed	

PART II — WHAT POST-HOC JUSTIFICATION IS

Post-hoc justification occurs when a decision-maker renders a ruling without adequate professional basis and then seeks to build supporting evidence after the fact — after the decision has been challenged. The evidence does not drive the decision. The decision drives the evidence-gathering.

In administrative law this is a recognized and serious problem because the integrity of the administrative record depends on the decision being supported by evidence that existed at the time it was made. A decision-maker cannot retroactively cure a defective ruling by producing expert support that was not part of the record when the decision was issued.

Mississippi case law directly supports this principle:

- City of Jackson v. Freeman-Howie, Inc. (2018) — denial not backed by the administrative record cannot stand
- P&Z Comm'n v. Hogg (2001) — commission must make findings supported by evidence at the time of the decision
- City of Ocean Springs v. Home Builders (2006) — inconsistent enforcement cannot be used to prohibit removal

PART III — APPLICATION TO APP-1377

The denial of APP-1377 was rendered on February 10, 2026. At that time, the administrative record contained:

- A complete professional arborist evaluation recommending immediate removal — submitted by the applicants
- No arborist or horticulturist evaluation submitted by or on behalf of the City
- No inspection report, professional credentials, or technical basis provided in support of the denial
- No Tree Protection Advisor identified anywhere in the record

The March 23, 2026 site visit occurred:

- Six weeks after the denial was issued
- Four weeks after the formal appeal was filed
- Seven days after the application was officially closed out by the City
- Without notice to or consent of the property owners

Any report, assessment, or testimony produced by Dr. Malcolm or any other individual as a result of the March 23 visit was not part of the administrative record at the time of the denial. It cannot be introduced to justify a decision that preceded it by six weeks.

Furthermore, the fact that the city's reviewer sought outside expert validation only after the appeal was filed — and only after the Sec. 22-92(b) credential deficiency was formally placed on the record — is itself evidence that the original denial lacked the professional foundation the ordinance requires.

PART IV — THE SEQUENCE SPEAKS FOR ITSELF

A properly conducted permit review follows this sequence:

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- Expert assessment → Professional findings → Decision

The sequence here was:

- Decision → Appeal filed → Expert assessment sought

The denial came first. The expert opinion came six weeks later. That is the opposite of how a defensible professional decision is supposed to work, and it is precisely the scenario that the Tree Protection Advisor requirement of Sec. 22-92(b) was designed to prevent.

PART V — REQUEST TO COMMISSION

The applicants respectfully request that the Commission:

- Limit its review to the administrative record as it existed at the time of the February 10, 2026 denial
- Decline to consider any assessment, report, or testimony arising from the March 23, 2026 unauthorized site visit as justification for the original denial
- Note for the record that the unauthorized visit occurred after the application was officially closed and without the property owners' consent
- Recognize that the absence of any expert opinion in the original record — combined with the post-denial effort to obtain one — confirms that the denial was not supported by the professional foundation required by Sec. 22-92(b)

Note: The statements attributed to the individual present on March 23, 2026 are based on partial audio captured by property security cameras. The audio was intermittent and muddled at times. The above represents the applicants' best interpretation of what was said rather than verbatim statements. Video and audio documentation has been preserved and is available for review by counsel.

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INTERNAL CREDENTIAL CONFLICT AND DEPARTMENTAL AUTHORITY
Building Clerk as Reviewer — Building Official Bypassed

Submitted in Support of Appeal — Application No. APP-1377
115 Demontluzin Avenue, Bay St. Louis, Mississippi 39520
Kevin Kernion and Laurie Norman

This exhibit presents a supplemental argument based on information captured during an unauthorized site visit on March 23, 2026. It is presented as a supplemental argument based on the applicants' best interpretation of partial audio, and is subject to clarification as additional facts are developed. The core argument does not depend on this exhibit — the procedural violations documented in the appeal stand independently on the administrative record.

PART I — CITY OF BAY ST. LOUIS BUILDING DEPARTMENT STRUCTURE

The City of Bay St. Louis Building Department personnel are publicly identified as follows:

Name	Title	Authority
Rickey Ladner	Building Official	Senior licensed professional. Responsible for all permit decisions, code interpretation, and departmental oversight. Highest technical authority in the department.
Drew Boxx	Building Inspector	Licensed inspector. Conducts field inspections and enforces building codes.
Ann Dauphin	Building Clerk	Administrative position. Responsible for scheduling, filing, portal management, and processing paperwork. No technical licensing or inspection authority.
Vince Owen	Code Enforcement	Handles violations and compliance. Separate from permit approvals.

PART II — WHO RENDERED THE DENIAL

The denial of APP-1377 was rendered by Ann Dauphin in her comment posted February 10, 2026:

> *The 2 trees in question do have some damage from previous hurricanes, but mostly the trees have not had any maintenance pruning in many years. They can be rebalanced and pruned to mitigate potential problems. These trees do not need to be cut down.*

Ann Dauphin holds the title of Building Clerk — an administrative support position. Her title, as publicly listed on the City's own website, carries no arborist license, no horticulturist license, no inspection authority, and no technical qualification to render a professional tree hazard assessment.

Sec. 22-92(b) of the Bay St. Louis Tree Preservation Ordinance requires that all tree removal decisions be rendered by a licensed arborist or horticulturist serving as Tree Protection Advisor. Ann Dauphin meets neither qualification. The City's own organizational structure confirms this.

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PART III — THE BUILDING OFFICIAL'S APPARENT POSITION

Rickey Ladner is the Building Official — the senior licensed professional at the top of the department and the person with actual technical authority over permit decisions. Based on partial audio captured during the March 23, 2026 site visit, the individual present made the following statements (presented as best interpretation, not verbatim):

- She referenced "Ricky" by name and stated she and him "have a difference of opinions when it comes to trees"
- She stated she was instructed that these trees should have been reported

If "Ricky" refers to Rickey Ladner, Building Official, these statements raise a significant question: did the Building Official — the senior technical authority in the department — review this application before the denial was issued?

The administrative record contains no evidence that Rickey Ladner reviewed APP-1377 prior to the denial. The denial was rendered by Ann Dauphin (Building Clerk) and confirmed by Drew Boxx (Building Inspector). The Building Official is not identified anywhere in the record in connection with the original denial.

PART IV — THE MOST PLAUSIBLE INTERPRETATION

Giving the Building Official the benefit of the doubt, the most plausible interpretation of the available evidence is:

- Rickey Ladner did not review the original application before the denial was issued
- Ann Dauphin rendered the denial on her own, as Building Clerk, without the Building Official's review or involvement
- When Ladner subsequently became aware of the application — likely after the formal appeal was filed on February 24, 2026 — his position was that the trees "should have been reported," suggesting he recognized the hazard condition
- The disagreement on trees referenced in the audio reflects a fundamental difference in how Ann Dauphin and Rickey Ladner assess tree hazard conditions

If this interpretation is accurate, it means:

- The denial was issued by a Building Clerk acting outside her authority and without the Building Official's knowledge or approval
- The senior technical professional in the department — when he did become aware — reached a conclusion more consistent with the applicants' position than with the denial
- The Tree Protection Advisor requirement of Sec. 22-92(b) was not just violated in a technical sense — the person who should have reviewed it was bypassed entirely

PART V — SIGNIFICANCE TO THE APPEAL

This argument supplements — but does not replace — the procedural violations already documented in the formal appeal. Its significance is threefold:

1. It confirms the Sec. 22-92(b) violation was not a technicality.

The ordinance requires a qualified Tree Protection Advisor precisely because tree disease, structural defects, and hazard assessment require specialized expertise. Ann Dauphin's own statements suggest she acknowledges she is still developing that expertise. The requirement exists for exactly this situation.

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2. It suggests the Building Official's position supports the applicants.

If Ladner's view is that the trees should have been reported — i.e., flagged as a hazard — then the senior technical professional in the City's own building department reached a conclusion aligned with the applicants' arborist, not with the denial. The Commission should consider what the Building Official would have decided had the application been properly routed to him.

3. It establishes that the denial lacked internal departmental authority.

A Building Clerk rendering a technical tree assessment decision over the apparent objection — or without the knowledge — of the Building Official is not a valid exercise of the City's permitting authority. It is a unilateral administrative action taken by a person with no technical authority to take it.

PART VI — IMPORTANT CAVEATS

The applicants acknowledge the following limitations of this argument:

- The audio captured on March 23, 2026 was intermittent and muddled — the above represents best interpretation, not verbatim statements
- The identity of the woman present on March 23 has not been formally confirmed — this argument assumes she is Ann Dauphin based on available evidence and context
- The identity of "Ricky" has not been formally confirmed — this argument assumes it refers to Rickey Ladner, Building Official, based on the departmental context
- This argument is presented as a supplemental theory pending formal identification and credential verification through a public records request

The applicants respectfully request that the Commission direct the City to identify the individual who assessed the trees in connection with the original denial, produce that individual's professional credentials, and confirm whether the Building Official reviewed the application prior to the February 10, 2026 denial.

> *Note: Video and audio documentation of the March 23, 2026 site visit has been preserved and is available for review by counsel and the Commission upon request.*

EXHIBIT "A"

EXHIBIT "A"