

February 26, 2025

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

Re: Scotts Branch Elementary School
Forest Conservation Specimen Tree Variance
Tracking # 04-25-4255

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 January 16, 2025. This request proposes to remove 40 out of 48 trees for the construction of a new elementary school. Thirty specimen trees (ST) are located within a 4.2-acre forested area (ST 15 - 45). The remaining 10 trees are isolated trees scattered throughout the property (ST 1, 8-14, 46 & 47). However, the contractor proposes to try to save ST 1 & 9 by implementing tree saving measures and trying to limit critical root zone impacts to less than 33%. There are four trees in poor condition (ST 11, 13, 20, 32) with the remaining trees in fair to good condition.

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 re-grade the site and construct a new elementary school with additional buildings, athletic facilities and expanded parking lots. However, requiring protection of the 40 specimen trees would not deprive the petitioner of all beneficial use of the property, since the lot is already developed with an existing school, with athletic fields and parking facilities. 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 making the proposed improvements is due to unique circumstances associated with the location of the specimen trees relative to the limit of disturbance necessary to re-grade and construct new school facilities on the site, 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. The 40 specimen trees found on the property would be disturbed for the re-grading and construction of the site for new school facilities and parking lots. No change in land use would result, as the site has been institutionally developed with a school for over 50 years and the surrounding areas are residential neighborhoods that have been built around the school. 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. The project will not impact any streams, wetlands, floodplains, steep slopes, or large contiguous forests. Furthermore, stormwater management (SWM) will be provided in accordance with Baltimore County's SWM Law. As a result, the proposed variance will not adversely affect water quality, so 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 40 specimen trees in fair to good condition, to re-grade the existing site for redevelopment would be consistent with the spirit and intent of this law given that water quality impacts would be minimal. Additionally, removal of the 30 trees in the forested area will be mitigated through purchase of forest conservation credits in a county approved mitigation bank and removal of the isolated six individual native specimen trees (ST 8,10,12,14, 46 & 47) in fair to good condition will be mitigated by payment of a fee-in-lieu of \$8,772.25. Therefore, this criterion has been met.

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. No mitigation fee is proposed for isolated ST-11 & 13 because they are in poor condition. Additionally, ST 1 & 9 will be impacted but are proposed to be retained so mitigation will not be required at this time. However, if the trees do not survive the development, a variance for their removal along with mitigation will be required. Specimen trees ST 15-45 are within a forest area and will be mitigated through Forest Conservation mitigation via the purchase of credits at a DEPS approved Forest Conservation Bank. The remaining 6 specimen trees shall be mitigated at the following amounts, which is based on \$0.55 per square foot of 25% of the critical root zone of each tree: ST-8 (\$1,632.99), ST-10 (\$1,329.90), ST-12 (\$1,796.30), ST-14 (\$8,772.25), ST-46 (\$933.48) and ST-47 (\$2,146.10) for a total fee in lieu of \$8,772.25 This fee-in-lieu of mitigation and any mitigation for reforestation 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 #04-25-4255) was granted to Baltimore County’s Forest Conservation Law to allow removal of 40 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. The final forest conservation plan (FCP) shall be revised to reflect this variance as well as the proposed minor subdivision and approved by DEPS staff prior to issuance of any permits.

Please 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 the renovation permit for this property.

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.

John Canoles
Scotts Branch Elementary
Forest Conservation Variance
Page 4

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

Sincerely yours,

Horacio Tablada
Director

HT/jda

c. Daniel Coy, Maryland Department of Natural Resources
Mark Hadley, Site Resources
Leslie Lazzeri- Baltimore County Board of Education

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

Baltimore County Public School Representative's Signature

Date

Printed Name