

June 14, 2016

Mr. Devin Leary
Human & Rohde Inc.
512 Virginia Ave.
Towson, MD 21286

RE: Tollgate Overlook (f.k.a. VFW Post 521)
Forest Conservation Variance
Tracking # 04-16-2250

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability (EPS), Title 6 Forest Conservation was received by this Department on May 13, 2016. This request proposes to remove 16 of 22 specimen trees on an 11.8-acre site to develop a 23-lot residential subdivision and relocate the parking lot of the existing VFW post from which the subdivision would be created. All but two of the trees to be removed are within forest. Those two specimens outside of forest are 35 and 36 inch DBH tulip poplars in good condition.

The 6.9 acres of forest onsite was delineated into three stands, one of which is a 1.3-acre stand that is high priority for retention due to its structural diversity and size of dominant trees. Approximately 1.2 acres of that high quality forest would be retained under the petitioner's preferred alternative, as indicated in the forest retention investigation report (FRIR) included with the variance application. Unfortunately, that stand only includes six (6) of the 22 specimen trees onsite. One of those trees, which is within the right of way for Tollgate Road, would have to be removed to replace the undersized culvert under Tollgate Road and construct a required sidewalk.

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.

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The first criterion (Subsection 33-6-116(d)(1) of the Code) requires 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 beneficial use of his property. The applicant is seeking to develop the property similarly to the adjacent developments. After investigating three alternative subdivision layouts via the aforementioned FRIR, the preferred alternative would protect six specimen trees, including five within a perpetual Forest Conservation Easement (FCE). The plan proposes retention of 1.3 of the 1.4 acres of forest that is high priority for retention due to its structural diversity. All of the remaining forest would be cleared.

Section 33-6-111(b) of the Code states in part, that areas considered priority for retention shall 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 them, that the plan cannot be reasonably altered, and the plan complies with all other applicable laws. Sixteen of the 22 specimen trees cannot be retained without severely impacting the feasibility of the project given SWM requirements, zoning setbacks, adequate access/egress both to public roads and driveways, sight distance concerns, and pedestrian access. Additionally, protecting five (5) of the 16 specimen trees that are somewhat clustered in the eastern portion of the site would push development into the aforementioned priority forest or result in a significant reduction of lots in order to accommodate both those trees and required road dimensions. Consequently, denying this variance request would deprive the applicant of all beneficial use of the property. In summary, the applicant has demonstrated to the satisfaction of the Department why these 16 trees cannot be left in an undisturbed condition, that reasonable efforts have been made to protect both them and the highest quality forest onsite, and that the plan cannot be reasonably altered. Therefore, the first variance criterion is 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 petitioner's plight is due to unique circumstances associated with the location of the specimen trees and priority forest on the site, as well as the infrastructure requirements. The development proposal and need for a variance is based on these unique conditions of the property and not from general 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 development, on which this variance request is predicated, will consist of houses commensurate with the architecture and density of the adjacent residential developments. Consequently, granting this variance will not alter the essential character of the neighborhood. Therefore, we find that this criterion has been met.

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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. No streams, wetlands, or floodplains would be impacted as a result of this variance. 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 that is the result of actions taken by the petitioner. The petitioner has taken no prior actions necessitating this variance. 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 16 trees to be removed in order to develop a major subdivision in a County-designated growth area cannot be retained without severely impacting the feasibility of the project. As stated above, the removal of these trees is associated with road standards, sight distance at Tollgate Road, SWM, and other County requirements for development plans. The applicant has demonstrated to the satisfaction of this Department why these trees cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them, and that the plan cannot be reasonably altered. Moreover, the applicant has demonstrated that virtually all of the high priority forest onsite, which contains five specimen trees, would be protected in FCE. Therefore, we find that granting the variance would be consistent with the spirit and intent of Article 33 of the Baltimore County Code and that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 with the following conditions:

1. A \$2,226 fee in lieu of mitigation for the two specimen trees outside of forested area shall be paid to Baltimore County prior to issuance of any grading permit.
2. Loss of the 14 specimen trees in forested area shall be mitigated by 3.3 acres of offsite reforestation required by the forest conservation plan and its worksheet.
3. The following note must be on all plans for this development:

“A variance to the Forest Conservation Law was granted by Baltimore County EPS on June 14, 2016 to allow the removal of 16 specimen trees. Conditions were placed on this variance including payment of a fee in lieu.”

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4. The preliminary forest conservation plan shall be revised to reflect this variance and approved by EPS prior to development plan approval.

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 a new variance request.

Please have the person(s) responsible for meeting the conditions of the variance approval sign the statement below 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.

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

Sincerely yours,

Vincent J. Gardina
Director

- c. Mr. Thomas Scherr, 214 Tollgate Road LLC
Ms. Marian Honecny, Maryland DNR

VJG/ges

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owner's Signature Date

Contract Purchaser's Signature Date

Printed Name

Printed Name