



**Howard County Department Of Planning And Zoning**

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Marsha S. McLaughlin, Director

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September 26, 2013

Robert and Kelly Gable  
715 Weller Drive  
Woodbine, MD 21797

**RE: WP-13-131 Patapsco Overlook (F-13-048)**

Dear Mr. and Mrs. Gable:

The Director of the Department of Planning and Zoning considered your request for a waiver from the Howard County Subdivision and Land Development Regulations.

As of the date of this letter, the Planning Director **approved** your request to waive the following sections of the Subdivision and Land Development Regulations:

**Section 16.103(g)** of the Amended Fifth Edition – *Conflict With Other Regulations*. If a provision of this Subtitle (Subtitle I) overlaps or contradicts another law covering the same subject matter, the provision which is more restrictive or imposes higher standards or requirements shall govern. The request is to allow this resubdivision plat to be approved and recorded.

**Section 16.120(b)(4)(iii)(b)** of the Amended Fifth Edition – For a lot or buildable preservation parcel 10 acres or greater in size floodplains, wetlands, streams, their buffers, and forest conservation easements for afforestation, reforestation, or retention may be located on the lot or parcel if the building envelope is no closer than 35 feet from these environmental features, provided that a deck may project 10 feet beyond the building envelope. The waiver request is to allow a stream, stream buffers and forest conservation easement on lots less than 10 acres in size.

**Section 16.147** of the Amended Fifth Edition - Requires the submission of a final plan. The petitioner is requesting to re-activate the existing voided final plan, F-13-048, that was in the plan review process prior to its voiding on March 22, 2013.

**Approval is subject to the following five (5) conditions:**

- 1) The Final Plan, F-13-048 and its Supplemental Plan (landscape plan, forest stand delineation/plan) are hereby reactivated to active plan status as a revised plan submission.
- 2) Compliance with all SRC review comments on the Final Plan (plat), F-13-048, is required prior to signature approval of the final plat.
- 3) On the Final Plan, F-13-048 and its Supplemental Plan, provide a brief description of waiver petition, WP-13-131, as a general note that includes the waiver requests, sections of the regulations, action and date of waiver approval.

- 4) The applicant shall revise the building restriction lines on the final plat to provide the required 35' BRL from all environmental features, buffers and forest conservation easements on the revised final plat submission for F-13-048.
- 5) The applicant shall add the following as a general note on the final plat:

*"The subject property is located in the County's designated Growth Tier Area IV in accordance with PlanHoward 2030 and is subject to State Law, SB-236, 'The Sustainable Growth and Agricultural Preservation Act of 2012'. Therefore, Lot 52 (6.8 acres) cannot be resubdivided or further subdivided in accordance with SB-236. No further subdivision or resubdivision is permitted from this property".*

**The decision of this waiver petition is based on the following justification:**

The petitioner has provided justification for why strict application of the Regulations (Subtitle I) in this specific case will create extraordinary hardship and practical difficulties. Due to unusual circumstances and a series of events unique to this particular resubdivision as a result of being in the County's plan review process during the timeframe of public debate regarding amendment of PlanHoward 2030 to establish the County's Growth Tier Maps. On July 20, 2012, the initial Growth Tier designations were rejected by the County Council, causing considerable uncertainty about rural properties to subdivide. On December 3, 2012, the Council adopted a Growth Tier Map (CB-37) that designated all undeveloped rural properties that weren't subject to preservation easements as Tier III and therefore would have permitted resubdivisions and major subdivisions. However, on December 13, 2012, this bill was vetoed by the County Executive. On February 8, 2013, Council Bill No. 1-2013 was adopted which designated the subject property as Tier IV, allowing only major subdivisions. The April 10, 2013 effective date for the new Growth Tier Maps was well after the initial submission and processing of the petitioner's subdivision plans.

Throughout the lengthy Growth Tier adoption process, the petitioner was diligently processing a subdivision to create one additional lot from an oversized parcel within an existing, developed rural subdivision. Unfortunately, the public debate over the tier designations and the complexity of the State's grandfathering provisions in SB 236 created considerable confusion. The percolation test application was accepted by the Health Department on October 12, 2012 based on positive communication the applicant received from the Health Department allowing processing of their application after the State's deadline of July 1, 2012 under SB-236. The percolation certification plan for this resubdivision plan was approved by the Health Department on November 12, 2012.

The Environmental Concept Plan (ECP-13-040) was submitted on December 3, 2012 and the Final Plan (F-13-048) on December 14, 2012. Both plans went through more than one round of plan review, incurring significant costs for percolation testing, engineering, and plan processing fees before either the Health Department or DPZ realized that this resubdivision would be prohibited by the Tier IV designation that became effective on April 10, 2013.

The alternative to not granting the requested waiver and reactivating of this project to active plan status for continued processing and approval based on the above series of events will serve no useful purpose. The proposed resubdivision will create one additional lot within an already developed subdivision. It will not have an adverse impact on the preservation of farmland or other rural resources, which is the purpose for the restrictions inherent in designation as Tier IV and SB 236. It has been determined that this is an unique case; there are no other subdivisions in process that received percolation testing approval by the Health Department, but did not complete the subdivision approval process prior to December 31, 2012, is not eligible for the extended grandfathering provisions set forth in SB 236. This situation resulted from confusion about the grandfathering provisions in SB 236 and the extended debate over Growth Tier designations. Disallowing the continued processing of this resubdivision plan should not be considered in this unique case. The petitioner's resubdivision plan has been involved in an unfortunate series of unusual events and misunderstandings about grandfathering provisions through no fault of the petitioner during this entire process.

The waiver request will not be detrimental to the public interest since the resubdivision plan will only create one additional lot, does not violate the intent of SB 236, meets all other regulatory requirements, and was the subject of a pre-submission community meeting in October 2012. Reinstatement of the resubdivision plan status to active plan processing will not have any adverse effect on the surrounding properties because the applicant has already addressed all the community's concerns for the project.

Approval of this waiver request will not nullify the intent or purpose of the Regulations since the resubdivision plan will be in compliance with County and State Regulations prior to receiving signature approval and recordation. Therefore, approval of this waiver request for reinstatement to plan processing will achieve the intent of the Regulations to provide fairness and consistency in the application of plan processing procedures, rather than punish the petitioner due to the unfortunate and unanticipated circumstances involved with the processing of this one resubdivision plan.

The Regulations require a 100' buffer from Use III and IV streams. This lot includes a stream that bisects the property and flows into a tributary of the nearby Patapsco River. The buffer will encumber 5600 square feet of developable land and would therefore create extraordinary hardship and a practical difficulty precluding the creation of one additional lot. There is also a dense, hardwood forest that includes Chestnut Oak and Hickory as the dominant species that will be protected by a forest conservation easement. A total land disturbance of 1.41 acres is proposed on the site and the only disturbance to the stream and its buffer will be for the proposed 12 foot wide single use driveway for the new residence planned for proposed Lot 51.

Approval of the waiver request will not alter the essential character of the neighborhood and will not substantially impair the appropriate use or development of the surrounding residential use properties. The proposed use (single-family homes) is appropriate for the land and provisions have been made to protect the natural resources (buffer, easement) that exist on the land.

The waiver will not be detrimental to the public interests. The 5600 square feet of stream buffer in question will only be affected by the proposed driveway crossing to Lot 51. Furthermore, a majority of the area, including the stream buffer area is densely forested and shall remain that way after the development concludes. In addition, the petitioner has no further development plan proposed for Lot 52 (existing residence) and the new development that's proposed for Lot 51 will be outside of the buffer, except for the driveway crossing.

Approval of this waiver request will not nullify the intent or purpose of the regulations since the resubdivision design will cause minimum disturbance and the maximum protection of the forested community. The net result is that the subdivision provides an excess of 200' of dense forest as an effectual stream buffer along the entire northern property line. The proposed subdivision layout shall be provided on the Final Plan and additional site information (including existing site conditions) will be included as part of that plan submission.

Indicate this waiver petition file number, request, section of the regulations, action, conditions of approval, and date on all future DPZ plans that are related to this project.

**This requested waiver will remain valid for as long as the final plan (F-13-048) remains in active processing.**

If you have any questions, please contact Derrick Jones at (410) 313-2350.

Sincerely,



Kent Sheubrooks, Chief  
Division of Land Development

KS/dj

cc: Research

DED

Health Dept.

Carney Law Office – Andrew H. Robinson

VanMar Associates, Inc. – Ronald Thompson

File: F-13-048