

August 4, 2016

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

Re: Rehberger Property  
Forest Conservation Variance Request  
EPS Tracking #03-16-2263

Dear Mr. Leskinen:

A revised request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on June 27, 2016. This variance request proposes to remove 24 of the 102 specimen trees onsite in order to develop a five lot, residential subdivision on this 12.5-acre property. The original variance request was for the removal of 33 of the 102 specimen trees, and was denied by this Department on April 14, 2016, because the required criteria for variance approval had not been met and because it was not demonstrated to the satisfaction of this Department that alternate project layouts did not exist and that the plan could not be reasonably altered.

The 12.5-acre property is located on Sweet Air Road, approximately one mile east of Jarrettsville Pike in the Jacksonville section of Baltimore County. The property is bounded to the north, east and west by residential development of single-family lots of similar sizes, and to the south by Chestnut Grove Presbyterian Church and single-family dwellings. It is zoned RC-5 and was previously improved with a single-family dwelling, which was destroyed by fire. The property is currently vacant with a vast majority of the site (8.3 acres) forested. This forest consists of very mature, mixed oak/poplar association. Sixteen of the 24 specimen trees proposed for removal are located within the 8.3-acre forest stand that comprises the entire central and northern portion of the property. Their removal will be accounted for by a required Forest Conservation Plan and Forest Conservation Worksheet. Eight remaining specimen trees to be impacted occur outside of the forest and are shown on the plan. Six of these trees are in poor or very poor condition and no mitigation is proposed. The applicant proposes to mitigate for the two specimen trees in fair to good condition by the payment to Baltimore County of a fee-in-lieu of planting. These are, Tree A-a 45-inch DBH bald cypress, and Tree B-a 32-inch DBH ornamental cedar. A forest retention investigation report, submitted in

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accordance with Section 33-6-111(b) of Baltimore County's Forest Conservation Law, was evaluated by EPS staff in conjunction with the variance request.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six criteria listed in Subsection 33-6-116 (d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three 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 that 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. Almost two-thirds of the project site is forested and all of this forest is identified as high priority for retention, based on its structure, and should be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect it and the plan cannot be reasonably altered, per Sections 33-6-108 and 33-6-111 of the Baltimore County Code. The prevalence and scattered nature of the specimen trees and extent of their critical root zones (CRZs) would significantly constrain development requirements if full protection to all specimen trees was provided. Therefore, we find that full application of the law would deprive the petitioner of all beneficial use of the property; thus, this criterion has 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 in the neighborhood. The petitioner's plight is due to the quantity and locations of specimen trees and their critical root zones, which occupy almost the entire site. Therefore, we find that this criterion has not 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 granting of this special variance will not alter the character of the surrounding neighborhood. The proposed subdivision would result in five residential lots with houses and lot sizes similar to others in the neighborhood. The proposed subdivision is consistent with adjacent development. Consequently, 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. Streams or wetland systems are not on, or proximal to the site and the proposed development activities. The proposed forest conservation easement will be protected during construction, which will avoid forest impacts, soil disturbance and compaction. Sediment

control and stormwater management practices will be incorporated during construction. Furthermore, this project will establish a 6.3-acre Forest Conservation Easement, protecting the priority forest onsite in perpetuity. Therefore, we find 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 which is the result of actions taken by the petitioner. The petitioner has taken no actions necessitating this variance prior to its request. The variance request is primarily based on the quantity and location of specimen trees across the area of the property. 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. We acknowledge that the site is significantly constrained due to the quantity and locations of specimen trees and the extent of existing forest. Almost two-thirds of the project site is forested and all of this forest is identified as high priority for retention, based on its structure, and should be left in an undisturbed condition unless the applicant has demonstrated to the Department that reasonable efforts have been made to protect it and the plan cannot be reasonably altered, per Sections 33-6-108 and 33-6-111 of the Baltimore County Code. During the review of the originally proposed forest conservation variance and accompanying plan, the applicant revised the original plan and reduced impacts to specimen trees of concern that were in addition to the 33 trees proposed to be impacted. The changes to grading and revisions to the Forest Conservation Easement (FCE) boundaries addressed those issues, increasing forest retention in an easement by 0.2-acre, from 5.7-acres to 5.9 acres. This revised variance further reduces impacts by including an additional 9 specimen trees within the FCE, increasing the area of forest to be retained within an easement by an additional 0.4-acre. This was accomplished by a re-design of Lot 3, reconfiguring it in a more northerly direction and avoiding a large cluster of specimen trees. Also, the limit of disturbance on Lot 4 was revised to further reduce forest impacts. In addition, clearing and grading have been limited around the proposed access roads and house sites to reduce forest impacts. Collectively, these efforts have significantly minimized impacts to specimen trees and forest. An additional 9 trees have been retained and an additional 0.6-acre of forest placed into a FCE since the review of the original variance request, and 78 of the 102 specimen trees will be retained within the FCE. The FCE has increased from 5.7-acres to 6.3-acres of this 12.5-acre site. It has been determined that the applicant has demonstrated to the satisfaction of this Department that reasonable efforts have been made to protect the specimen trees and priority forest and that the plan cannot be further reasonably altered. Therefore, we find that granting the variance would be consistent with the spirit and intent of the Forest Conservation Law, and this criterion has been met.

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Based upon our review, this Department finds that the required variance criteria have been met for the removal of the 24 specimen trees identified on the plan and herein. Therefore, the variance is hereby approved for the removal of those 24 specific specimen trees, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. A final Forest Conservation Plan for this project must be approved by EPS prior to approval of the minor subdivision plan. The FCP must include, but not be limited to, tree protection measures for specimen trees and forest that will be located within 50 feet of the limit of disturbance, and the payment of a fee-in-lieu of planting, described in Comment #2, below.
2. Meeting forest conservation requirements for the area of forest cleared will provide any necessary mitigation for the impact to the 16 of the 24 specimen trees to be removed, shown on the plan with this variance request, as these trees exist within the forest. No mitigation is required for the removal of 6 specimen trees outside of the forest in poor or very poor condition. Mitigation is required for the 2 specimen trees outside of the forest in fair to good condition by the payment to Baltimore County of a fee-in-lieu of planting. These are: Tree A-a 45-inch DBH bald cypress, and Tree B-a 32-inch DBH ornamental cedar. This amounts to 5,389 square feet of retention credit at \$0.50 per square foot (\$2,695.00).
3. The Forest Conservation Easement must be recorded in the Land Records of Baltimore County prior to approval of the minor subdivision plan.
4. A note must be added to all future plans for this project that states: "A Forest Conservation Special Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability to allow for the removal of 24 of 102 specimen trees on this project site, and mitigation was provided by meeting all forest conservation requirements, including mitigation, as outlined on the approved forest conservation plan".

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, or new variance request.

Please have the property owner sign the statement on the next page 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.

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If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG:tcp

c. Marian Honeczy, Maryland DNR

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I/We agree to the above conditions to bring my/our property, identified as comprising approximately 12.5-acres, within District 10 with the tax account # 1018010026, into compliance with the Baltimore County Code, Article 33, Title 6: Forest Conservation.

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Property Owner(s) Signature(s)

Date

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Printed Name(s) of Owner(s)