

March 18, 2016

Mr. Henry A. Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: DK Wood Valley, LLC Property
Forest Conservation Variance Request
Tracking #02-15-2116

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on December 3, 2015. This request proposes to remove seven of the twenty specimen trees onsite in order to develop a three lot residential subdivision on this 5.4-acre property. The specimen trees to be removed are natives, mostly in fair to good condition, occurring within a 1.8-acre forest stand that separates the open portion of the property from Woodvalley Drive. Additionally, nine other specimen trees on this property would be impacted to various degrees by the proposed construction activities. The loss of the seven specimen trees would be mitigated by 1.2 acres of offsite reforestation. A forest retention investigation report submitted in accordance with Section 33-6-111(b) of Baltimore County's Forest Conservation Law was evaluated by EPS staff in conjunction with the variance request.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six criteria listed in Subsection 33-6-116 (d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three 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 that the petitioner show that 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 all beneficial use of his property. The location of the specimen trees and extent of their critical root zones (CRZs) would significantly limit the size of the buildings and constrain access if full protection to all specimen trees was provided.

Mr. Henry A. Leskinen
DK Wood Valley, LLC Property
Forest Conservation Special Variance
March 18, 2016
Page 2

However, it appears that at least two residential dwellings could be constructed on the property with minimal impacts to specimen trees. Therefore, we find that full application of the law would not deprive the petitioner of all beneficial use of the property; thus, this criterion has not 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 in the neighborhood. The petitioner's plight is due to the number and location of specimen trees and other site constraints. However, while some specimen tree impacts are unavoidable, alternate site layouts exist that would avoid most of these impacts. Therefore, we find that this criterion has not 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 granting of this special variance will not adversely affect the character of the surrounding neighborhood. The proposed minor subdivision would result in three residential lots with houses similar to others in the neighborhood. Consequently, 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 specimen trees to be removed are not within the riparian buffer area onsite. Furthermore, this project will establish a 1.2-acre Forest Buffer and Forest Conservation Easement protecting the riparian area and other forest onsite. Therefore, we find 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 which is the result of actions taken by the petitioner. The petitioner has taken no actions necessitating this variance prior to its request. The variance request is primarily based on the number and location of specimen trees across the buildable area of the property. 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. We acknowledge that the site is constrained due to the number and location of specimen trees, the extent of existing forest, the extent of the required Forest Buffer Easement in the rear of the property, and the site's topography with respect to the elevation of the metropolitan sewer. However, those same constraints existed in 2009 when the previous Dowling Property subdivision was submitted for a 3-lot subdivision. While that minor subdivision plan proposed removal of some specimen trees prior to the requirement for a special variance to remove such trees, it conserved an additional 0.3 acres of forest in Forest Conservation Easement

Mr. Henry A. Leskinen
DK Wood Valley, LLC Property
Forest Conservation Special Variance
March 18, 2016
Page 3

and met its entire 0.9-acre reforestation requirement in and adjacent to the Forest Buffer Easement onsite. Therefore, we find that granting the variance would not be consistent with the spirit and intent of the Forest Conservation Law, and this criterion has not been met.

Based on our review, this Department finds that all required criteria have not been met. Therefore, the requested variance request is hereby denied in accordance with Section 33-6-116 of the Baltimore County Code.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG:msk

c. Marian Honeczy, Maryland DNR