

May 13, 2016

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

Re: DK Woodvalley, LLC Property  
Forest Conservation Variance Request  
Tracking #02-16-2214

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 April 26, 2016. This request proposes to remove three (3) of the twenty (20) specimen trees onsite in order to develop a three lot residential subdivision on this 5.4-acre property. The specimen trees to be removed are natives, in fair to good condition, occurring within a 1.8-acre forest stand that separates the open portion of the property from Woodvalley Drive. Additionally, nine (9) other specimen trees on this property would receive minor impacts to their critical root zones (CRZs) for construction activities associated with utilities, access and stormwater management. The application offers a fee-in-lieu of \$3,971.00 for loss of the three specimen trees as well as 1.2 acres of offsite reforestation as mitigation. 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 an earlier 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. The location of the specimen trees and extent of their critical root zones (CRZs) would significantly limit the number and size of the buildings and constrain access if full protection to all specimen trees was provided.

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However, it appears that at least one and possibly two residential dwellings could be constructed on the property with minimal impacts to specimen trees. 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 number and location of specimen trees and other site constraints, not 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. The granting of this special variance will not adversely affect the character of the surrounding neighborhood. The proposed minor subdivision would result in three residential lots with houses similar to others in the neighborhood, while still retaining many of the specimen trees and much of the forest. 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. The specimen trees to be removed are not within the riparian buffer area onsite. Furthermore, this project will establish a 1.2-acre Forest Buffer and Forest Conservation Easement protecting the riparian area and other forest onsite. 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 number and location of specimen trees across the buildable 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 number and location of specimen trees, the extent of existing forest, the extent of the required Forest Buffer Easement in the rear of the property, and the site's topography with respect to the elevation of the metropolitan sewer. Furthermore, the latest plan and variance request proposed significantly fewer impacts to specimen trees. Therefore, we find that granting the variance would be consistent with the spirit and intent of the Forest Conservation Law, and this criterion has been met.

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

1. Permanent impacts to Specimen trees D, T and U as shown on the preliminary forest conservation plan accompanying the variance application shall be mitigated through compliance with the 1.2 acre reforestation planting requirement of the Forest Conservation Worksheet calculations. No fee-in-lieu of mitigation for the three specimen trees to be removed is required, as those trees are within the forest to be mitigated.
2. Impacts to the critical root zones of nine (9) of the remaining seventeen (17) trees shall be minimized through the use of vibratory knife root pruning and other silvicultural practices as well as additional protective measures to be detailed on the approved, final Forest Conservation Plan. Also, the sequence of operations on the sediment control plan to be approved by EPS shall reference implementation of those tree protection and stress reducing measures prior to Environmental Agreement approval.
3. Prior to issuance of any Baltimore County permit, blaze orange high visibility fence shall be installed along the limit of disturbance wherever the limit of disturbance is within 50 feet of any remaining specimen tree or Forest Conservation Easement (and Forest Buffer and Forest Conservation Easement). The protective fence shall be illustrated on the plan view, shall be detailed (per Enclosure 1) and mentioned early on in the sequence of operations on both the sediment control and final Forest Conservation Plans. Installation of this fence shall be inspected and approved by EPS staff prior to grading permit issuance.
4. The limits of the Forest Conservation Easement (and Forest Buffer and Forest Conservation Easement) shall be permanently posted at 80-foot intervals or at any turning point with "Forest Buffer-Do Not Disturb" signs (see Enclosure 2), which are available from private sign contractors (Enclosure 3). The signs must be installed prior to issuance of any permits for the development or by December 19, 2016, whichever comes first.
5. The following note must appear on all subsequent plans for this project:  
  
"A variance was granted on May 13, 2016 to Baltimore County's Forest Conservation Law to allow permanent impacts to three specimen trees onsite. Conditions were placed on this variance, including protecting the remaining specimen trees onsite."

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6. The minor subdivision plan shall be revised to reflect the approved development design as well as any pertinent variance conditions.
7. The final forest conservation plan addressing the conditions of this variance as well as the requirements of Section 33-6-110 must be submitted to EPS and approved prior to grading and sediment control plan approval.
8. This variance approval does not exempt future development activities at this site from compliance 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 a new 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, or may result in delays in the processing of plans for this project.

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

Sincerely yours,

Vincent J. Gardina  
Director

VJG/msk

Enclosures (3)

c. Marian Honeczy, Maryland DNR

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

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Property Owner's Representative's Signature      Date

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Property Owner's/Representative's Printed Name