

October 7, 2015

Mr. Robert Ryan, Manager  
Baltimore County EPS  
111 W. Chesapeake Avenue  
Suite 319  
Towson, MD 21204

Re: West Branch of North Fork at Garland Ave  
Stream Restoration  
Forest Conservation Variance  
Tracking # 05-15-2066

Dear Mr. Ryan:

The request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation for the above referenced project was received by the Department of Environmental Protection and Sustainability (EPS) on September 4, 2015. This request proposes to remove 9 of 23 specimen trees within the limits of disturbance for the restoration of approximately 7,200 linear feet of the west branch of the north fork of White Marsh Run, a Use IV stream. The specimen trees to be removed include 7 *Liriodendron tulipifera* from 30-inch diameter at breast height (DBH) to 38-inch DBH, a 32-inch *Acer rubrum*, and a 32-inch *Salix babylonica*. The *A. rubrum*, and 2 of the *L. tulipifera* are in poor condition. A 36-inch DBH *L. tulipifera* is the only tree to be removed that is within the net tract area forest. All other trees, except for the 35-inch *L. tulipifera* in poor condition, are located within the 100-year floodplain. Based on the current plan, it has been determined that the other 14 specimen trees can be adequately protected during the construction activities.

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 beneficial use of his property. The applicant is seeking to restore approximately 7,200 linear feet of stream as part of the EPS goal to improve water quality and stream habitat. Completion of the project would not be feasible with a full application of the law due to the location of the

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specimen trees relative to the necessary limits of disturbance to complete a successful restoration of the stream channel. Therefore, this criterion has 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 plight of the petitioner is due to the fact that the specimen trees are located in areas that cannot be avoided to complete a successful stream restoration project rather than the general conditions in the neighborhood. Therefore, 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 will be no change in land use as a result of the stream restoration. Therefore, 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. The purpose of this project is to improve a degraded stream system that will reduce sedimentation downstream and improve aquatic and riparian habitat. Therefore, 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 petitioner has not taken any actions in the project area that resulted in requesting this variance. 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. Allowing the removal of the 9 specimen trees for the completion of the subject stream restoration would be consistent with the spirit and intent of the Forest Conservation Law given that the applicant has designed the project to retain as many specimen trees within the limit of disturbance as possible (14) by using adequate protective measures during construction activities. Also, the completion of this project will improve water quality and riparian habitat. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the above 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:

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1. The removal of the 5 specimen trees in fair to good condition that are located outside the net tract area forest must be mitigated by payment of a fee-in-lieu of \$2,102.00 to the Baltimore County Forest Conservation Fund. Mitigation for the removal of the specimen tree located within the net tract forest area must be mitigated by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund based on the reforestation requirements pursuant to the final Forest Conservation Plan for the project. No mitigation is required for the removal of the 3 specimen trees in poor condition.
2. A note must be added to all plans stating that a variance was granted by Baltimore County EPS to allow for the removal of 9 specimen trees on this project site with mitigation provided by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund based on the reforestation requirements for the project and the critical root zone area of the impacted trees.
3. Adequate protection measures for the specimen trees and forest to be retained must be detailed on the Forest Conservation Plan for the 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, Maryland Dept. of Natural Resources

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