

June 8, 2016

Ms. Jennifer Bird
KCI Technologies Inc.
936 Ridgebrook Rd.
Sparks MD 21152

Re: Sewer Meter Basins 17, 33 Perring Parkway System
Herring Run Watershed
Forest Conservation Variance
Tracking # 06-16-2166

Dear Ms. Bird:

A request for a variance from Baltimore County Code Article 33 Environmental Protection and Sustainability (EPS), Title 6 Forest Conservation concerning the referenced project was received by this Department on March 3, 2016. This request proposes to remove 18 specimen trees for the purpose of constructing relief sewer lines in basins 17 and 33 to upgrade the system pursuant to a consent decree between Baltimore County and the United States Environmental Protection Agency. These trees include 8 *Liriodendron tulipifera* from 30 to 40-inches (diameter at breast height for all measurements), 3 *Quercus alba* from 30 to 36-inches, 2 *Quercus rubra* of 33 and 52-inches, a 36-inch *Acer saccharinum*, a 41-inch *Fagus grandifolia*, a 36-inch *Fraxinus americana*, a 37-inch *Carya tomentosa*, and a 32-inch *Platanus occidentalis*. All of these trees are in fair to good condition and are located within the forest buffer with the exception of the *Carya tomentosa*. Five of these trees, including the *C. tomentosa* (poor condition) are located outside forest. Eighty-five other trees within the project area with DBH's of 30-inches or greater are to be saved by avoidance, and the use of stress reduction and tree protection measures.

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. Because this is a public sewer project, this criterion is not applicable.

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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. Construction of the relief sewers is required to upgrade the sanitary sewer in Basins 17 and 33 pursuant to a consent decree between Baltimore County and the United States Environmental Protection Agency. This represents unique circumstances associated with the subject project, rather than general conditions in the neighborhood. Therefore, the second 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 petitioner proposes construction of relief sewers in areas near or adjacent to the existing sewer system. Residential, commercial, and public uses in the project areas will remain the same, and natural areas will be revegetated. Therefore, the essential character of the neighborhood is not affected and the third 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 relief sewer project is required to upgrade the sewer system and eliminate existing sewer overflow problems and correct identified deficiencies in the Herring Run watershed. The project will improve water quality in this watershed. Reforestation requirements must be met, specimen trees removed outside forest must be mitigated, and disturbed areas will be revegetated by use of native seed mixes and other planting appropriate for utility rights-of-way. In addition, stream disturbances will be stabilized with stream restoration methods, and wetland impacts will be restored to the original condition. Therefore, with the proposed water quality improvements and restoration, granting of the special variance will not adversely affect water quality, and 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 that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property that have resulted in the need for 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 applicant has minimized forest and tree impacts when considering the site constraints and the siting requirements for this relief sewer project. Eighty-five other trees in the project area with DBH's of 30-inches or greater are being retained. The specimen trees to be impacted that are located within existing forest must be mitigated by meeting reforestation requirements, and the specimen trees to be removed that are located outside forest must be mitigated by payment of a fee-in-lieu based on the area of the critical root zone. Therefore, this criterion is met.

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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. The specimen trees located outside forest must be mitigated by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund. No mitigation will be required for the impact to the *C. tomentosa* that is in poor condition. Specimen trees within forest must be mitigated by meeting the reforestation requirements for the project. Because of woody plant restrictions in the utility rights-of-way, a fee-in-lieu will apply to meet all or the majority of the reforestation requirement.
2. A Forest Conservation Plan for this project must be approved prior to any permit approval.
3. A note must be added to all plans stating that a variance was granted by Baltimore County EPS to allow the removal of 18 specimen trees on this project site, and that mitigation was provided by meeting reforestation and specimen tree mitigation requirements including payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund.

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.

Please have the Baltimore County Department of Public Works representative sign the statement at the end of this letter, 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 contact Paul Dennis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG/pad

c: Marian Honeczy MDDNR
Dave Bayer, P. E. Baltimore County DPW

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

Baltimore County Public Works Representative

Date

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