

May 31, 2013

Mr. Robert Ryan, Manager  
Capital Program and Operations  
Environmental Protection and Sustainability

Re: Magnolia Stormwater Management Retrofit  
Forest Conservation Variance  
Tracking # 05-13-1637

Dear Mr. Ryan:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Environmental Impact Review Section of EPS on May 22, 2013. The request proposes to impact 2 specimen trees for the construction of a step-pool stormwater management conveyance system to address severe bed and bank erosion on two ephemeral channels, and an intermittent stream tributary to White Marsh Run. The trees (a 30-inch diameter at breast height (DBH) *Quercus rubra* in fair condition, and a 32-inch DBH *Liriodendron tuliperifa* in fair condition) are within existing forest, and must be removed for bank stabilization. The majority of the critical root zones of both trees have been exposed, and undermined by the erosion. The forest to be impacted is 0.4-acres, and is at the edge of an approximately 14-acre forest area. The applicants propose to reforest the entire area of forest impacted.

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 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 limits of disturbance for the project include Baltimore County owned local open space, and an adjacent private property. These trees cannot be retained if the goals of the project are to be met. Because this is a capital improvement project, this criterion does not apply.

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 variance request arises from a unique situation

Mr. Robert Ryan  
Magnolia Stormwater Management Retrofit  
Forest Conservation Variance  
Tracking # 05-13-1637  
May 31, 2013  
Page 2

concerning the location of specimen trees in relation to the severe erosion of a stream channel and two ephemeral channels above the stream. The plight of the petitioner is not related to general conditions of the neighborhood. Therefore, this criterion is 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. This project includes a maintained local open space, and 0.4 acres of forest on public and private properties. It is located adjacent to single family dwellings to the north, and forested area to the east, south, and west. At the completion of the restoration work, the forest area cleared (includes the 2 specimen trees), will be reforested. Because the area will be restored as it was prior to the project, the project will not alter the essential character of the neighborhood, and this criterion is 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 project is being conducted to improve water quality. Stabilization of the channel beds and banks will eliminate severe sediment run-off in a tributary to White Marsh Run. In addition, several mature trees are being saved, and forest will be replaced on the project site. Based on this, this criterion is 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 action necessitating this variance request. The request is the result of severe erosion that has occurred because of direct storm drain discharges for approximately 40 years. Therefore, this criterion is 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 2 specimen trees are located within existing forest, and the applicant will be meeting reforestation requirements at the same location. Therefore, this criterion is met.

Based upon our review, this Department finds that the required variance 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. Reforestation requirements for the area of forest cleared will provide the mitigation for the impact to specimen trees within the forest. A Forest Conservation Plan for this project must be approved prior to any permit approvals.

Mr. Robert Ryan  
Magnolia Stormwater Management Retrofit  
Forest Conservation Variance  
Tracking # 05-13-1637  
May 31, 2013  
Page 3

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.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG/pad

c: Marian Honeczy MDDNR

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