

December 17, 2015

Mr. John Canoles
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

RE: Kopp Property Parcel 128
Forest Conservation Variance Request
Tracking # 02-15-2112

Dear Mr. Canoles:

A 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 November 17, 2015. This request would allow the removal of 13 specimen trees on an 8.7-acre property to develop it as a three lot minor subdivision. The property is entirely forested with forest that is priority for retention as defined in Section 33-6-111(b). Consequently, the required forest retention investigation report (FRIR) was included with the variance application but did not provide alternate layouts, only a justification of the preferred layout that does not minimize forest clearing and fragmentation. Detailed comments on the FRIR are included in separate correspondence from EPS staff.

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 all beneficial use of his property. The applicant is seeking to develop a three lot subdivision on an 8.7-acre property with over 60 specimen trees. Based on the plan submitted with the application and the fact that any lot must be served by private well and septic system, it appears that one or more specimen trees would have to be removed to develop even one homesite. Therefore, the petitioner would be deprived of all beneficial use of the property, and 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 their plight is due to unique circumstances and not the general conditions of the neighborhood. The need for the variance arises from the fact that numerous specimen trees are spread throughout the site and cannot be totally avoided in developing the site as a minor subdivision as requested. Therefore, the petitioner's plight is associated with the subject property rather than general conditions in the neighborhood, and 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 proposed development is generally consistent with the essential character of the neighborhood given that the houses would be of similar size and architecture to the adjacent homes. However, this development would result in significant loss of visual buffer to those properties, especially with the loss of 13 specimen trees. Nonetheless, we find that granting the variance and allowing the development as proposed will not alter the essential character of the neighborhood; thus, 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 forest in the Forest Buffer Easement would remain undisturbed by the proposed development. However, all forest onsite is priority for retention in part due to its contiguity to this riparian forested buffer, and a significant portion of this forest would be cleared for development. Therefore, we find that granting the variance may adversely affect water quality and that this criterion has not 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. 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. Given that all forest onsite is priority for retention and the FRIR did not provide alternative layouts to demonstrate minimization of forest clearing, granting the requested variance to allow removal of the 13 specimen trees within this forest would not be consistent with the spirit and intent of the regulations. Therefore, this criterion has not been met.

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

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are revised and approved, you may apply for a new variance to remove specimen trees if necessary.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

Vincent J. Gardina
Director

VJG/ges

- c. Dover Road Development LLC
Mr. Raymond Hopkins, KCI Technologies, Inc.
Ms. Marian Honeczy, Maryland Dept. of Natural Resources