

June 12, 2024

Devin Leary
Human & Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: 20718 Old York Road
Forest Conservation Variance
Tracking #03-24-4106

Dear Devin Leary:

A request for a variance from Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on April 18, 2024. The request proposes the removal of five (5) specimen trees from a proposed two-lot minor subdivision due to the trees' continued decline in health or death. One of the five specimen trees has already been approved for removal via a variance previously granted for this property on January 10, 2023 due to its location within a septic reserve area. The additional four (4) specimen trees to be impacted are a 44-inch diameter-at-breast-height (dbh) red oak and a 38-inch dbh red oak, both in fair condition; and a 30-inch dbh red oak and a 34-inch dbh red oak, both of which are dead. Seven additional specimen trees on the 5.7-acre property will not be impacted by the development, six of which will be retained in a permanent protective Forest Conservation Easement.

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 develop the property into two single-family dwelling lots. One dwelling already exists on the property, meaning the applicant is already realizing beneficial use of the property without the requested variance. As such, 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. Rather than general conditions in the neighborhood, the petitioner's plight is due to dead or dying trees resulting from an apparent widespread oak decline. Consequently, 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 low-density residential lots, agricultural fields and facilities, and forested areas. The density of the proposed two-lot subdivision would be consistent with the surrounding neighborhood, and all forest onsite would be retained in a protective Forest Conservation Easement. Therefore, we find that granting this variance will not alter the essential character of this neighborhood and 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. Granting the variance to allow impact to the specimen tree will not impact any streams, wetlands, floodplains or associated buffers, as none exist on or near the property. 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 a total of five specimen trees would be impacted for this development, seven other specimen trees will be retained, and some will be in a permanent Forest Conservation Easement. Additionally, all onsite forest will be retained in Forest Conservation Easements. 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. A mitigation fee of \$1,880.70 is required for the removal of the 44-inch red oak in fair condition, and a mitigation fee of \$1,402.75 is required for the removal of the 34-inch dbh red oak in fair condition. No mitigation is required for removal of the

other specimen trees due to their poor or dead condition or location within forest. The total required mitigation fee is \$3,283.45.

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

“A variance (tracking #03-24-4106) was granted by Baltimore County Department of Environmental Protection and Sustainability to allow impact to four (4) specimen trees due to their dead or dying condition, in addition to the one authorized in a previous variance decision. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met.”

3. The forest conservation plan included with the variance application must be revised to reflect this variance decision.
4. 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.

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. 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 Ms. Libby Errickson 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 yours,

Horacio Tablada
Director

HT/lbe

- c. Ms. Yvonne Shelley, Owner
Mr. Geoff Schultz, Polaris Land Consultants
Anne Hairston-Strang, Maryland Department of Natural Resources

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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