

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Patuxent Cove Forest Conservation Plan
Tax map 43, Grid 18, Parcel 318
Pegg Road, Lexington Park, MD

Case No. VAAP #17-185-006

DECISION AND ORDER**Introduction**

Conifer Realty, LLC (hereinafter "Applicant"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located on tax map 43, grid 18, parcel 318, Lexington Park, Maryland (hereinafter the "Property"). The application requests a variance from Section 75.8.2.b(6) of the Comprehensive Zoning Ordinance to remove 1 specimen tree with a diameter of 30 inches or more measured at 4.5 feet above ground.

After due notice, a public hearing was conducted at 6:30 p.m. on July 12, 2018, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

1. *General.* The general standards for granting a variance set forth in Section 24.3 do not apply to Forest Conservation Priority Retention Area variances. Variances to Forest Conservation Priority Retention Areas are limited to trees described in Chapter 75.8.2.b.(4), (5), and (6).
2. *Application.* As part of the application for a variance from Forest Conservation Priority Retention Area requirements, the applicant must demonstrate, to the satisfaction of the County, that reasonable efforts have been made to protect trees described in Chapter 75.8.2.b. (4), (5) and (6) and the plan cannot reasonably be altered.
3. *Standards.* A variance from Forest Conservation Priority Retention Area requirements shall only be granted by the Planning Director upon findings that:
 - a. Owing to special features of a site or other circumstances, implementation of the provisions of Chapter 75 would result in unwarranted hardship to the applicant, and
 - b. The granting of a variance will not adversely affect water quality.

Findings of Fact

The subject property (the “Property”) is the site of a proposed apartment complex, which will be constructed in two phases. Phase 1 will comprise of six buildings containing a total of 60 apartment units, a neighborhood green, a tot lot, and a 3,100 square-foot community building or clubhouse. Phase 2 will contain four buildings for a total of 38 apartment units. Only Phase I has received concept site plan approval from the Planning Commission.

Chapter 75 of the Ordinance regulates the cutting and clearing of certain forests and requires forest stand delineations and forest conservation plans pursuant to *Natural Resources Article*, §§5-1601—5-1612, Maryland Annotated Code. An applicant seeking approval of a subdivision creating new building lots, a site plan, a grading permit, or a sediment control permit on units of land 20,000 square feet or greater is subject to the regulations of this Chapter.

Pursuant to Section 75.8.2.b of the Ordinance, paragraphs (6) and (7), any disturbance of a tree having a diameter of 30 inches or more, when measured at 4.5 feet above the ground, shall require an administrative variance, pursuant to Chapter 22 and Chapter 24. Section 22.5.5 of the Ordinance, “Forest Conservation Administrative Variance,” states that the Planning Director shall not grant a variance to the forest conservation standards except upon findings that the general standards for variance set forth in Section 24.10 have been met and that the granting of the variance will not adversely affect water quality.

Approximately 10.34 acres of the Property are wooded. According to the Forest Stand Delineation (FSD) prepared for the Patuxent Cove Property, the Property contains two (2) specimen trees with a diameter of 30 inches or more measured at 4.5 feet above ground level. Tree #1 is a white oak in good condition with a diameter of 41 inches. Tree #2 is a white oak in poor to fair condition with a diameter of 35 inches. The retention value of this tree was considered low because of its condition and its proximity to neighboring sheds and chicken coops. Additionally, no environmental features were found within the tree stand where tree #2 is located.

The Applicant plans to preserve specimen tree #1 and to remove specimen tree #2 during development of Phase 2 of the project.

Conclusions of Law

That the applicant has demonstrated that reasonable efforts have been made to protect trees as described in Chapter 75.8.2.b. (4), (5) and (6) and the plan cannot reasonably be altered. That owing to special features of the site or other circumstances, implementation of the provisions of