

September 19, 2016

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

Re: Tobias Property  
Forest Conservation Variance  
Tracking # 05-16-2245

Dear Mr. Leskinen:

A revised 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 August 19, 2016. This request proposes to remove three (3) of the nine specimen trees on site for the creation of a two lot subdivision. There is currently one existing dwelling which will remain. There are forest and wetlands on the property, and all of the specimen trees are within the forest.

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 beneficial use of his property. A subdivision of this site could not occur without removal of some of the specimen trees. However, a dwelling currently exists and thus would not deprive the petitioner of beneficial use of his property. Therefore, 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 his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The site contains three specimen trees around the existing dwelling, three along the road, two close to the wetlands, and one in between the

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road and interior trees. The second dwelling is proposed close to the road, with the forest and wetlands farther back on site to be placed in an easement. The three trees are proposed for removal because their location and critical root zones present difficulties in developing the site. It would not be possible to access the site from Gerwell Court and construct a dwelling without impacting a specimen tree. The neighborhood is already developed and therefore the circumstances here are unique and not related to the 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 property is surrounded by similar residential development. The proposal to remove three specimen trees as part of the proposed subdivision of the site will not change the character of the neighborhood. Therefore, 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. The new construction will meet all sediment and erosion control requirements during construction. No wetlands or wetland buffers will be impacted by the subdivision. 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. The petitioner has not removed the specimen trees. 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. Although the specimen trees are within an existing forest, the amount of retained forest exceeds the required amount by 0.3 acres. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the required criteria have been met. Therefore, the variance request is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code contingent with the following condition:

Add the following note to all plans for this project: "A Forest Conservation Special Variance was approved by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of three specimen trees."

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It is the intent of this Department to approve this variance subject to the above condition. Any changes to site layout may require submittal of revised plans and an amended variance request.

If you have any questions regarding this correspondence, please call Ms. Regina Esslinger at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG/rae