

November 20, 2014

Ms. Stacey McArthur  
D. S. Thaler & Associates Inc.  
7115 Ambassador Rd.  
P O Box 47428  
Baltimore MD 21244-7428

Re: The Townes at Gunpowder Falls  
Forest Conservation Variance  
Tracking # 05-14-1892

Dear Ms. McArthur:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on October 29, 2014. The request proposes to remove two specimen trees for the purpose of constructing a residential subdivision. The two trees, a 40-inch diameter at breast height (DBH) Liriodendron tulipifera, and a 36-inch DBH Acer rubrum are in good condition and are located within existing forest outside the required forest buffer.

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 applicant proposes to remove 2 specimen trees on the 5.4-acre site. The two trees are located within forest to be cleared in the upland areas of the property. These trees cannot be retained without severely impacting the feasibility of the project. The property is highly constrained by shape, size, and infrastructure requirements. However, the site could be developed without impact to these specimen trees with fewer homes, and a beneficial use of the property would exist. Also, denying this variance request would not deprive the applicant of a reasonable use of the property. Therefore, this criterion is not met.

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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 in the neighborhood. The variance request arises from a unique situation concerning the location of the two specimen trees on the referenced property relative to the forest buffer, other forest areas on-site, the infrastructure requirements, and the area of the property that can be developed. The townhomes have been located to allow for the maximum retention of forest possible on the site including several other trees with a DBH greater than or equal to 30-inches. The development proposal is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is 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. This property was the location of a restaurant and the associated parking lot. It is located adjacent to a townhouse development to the east and southeast, mixed residential and commercial uses to the west and south, and Gunpowder Falls State Park with fields and forest areas to the north and northeast. Forest adjacent to the park property is proposed for retention. Therefore, the proposed townhome development of the site 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. An adequate forest buffer has been proposed to provide water quality management for the stream located off the eastern portion of the site. Stormwater management is being provided for the development in accordance with current County regulations. In addition, native trees and shrubs will be planted within the buffer and on the southeast part of the site to provide mitigation for buffer impacts, and forest will be retained along the northern property line, and within the forest buffer. 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 petitioner has not taken any action on the property that would necessitate this variance request. 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 development plan proposes maximum retention of on-site forest when considering the site constraints. The two specimen trees to be impacted are located within existing forest, and the applicant is required by the law to mitigate forest impacts by meeting all forest conservation requirements. In this case, requirements will be met by forest retention on-site, and by off-site retention or payment of a fee-in-lieu for any remaining reforestation requirement. Therefore, this criterion is met.

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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. Meeting forest conservation requirements for the area of forest cleared will provide any necessary mitigation for the impact to the two specimen trees as these trees exist within the forest. A Forest Conservation Plan for this project must be approved prior to grading permit approval.
2. A note must be added to all plans stating that a variance was granted by Baltimore County EPS to allow for impacts to 2 specimen trees on this project site, and that mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project.

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 Honecny MDDNR

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

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Property Owner(s)

Date

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Printed Name(s)