

December 5, 2013

Mr. John Sekerak, RLA AICP
Stantec Consulting Services, Inc.
20410 Century Boulevard, Suite 200
Germantown, Maryland 20874-1187

Re: Dulaney Valley Memorial Gardens,
Harmony Hills Section
Forest Conservation Variance Request
Tracking # 03-13-1727

Dear Mr. Sekerak:

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 November 18, 2013. This request proposes to base the afforestation required by Section 33-6-111 of the Forest Conservation Law on the 5.2-acre limit of disturbance rather than the entire 68.6-acre site. The proposed redevelopment activity includes the grading of an open area of lawn for additional grave sites and the construction of a cul-de-sac into the interior of the area.

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 seeking a minor expansion of the existing operation occurring on a much larger cemetery property that existed prior to the effective date of the Forest Conservation Law. While full application of the law to the entire parcel would create a hardship, it would not deny the petitioner of all beneficial use of this 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 in the neighborhood. The petitioner's plight is due to the financial hardship of bringing the property into compliance with the law rather than 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 5.2 acres of the 68.6-acre cemetery are proposed for expanded use in association with this variance request. Furthermore, the property has been used as a cemetery for decades. 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 the proposed expansion is more than three hundred feet beyond the limit of the anticipated riparian Forest Buffer and would only impact maintained lawn area. 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 petitioner has not taken any actions creating conditions necessitating this variance. Furthermore, the area in question was reserved for expansion long before the enactment of this law. 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. Reducing the afforestation obligation based on the limit of disturbance for a minor expansion of the existing interment operations on this longstanding cemetery would be consistent with the spirit and intent the Forest Conservation Law. This is especially true given that no impacts to forest or water quality would result from this expansion. Therefore, 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 of the Baltimore County Code, with the following conditions:

1. The project's 0.8 acre afforestation requirement shall be met by paying a \$17,424.00 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 permits, the fee shall be paid to EPS or the signed bank letter returned to EPS indicating that retention bank credit has been purchased.

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2. A forest conservation plan (FCP) must be submitted to EPS and approved prior to issuance of any permits. The grading plan may be used as a base plan for the FCP, provided that the modified forest conservation worksheet and a note indicating how forest conservation was met are added to the plan.

It is the intent of this Department to approve this variance subject to the preceding conditions. Any changes to site layout may require submittal of revised plans and an amended variance request. Moreover, this variance does not exempt any future development activity on the subject property from the Forest Conservation Law.

Please have the property owner 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 and/or permits for this project.

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

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

Property Manager

Date

Printed Name