

March 28, 2016

Mr. Michael Schening
RK&K
81 Mosher Street
Baltimore, Maryland 21217

Re: Brien Run Sewer Interceptor Rehabilitation
Forest Conservation Variance
Tracking # 06-15-2111

Dear Mr. Schening:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on February 23, 2016. This request proposes to remove four (4) specimen trees for the rehabilitation of approximately 8,000 feet of existing sanitary sewer line that is currently leaking into Brien Run and the ground water.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. The applicant is seeking to correct an existing sanitary sewer leakage problem. Truck access to existing manholes is necessary to install a sewer pipe lining. Four specimen trees preclude access to manholes along the 8,000 foot sewer line work area. The work cannot be conducted without access to the manholes along the sewer line. Full application of the law to the entire property would result in unwarranted hardship to the applicant, and we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The site contains 19 specimen trees, including five in

Mr. Michael Schening
Brien Run Sewer Interceptor Rehabilitation
Forest Conservation Variance
March 28, 2016
Page 2

the Critical Area, and four of which will be removed outside the Critical Area. The existing sewer line has leakage problems into Brien Run which need to be corrected. The trees are proposed for removal because their locations are within the access area to the sewer line manholes. The sewer line and manholes already exist and therefore the circumstances here are unique and not related to the conditions of the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The property is surrounded by a mix of residential, commercial, and industrial development as well as Victory Villa Elementary School. The sewer serves all this development. The proposal to remove four specimen trees to fix a sanitary sewer leakage problem will not change the character of the neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The new construction will meet all sediment and erosion control techniques during construction and all temporary forest impacts will be replanted on site. Mitigation will be provided for permanent forest impacts. Replanting of the limits of disturbance will occur through a Forest Buffer Protection Plan. Therefore, we find that granting of the special variance will not adversely affect water quality, and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not removed the specimen trees. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Mitigation in the form of a fee-in-lieu for specimen tree removal will be required. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the required criteria have been met. Therefore, the variance request is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code contingent with the following conditions:

Add the following note to all plans for this project: "A Forest Conservation Special Variance was approved by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of four specimen trees. Mitigation was accomplished through the payment of a fee-in-lieu."

Mr. Michael Schening
Brien Run Sewer Interceptor Rehabilitation
Forest Conservation Variance
March 28, 2016
Page 3

A fee-in-lieu of \$3,807.31 will be required for specimen tree removal prior to the approval of any permits.

It is the intent of this Department to approve this variance subject to the above condition. Any changes to site layout may require submittal of revised plans and an amended variance request.

If you have any questions regarding this correspondence, please call Ms. Regina Esslinger at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

c: Marian Honecny, DNR

VJG/rae

Brien Run Sewer FCVA 3.28.16/FCVA/rae/shreir