

September 26, 2023

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

Re: Southern Crossroads
Forest Conservation Variance
Tracking #01-23-3924

Dear John Canoles:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on June 28, 2023. If granted, the variance would confirm the previous approval of the removal of 32 specimen trees in order to redevelop the 72-acre residential care facility site as townhomes and student housing serving nearby colleges. A variance with tracking number 01-23-3563 was granted by this Department on October 21, 2021 to remove 51 specimen trees for both phases of the proposed development, including these 32; however, the hearing officer steted the variance approval pending refinement of the Phase 2 development layout, thus necessitating the current variance request.

At the time of the original variance request, 35 specimen trees were proposed for removal during Phase 2, but this number has been reduced to 32, as three of the trees will no longer be impacted by the development resulting in a total of 48 specimen trees to be removed. These trees include fifteen (15) white oaks, seven (7) black oaks, three (3) chestnut oaks, three (3) red oaks, two (2) pin oaks, one (1) southern red oak, and one (1) tulip poplar. Of the trees to be removed, 11 are in good condition, 11 are in fair condition, and 10 are in poor condition. The diameters-at-breast-height (DBH) of the trees range from 30 inches DBH to 54.5 inches DBH, with an average DBH of 35.2 inches. There are 79 additional specimen trees on the property that will not be impacted by the proposed development, 70 of which are in fair to good condition. All but one of the specimen trees to be removed are within forest.

The Director of the Department of Environmental Protection and Sustainability (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 to show that 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 the property. The applicant is seeking to build a townhome and student housing community. Given that there is already an existing residential care facility that functioned without the removal of the specimen trees in question, full application of the law would not deprive the applicant 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 the petitioner to show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the location of specimen trees in relation to otherwise developable area onsite rather than the general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires the petitioner to show that the special variance, as requested, will not alter the essential character of the neighborhood. The surrounding neighborhood consists of high-density residential neighborhoods, an elementary school, and several commercial and industrial areas. We find that granting this variance to allow the development of an additional high-density residential area will be consistent with the existing neighborhood. Additionally, much of the forested areas on the property that border the existing neighborhoods will be retained in protective easements, so the removal of some forest and specimen trees from the site will not alter the essential character of this neighborhood. 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. Removal of the specimen trees will not directly impact any streams, wetlands, or associated buffers. The wetlands and streams onsite will be protected in Forest Buffer Easements. The project will also conform to the latest stormwater management and sediment control requirements. Therefore, this Department finds that the proposed 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 resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires the Director of EPS to find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although 32 specimen trees would be removed as a result of Phase 2 of this project, 79 other specimen trees will be retained and protected during and post construction. Furthermore, 36.8 of the 56.7 acres of forest on the property will be retained in a contiguous fashion within Forest Buffer and/or Forest Conservation Easements, exceeding the breakeven point by 15 acres. Additionally, impacts to specimen trees have been greatly reduced from the original variance application, which requested the removal of 89 specimen trees instead of the 51 approved in the 2021 variance and which was further reduced by the refined Phase 2 development plans to 48 specimen trees for both phases of the development. In light of these findings, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

Based on our review, this Department finds that the requested variance meets all required criteria. 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 following note on all subsequent plans for this development project:

“A variance (tracking #01-23-3924) was granted on by Baltimore County Department of Environmental Protection and Sustainability to allow the removal of 48 specimen trees, including 32 within Phase 2 of a proposed townhome and student housing development. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met.”
2. Given that all but one of these specimen trees are within forest to be cleared, their removal shall be mitigated by the protection of 36.8 of the 56.7 acres of forest in perpetual Forest Buffer and/or Forest Conservation Easements in accordance with an EPS-approved forest conservation plan. The sole specimen tree outside of forest (i.e. Specimen Tree #99) shall be mitigated by payment of a \$994.75 fee in lieu of planting to be remitted prior to any permit issuance.
3. This variance approval does not exempt future development activities at this site, including further specimen tree removal, 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 on the following page and return a signed copy of this letter to this Department.

John Canoles
Southern Crossroads
Forest Conservation Variance
Page 4

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 you have any questions regarding this correspondence, please call Libby Errickson at (410) 887-3980.

Sincerely yours,

Horacio Tablada
Director

HT/lbe

- c. Mark Levy, H&H Rock Companies
Brandon Rowe, Bohler Engineering
Jason Vettori, Smith, Gildea & Schmidt
Anne Hairston-Strang, 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.

Owner's Signature

Date

Printed Name