

May 6, 2016

Matthew Bell
Samantha Bell
11 Middle Woods Ct.
Parkton, MD 21120

Re: Bell Property
11 Middle Woods Ct.
Forest Conservation Variance
Tracking # 03-16-2204

Dear Mr. and Mrs. Bell:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Management, Title 6 Forest Conservation was received and processed by this Department. This request proposes to allow you to maintain a yard in the Forest Conservation Easement (FCE) located on your property.

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 that 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 the beneficial use of his or her property. We determined that your FCE was already in place before you purchased the property, therefore, the inability to mow the easement has not deprived you of the beneficial uses of your property and 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. Several other properties within the Middletown Woods subdivision have property that is constrained by Forest Buffer/Forest Conservation Easements, similar to the constraints on your property. However, you have demonstrated that you have a child with severe asthma which could be exacerbated by allowing the growth of tall grass and weeds near your home. For this reason, you have shown that your plight is due to unique circumstances. As a result, this criterion has been met.

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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. Maintaining a small yard within the FCE will diminish the size of the forest stand within the FCE. However, a large portion of the subdivision is wooded and the small portion of the FCE in question can only be seen from your home. As a result, we determined that mowing a small portion of the conservation easement 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. A variance approval would only affect a small portion of the easement and would leave a minimum of 300 feet of mature woodlands between the maintained yard and the nearest stream, maintaining a more than adequate buffer to protect water quality in the area. 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. Although you purchased the property after the creation of the FCE, the area in question had been maintained by the previous owner. Allowing the maintenance of a small yard behind the home will minimize the potential for an asthma attack for your son. For this reason, we determined that the variance request does not arise from a condition or circumstance which is the result of actions taken by you, and 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. We determined that maintaining a mowing area within the easement area would not affect the overall functionality of the FCE or water quality and would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Therefore, this criterion has been met.

Based upon 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, with the following conditions:

1. By June 22, 2016, you must plant 9 native deciduous trees that are 2 inch caliper and at least 5 feet tall within the FCE, as mitigation for the special variance on the 4,022 square feet of FCE.
2. All mature trees must remain within the variance area and can only be removed with DEPS permission.

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3. The following note must appear on all future plans for the property: “A variance from the Baltimore County Forest Conservation Law was granted by the Baltimore County Department of Environmental Protection and Sustainability on April 27, 2016. The variance approved 4,022 square feet of continued existing use of a yard within the Forest Conservation Easement.”

Please note, your property remains in violation of Section 33-6-103 of the Baltimore County Code. The compliance requirements stipulated in our February 16, 2016 violation letter still apply. You must delineate the FCE boundary by placing signage or a living fence. The Department will grant you an extension until June 15, 2016 to complete the compliance requirements. Failure to abide by these regulations by June 15, 2016 will result in an enforcement action by this Department.

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

Sincerely yours,

Vince J. Gardina
Director

VJG/jps

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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.

Printed Name Date

Signature Date

Printed Name Date

Signature Date