

December 20, 2013

Mr. Tom McGilloway
Mahan Rykiel Associates
800 Wyman Park Dr. Suite 100
Baltimore MD 21211

Re: Ridgely Manor Park, Yakona Rd. 21286
Forest Conservation Variance
Tracking # 05-13-1740

Dear Mr. McGilloway:

A request for a variance from Baltimore County's Forest Conservation Law for the above referenced project was received by the Department of Environmental Protection and Sustainability (EPS) on December 16, 2013. The request concerns impacts that have occurred to 6 specimen trees during demolition activities on the above referenced site. The trees removed were as follows; 2 *Quercus rubra* with diameters at breast height of 32 and 34-inches, 2 *Fagus grandifolia* with DBH's of 32-inches and 36-inches, a 30-inch DBH *Acer saccharinum*, and a 40-inch DBH *Acer rubrum*. Four trees that are 30-inch DBH or greater are being saved on the property. There is no forest on-site, and there are no priority planting areas on-site.

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. Six specimen trees were removed on the site due to demolition activities, or were deemed in poor condition by an arborist. The project involves grading of the 2.0-acre site to create a park, and to install groundwater remediation devices per the requirements of the Maryland Department of the Environment. This criterion does not apply in this situation, therefore, this criterion is not 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 variance request arises from a unique situation involving demolition of a group of dwellings due to groundwater remediation requirements, and from the location of specimen trees in relation to the demolition. Because the entire site will also be a park, additional hazard trees were also removed. The applicant's plight is due to the unique circumstances associated with the demolition and the poor condition of the trees, and not from general conditions of the neighborhood. Therefore, this criterion is met.

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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 property is located adjacent to residential properties to the south, and east, and commercial facilities to the north and west. While groundwater remediation activities will occur on the property, it is being transformed to a park that will fit well within this residential community. Therefore, the proposed uses would be compatible with 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. There are no streams, wetlands, buffers, or forest on the site, and the applicant proposes to save 24 trees, including 4 that are greater than 30-inches DBH. Landscape planting is proposed, and groundwater remediation will be performed at the site. In addition, forest conservation requirements, including mitigation for the 6 specimen trees removed, and afforestation based on the entire property, will be met by payment of a fee-in-lieu of \$0.50 per square foot to the Baltimore County forest conservation fund. 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 6 specimen trees were removed during the demolition work on-site, but the tree issues because of the proximity to the demolition, or because of poor health were documented by an arborist. Although the 6 specimen trees were removed during home demolition, the arborist had documented the issues with the trees. The groundwater remediation on-site has been required by the Maryland Department of the Environment. Based on a review at the site, and with information provided, the conditions and circumstances would have ultimately resulted in these same impacts. Because of the type of project, the required impacts, and the poor health of trees, EPS acknowledges that these impacts would be unavoidable based on the circumstances. 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 applicant is required by the law to mitigate by meeting afforestation requirements based on the entire property area, and on the critical root zone areas of the specimen trees. 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. Mitigation for the 6 specimen trees that were removed must be provided by payment of a fee-in-lieu of \$6,187.50 (\$0.50 per square foot) to the Baltimore County forest conservation fund. Based on the 2-acre area of the entire property, afforestation requirements must be met by payment of an additional fee-in-lieu of \$6,534.00 (\$0.50 per square foot). The total fee-in-lieu to be paid to the Baltimore County forest conservation fund is \$12,721.50. The fee-in-lieu must be paid, and a forest conservation plan for this project must be approved prior to any permit approvals.

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2. A note must be added to all plans stating that a variance was granted by Baltimore County EPS to allow for impacts to 6 specimen trees on this project site, that 4 specimen trees will be retained, and that afforestation requirements were met by payment of a fee-in-lieu.

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 property owner 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

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

Property Owner(s) Signature(s) Date

Printed Name(s)