

September 20, 2016

Mr. Gerald McHenry
Baltimore County Dept. of Public Works
111 W. Chesapeake Avenue, Room 200
Towson, Maryland 21204

Re: Fullerton Reservoir
Forest Conservation Variance
Tracking # 05-16-2235

Dear Mr. McHenry:

A revised 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 May 12, 2016, and revisions received August 24, 2016. This request proposes to remove sixteen (16) specimen trees on site for the construction of three closed clean water reservoir tanks, associated stormwater management facilities, access, and grading. These reservoirs will serve the greater Baltimore metropolitan area. A forest buffer variance has been requested for the impacts to the forest buffer. There are twenty nine specimen trees on site, and all the specimen trees proposed for removal are within the existing forest.

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 property was acquired for a reservoir over thirty years ago, and construction of the tanks is necessary to provide water to the greater metropolitan area. The tank location on the ridge, in what was mostly prior farm field, helps reduce the amount of clearing necessary. Development of the reservoir tanks could not occur without removal of the specimen trees and thus would deprive the petitioner of beneficial use of the property. Therefore, we find that this criterion has 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 property was purchased many years ago to serve as a reservoir for the Baltimore region as growth warranted. The reservoir tanks shall be partially buried to reduce visual impact to the surrounding community. The reservoir tanks are being constructed because there is a public need for additional water. The neighborhood is already developed 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 residential development. The proposal to remove sixteen specimen trees as part of the proposed development of the site 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 and stormwater management requirements during and after construction. The site is currently untreated for stormwater management. 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. The specimen trees are within existing forest. The forest conservation reforestation requirement is 3.5 acres, and over 6 acres of planting are proposed by the applicant. 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:

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1. 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 sixteen specimen trees.”
2. A Forest Conservation Plan shall be submitted and approved prior to approval of the grading plans.

It is the intent of this Department to approve this variance subject to the above conditions. 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

VJG/rae