KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection and Sustainability

April 14, 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 #03-15-2128

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on December 22, 2015. This request proposes to remove thirty three of the one hundred and two specimen trees onsite in order to develop a five lot, residential subdivision on this 12.5-acre property. The property is located on Sweet Air Road, approximately one mile east of Jarrettsville Pike in the Jacksonville section of Baltimore County. Additional information was requested of the applicant to complete the variance application regarding eight additional specimen trees not proposed for removal, but impacted to various degrees by the proposed development activities. An addendum to this variance, addressing these concerns, was received by this Department on March 24, 2016. Minimization of impacts to these trees of concern were addressed by modified grading, reconfiguration of septic reserve areas and expanded proposed forest conservation easement limits.

The specimen trees to be removed are mostly in fair to good condition, most of which occur within an 8.3-acre forest stand that comprises the entire central and northern portion of the property. Twenty five of the thirty three trees to be removed are located within forest, with sixteen of these trees located on proposed Lot 3. The eight remaining trees to be removed are located outside of the forest. Six of these trees are in poor or very poor condition and no mitigation is proposed. The applicant proposes to mitigate for the two trees in fairly good condition by the payment to Baltimore County of a fee-in-lieu of planting. A forest retention investigation report, submitted in 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 Priority 1 for retention, based on its priority 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. The location 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. However, it appears that at least four residential dwellings could be constructed on the property with significantly minimized impacts to specimen trees, given that almost one-half of the specimen trees proposed for removal occur on Lot 3. Therefore, we find that full application of the law would not deprive the petitioner of all beneficial use of the property; thus, 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 in the neighborhood. The petitioner's plight is due to the quantity and location of specimen trees and other site constraints. However, while some specimen tree impacts are unavoidable, alternate site layouts exist that would avoid many of these impacts. 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 adversely affect the character of the surrounding neighborhood. The proposed subdivision would result in five residential lots with houses similar to others in the neighborhood. 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 its 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 5.7-acre Forest Conservation Easement, protecting the 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 constrained due to the quantity and location of specimen trees and the extent of existing forest that is priority for retention. However, per the Baltimore County Code, Section 33-6-111(b), given that the forest to be impacted is Priority 1 for retention and shall be left in an undisturbed condition, it has not been demonstrated to the satisfaction of this Department that alternate project layouts do not exist and the plan cannot be reasonably altered to avoid the removal of such a significant amount of specimen trees. Therefore, we find that granting the variance would not be consistent with the spirit and intent of the Forest Conservation Law, and this criterion has not been met.

Based on our review, this Department finds that all required criteria have not been met. Therefore, the requested variance request is hereby denied in accordance with Section 33-6-116 of the Baltimore County Code, and the forest retention investigation report is not approved.

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

Sincerely yours,

Vincent J. Gardina

Vincent J. Gardina
Director

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c. Marian Honeczy, Maryland DNR
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