

July 9, 2024

John Canoles
Eco-Science Professionals
PO Box 5006
Glen Arm, MD 21057

Re: Halethorpe Townhouses
Forest Conservation Variance
Tracking # 01-24-4144

Dear John Canoles:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by the Department of Environmental Protection and Sustainability (DEPS) on June 21, 2024. This request proposes to remove four of six specimen trees to facilitate the construction of a townhouse community. These specimen trees are all located outside of any forest and consist of: three tulip polars (*Liriodendron tulipifera*) which are 48.5-inch diameter at breast height (DBH), 33-inch DBH and 35-inch DBH and a 30-inch DBH pin oak (*Quercus palustris*). All four trees are in good condition. Approximately 2.7-ac of forest will be cleared for the construction of the townhome community.

The Director of DEPS 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 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 the property. The applicant is seeking to construct a townhouse community. However, requiring protection of the four viable specimen trees would not deprive the petitioner of all beneficial use of the property, as the project could be downsized to avoid impacts. Additionally, a home already exists on the property. Therefore, 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 requesting the variance is due to unique circumstance associated with the location of the specimen trees relative to the area available to construct the townhomes 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 to allow removal of four specimen trees in order to construct a 53-unit townhouse development would not alter the essential character of the neighborhood, which consists of medium to high density residential as well as commercial development. Therefore, we find that 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. One specimen tree within in the Forest Buffer will be removed to construct the entrance; however, impacts to water quality from that construction will be mitigated in accordance with the approval conditions of an alternatives analysis demonstrating that impacts to water quality have been adequately minimized and mitigated. The remaining three trees are outside of the Forest Buffer, and their removal should have no significant impact on water quality. The project will also conform to current stormwater management regulations that require water quality management of runoff. Therefore, we find 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 petitioner has not taken any actions on the property necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of DEPS 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 four of six specimen trees to construct townhouse residences would be consistent with the spirit and intent of this law given that the removal of the specimen trees will be mitigated by payment of a fee in lieu. That fee money will be used by EPS to afforest priority planting areas in Baltimore County. In light of these findings, 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. The four specimen trees shall be mitigated by payment of a \$5,407.46 fee in lieu, which is based on 25% of the critical root zone of each tree. This fee-in-

lieu of mitigation and any fee-in-lieu of afforestation shall be remitted to DEPS prior to approval of any permit for this project. Checks should be made payable to Baltimore County.

2. The following note must appear on all subsequent plans for this project:

“A variance (tracking #01-24-4144) was granted to Baltimore County’s Forest Conservation Law to allow removal of four specimen trees. Conditions were placed on this variance to ensure the spirit and intent of this law were met including payment of a fee in lieu of mitigation.”

3. A final forest conservation plan reflecting the terms of this variance must be submitted to DEPS and approved prior to approval of the grading and sediment control plan or any permit for this project.

Please have the property owner sign the statement on the following page 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 development.

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.

If you have any questions regarding this correspondence, please call Jannifer Anderson at (410) 887-3980.

Sincerely yours,

Horacio Tablada
Director

HT/jda

- c. Logan Alomar, Colliers Engineering
Clay Kirby, Kirby Development, LLC
Daniel Coy, Maryland Dept. Natural Resources

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

Owner's Signature

Date

Owner's Printed Name