

February 6, 2018

Mr. Kevin Garvey, RLA
D. S. Thaler & Associates Inc.
7115 Ambassador Rd.
P O Box 47428
Baltimore MD 21244-7428

Re: The Villages of White Marsh
Bucks Schoolhouse Road, White Marsh Road 21237
Forest Conservation Variance
Tracking # 05-17-2624

Dear Mr. Garvey:

A request for a variance from the Baltimore County Forest Conservation Law for the referenced property was received by the Department of Environmental Protection and Sustainability (EPS) on December 7, 2017. The request proposes to remove 36 of 72 specimen trees in order to construct a major residential subdivision, a church, and an assisted living facility. This includes 10 trees in poor condition, and the following trees in fair to good condition with diameters at breast height as noted (DBH): 10 *Quercus alba* (30 to 44-inches), 5 *Quercus rubra* (31 to 39-inches), 4 *Quercus palustris* (31-38-inches), 4 *Liriodendron tulipifera* (33-35-inches), 2 *Acer rubrum* (32 and 35-inches), and 1 *Acer saccharinum* (42-inches). Of the 36 specimen trees proposed for removal, 25 trees are located within the 23.1 acres of existing forest. Streams, ponds, wetlands, and required forest buffers on the project site are associated with the Use IV White Marsh Run watershed.

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. Due to site constraints and infrastructure requirements, this proposed project could not be constructed without removal of specimen trees. However, there are existing residential uses and church uses on the project site, and the petitioner would not be deprived of all beneficial use of the property. In addition, there are development options without impact to these specimen trees that would constitute a beneficial use of the property. 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 due to the location of the specimen trees on the project

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site relative to the proposed residential, church, and assisted living facility development and the required infrastructure. 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 project involves existing residential properties, an existing church, a property with several outbuildings, and pasture and lawn areas with some forested stream corridors. In general, the project is surrounded by residential subdivisions to the west, and commercial uses to the east. There are mixed commercial and residential uses to the south. The forested stream corridor along White Marsh Boulevard will remain, and forest buffers elsewhere on-site will be planted with native trees. The proposed development meets the growth patterns in the area. Therefore, the proposed development 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. Forest buffers to protect streams, ponds, and wetlands are required, and planting of forest buffers to meet forest conservation and other mitigation requirements is required. Half of the 72 specimen trees will remain. In addition, stormwater management is being provided for the development in accordance with current County regulations. Specimen tree mitigation must be met by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund, or by additional planting of forest, pending a review of the forest conservation plan by this office. 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 conducted any work on the property that would have required 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 must meet all forest conservation requirements, including planting priority forest buffer areas on the property. In addition, mitigation for specimen trees approved for removal must be met by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund, or by additional planting of forest, pending forest conservation plan approval. 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 removal of the 26 specimen trees in fair to good condition must be met by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund, or by additional planting of forest, pending a review and approval of the forest conservation plan by this

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office. The final forest conservation plan (FCP) for this project must be submitted and approved by EPS prior to issuance of any permits.

2. On all project plans, label specimen trees as “retain” or “remove” and add the following notes:

A forest conservation special variance was granted by Baltimore County Department of Environmental Protection and Sustainability on February 6, 2018 to allow for the removal of 36 specimen trees on this project site. Mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability.

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 contract purchaser 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,

David V. Lykens
Deputy Director

DVL/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.

Contract Purchaser Signature

Date

Printed Name