

December 7, 2015

Ms. Laura Callens
Whitman, Requardt & Associates, LLP
801 South Caroline Street
Baltimore, MD 21231

Re: Patapsco Sewershed #33 Relief Sewer
Forest Conservation Variance
Tracking #01-15-2087

Dear Ms. Callens:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department on October 14, 2015. If granted, the variance would allow the removal of two specimen trees for a proposed sewer improvement project. The specimen trees proposed to be removed are both in good condition and are within forest to be cleared. The proposed sewer system improvements are required under a Federal consent decree and involve the installation of approximately 11,500 linear feet of parallel relief sewer to increase capacity.

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 as requested is imposed and will deprive the petitioner of beneficial use of his property. The applicant proposes to remove two specimen trees for a Federal consent decree project in order to upgrade an existing public sewer. Full application of the law would deprive the petitioner of all beneficial use of his property, as the sewer cannot be shifted enough to protect these trees. Consequently, the project cannot proceed if the trees are retained, and we find that this criterion has 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 petitioner's plight is due to unique circumstances associated with the location of the specimen trees in relation to the proposed sewer, rather

than the general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show the special variance requested will not alter the essential character of the neighborhood. Only two specimen trees will be removed for an 11,500-linear foot sewer project within a forested stream corridor, and no structures are proposed. Therefore, we find that the variance will not alter the essential character of the neighborhood, and 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. Removal of the two specimen trees would not impact any stream or wetland. Furthermore, an alternatives analysis was approved by this Department resulting in construction and mitigation plans that will minimize impacts to water quality inasmuch as possible and mitigate the unavoidable impacts. Finally in this regard, the goal of the project is to reduce sewer leaks and subsequent pollution to the Chesapeake Bay and its tributaries. 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 does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property necessitating this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 343-6-116(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. Removing two specimen trees in order to upgrade an insufficient public sewer thus improving water quality would be consistent with the spirit and intent of the Forest Conservation Law. Furthermore, the applicant proposes to mitigate the clearing of existing forest, which includes the specimen trees. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the 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. Add the following note to the final forest conservation plan:
“A variance to Baltimore County’s Forest Conservation Law was granted by Baltimore County Department of Environmental Protection and Sustainability on December 7, 2015 to remove two specimen trees. Conditions were placed on this approval to mitigate the loss of forest resources.”

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2. The forest cleared for the sewer project shall be mitigated by payment to EPS of a fee in lieu of planting prior to issuance of a grading permit for this project. No additional mitigation will be required for removal of two specimen trees since both trees are within that forest to be mitigated.

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 call Mr. John Russo at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG/jgr

- c. David Bayer, Sewer Design, DPW
Marian Honeczy, Maryland Department of Natural Resources