

June 15, 2016

Mr. Mark Hufnagel
13845 Forsythe Road
Sykesville, Md. 21784

Re: Hufnagel Property at 17 Maple Avenue
Forest Conservation Variance
Tracking # 01-16-2252

Dear Mr. Hufnagel:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by the Department of Environmental Protection and Sustainability (EPS) for the above referenced site on June 8, 2016. This request proposes to critically impact one (1) isolated specimen tree on a 1.9-acre residential property in order to develop it as a 3-lot minor subdivision with two new houses. The specimen tree to be impacted and thus ultimately removed is a 64-inch diameter breast height (DBH) Ginkgo in very good condition. Based on current information, it may be the second largest Ginkgo in Baltimore County, and its diameter is over 75% of the Maryland State champion. Due to the close proximity of the grading for the proposed house and stormwater drywell on lot 1 to the tree, significant impacts to the tree's critical root zone are unavoidable and threaten its survival.

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.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show 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 proposes to remove one specimen tree in order to develop one of three proposed lots on a 1.9-acre site containing a 19th century house and lawn with large trees. Impacts to the critical root zone of the specimen Ginkgo tree cannot be adequately minimized without redesigning both the house and storm water management (SWM) drywell location on lot 1. Consequently, full application of the law would be

Mr. Mark Hufnagel
Hufnagel Property at 17 Maple Avenue
Forest Conservation Variance
June 15, 2016
Page 2

costly but would not deprive the petitioner of all beneficial use of the 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 of the neighborhood. The request to remove one of the nine specimen trees onsite in order to develop two additional lots is due to unique circumstances associated with the location of the tree relative to the proposed house and its required SWM facility rather than general conditions of 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. Historically, the property has been maintained with a 19th century house and lawn with large trees. The applicant proposes to keep the old house along with eight of the nine specimen trees. The general character of the neighborhood is more typically defined by older single family residences on smaller lots, which is consistent with the proposed lots. Therefore, the removal of one specimen tree will not alter the essential character of the surrounding neighborhood. 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. Granting the variance to allow removal of the specimen tree will not impact any wetlands, streams, buffers, or forest. Therefore, we find that granting the special variance will not adversely affect water quality and that this criterion has also 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 not taken any prior actions necessitating this variance request. 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 removal of the specimen tree is necessary mainly due to extensive impacts to its critical root zone which threaten the tree's survival and may pose a safety concern. Removal of the tree would be mitigated and all Forest Conservation requirements met prior to subdivision approval. Therefore, we find that granting this variance request would be consistent with the spirit and intent of law and that this criterion has been met.

Mr. Mark Hufnagel
Hufnagel Property at 17 Maple Avenue
Forest Conservation Variance
June 15, 2016
Page 3

Based on our review, this Department finds that all 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. The removal of the specimen tree shall be mitigated by payment of a \$3,619 fee-in-lieu of planting. This fee is based on 25% of the critical root zone. Checks must be made payable to Baltimore County.
2. Prior to subdivision approval, a revised Forest Conservation Plan (FCP) must be submitted and approved. The FCP may show the specimen tree to be saved, but that will be the responsibility of the property owner. Due to safety concerns, the County will allow the tree to be removed at the owner's discretion.
3. Add the following note to the FCP and Minor Subdivision Plan:
"A variance to the Forest Conservation Law was granted by the Baltimore County Department of Environmental Protection and Sustainability on June 15, 2016 to allow removal of a specimen Ginkgo tree. A \$3,619 fee in lieu of mitigation shall be paid prior to subdivision 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 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 the delay of processing plans for this project."

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

Sincerely yours,

Vincent J. Gardina
Director

VJG/jgr

- c. Ms. Marian Honeczy, Maryland Dept. of Natural Resources
John Canoles, Eco-Science Professionals

