

October 17, 2018

Mr. Charles Merritt
Merritt Development Consultants, Inc.
9831 Magledt Road
Baltimore, MD 21234

Re: Rye Property
Forest Conservation Variance
Tracking # 05-18-2787

Dear Mr. Merritt:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on August 14, 2018. This request would allow removal of two specimen trees in conjunction with a proposed six lot major subdivision. There are a total of five specimen trees on the property. The two specimen trees proposed for removal are in fair or better condition. The two specimen trees are proposed for removal because they interfere with the proposed access to the subdivision.

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 all beneficial use of this property. The petitioner is proposing a six lot residential subdivision on a property that was previously utilized as a nursery for small cut flowers. The nursery used a 20-foot wide right-of-way between two existing houses to access the property. County Regulations require a larger access road and right-of-way to support the proposed six lot subdivision. The only area available to support the required access width to the property would require the removal of two specimen trees. Impacts to the two specimen trees could be avoided with the construction of a single house or maintaining the existing business. Since it is possible to develop the property without impacting the specimen trees, compliance with the Forest Conservation Law will not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has been not 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 need to remove the specimen trees is a result of the location and inadequate size of the current access to the property and the location of the two specimen trees. The current access is only twenty feet wide and located between two houses constructed in 1929. The two specimen trees proposed for removal are located along Chapel Road and adjacent to a proposed forest buffer. These circumstances are unique to this property and not 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 that the special variance requested will not alter the essential character of the neighborhood. There are other developments in this neighborhood with residential lots similar in size to those proposed with this development. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, 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. There is a stream and associated wetlands and 1.3 acres of forest on the property. The stream, wetlands, and forest will be protected in a Forest Buffer and Forest Conservation Easement (FBFCE). Only two of the five specimen trees on the property are proposed for removal and none of the existing forest will be cleared. Therefore, we find that granting the 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 request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance request arises from the distribution of the specimen trees on the property. The two specimen trees proposed for removal are located along Chapel Road. There are no other areas on the property other than the area with the two specimen trees that are wide enough to support the required access width for entry into the proposed subdivision. Therefore, the petitioner has taken no actions necessitating this variance prior to its request, and 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. Only two of the five specimen trees located on the property are proposed for removal, and they are located outside the forest on the property. The remaining specimen trees which are located inside the forest will be protected in a FBFCE. In addition, there is no forest clearing associated with the proposed developed. All 1.3 acres of forest onsite will be protected in the proposed FBFCE. Given that the property owner has limited their proposed tree removal to the two specimen trees located outside the forest and all forest onsite will be protected in a conservation easement, we find that this variance request is consistent with the spirit and intent of Article 33 of the Baltimore County Code. Therefore, this criterion has been met.

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Based on our review, this Department finds that all of the required 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. A fee-in-lieu of specimen tree mitigation (\$3,260) shall be paid for the trees in fair to good condition prior to the issuance of any permits for the proposed development. Checks must be made payable to Baltimore County.
2. The final Forest Conservation Plan must reflect the conditions of this variance and show the critical root zone of all specimen trees on or near the property.
3. All plans prepared for Rye Property must include the following note:

“A special variance to the Forest Conservation Law was granted by Baltimore County Department of Environmental Protection & Sustainability on October 17, 2018 to allow the removal of two specimen trees. Conditions were placed on this approval to mitigate for the loss of these trees, including payment of a fee in lieu of specimen tree mitigation.”

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 a new variance request.

Please have the party responsible for meeting the conditions of this variance 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 there are any questions regarding this correspondence, please contact Mr. Gris Batchelder at (410) 887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL/cgb

cc : Marian Honeczy, Maryland Department of Natural Resources

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

Responsible Party's Signature

Date

Responsible Party's Printed Name