

April 18, 2016

Dennis Miller  
Cal-Atlantic Homes  
9710 Patuxent Woods Drive  
Suite 100  
Columbia, MD 21046

Re: Dulaney View  
Pot Spring Road  
Forest Conservation Variance  
Tracking #03-16-2198

Dear Mr. Miller:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Resource Management, Title 6 Forest Conservation was received and processed by this Department. This request proposes to impact 375 square-feet of Forest Conservation Easement (FCE) to construct a wooden fence along the entrance to Dulaney View Subdivision.

The Director of the Department of Environmental Protection and Sustainability (DEPS) 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. Construction of the wooden fence will make the entrance into the Dulaney View subdivision more attractive as well as protect future disturbance in the Forest Conservation Easements on the property. While the inability to construct the wooden fence might make the entrance into Dulaney View less attractive, it will not prevent the petitioner from obtaining a reasonable return on the property and deprive the petitioner of the beneficial use of his property. As a result, this criterion has not been met.

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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 road right-of-way is adjacent to the FCE. Due to the proximity of the road right-of-way to the FCE and plans for a sidewalk, there is no room to build a fence without impacting the easement. The need to build the fence within the FCE is not a result of the general conditions of the neighborhood. Therefore, the plight of the petitioner is due to unique circumstances, and this criterion is 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 impact associated with the proposed wooden fence is minimal and restricted to the entrance of the subdivision. Therefore, the proposed fence will not alter the essential character of the neighborhood, and 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. As indicated above, the proposed fence will be constructed a few feet inside the FCE and result in minimal disturbance. The wooden fence will protect the FCE from encroachment in a high traffic area of the subdivision. In addition, no trees will be removed as part of the fence construction. Due to the scope of the disturbance and the absence of any tree removal, the construction activity will result in minimal erosion. Furthermore, there are no streams within 300 feet of the disturbance area. As a result, the proposed variance will not adversely affect water quality, so 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 developer addressed the County's Forest Conservation Regulations by retaining forest in conservations easements. Given the FCE locations and the need for an entrance into the subdivision and associated right-of-way, it was necessary to locate the entrance road immediately adjacent to the FCE. The need to construct the fence within the FCE is not a result of actions taken by the petitioner. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The limit of disturbance for constructing the fence within the FCE is minimal and no trees within the easements will be removed to build the fence. Furthermore, the fencing will protect trees in the FCE from disturbance in a high traffic area of the subdivision. As a result, the proposed fence construction is consistent with the spirit and intent of Article 33 of the Baltimore County Code, and this criterion is met.

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Based on our review, this Department finds that the 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 contingent upon the following:

1. Forest Conservation Easement protective signs are installed along the entire easement boundary per the approved Forest Conservation Plan for the subdivision.
2. The following note must appear on all plans and plats submitted for this project: "A variance from Baltimore County Forest Conservation Law was granted by the Baltimore County Department of Environmental Protection and Sustainability on April 18, 2016. This variance approved the disturbance of 375 square of Forest Conservation Easement (FCE) for the purpose of constructing a wooden fence inside the FCE. Conditions were placed on this approval including the installation of FCE signs along the easement boundary.

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

Please have the property owner and applicant sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Mr. Gris Batchelder at (410) 887-3980.

Sincerely yours,

Vince J. Gardina  
Director

VJG/cgb

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I/we agree to the above conditions to bring my/our property into compliance with  
Baltimore County's Forest Conservation Law.

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Property Owner's Signature

Date

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Printed Name