

September 30, 2024

Keith Binsted
Underwood & Associates
1753 Ebling Trail
Annapolis, Maryland 21401

Re: Sherwood Episcopal Church
Clean Water Project Channel Restoration
Forest Conservation Variance
Tracking # 03-23-3914

Dear Keith Binsted:

This Department received a request for a variance from Baltimore County's Forest Conservation Law on June 25, 2023. An addendum of supplemental information and a preliminary forest conservation plan (FCP) were received on May 17, 2024. The variance seeks approval to clear 11,512 sf (0.26 acres) of forest in an existing Forest Conservation Easement (FCE) to realign, stabilize and extend eight hundred and eighty-one linear feet (881') of ephemeral stream channel in the Use IIIP Beaverdam Run. The restored channel within the FCE and downstream are proposed to be reforested with 1" caliper trees and containerized shrubs and shall serve as reforestation for impacts to the existing forest within the FCE. The FCP will be addressed in a subsequent correspondence.

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 his property. The applicant is voluntarily seeking to perform channel restoration to address erosion and drainage issues. We have determined that while proper restoration of the ephemeral channel is not possible without impacting the adjoining FCE the property could still function as an institution as it has done for decades and could continue to do so. Consequently, the petitioner would not be deprived of all beneficial

use of the property should the variance be denied. 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 their plight is due to unique circumstances and not the general conditions of the neighborhood. The need for the variance arises from the fact that the FCE encompasses the channel to be restored and that this restoration would be necessary to stem erosive runoff from the upper drainage basin and 24" CMP culvert under Sherwood Road. Therefore, we find that the need for this variance is due to unique circumstances and not the general conditions in the neighborhood; thus, 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 proposed ephemeral channel restoration and riparian reforestation will not change the uses of the affected properties or existing FCE and thus the character of the neighborhood would remain. 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 purpose for clearing forest within the existing FCE is to restore a degraded and eroding ephemeral stream channel to improve water quality as well as to create semiaquatic habitats. Moreover, the cleared easement area would be reforested in accordance with an approved Forest Conservation Plan. 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. The petitioner has not taken any actions necessitating this variance prior to requesting it. This variance is necessitated by the location of the FCE relative to the limit of disturbance required for channel restoration. 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. Although a total of 0.26 acres of good quality forest in an existing 0.617-acre FCE would be cleared, the purpose of this impact is to improve water quality through the creation of a stable channel with sand and organic medium as substrate for filtration and infiltration. Furthermore, there will be no net loss of forest as the disturbed and restored channel will be reforested with tree, shrub and herbaceous plants. Therefore, granting this variance would be consistent with the spirit and intent the Forest Conservation Law; thus, this criterion has been met.

Based on our review, this Department finds that 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. Prior to issuance of any Baltimore County permit, blaze orange high visibility tree protection fence shall be manually installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of the existing Forest Conservation Easement. This protective fence shall be illustrated in the plan view and mentioned in the sequence of construction on the erosion and sediment control plans for the project.
2. The cleared FCE shall be reforested as proposed on a DEPS-approved final Forest Conservation Plan.
3. Surveyed limits of the FCE along the LOD at its eastern and western boundaries shall be permanently posted at 100-foot intervals with “Forest Conservation Area - Do Not Disturb” signs prior to reduction of any EPS-held environmental securities. EPS staff shall inspect and approve the sign installation.
4. The final Forest Conservation Plan (FCP) and its performance security shall address this reforestation and the posting of the Forest Conservation Easement. This FCP and its security amount shall be approved by DEPS prior to approval of any grading and sediment control plans for this project.
5. The channel restoration project shall adhere to the 5-year binding maintenance agreement with the affected property owner in accordance with Maryland Natural Resource Article §5-1602(b)(12) or comply with additional Forest Conservation requirements.
6. The construction drawings (i.e., grading/erosion and sediment control/stream restoration plans) submitted to DEPS staff for approval shall reflect the conditions of this variance
7. The following note must appear on all plans submitted for this project:

“A special variance (tracking # 03-23-3914) was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Forest Conservation Law to temporarily impact 0.3 acres of existing Forest Conservation Easement on the adjacent Ira C. Rigger and Wife Property. Conditions were placed on this variance to mitigate forest impacts including reforestation of the cleared Forest Conservation Easement area once the stream restoration is complete.”

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.

Please have the affected property owner 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.

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 contact Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Horacio Tablada
Director

HT/msk

c. Daniel Coy, Maryland DNR

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

Property Owner

Date

Printed Name