



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

December 16, 2020

Mr. Avinash Dewani
Howard County Department of Public Works
SWM Division
9801 Broken Land Parkway
Columbia, MD 21046

Dear Mr. Dewani:

RE: WP-21-030, Sewells Orchard Pond Retrofit

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.

On December 10, 2020, and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning and Administrator of the Office of Community Sustainability (Director of Public Works recused) considered and **approved** your request for a variance with respect to **Section 16.116(a)(2)(iii)** of the Subdivision and Land Development Regulations to allow disturbance within a stream and its buffer. Since this is DPW capital project, the Department of Public Works recused itself from consideration of this request. Please see the attached Final Decision Action Report for more information.

On December 10, 2020, and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Department of Recreation and Parks, and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to **Section 16.1201(v)** to allow the limit of disturbance to serve as the net tract area; and **Section 16.1209(b)(1)** requiring forest conservation to be established on on-site sensitive area. Please see the attached Final Decision Action Report for more information.

On December 7, 2020, and pursuant to Section 16.104, the Director of the Department of Planning and Zoning, considered and **approved** your request for alternative compliance with respect to **Section 16.115(c)(1)** of the Subdivision and Land Development Regulations to disturbance to the floodplain.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of **Section 16.115(c)(1)** would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the four (4) items you were required to address, pursuant to Section 16.104(a)(1):

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

Typical dam repair projects require an area immediately adjacent to the site to be temporarily occupied to maneuver equipment and to off-load materials as needed to complete the repair. Strict compliance with the requirements would result in the need for an expanded limit of disturbance if this area was forced out of the Floodplain land, which would create additional impacts and would not meet with the intent of the forest conservation requirements. In addition, the purpose of the project is to repair and

make safety/maintenance repairs to the existing SWM pond, associated dam and outfall in order to restore functionality of the facility and address pond deficiencies to meet MD-378 criteria. Strict conformance with the Regulations would deprive DPW from the right to maintain its stormwater facilities and easements. The pond was previously shown on an SDP approved by the SRC. DPW has proposed easements to maintain the proper function and safety of this facility. Denial of the request would deprive DPW of the right to properly maintain the SWM facility.

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 existing dam is located immediately adjacent to the floodplain boundary. Therefore, providing adequate space to complete construction requires impacts to the floodplain. Complete avoidance of the floodplain would create an unreasonable hardship as the area surrounding the project that is outside of the floodplain consists of residential properties. The proposed SWM facility extends along the pond outfall, which is classified as a waterway. Strict adherence to the Regulations would result in practical difficulty as it is impossible to retrofit the existing principal spillway and maintain the easement while avoiding grading and removal of vegetation within 100 feet of a perennial stream as these features are one in the same.

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

There is no evidence that the variance will confer a special privilege to DPW. The variance is requested so that standard construction operations can be completed. The ability to maintain easements and retrofit existing facilities is a frequent request that is not denied to other applicants.

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.

The modification will not be detrimental to public health, but rather will allow DPW to repair an existing stormwater facility to bring it up to code and maintain public health, safety, and welfare and prevent injury to other properties.

Director's Action: Approval of this Alternative Compliance is subject to the following conditions:

Conditions for approval of Section 16.115(c)(1):


1. The applicant shall obtain all required authorizations and permits from the Maryland Department of the Environment and U.S. Army Corps of Engineers for disturbances within the floodplain, streams, and stream buffers. Reference the applicable MDE or USACE permits or tracking numbers on all building or grading permits. Provide approval letters for MDE and/or USACE with the grading permit applications.
2. The Limit of Disturbance is restricted to that area shown on the Alternative Compliance Exhibit for WP-21-030.
3. A red-line to SDP-01-035 must be submitted showing the improvements/repairs to the SWM facility. The forest conservation worksheet must be added to SDP-01-035.
4. Once the SWM repair has been completed, the Limit of Disturbance shall be restored to its previous condition through stabilization and permanent vegetation.
5. On all future submissions, provide a brief description of alternative compliance petition, WP-21-030, as a general note to include request(s), section(s) of the regulations, action and date.

6. Authorization from the Columbia Association and BGE for the off-site disturbance and grading to their properties. Authorization must be obtained and submitted with the red-line revision to SDP-01-035 and/or grading permit application.

Indicate this alternative compliance petition file number, request, section of the regulations, action, conditions of approval, and date on all related plats, and site development plans, and building permits. 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 Luber at (410) 313-2350 or email at BLuber@howardcountymd.gov.

Sincerely,

DocuSigned by:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/bl

Enclosure

cc: Research
DED
DLD - Julia Sauer
Real Estate Services
Marian Honecny- DNR MHONECZY@dnr.state.md.us
Century Engineering, Karen Bowman kbowman@centuryeng.com



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

■ Ellicott City, Maryland 21043

■ 410-313-2350

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FAX 410-313-3467

ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

DEPARTMENT OF PLANNING AND ZONING
OFFICE OF COMMUNITY SUSTAINABILITY
DEPARTMENT OF PUBLIC WORKS
DEPARTMENT OF RECREATION AND PARKS

RE: WP-21-030, Sewells Orchard Pond Retrofit

Applicant: Howard County Department of Public Works
SWM Division
9801 Broken Land Parkway
Columbia, MD 21046

Pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, and the Administrator of the Office of Community Sustainability considered and **APPROVED** the applicants request for a waiver with respect to **Section 16.116(a)(2)(iii)** of the Subdivision and Land Development Regulations to disturb a stream and stream bank buffer between the stormwater management outfall and the existing foot path in order to realign the principal spillway. Since this proposal is a DPW capital project, the Department of Public Works recused itself from consideration of this application.

Pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **APPROVED** the applicants request for a variance with respect to **Section 16.1201(v)** and **Section 16.1209(b)(1)** of the Subdivision and Land Development Regulations to allow the limit of disturbance to serve as the net tract area when calculating the forest conservation obligation, and to waive providing forest conservation easement within the onsite environmental features.

The Directors deliberated the application for all Sections in a meeting on December 10, 2020.

Subtitle 1: Section 16.116(a)(2)(iii)

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unreasonable hardship or practical difficulty. This determination is made with consideration of the variance application and the seven (7) items the applicant was required to address, pursuant to Section 16.104(a)(1) and Section 16.116(d):

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

The applicant is requesting approval to grade and remove vegetation within the stream buffer between the outfall and the existing foot path in order to realign the principal spillway. In addition, the purpose of the project is to repair and make safety/maintenance repairs to the existing SWM pond, associated dam and outfall in order to restore functionality of the facility and address pond deficiencies to meet MD-378 criteria. The pond was previously shown on an SDP approved by the SRC. DPW has proposed easements to maintain the proper function and safety of this facility. Denial of the request would deprive DPW of the right to properly maintain the SWM facility.

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 proposed SWM facility extends along the pond outfall, which is classified as a waterway. Strict adherence to the Regulations would result in practical difficulty as it is impossible to retrofit the existing principal spillway and maintain the easement while avoiding grading and removal of vegetation within 100 feet of a perennial stream as these features are one in the same.

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

There is no evidence that the variance will confer a special privilege to DPW. The variance is requested so that standard construction operations can be completed. The ability to maintain easements and retrofit existing facilities is a frequent request that is not denied to other applicants.

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.

The modification will not be detrimental to public health, but rather will allow DPW to repair an existing stormwater facility to bring it up to code and maintain public health, safety, and welfare and prevent injury to other properties.

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

All disturbance not associated with the storm water management facility will be stabilized to its natural condition post-construction. The proposed stabilization consists of turfgrass immediately adjacent to the trail and a riparian seed mix beyond the limits of the trail corridor. The riparian seed establishment includes native grasses such as Big Bluestem, Switchgrass, Virginia Wildrye, Indiangrass and wildflowers such as Blackeyed Susan and Oxeye Sunflower. Three River Birches are also proposed within the LOD. The vegetation and grades under proposed conditions will be representative of existing conditions.

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

Disturbance to the waterway will result from restoration of the existing principal spillway, additional impacts to waterways are not anticipated. The area surrounding the principal spillway will be stabilized and vegetated to its natural condition following construction to minimize adverse impacts to water quality, fish, wildlife, and vegetative habitat. The proposed stabilization is designed to establish quickly and minimize runoff from exposed soil, minimizing adverse impacts to water quality and aquatic species. Native plantings will be utilized to provide forage and shelter for wildlife. Native plantings will also be utilized to establish a vegetative habitat suitable for the location and avoiding the use of invasive species will minimize adverse impacts to the vegetative habitat.

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.

In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts and retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects. The proposed landscape plan is developed to stabilize the disturbed area where grading or removal of vegetative cover has taken place. Native vegetation was incorporated into the design to meet the vegetative requirements for utility rights of way while still providing biological diversity with proposed plant material to support the local ecosystem.

Directors Action: Approval of this alternative compliance is subject to the following conditions:

1. The applicant shall obtain all required authorizations and permits from the Maryland Department of the Environment and U.S. Army Corps of Engineers for disturbances within the floodplain, streams, and stream buffers. Reference the applicable MDE or USACE permits or tracking numbers on all building or grading permits. Provide approval letters for MDE and/or USACE with the grading permit applications.
2. The Limit of Disturbance is restricted to that area shown on the Alternative Compliance Exhibit for WP- 21-030.
3. A red-line to SDP-01-035 must be submitted showing the improvements/repairs to the SWM facility. The forest conservation worksheet must be added to SDP-01-035.
4. Once the SWM repair has been completed, the Limit of Disturbance shall be restored to its previous condition through stabilization and permanent vegetation.
5. On all future submissions, provide a brief description of alternative compliance petition, WP-21-030, as a general note to include request(s), section(s) of the regulations, action and date.
6. Authorization from the Columbia Association and BGE for the off-site disturbance and grading to their properties. Authorization must be obtained and submitted with the red-line revision to SDP-01-035 and/or grading permit application.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

Recused – DPW Capital Project

Thomas Meunier, P.E., Director
Department of Public Works

Subtitle 12: Sections 16.1201(v) and 16.1209(b)(1)

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unwarranted hardship. This determination is made with consideration of the variance application and the seven (7) items the applicant was required to address, pursuant to Section 16.1216(c)(1)-(7):

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship.

The purpose of this project is to repair and make safety/maintenance upgrades to the existing stormwater management pond, associated dam, and outfall in order to restore functionality of the facility and address pond deficiencies to meet MD-378 criteria. The sum of the area of the two parcels on which the project limit of disturbance (LOD) occurs is 22.221 acres and the overall BGE right-of-way is significantly larger; however, the proposed LOD for this project is only 5.87 acres between the two parcels. The County parcel where the existing SWM pond is situated is exempt from forest conservation per Section 16.1202(b)(1)(xiv) and the Columbia Association property is exempt per Section 16.1202(b)(1)(ii). When this portion is removed from the 5.87 acres project LOD, the LOD remaining within the BGE parcel is 0.29 acres. The area of the 100-year floodplain is then netted out of the 0.29 acre LOD within the BGE parcel and the remaining LOD area is 0.01 acre.

An unwarranted hardship would be endured if the LOD of 5.87 acres were not permitted to be used as the Gross Tract Area, such that after netting out the 100-year floodplain and exempt parcels, the Net Tract Area for further calculations is 0.01 acre. Having to address the Forest Conservation for the entire BGE parcel would far exceed the area of physical impact. Furthermore, Howard County forest conservation regulations require forest conservation easements to be established in all on-site sensitive areas, including stream buffers, and to ensure protection of riparian areas, the forest conservation easement shall be a minimum of 75-feet from the banks of the stream. There is a perennial stream and associated stream buffer within the project limits of disturbance at the stormwater facility outfall. The property on which the stream channel is located is within a proposed maintenance easement for the stormwater facility. Establishment of a forest conservation easement over the entire stream buffer would restrict and be contrary to future maintenance activities for the facility.

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas.

Enforcement of the Regulations would deprive the applicant from rights commonly used in similar projects. Using the limit of disturbance for purposes of calculating the forest conservation obligation is a common request for County Capital Projects that expand over multiple parcels and create limited disturbance in relation to the overall parcel sizes.

3. Verify that the granting of a variance will not adversely affect water quality.

There is no evidence that granting the variance will adversely affect water quality. The proposed stormwater management pond repairs will bring the current pond up to MD-378 standards which will improve water quality.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants.

There is no evidence that granting the Variance will confer a special privilege to DPW. The ability to maintain easements and retrofit existing facilities is a frequent request that is not denied to other applicants.

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

The project is needed to provide maintenance to existing County infrastructure and restore an outfall that has degraded. There is no evidence that the applicant created the condition or circumstance for which this request is needed.

6. Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

There is no evidence that the request for alternative compliance was a result for a condition relating to land or building use, either permitted or non-conforming, on a neighboring property. The request is to repair an aged stormwater management pond and restore an existing outfall.

7. Provide any other information appropriate to support the request.

The project is necessary to restore the functionality of the facility, provide TMDL credit, and address pond deficiencies to meet MD-378 criteria. Strict compliance to the Regulations would require delays in the needed repairs.

Directors Action: Approval of this alternative compliance is subject to the following conditions:

1. The Limit of Disturbance is restricted to that area shown on the Alternative Compliance Exhibit for WP- 21-030.
2. A red-line to SDP-01-035 must be submitted showing the improvements/repairs to the SWM facility. The forest conservation worksheet must be added to SDP-01-035.
3. Once the SWM repair has been completed, the Limit of Disturbance shall be restored to its previous condition through stabilization and permanent vegetation.
4. On all future submissions, provide a brief description of alternative compliance petition, WP-21-030, as a general note to include request(s), section(s) of the regulations, action and date.
5. Authorization from the Columbia Association and BGE for the off-site disturbance and grading to their properties. Authorization must be obtained and submitted with the red-line revision to SDP-01-035 and/or grading permit application.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

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Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

DocuSigned by:

Raul Delorme

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Raul Delorme, Director
Department of Recreation and Parks

cc: DLD, Brenda Luber
OCS, Joshua Feldmark
DPW, Thomas Meunier
Rec and Parks, Raul Delorme



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

October 26, 2020

Mr. Avinash Dewani
Howard County DPW SWM Division
9801 Broken Land Parkway
Columbia, MD 21046

Dear Mr. Dewani:

RE: WP-21-030, Sewells Orchard Pond Retrofit

Regarding the above referenced alternative compliance petition, this Division is advising you that no action can be taken until an alternative plan analysis explaining why the proposed locations for the development cannot be reconfigured or relocated on the property to avoid removal of the trees. Once submitted, this information will need to be uploaded into ProjectDox for the SRC agencies to review.

Copies of the exhibit/plan and the supplemental information and a response letter to the comments for each agency should be submitted to this Division for distribution in the following manner:

Agency:DLD

#Copies: 1

The requested information/**revised plans** must be submitted to this Division within **45 days*** of the date of this letter (**on or before December 10, 2020**), or this Division will recommend that the Planning Director deny this alternative compliance petition.

Please refer to the Department of Planning and Zoning website for current business processes during this time. Originals can be mailed to the Howard County Planning and Zoning, 3430 Court House Drive, Ellicott City, MD 21043 or dropped into the bin labeled 'DPZ' in the George Howard Building lobby. Submission material can also be emailed to planning@howardcountymd.gov for processing.

*Deadlines for submission are pursuant to the Fifth Edition of the Subdivision and Land Development Regulations. Pursuant to Executive Order 2020-04, and as per DPZ Director Department Order dated April 14, 2020, certain deadlines are reinstated. Should those deadlines lapse while Executive Order 2020-03 is in effect, those deadlines are automatically extended to (30 days) beyond the termination of the order.

Once the requested information has been received and reviewed, this office will coordinate agency comments and will prepare a recommendation for the Planning Director's action.

Please include a copy of this letter with your submission.

If you have any questions, please contact Brenda Luber at (410) 313-2350 or email at BLuber@howardcountymd.gov.

Sincerely, DocuSigned by:

Anthony Cataldo, AICP, Chief
Division of Land Development

AC/bl

cc: Research
Century Engineering – Karen Bowman
File
DLD – Julia Sauer



Howard County Maryland
Department of Planning and Zoning
 3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:

File No.

Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description:

Subdivision Name/Property Identification:

Location of property:

Existing Use:

Proposed Use:

Tax Map:

Grid:

Parcel No:

Election District:

Zoning District:

Total site area:

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:

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. Please use the additional page if needed.

Section Reference No.	Brief Summary of Request

Section Reference No.	Brief Summary of Request

Signature of Property Owner: *Anish Dewani*

Date:

Signature of Petitioner Preparer: *KarBoun*

Date:

Name of Property Owner:

Name of Petition Preparer:

Address:

Address:

City, State, Zip:

City, State, Zip:

E-Mail:

E-Mail:

Phone No.:

Phone No.:

Contact Person:

Contact Person:

Owner's Authorization Attached