

October 29, 2014

Mr. Devin M. Leary
Human and Rohde, Inc.
512 Virginia Avenue
Towson, Maryland 21286

Re: 21603 Middletown Road
Forest Conservation Variance
Tracking # 03-14-1884

Dear Mr. Leary:

A request for a variance from Baltimore County's Forest Conservation Law has been reviewed by this Department of Environmental Protection and Sustainability (EPS). This request proposes to base afforestation required by Section 33-6-111 of the Forest Conservation Law on the 0.4-acre limit of disturbance (LOD) rather than the entire 3.6-acre tavern property. Relief is sought for the proposed construction of additional parking lot and modifications to an outdoor seating area at the above-referenced property, formerly the Cherry's Inn, which predates the effective date of the Forest Conservation Law.

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 (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three 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 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. The applicant is undertaking renovation and revitalization of an existing establishment that predates the effective date of the Forest Conservation Law. While full application of the law to the entire property would result in a practical difficulty, it would not deprive the petitioner of all beneficial use; therefore, we find that this criterion has not been met.

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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 proposal to expand the parking lot and revitalize the existing tavern is due to unique circumstances associated with the subject property, rather than the general conditions in the neighborhood. Therefore, we find that this 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. Only 0.4 acres of the 3.6-acre tavern property is proposed for expanded use in association with this variance request. 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. We have determined that there are no wetlands, streams or floodplains on or near the subject property proposed for expanded use. Additionally, stormwater management is being provided for the impervious areas. 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 which is the result of actions taken by the petitioner. The special variance request is to limit the forest conservation requirement to the LOD and is not the result of actions taken by the petitioner. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Reducing the afforestation obligation based on the LOD for expanded uses within an existing tavern property would be consistent with the spirit and intent of the Forest Conservation Law. This is especially true given that no impacts to forest or water quality would result from this construction project. Therefore, this criterion has been met.

Based upon our review, this Department finds that five of the six above criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. The project's 0.1-acre afforestation requirement shall be met by paying a \$2,178.00 fee-in-lieu **OR** by purchasing credit at an EPS-approved forest retention bank. A bank authorization letter is enclosed for your use. Prior to issuance of any grading or building permits, the fee shall be paid to EPS, or

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the signed bank letter shall be returned to EPS indicating that retention bank credit has been purchased.

2. This variance approval does not exempt future redevelopment of this site from complying with Baltimore County's Forest Conservation Law.

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 variance request.

Please have the property owner sign the statement on the following 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, and will result in delays in the processing of plans and permits for this property.

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

Sincerely yours,

Vincent J. Gardina
Director

VJG:msk

Enclosure

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

Property Owner's Signature

Date