

July 9, 2024

John Canoles
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

Re: Castanea Lot 28
Forest Conservation Variance
Tracking # 02-24-4143

Dear John Canoles:

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 (DEPS) on June 21, 2024. This request would allow removal of one 34.5-inch DBH specimen white pine in fair condition located outside of forest in order to develop that lot. This tree was originally shown as Specimen #116 to be saved on the forest conservation plan (FCP) for Castanea, thus necessitating this variance request. Violations of the Forest Conservation Law occurring last year involving this lot and two others have been corrected in accordance with this Department's April 14, 2023 enforcement letter.

The Director of DEPS 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 seeking to develop one of the 40 residential estate lots. This specimen tree was originally to be retained on the DEPS-approved FCP for Castanea. However, that was based on a schematic house design that did not account for the mansions that are being built in this high-end development. Nonetheless, the lot could be developed as originally proposed, thus full application of the law would not deprive the petitioner of all beneficial use of the property. Therefore, we find that this criterion has 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 petitioner's plight in removing the specimen tree is due to unique circumstances associated with its location relative to the buildable area rather than 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. Granting the variance would allow the development of Lot 28 with a house consistent with the character of the neighborhood. Additionally, the forested Forest Conservation Easement on the lot would not be disturbed for 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. The specimen tree is not within any Forest Buffer Easement, no forest would be cleared to develop the lot, and the Castanea development will meet current SWM requirements. 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. This variance is necessitated by the location of the specimen tree relative to the building envelope on the lot rather than a condition or circumstance resulting from actions 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. Allowing removal of one isolated specimen tree would be consistent with the spirit and intent of the Forest Conservation Law given that no forest would be impacted. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all 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 \$1,156.25 fee in lieu of mitigation shall be received by DEPS prior to our approval of any permit for this lot. The check must be made payable to Baltimore County.
2. All conditions of the April 14, 2023 enforcement order shall continue to be met and the replacement planting properly maintained.
3. A note must be on the plan accompanying any permit application stating:

“A special variance to the Forest Conservation Law was granted by Baltimore County Dept. of Environmental Protection & Sustainability to allow the removal of one specimen tree in fair condition. Conditions were placed on this approval to ensure the objectives of the Forest Conservation Law are met including protection of the Forest Conservation Easement and payment of a \$1,156.25 fee in lieu of mitigation.”

4. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County's Forest Conservation Law.

This variance is approved by the Director of the Department of Environmental Protection and Sustainability on _____. 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 below and return a signed copy of this letter to this Department. 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 Glenn Shaffer at (410) 887-3980.

Sincerely,

Horacio Tablada
Director

HT/ges

- c. 1212 Volpe Court LLC
Daniel Coy, Maryland Department of Natural Resources

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