



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

FAX 410-313-3467

February 27, 2020

Mr. Mark Levy  
Binder Rock, LLC  
6800 Deerpath Road, Suite 100  
Elkridge, MD 21075

Dear Mr. Levy:

RE: WP-20-081, Dorsey Center, Parcel R

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

As of the date of this letter, the Director of the Department of Planning and Zoning, Director of the Department of Public Works and Administrator of the Office of Community Sustainability **approved** your request for an alternative compliance to **Section 16.115(c)(2)** prohibiting clearing, excavation, filling, altering drainage or impervious paving in a floodplain, and **Section 16.116(a)(2)(i)** prohibiting grading, removal of vegetative cover and trees, paving and new structures within 50' of an intermittent stream and its buffer. The approval allows earthwork operations to be performed within stream areas and floodplain areas. This work will divert an isolated section of a stream to a pipe conveyance to construct a 65,000 square foot apartment building, related parking and amenities area.

Approval is subject to the following conditions:

1. Maryland Department of Environment and Army Corp of Engineer Permit approvals are required for the disturbance of the intermittent streams, 50' intermittent stream bank buffers and filling of the 100-year Floodplain area on Parcel R of the Dorsey Center Subdivision. All other County and State permits are required as applicable. A note shall be added to the site development plan indicating all permit numbers, date and action.
2. Providing safe conveyance, without adversely impacting downstream properties, of the 100-year Floodplain discharge of 397.2 cfs to the existing downstream storm water management pond. 100-year discharge of 397.2 cfs is based on the computations received at Environmental Concept Plan:  $Q=CIA=0.89 \times 12.75 \times 35 = 397.2$ .
3. Compliance with the comments dated May 20, 2015, from the Development Engineering Division.
4. All construction on Parcel R shall be subject to requirements of the Howard County Building Code.
5. Mitigation for the approval of this alternative compliance request for the proposed on-site stream diversion via a storm drain bypass system will require the restoration of the section of Deep Run stream segment by the applicant. A site development plan shall be approved for the off-site stream restoration project prior to signature approval of the site development plan for Parcel R.

6. The offsite stream mitigation must be completed before the use and occupancy permits will be issued for the apartment building proposed on Dorsey Center, Parcel R.
7. On all future plan submissions, provide a brief description of alternative compliance petition, WP-20-081, as a general note to include request(s), section(s) of the regulations, action and date.

Our decision was made based on the following:

**The following applies to Sections 16.115 and 16.116:**

1. **Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by other in similar areas.** As cited in the developer's justification, the property was previously developed as a residential property with a home and barn and associated agricultural uses. The previous owner used wood piles and tire retaining walls to stabilize the existing streams. The manipulation of the stream resulted in damages to the streambank. The stream system has been piped, on adjacent parcels, both up and downstream. In addition, the on-site stream originates from the outfall from an unground storm water management facility on the adjacent property. It is undetermined if the water flow is natural or the result of discharge from the adjacent SMW facility. In addition, the streambank has been altered by the previous property owner by the placement of tire retaining walls and woodpiles. The overall project will enhance the community which includes the offsite stream mitigation which will restore the stream and provide a more viable stream segment within the watershed.
2. **Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations.** Per the applicant's justification, the resources on the subject property are less than pristine, are creating a continued hazard of bank failure, are acting as a source of water quality degradation through sediment input/potential leaking from an old tire retaining walls, and the proposed offsite stream mitigation offering will restore and enhance existing offsite resources. A staff site visit confirmed that the stream is in poor condition and there was evidence of discarded tires and other debris within the stream bank area. In addition, there was evidence of stream erosion and off-site upstream and downstream piping of the stream.
3. **The alternative compliance will not confer to the applicant a special privilege that would be denied to other applicants.** The manipulation of the stream resulted in damages to the streambank. The stream system has been piped, on adjacent parcels, both up and downstream. In addition, the on-site stream originates from the outfall from an underground storm water management facility on the adjacent property. It is undetermined if the water flow is natural or the result of discharge from the adjacent SMW facility. In addition, the streambank has been altered by the previous property owner by the placement of tire retaining walls and woodpiles. The overall project will enhance the community which includes the offsite stream mitigation which will restore the stream and provide a more viable stream segment within the watershed. The developer has received the required permits from MDE and Army Corps. Given the offsite mitigation requirement, the applicant has demonstrated that special privileges have not been awarded. The community, the owners of 15 parcels which are part of by the stream mitigation, and the watershed area will benefit from this offsite mitigation.
4. **The issuance of the alternative compliance is not detrimental to public health, safety and welfare, or injurious to other properties.**

The approval of the Alternative Compliance will improve public safety and welfare and will improve the conditions of other properties by eliminating stream erosion conditions that were created by the prior landowners. The offsite stream mitigation will reduce bank erosion and sediment discharge

**The following applies to Section 16.116 only:**

**5. Disturbance is returned to its natural condition to the greatest extent possible.**

Per the applicant's justification, the proposed development of the site has been designed to allow viable use of the property and will not retain the area in a natural condition. The proposed stream relocation has been designed to minimize impacts to the stream and floodplain dynamics to lessen indirect impacts to offsite resources. Although the site will not be maintained in a natural condition, the benefits gained from the offsite stream mitigation, which traverses 15 parcels, will outweigh the on-site disturbance.

**6. Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife and vegetative habitat.**


The tire retaining wall and wood piles which were used to define the stream and the controlled and uncontrolled SWM discharge have contributed to the existing degraded stream quality which has impacted fish, wildlife and native vegetation. The existing stream buffer has evidence of unauthorized dumping and is heavily impacted by invasive species. The stream mitigation will improve water quality by removing sediment discharge and will reduce future opportunities of leaching from old tires and debris. The offsite stream mitigation will greatly stabilize and enhance the eroded stream. These improvements will enhance water quality and habitat within the watershed.

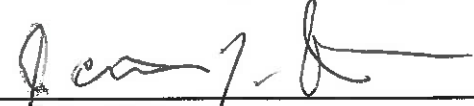
**7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements.**

Given the size of the infrastructure needed to serve the proposed apartment building, the site cannot be designed without impacting the resources. However, the stream channel relocation has been designed to ensure that no secondary impacts will result from the project development.

This alternative compliance approval will remain valid for one year from the date of this letter or as long as a subdivision or site development plan is being actively processed in accordance with the processing provisions of the Regulations.

If you have any questions, please contact Brenda Lubber at (410) 313-2350 or email at [BLubber@howardcountymd.gov](mailto:BLubber@howardcountymd.gov).

  
\_\_\_\_\_  
Amy Gowan, Director  
Department of Planning and Zoning

  
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James Irvin, Director  
Department of Public Works



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Joshua Feldmark, Administrator  
Office of Community Sustainability

cc: Research  
DED  
Real Estate Services



**DPZ Office Use only:**  
 File No. WP-20-081  
 Date Filed 2/21/2020

**ALTERNATIVE COMPLIANCE APPLICATION**

**Site Description:** Dorsey Center Apartments

**Subdivision Name/Property Identification:** Dorsey Center, Parcel R

**Location of property:** Deerpath Road and Dorsey Road

**Existing Use:** vacant      **Proposed Use:** Apartments

**Tax Map:** 37      **Grid:** 24      **Parcel No:** 375      **Election District:** 1st

**Zoning District:** TOD      **Total site area:** 4.18 ac

Please list all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.). If no previous plans have been submitted, please provide a brief history of the site and related information to the request:

F-07-80, SDP-07-016, WP-15-131, ECP-15-017, S-17-004, SDP-19-038

In the area below, the petitioner shall enumerate the specific numerical section(s) from the Subdivision and Land Development Regulations for which an alternative compliance is being requested and provide a brief summary of the request.

Section Reference No.	Brief Summary of Request
16.115(c)(2)	We seek reapproval of a waiver to perform earthwork operations within stream areas to divert an isolated section of stream to a pipe conveyance similar to adjacent sites.
16.116(a)(2)(i)	We seek reapproval of a waiver to allowing work within stream and floodplain areas to divert an isolated section of stream to a pipe conveyance similar to adjacent sites.

Signature of Property Owner:  Date: 2/20/20

Signature of Petitioner Preparer: \_\_\_\_\_ Date: 2/20/20

Name of Property Owner: Binder Rock LLC Name of Petition Preparer: Benchmark Engineering, Inc.

Address: 6800 Deerpath Road, Suite 100 Address: 8480 Baltimore National Pike, Suite 315

City, State, Zip: Elkridge, MD 21075 City, State, Zip: Ellicott City, MD 21043

E-Mail: amnimal@aol.com E-Mail: bei@bei-civilengineering.com

Phone No.: 410-579-2242 Phone No.: 410-465-6105

Contact Person: Mark Levy Contact Person: Alice Miller

Owner's Authorization Attached

## Waiver Petition Justification

### Summary of Site:

Dorsey Center Parcel 'R' is approximately 4.18 acres located in the southwest quadrant of the intersection of U.S. Route 1 and Maryland Route 100. It is located between Deerpath Road and Dorsey Road, at the west end of Deerpath Road and is zoned TOD (Transit Oriented District) and within the Route 1 Manual area. There are two existing streams that enter the site from the west and north via storm drain systems. These two intermittent streams converge to form a Y-shape in the western portion of the site and exit the site as a single intermittent stream via an offsite underground storm drain system. There is an existing floodplain that terminates at the property boundaries associated with the streams. This floodplain is not a FEMA floodplain. The site is partially wooded with a former house pad on the area of the property fronting Dorsey Road. The property is not currently being utilized for any use.

The proposed development of the property is for a 65,000 ± sf apartment building consisting of approximately 210 units. The building will wrap a parking structure. The building and parking will be constructed over the existing stream and result in impacts to the stream channels, buffers and associated floodplain. The existing stream is proposed to be diverted around the site via a storm drain bypass system.

### Sections to be waived:

Section 16.116(a)(2)(i) – Grading, removal of vegetative cover and trees, paving and new structures shall not be permitted within 50' of an intermittent stream bank

Section 16.115(c)(2) – No clearing, excavation, filling, altering drainage, or impervious paving, may occur on land located in a floodplain unless required or authorized by the Department of Planning and Zoning upon advice of the Department of Inspections, Licenses and Permits, the Department of Public Works, the Department of Recreation and Parks, and the Soil Conservation District, or the Maryland Department of the Environment. Any proposed construction of a structure within the floodplain shall be subject to the requirements of the Howard County Building Code.

1. Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by other in similar areas.

Strict conformance with the requirements of the County Code related to stream and buffer protection would preclude the landowner from developing the property in a manner that is keeping with and complementary to the existing zoning and adjacent land uses. Per the County's Alternate Compliance process, all landowners with unique site conditions and substantial site constraints created by current regulations, are eligible to receive consideration for a modification of the regulatory requirements to allow for reasonable and complementary use of their property.

The resources on the subject property are less than pristine, are creating a continued hazard of bank failure, are acting as a source of water quality degradation through sediment input/potential leaking from old tire retaining walls, and the proposed offsite stream mitigation offering will restore and enhance existing offsite resources. In consideration of the overall resource benefits that will be generated by implementation of this project we feel that the project qualifies for relief from strict conformance with the requirements of the regulations.

We would anticipate that others proposing comparable overall project benefits would qualify for relief from strict conformation with the requirements and therefore the strict enforcement of the regulations, denial of the alternate compliance request, for this project would deprive this landowner rights that are commonly enjoyed by others in similar areas or with similar project outcomes.

2. Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations.

The subject property is unique in many ways. The property was previously developed as a residential property with a home and barn. The associated agricultural uses of the property have long been abandoned but evidence of past use is seen along the intermittent stream channel to be relocated for this project. The streambanks along much of the channel have been historically altered with various stabilization techniques that include both wood piling and old tire retaining walls. The past manipulation of the stream, and the resulting damage to the streambanks creates a condition unique to this property. Furthermore, the stream system both up and downstream of the property is piped into existing culvert systems. The northern branch of the onsite stream originates from the outfall from an underground stormwater management facility on the adjacent property. It is not clear if the flow that is observed through that channel is natural, or the result of the discharge from that facility. The main channel enters the site from a culvert system that is piped under Dorsey Road and it appears to convey both natural base flow and stormwater from the road and the adjacent properties.

The location of the stream system creates a practical difficulty for any development of the site that would be compatible with the zoning and surrounding land uses. The stream and its associated buffers render the priority road frontage of the site undevelopable and substantially alter the overall development potential of the property, thus creating a hardship for the property owner.

The hardship created by the regulations is derived from the fact that retention of the stream and buffers in their current state would greatly impact the development potential and viability of the property for any use that is in keeping with the zoning of the property and the surrounding uses. While the layout of the property may well have been favorable to a single-family home/farmette, this use is not compatible with the current community



The hardship becomes unwarranted due to the fact that the stream in question is so substantially altered, both on and offsite and provides little to no normally anticipated habitat or water quality standard. The denial of the alternative compliance request would also be unwarranted because the overall project will enhance the community and includes a mitigation component that will provide stream restoration on a larger and more viable stream segment within the watershed.

In consideration of all of the factors associated with the quality of the resource, the development potential of the property, the adjacent property uses and the mitigation proposed with the project, denial of the alternative compliance would create an unreasonable hardship.

3. The alternative compliance will not confer to the applicant a special privilege that would be denied to other applicants.

Approval of the alternative compliance will not confer a special privilege to the applicant because the County regulations allow for issuance of alternative compliance proposals for projects that meet the unique standards of the request. It is anticipated that any other applicant with a practical difficulty or unwarranted hardship such as has been enumerated for this project, would also be eligible to receive approval for an alternative compliance request.

4. The issuance of the alternative compliance is not detrimental to public health, safety or welfare, or injurious to other properties.

The issuance of the alternative compliance approval will not adversely impact the public health, safety or welfare or be injurious to other properties. In fact, issuance of the alternative compliance will improve the public safety and welfare and will improve the condition of other properties. Permitting the reasonable development of the subject property will allow the property to be developed and not longer maintained in a vacant condition that can be utilized by trespassers or others seeking shelter or cover on the site. The development of the site will also eliminate an erosive stream condition that has developed around the failing bank stabilization that was implemented by previous property owners. This feature of the project will help reduce bank erosion and sediment input into the stream system. The development of the site will also eliminate the potentially dangerous conditions that existing in association with the steep and eroding stream channel banks. These unstable banks could present a hazard to anyone, authorized or trespassing, that is walking along the streambank.

The proposed mitigation will improve the site conditions of offsite property by provide stream bank stabilization along a degraded stretch of Deep Run. Without the issuance of the alternative compliance and the approval of the project, this stream restoration would not be realized.

5. Disturbance is returned to its natural condition to the greatest extent possible.

The proposed development of the site has been designed to maximize the viable use of the property and will not retain the area in a natural condition. The proposed stream relocation has been designed to minimize impacts to the stream and floodplain dynamics to lessen indirect impacts to offsite resources.

6. Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife and vegetative habitat.

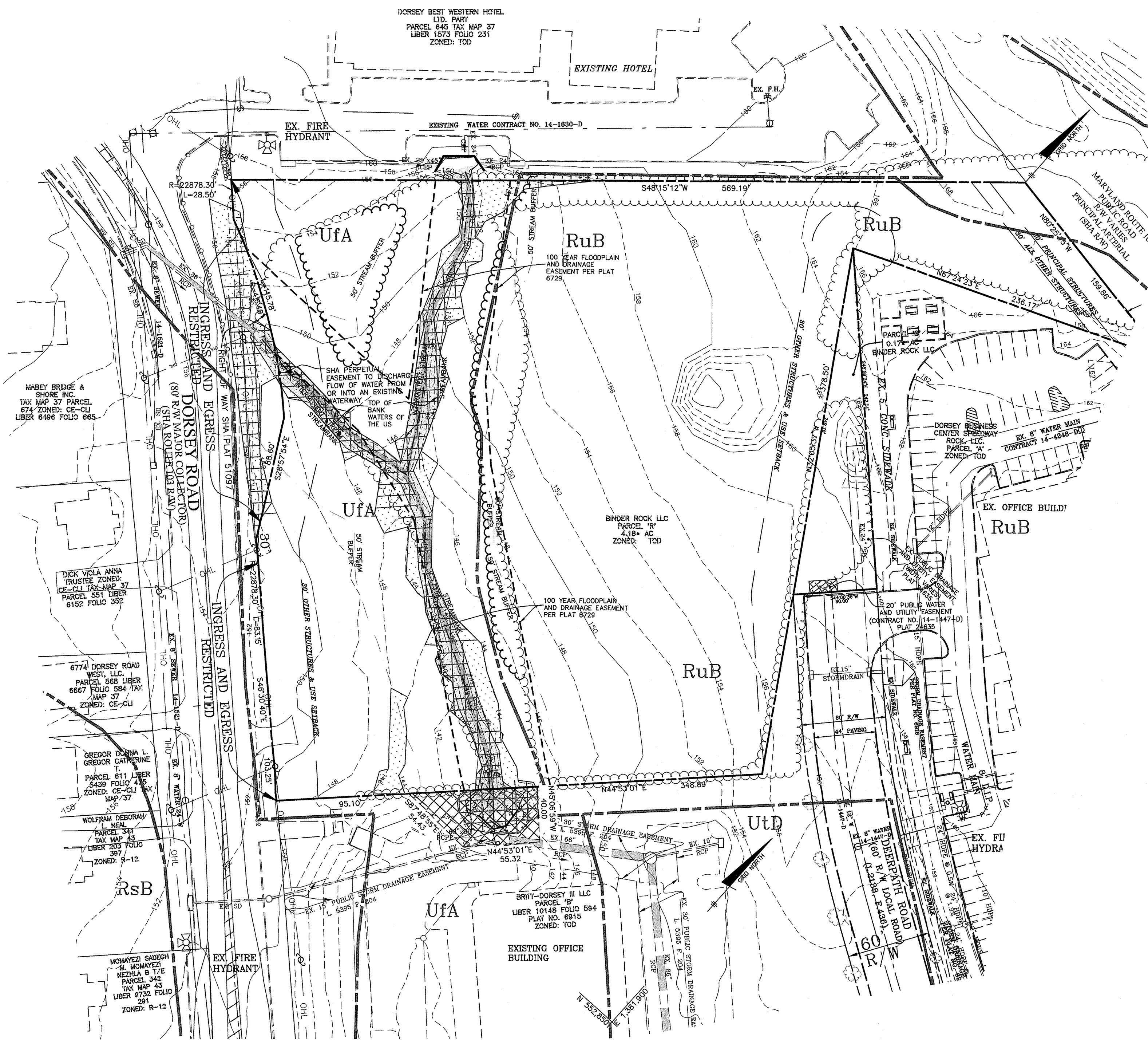
The initial consideration of this obligation is that the proposed project will have minimal impact on fish, wildlife and native vegetation because the stream channel and buffers to be impacted are so degraded by past disturbance and current inputs of controlled and uncontrolled stormwater. The flows in the channel are flashy and erosive and several segments of the stream banks are failing. Tire retaining walls that were once used to define the streambank are failing and likely contributing to water quality degradation. The vegetation along the buffers is heavily impacted by invasive species and is routinely impacted by unauthorized dumping and as a collection point for trash and other debris that originates from offsite locations. As such, the project proposal to relocate and stabilize the stream channel in a culvert on the site will actually help to improve water quality by removing sediment input from the system and reducing the opportunity for leaching of old tire wastes and input of trash/debris.

Despite the limited value of the resources on the site the proposed project includes a substantial mitigation effort that will greatly enhance water quality and habitat within the watershed. The mitigation includes the stabilization and enhancement of eroded stream bank segments along the main stem of Deep Run.

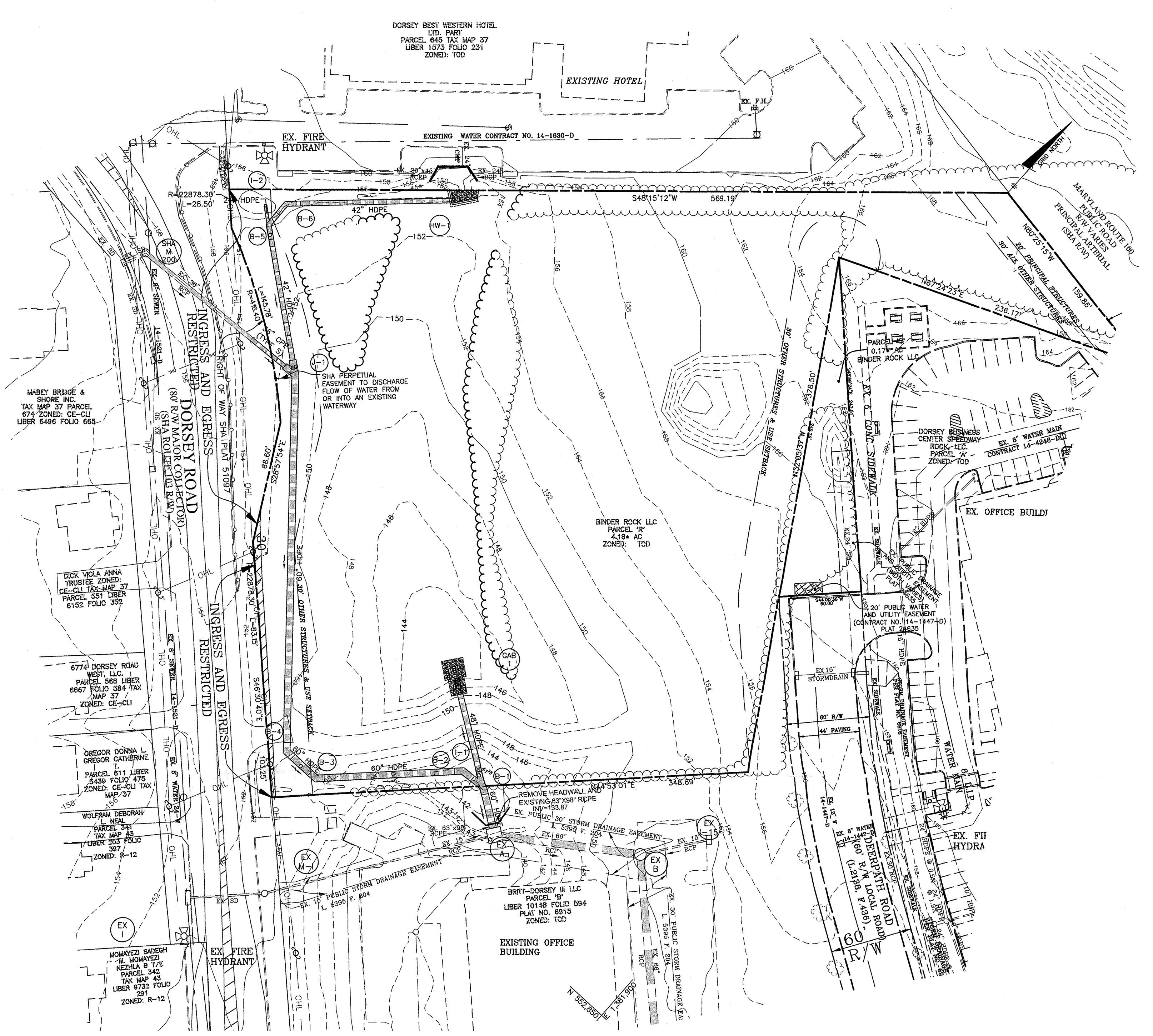
The mitigation will include structural stabilization of the eroding banks to reduce sediment input into the system and will include plantings to further stabilize the system and provide enhanced wildlife habitat.

7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent require to accommodate the necessary improvements.

The site plan has been designed to provide the infrastructural needs of the project and there are no gratuitous impacts or grading proposed. Given the size of the lot and the location of the resources, there is no way to effectively develop the site in keeping with the allowed project density and adjacent uses while retaining the resources in an undisturbed fashion. The design of the stream channel relocation has been done to ensure that the hydrologic condition of the stream and its floodplain are addressed to ensure that no secondary impacts result from the proposed project.



**EXISTING CONDITION**  
SCALE: 1" = 50'

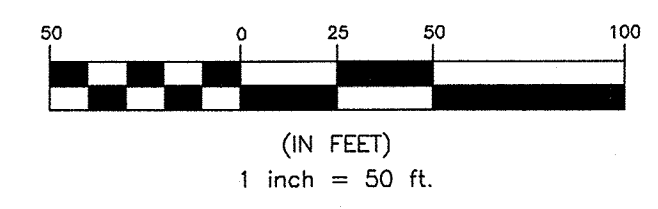


**POST-STREAM DIVERSION CONDITION**  
SCALE: 1" = 50'

**LEGEND**

- EXISTING CONTOURS
- EXISTING TREELINE
- PROPOSED TREELINE
- EXISTING STREAM
- EXISTING STRUCTURE
- EXISTING STREAM BUFFER
- APPROXIMATE 100 YEAR FLOODPLAIN LIMIT (PLAT 6729)
- SUPER SILT FENCE
- CLEANWATER DIVERSION
- EROSION CONTROL MAT
- SEC DRAINAGE AREA

APPROVED: DEPARTMENT OF PLANNING AND ZONING	
CHEF, DEVELOPMENT ENGINEERING DIVISION	DATE
CHEF, DIVISION OF LAND DEVELOPMENT	DATE
DIRECTOR	DATE



NO.	DATE	REVISION

**BENCHMARK**  
ENGINEERS • LAND SURVEYORS • PLANNERS  
**ENGINEERING, INC.**

8480 BALTIMORE NATIONAL PIKE • SUITE 315 • ELLICOTT CITY, MARYLAND 21043  
(P) 410-465-6105 (F) 410-465-6644  
WWW.BE-CIVILENGINEERING.COM

OWNER/DEVELOPER: BINER ROCK LLC C/O H & H ROCK COMPANIES 6800 DEERPATH ROAD SUITE 100 ELKRIDGE, MARYLAND 21075 410.579.2242	PROJECT: <b>DORSEY CENTER PARCEL R - STREAM DIVERSION</b>
LOCATION: TAX MAP 37 PARCEL 375 - GRID 24 1st ELECTION DISTRICT HOWARD COUNTY, MARYLAND	TITLE: <b>ALTERNATIVE COMPLIANCE EXHIBIT</b>
DATE: FEBRUARY, 2020	PROJECT NO. 1959
SCALE: AS SHOWN	DRAWING 1 OF 1

Professional Certification: I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland, License No. 28376, Expiration Date: 1-1-21.

WP-20-081





**DPZ Office Use only:**  
 File No. WP-20-081  
 Date Filed 2/21/2020

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E-Mail: amnimal@aol.com E-Mail: bei@bei-civilengineering.com

Phone No.: 410-579-2242 Phone No.: 410-465-6105

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Owner's Authorization Attached