

March 2, 2016

Mr. Robert Ryan, Manager  
Watershed Restoration Section  
Baltimore County Department of Environmental  
Protection & Sustainability  
111 W. Chesapeake Avenue, Room 319  
Towson, MD 21204

Re: Dead Run at Westview Park Stream Restoration  
Forest Conservation Variance  
Tracking # 01-16-2158

Dear Mr. Ryan:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by the Department of Environmental Protection and Sustainability (EPS) on February 22, 2016. This request proposes to remove five (5) specimen trees to facilitate the restoration of 1,815 linear feet of Dead Run, a tributary to the Gwynns Falls. The specimen trees to be removed include: a 30-inch DBH Chestnut oak in good condition; a 36-inch DBH Chestnut oak in good condition; a 30-inch DBH Green ash in good condition; a 30-inch DBH Tulip poplar in good condition; and, a 30-inch DBH American elm in poor condition.

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 restore 1,815 linear feet of stream as part of this Department's goal to improve water quality and stream habitat. Full application of the law would render the project infeasible due to the location of the tree(s) in relation to the limit of disturbance necessary to successfully restore the stream. Therefore, 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

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conditions of the neighborhood. The petitioner's plight is due to the fact that the specimen tree(s) are located in such a manner that they cannot be avoided while improving the stream system rather than the general conditions in 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. No change in land use would result from the stream restoration. 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 very purpose of the construction activity is to improve a degraded stream system that will reduce sedimentation downstream and improve aquatic and riparian habitat. 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 that is the result of actions taken by the petitioner. The petitioner has not taken any actions prior to requesting this variance. 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. Allowing the removal of specimen trees for the subject stream restoration would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, this criterion has been met.

Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code. No mitigation will be required for removal of the five specimen trees given that they are within the forest to be cleared and mitigated in accordance with an approved forest conservation plan (FCP).

Please be advised that prior to this Department's approval of the grading plan, a final FCP plan acknowledging this variance and detailing the protection of the remaining specimen trees and forest must be approved by this Department. Additionally, any fee-in-lieu of reforestation shall be paid prior to issuance of any permit.

It is the intent of this Department to approve this variance subject to any conditions. Any significant design changes may require submittal of an amended variance request.

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If you have any questions regarding this correspondence, please call John Russo at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG/jgr

c. Marian Honeczy, Maryland Dept. of Natural Resources

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