

March 7, 2014

Mr. William N. Bafitis, PE  
Bafitis and Associates, Inc.  
1249 Engleberth Road  
Baltimore, Maryland 21221

Re: Stages Music Arts Academy  
Forest Conservation Variance  
Tracking # 03-14-1767

Dear Mr. Bafitis:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on February 7, 2014. This request proposes to remove a 54" White Mulberry (*Morus alba*) specimen tree to allow for the redevelopment of six residential office properties totaling 1.5 acres. It should be noted that the tree to be removed is a non-native species.

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 locations of the specimen tree and extent of its critical root zone would limit the size of any building and limit parking spaces if full protection to the tree was provided. However, we note that residential office buildings already exist onsite and although not a full use of the site, a benefit could be realized nonetheless. Therefore, we find that full application of the law would not deprive the petitioner of all beneficial use of the property; thus, this criterion has not been met.

Mr. William N. Bafitis, PE  
Forest Conservation Variance  
Stages Music Academy  
March 7, 2014  
Page 2

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. Rather than the general conditions in the neighborhood, the petitioner's plight is due largely to the location of the existing specimen tree as well as road frontage and setback requirements, all of which existed well prior to the law from which this special variance is requested. 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. The granting of this special variance will not adversely affect the character of the surrounding neighborhood, as this corridor along York Road in Cockeysville has been designated for mixed commercial and industrial uses such as that proposed. Consequently, 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. This redevelopment project is not occurring in close proximity to any stream and wetland resources. Furthermore, its design will provide Environmental Site Design storm water management. Therefore, we find that 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 which is the result of actions taken by the petitioner. The request is based on the circumstance that the specimen tree is centered on the buildable area of the property rather than any action by the petitioner. 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. Proposing to remove a non-native specimen tree while meeting the project's 0.2-acre afforestation requirement in an approved offsite forest retention bank, where large tracts of protected forest otherwise eligible for clearing, will be permanently protected in easement, would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, we find that this criterion has been met by the variance request.

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. In accordance with current policy, no mitigation is required for the removal of this non-native specimen tree.

Mr. William N. Bafitis, PE  
Forest Conservation Variance  
Stages Music Academy  
March 7, 2014  
Page 3

2. This redevelopment project shall satisfy its 0.2-acre afforestation requirement either by purchase into an EPS-approved forest retention bank or by payment of a \$4,356.00 fee-in-lieu (based on \$0.50 per square foot). A bank authorization letter is enclosed for your use. Prior to issuance of any permits, either the fee shall be paid to EPS, or the signed bank letter returned to EPS indicating that retention bank credit has been purchased. Any fee in lieu shall be made payable to Baltimore County.
3. The following note must appear on all subsequent plans for this project:

“A variance was granted on March 7, 2014 to Baltimore County’s Forest Conservation Law to remove a non-native specimen tree from this property to redevelop it as commercial office space. Conditions were placed on this variance to ensure full compliance with the Forest Conservation Law”

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 on the following page 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 Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG: msk

Enclosure

c. Marian Honeczy, Maryland DNR

Mr. William N. Bafitis, PE  
Forest Conservation Variance  
Stages Music Academy  
March 7, 2014  
Page 4

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

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Property Owner

Date

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Printed Name