

October 27, 2015

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

Re: Isaac Property
12209 Worthington Road
Lot 22 Worthington Valley
Forest Conservation Variance
Tracking #02-15-2046

Dear Mr. Leskinen:

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 extinguish a 12,520 square-foot portion of an existing Forest Conservation Easement (FCE) on Lot 22 of the Worthington Valley Subdivision. The applicant proposes to mitigate at a 2:1 ratio for extinguishment of the easement by paying a fee-in-lieu of \$12,520 to Baltimore County.

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. The applicants, Michael and Elisa Schwartz, purchased Lot 17 in the Worthington Valley Subdivision in July of 2010. The FCE on Lot 22 adjacent to their property was established as part of the Worthington Valley Subdivision prior to their purchase. The previous property owner conducted unauthorized clearing in the FCE within Lot 22 and established lawn in the cleared easement area. When Mr. and Mrs.

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Schwartz purchased the property, they were under the impression the cleared area within the FCE was part of their property, and they improved their house and rear and side yards accordingly. Given that the original house and driveway were constructed on Lot 17 without disturbing the FCE, the land in question can yield a reasonable return and will not deprive the petitioner of all the beneficial uses of his or property. As a result, 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 of the neighborhood. The FCE adjacent to Lot 17 was established prior to the construction of the house and driveway. There are several properties in the Worthington Valley Subdivision that are adjacent to the Forest Buffer and Forest Conservation Easements established as part of the subdivision approval process. However, the building envelope on this property is substantially narrower than on the other lots, and the usable yard area was compromised. 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 total forest buffer and forest conservation acreage within the Worthington Valley Subdivision is 38.4 acres. The proposed variance request is to extinguish 12,520 square feet of FCE. This easement reduction represents a small fraction of the total 38.4-acre easement acreage of the subdivision and will not alter the essential character of the neighborhood. As a result, 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. As indicated above, the proposed easement reduction represents a small fraction of the conservation easement acreage associated with the Worthington Valley Subdivision. The area of the proposed easement reduction is approximately 290 feet from the stream that crosses the subdivision. The buffer area between the proposed reduction area and the stream consists of existing forest or recently planted trees. Due to the substantial remaining forest buffer, 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 taken any actions on the property prior to requesting this variance. The owner prior to Mr. and Mrs. Schwartz cleared forest and established lawn within the FCE to increase the size of the rear yard. Therefore, this criterion has been met.

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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 12,520 square-foot area proposed for removal from the FCE on Lot 22 represents a small fraction of the total conservation easement acreage for the subdivision. The forest associated with this area prior to the disturbance was of low quality and not a high priority for retention. The applicant proposes to pay a fee-in-lieu of \$12,520 to Baltimore County to mitigate for the area of easement removal. The fee-in-lieu can be used by the County to plant trees in other areas that are more environmentally sensitive. Therefore, this criterion has been met.

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. The Forest Buffer Protection Plan and Forest Conservation Plan for the Worthington Valley Subdivision must be amended to reflect the removal of 12,520 square feet of the FCE on Lot 22 as shown on the attached exhibit by November 30, 2015.
2. The Record Plat for the Worthington Valley Subdivision must be amended to reflect the removal of 12,520 square feet of the FCE on Lot 22 as shown on the attached exhibit by December 31, 2015.
3. A new Forest Conservation Declaration of Protective Covenants, Conditions, and Restrictions must be recorded in the Land Records of Baltimore County that reflects the removal of 12,520 square of the FCE on Lot 22 as shown on the attached exhibit by December 31, 2015.
4. The applicant must mitigate for removal of the 12,520 square feet of FCE at a 2:1 ratio by paying a fee-in-lieu of \$12,520 to Baltimore County by December 31, 2015.
5. 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 October 27, 2015. This variance approved the removal of 12,520 square feet of Forest Conservation Easement (FCE) from Lot 22. Conditions were placed on this approval including the payment of a \$12,520 fee-in-lieu to Baltimore County as mitigation for removal of the 12,520 square feet of FCE."

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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

Enclosure

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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.

Property Owner's Signature Date

Printed Name

Applicant Signature Date

Applicant Printed Name