

March 12, 2024

Matthew Jennette
Geo-Technology Associates, Inc.
3445-A Box Hill Corporate Center Drive
Abingdon, MD 21009

Re: Dowell Lane Property
Forest Conservation Variance
Tracking # 05-24-4040

Dear Matthew Jennette:

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 17, 2024. The request would allow the removal of five specimen trees in conjunction with a 1.5MW ground-mounted solar photovoltaic energy generation facility. There are a total of 18 specimen trees on the property. Seven of the 18 specimen trees are located outside the forest. The majority of the specimen trees on the property are in fair or better condition. The five specimen trees are proposed for removal to allow for the construction of 3,744 solar modules and associated equipment for the proposed solar generation facility.

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 18.1-acre site consists of wooded areas, agriculture pasture, and several farm buildings. In addition to the forest on the property, there are several non-tidal wetlands and a stream on the property. The petitioner is proposing the construction of a 1.5MW ground-mounted solar energy generation facility with 3,744 solar modules, racking equipment, electrical equipment, and security fencing. The proposed development would result in the removal of five of the 18 specimen trees on the property. Impacts to the five specimen trees could be avoided by reducing the number of solar modules associated with the proposed solar energy generation facility. Since it is possible to develop the property without impacting five of the 18 specimen trees, compliance with the Forest Conservation Law will not deprive the petitioner of all beneficial use of the property. Consequently, 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. There are 18 specimen trees that are scattered throughout the property. The need to remove the specimen trees is a result of their distribution across the property and the open space needed to create a financially viable community-scale solar energy generation facility. These circumstances are unique to this property and not the 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 proposed solar generation facility will result in the construction of 3,744 solar modules, racking equipment, electrical equipment, and security fencing. While the property is immediately surrounded by residential properties, there are several other solar generating facilities in the larger vicinity near Interstate 95. The property has existing forest along the southern and western property boundaries and the owner will plant a 25-foot wide landscape buffer on the eastern and northern property boundaries. This will maintain the rural nature of the area. 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. There are non-tidal wetlands and a stream on the property. The non-tidal wetlands, stream, and associated forest buffer will be protected in a Forest Buffer Easement. All five of the specimen trees proposed for removal are located outside the forest buffer. 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 variance request arises from the distribution of the specimen trees on the property. The specimen trees are scattered throughout the property making it difficult to develop the site without impacting the specimen trees and their critical root zones. Therefore, the petitioner has taken no actions necessitating this variance prior to its request, and 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. The proposed development will result in the removal of five of the 18 specimen trees located on the property. The majority of the specimen trees on the property will not be removed. The property contains 5.6 acres of forest. Of the 5.6 acres of forest, 4.7 acres will be permanently protected in a forest conservation easement. The 4.7 acres to be permanently protected includes all of the forest inside the forest buffer on the property. This forest is a high priority for retention. Therefore, we find that this variance request is consistent with the spirit and intent of Article 33 of the Baltimore County Code. 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. A fee-in-lieu of specimen tree mitigation in the amount of \$3,617.60 shall be paid for the four specimen trees proposed for removal that are located outside the forest prior to the issuance of any permits for the proposed development. Checks must be made payable to Baltimore County. Mitigation is not required for the specimen tree located inside the forest onsite because forest conservation will be addressed for the proposed commercial development.
2. The final forest conservation plan must reflect the conditions of this variance.
3. All plans prepared for Dowell Lane Property Development must include the following note:

“A Forest Conservation Specimen Tree Variance (Tracking Number 05-24-4040) was granted by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of five specimen trees. Conditions were placed on this approval to mitigate the loss of these trees, including payment of a fee-in-lieu of mitigation. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability. ”

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. If there are any questions regarding this correspondence, please contact Mr. Gris Batchelder at (410) 887-3980.

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.

Sincerely,

Horacio Tablada
Director

HT/cgb

cc : Robert R. White, Senior
Michael Redding, Kingsville Community Energy Initiative LLC
Jeffrey Zigler, Carroll Land Services, Inc.

Matthew Jennette
Dowell Lane Property
Forest Conservation Variance
Page 4

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