June 25, 2019

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

Re: Reisterstown Shopping Center at 11989 Reisterstown Road
Forest Conservation Variance
Tracking # 02-19-3014

Dear Mr. Leskinen:

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 May 22, 2019. The requested variance would allow the calculation of the afforestation requirement to be based on the 0.2 acre of pervious surface area within the proposed 1.3-acre limit of disturbance (LOD) rather than 15% of the entire 17.4-acre property to redevelop a portion of this long standing shopping center. A simplified forest stand delineation and forest conservation worksheets based on both scenarios were included with the application.

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 redevelop a portion of the shopping center. However, full compliance with the afforestation requirement does not deprive the petitioner of all beneficial use of the property, only the cost of complying with the law. Consequently, we find that this criterion has not been met.

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 petitioner's request for relief from the full afforestation requirement rather than conditions of the neighborhood**.** Therefore, 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 redevelopment is consistent with the current use of the property and the character of the commercial neighborhood. Therefore, we find that granting the requested variance 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. While there are no streams wetlands or associated Forest Buffers on or near the property and the project is redevelopment, the requested relief is excessive such that the water quality benefit of planting forest offsite would be eliminated were the variance granted as requested. Therefore, we find that granting of the special variance will 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 that would necessitate this variance prior to requesting it. 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. The variance, as requested, is inconsistent with EPS policies regarding application of Forest Conservation to redevelopment. Specifically, the petitioner requests to both base the gross tract area on the LOD and then deduct the impervious surface area from the LOD area. While EPS supports redevelopment, the spirit and intent of the Forest Conservation Law must still be met by providing adequate afforestation for the development activity proposed. Given that denying the variance would not deprive the petitioner of all beneficial use of the property and the fact no afforestation would result from basing the afforestation threshold on the 0.2 acre of pervious surface within the LOD, we find that the variance, as requested, is not consistent with the spirit and intent of the Law. Therefore, this criterion is also not met.

Based on our review, this Department finds that 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.

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

Sincerely,

David V. Lykens
Director

DVL/ges

c. Mr. Eric McWilliams, Bohler Engineering