



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

March 15, 2022

Christine Lowe
Howard County DPW
9801 Broken Land Pkwy
Columbia, MD 21046
Sent via email: cslowe@howardcountymd.gov

RE: WP-22-004 Bonnie Branch Phase II

Dear Ms. Lowe:

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 March 10, 2022 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 the Department of Public Works recused) considered and **approved** your request for alternative compliance with respect to **Section 16.116(a)(1), Section 16.116(a)(2)(ii), and Section 16.116(b)(1)** of the Subdivision and Land Development Regulations to disturb areas of floodplain, wetland buffer, stream buffer, and steep slopes to repair an eroding stream bank. Please see the attached Final Decision Action Report for more information.

On March 10, 2022 and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the 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) and Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations to use the limit of disturbance to calculate the net tract area and to remove two specimen trees for the repair of an eroding stream bank. Please see the attached Final Decision Action Report for more information.

On March 10, 2022 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 16.155(a)(1)(i)** of the Subdivision and Land Development Regulations to allow the alternative compliance exhibit to serve as the site development plan.

Pursuant to Section 16.115(c)(2) of the Subdivision and Land Development Regulations, **no action** is required for **Section 16.115(c)(2)**. The Regulations allow DPZ, upon the advice of the Department of Inspections, Licenses and Permits, the Department of Public Works, the Department of Recreation and Parks, the Soil Conservation District, or the Maryland Department of the Environment, to permit clearing, excavating, filling, altering drainage, or impervious paving to occur on land located in a floodplain. Any proposed construction of a structure located within a floodplain shall be subject to the requirements of the Howard County Building Code. This request is being sought by the Department of Public Works and DPZ has received advice from the Department of Recreation and Parks and Soil Conservation District, as well as OCS, MDOT, and OOT in support of the request. A separate approval through the alternative compliance process is not necessary.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of Section 16.155(a)(1)(i) would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the one (1) item you were required to address, pursuant to Section 16.104(a)(1):

1. Unreasonable hardship or practical difficulties may result from strict compliance with the regulations.

Strict compliance with the regulation would require the applicant to submit a formal Site Development Plan for the proposed project. This would result in an unreasonable hardship since the alternative compliance plan exhibit contains all necessary information for permitting and construction. Approval of the alternative compliance promotes efficiency of the plan review process as the alternative compliance drawings include all relevant information needed for this project's improvements.

Approval of alternative compliance of Section 16.116(a)(1), Section 16.116(a)(2)(i), and Section 16.116(b)(1) is subject to the following conditions:

1. The disturbance to the stream, wetlands, their buffers, and steep slopes shall be limited to the grading as shown on the alternative compliance exhibits. Any natural vegetation disturbed during the grading for the stream stabilization must be restored to its natural condition to the greatest extent possible once the construction is complete.
2. A copy of the Maryland Department of Environmental (MDE) permit approval for the disturbance to the stream, wetland, and their buffers must be provided to DPZ prior to filing of the grading permit application.

Approval of alternative compliance of Section 16.155(a)(1)(i) is subject to the following conditions:

1. The alternative compliance plan exhibit shall serve as the substitute for a site development plan. No disturbance is permitted beyond the 0.84-acre limit of disturbance as shown on the alternative compliance exhibit, unless it can be sufficiently demonstrated by the applicant to be justified.
2. The applicant shall comply with all grading permit requirements from the Department of Inspection, Licenses and Permits and Howard Soil Conservation District.
3. The applicant shall obtain all required authorizations from the Maryland Department of the Environment and the U.S. Army Corps of Engineers. Provide approval letter from MDE and/or the USACE prior to filing of the grading permit application.

Approval of alternative compliance of Section 16.1201(v) and Section 16.1205(a)(3) is subject to the following conditions:

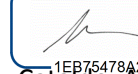
1. The alternative compliance approval applies only to the proposed development and grants the applicant the authority to remove the two (2) specimen trees (Specimen Tree Tag #903 and Tag #912) as shown on the alternative compliance exhibit. The removal of any other specimen tree on the subject property is not permitted under this approval.
2. The removal of the two (2) specimen trees is permitted and requires the planting of four (4) native shade trees onsite which exceeds the requirements per Section 16.1216(d) of the Forest Conservation Regulations. The native trees shall be a minimum of 3" DBH.
3. Protective measures shall be utilized during construction to protect the specimen trees that are to remain, including protection of their critical root zones.

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 Kathryn Bolton, at (410) 313-2350 or email at kbolton@howardcountymd.gov.

Sincerely,

DocuSigned by:



Anthony Cataldo, AICP, Chief
Division of Land Development

AC/kb

cc: Research
DLD - Julia Sauer
Real Estate Services
Marian Honeczy- DNR
Katie Talley, Biohabitats: ktalley@biohabitats.com



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

ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

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

RE: **WP-22-004 Bonnie Branch Phase II**
Request for an alternative compliance to Sections 16.115(c)(2), 16.116(a)(1), 16.116(a)(2), 16.116(b)(1), 16.155(a)(1)(i), 16.1201(v), and 16.1205(a)(3) of the Subdivision and Land Development Regulations.

Applicant: Christine Lowe
Howard County Department of Public Works
9801 Broken Land Parkway
Columbia, Maryland 21046

Pursuant to Section 16.116(d), the Director of the Department of Planning Zoning, Director of the Department of Public Works and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for an alternative compliance with respect to **Section 16.116(a)(1), Section 16.116(a)(2)(ii) and Section 16.116(b)(1)** of the Subdivision and Land Development Regulations. The purpose is to disturb areas of floodplain, wetland buffer, stream buffer, and steep slopes to repair an eroding stream bank.

Pursuant to Section 16.1216, the Director of the Department of Planning 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 16.1205(a)(3)** of the Forest Conservation Regulations. The purpose is to use the limit of disturbance to calculate the net tract area and to remove two specimen trees for the repair of an eroding stream bank.

The Directors deliberated the application in a meeting on March 10, 2022.

Subtitle I, Article II, Section 16.116(a)(1), Section 16.116(a)(2)(ii), and Section 16.116(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 unreasonable hardship or practical difficulty. This determination is made with consideration of the alternative compliance 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 other in similar areas.

DPW's goal of the proposed project is to stabilize the eroding stream bank of the existing stream channel, which will create a temporary impact to the stream, the wetlands, their buffers, and steep slopes. Strict conformance

with the requirements would not allow the County to stabilize an eroding stream bank, which is a common practice in similar areas and conditions.

The proposed stabilization project is within County own Open Space Lot 150 acquired through the subdivision of Autumn View, Section 3 and Open Space Lot 5 of Bonnie Branch Point. The completion of this Capital Project will improve the ecological function of the stream, the wetland, their buffers, and steep slopes. Once completed, all impacted areas will be restored to a more stable environment and replanted with native species.

2. The 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 work required to stabilize the eroding unnamed tributary of Deep Run's stream channel could not be completed without impact to the stream, the wetland, their buffers, and steep slopes. Work adjacent to the stream and within these environmental features is required, and the goal of the project could not be met without these impacts.

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

The variance would not confer the County a special privilege that would be denied to other applicants looking to temporarily impact the stream, wetland, their buffers, and steep slopes for the purpose of stream stabilization.

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

Modification would not detrimental to the public health; safety or welfare, or injurious to other properties as the proposed impacts would be beneficial by reducing sediment and nutrients in the County's waterways. Increased safety would occur from stabilizing the area around the stream banks with native vegetation and reducing further erosion.

5. Any area of disturbance is returned to its natural condition to the greatest extent possible.

The temporary disturbance these environmental features will result in an improved stream channel and banks once the project is completed. The stream banks, buffers, and other disturbed areas will be planted with native, herbaceous seed, shrubs, and trees to restore the area to natural conditions.

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

The project is considered self-mitigating and the condition of the affected environmental features will be improved with the completion of the project. During construction, pump around practices and filter bags are provided to ensure clean water is either being diverted around the active construction area or any dirty water is filtered before leaving the construction area.

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.

The LOD was delineated to minimize impacts to existing vegetation and trees while still accommodating the area needed for the stream channel improvements. The LOD outside of the stream channel will be planted with native, herbaceous seed, shrubs, and trees to restore the area to natural conditions.

Directors Action: Approval of alternative compliance of Section 16.116(a)(1), Section 16.116(a)(2)(i), and Section 16.116(b)(1) is subject to the following conditions:

1. The disturbance to the stream, wetlands, their buffers, and steep slopes shall be limited to the grading as shown on the alternative compliance exhibits. Any natural vegetation disturbed during the grading for the stream stabilization must be restored to its natural condition to the greatest extent possible once the construction is complete.

2. A copy of the Maryland Department of Environmental (MDE) permit approval for the disturbance to the stream, wetland, and their buffers must be provided to DPZ prior to filing of the grading permit application.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

(RECUSED)

Thomas Meunier, Director
Department of Public Works

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

Subtitle 12, Section 16.1201(v) and Section 16.1205(a)(3)

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

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

The County is proposing to temporarily impact two (2) County owned properties to preform work within their regulated waterways. Using the LOD as the net tract area will allow the County to perform work without incorporating the undisturbed County own lands outside the project limits when calculating the forest conservation requirement.

The applicant's submitted request listed the removal of one (1) Specimen Tree Tag #903, the 31" Tulip Poplar. However, after review of the exhibits, staff believes that the impact to Specimen Tree Tag #912, the 44" Horse Chestnut, would also be greater than the permitted 30% impact to the critical root zone (CRZ). Due to the proximity of these two specimen trees to the stream bank, their CRZ will be impacted greatly with the necessary stabilization work. The area of LOD was determined to minimize impacts to existing vegetation and trees, while still accommodating the area needed for the stream channel improvements. DPZ staff is supportive of the removal of these two trees in order to perform the work and reduce the removal of younger, healthier trees.

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

Allowing the LOD to be use in place of the New Tract Area, provides for the forest conservation regulations to be applied to the portions of property which are physically impacted by the stream restoration. Enforcement of these

regulations would cause the County to calculate a forest conservation obligation for the entirety of the two parcels when the project is localized to the stream stabilization work only.

Specimen trees #903 and #912 will be significantly impacted by the proposed stream restoration work. Requiring these two trees to remain would inhibit the restoration work to continue and lead to additional destabilization of the stream bank. The proposed work is being done in the public interest and the trees are proposed to be replaced 2:1 in addition to the corrective stream measures. Enforcement of the regulations would deprive the County from stabilizing the stream bed and banks which, if left unattended, could impact County infrastructure.

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

Granting of a variance will not adversely affect water quality as the purpose of the project is to repair the stream channel and its associated banks that are actively eroding and contributing sediment and nutrients into the County's waterways. Removal of the specimen trees is necessary for the project to be completed and their removal will be mitigated by planting of 4 native trees onsite.

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

Granting the variance will not confer the applicant a special privilege that would be denied to other applicants. The Capital Improvement project proposed only temporary impacts to the area of LOD, which will be restored to natural conditions. The impacts to the CRZ of the two specimen trees could leave the trees in a poor condition, removal of these trees would be considered best practice among arborists and land management professionals. Mitigation will be provided for the specimen trees which are removed.

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

The variance request is not based on conditions or circumstances which are the result of actions made by the applicant. The applicant did not cause the stream erosion that is being repaired through this project. The request to use the LOD as the net tract area is intended to delineate the forest conservation obligation for the Capital Project. The impact and removal of the trees is based on their proximity to the stream and they will need to be removed for the stream repair.

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.

The variance request is a result of the property's physical characteristics and there is no evidence that the conditions arose from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

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

The majority of area within the LOD is covered by 100-year floodplain which is netted out of the net tract area, therefore, forest conservation obligations were not calculated for that portion of the LOD. Once the project is completed the area will be planted with native herbaceous seed, shrubs, and trees to restore the area to natural conditions. A site visit conducted by staff states that the tree is currently in fair condition and a significant amount of roots are exposed due to the erosion along the stream bank. It was also noted that a number of other trees were observed to have fallen into the stream due to the surrounding stream bank erosion.

Directors Action: Approval of alternative compliance of Section 16.1201(v) and Section 16.1205(a)(3) is subject to the following conditions:

1. The alternative compliance approval applies only to the proposed development and grants the applicant the authority to remove the two (2) specimen trees (Specimen Tree Tag #903 and Tag #912) as shown on the

alternative compliance exhibit. The removal of any other specimen tree on the subject property is not permitted under this approval.

2. The removal of the two (2) specimen trees is permitted and requires the planting of four (4) native shade trees onsite which exceeds the requirements per Section 16.1216(d) of the Forest Conservation Regulations. The native trees shall be a minimum of 3" DBH.
3. Protective measures shall be utilized during construction to protect the specimen trees that are to remain, including protection of their critical root zones.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

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Raul Delerme

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Raul Delerme, Director
Department of Recreation and Parks

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

cc: Research
OCS, Joshua Feldmark
DPW, Thomas Meunier
DRP, Raul Delerme



DPZ Office Use only: File No. Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description:

The Howard County Department of Public Works (DPW) Stormwater Management Division (SWMD) is undertaking a task under Capital Project D-1176 to stabilize 676 linear feet of stream adjacent to Bonnie Branch Road in Ellicott City, MD. This project will reduce channel bed and bank erosion, which is eligible for nutrient and sediment removal credits for Howard County's MDE/TMDL requirements.

Subdivision Name/Property Identification: Bonnie Branch Phase II	
Location of property: SSW of 4556 College Ave, Ellicott City, MD 21043	
Existing Use: Forested stream corridor, Residential	Proposed Use: Forested stream corridor, Residential
Tax Map: 31	Grid: 4
Parcel No: 814 & 399	Election District: 2
Zoning District: R-ED & R-20	Total site area: 0.8 acres

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:

This County Capital Project D-1176 has no subdivision plans or Board of Appeals petitions currently open. This is the first submittal for an alternative compliance. This project is located on two separate County owned parcels and looks to stabilize an actively eroding stream to reduce channel bed and bank erosion. While the nature of this project requires unavoidable and necessary disturbances to the stream channel, steep slopes, existing forest, and wetland buffers, the shown limits of disturbance was developed to reduce these impacts as best as possible while meeting the intent of the project goals.

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
16.104(a)(2)(ii)	Waiver of the requirements of Subtitle 1 if necessary for the construction of a stormwater management or flood control facility as part of a capital project
16.116(c)(1)	Necessary disturbance of streams, wetland buffer, stream buffer and steep slope to stabilize existing stream bed and banks from further erosion and subsequent loss of sediment and nutrients downstream

Section Reference No.	Brief Summary of Request
16.116(d)	Waiver allowing alternative compliance because area of disturbance will return to natural condition; limits of disturbance was reduced as best as possible to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat; grading and removal of trees was limited to the extent needed to stabilize the channel bed and banks and will be re-vegetated with native trees, shrubs, and herbaceous plantings.
16.1201(v)	Definition of net tract area for forest conservation calculations

Signature of Property Owner: *Christine Lowe* **Date:** _____

Signature of Petitioner Preparer: _____ **Date:** _____

Name of Property Owner: Howard County Dept. of Public Works _____ **Name of Petition Preparer:** _____

Address: 9801 Broken Land Parkway _____ **Address:** _____

City, State, Zip: Columbia, MD 21406 _____ **City, State, Zip:** _____

E-Mail: cslowe@howardcountymd.gov _____ **E-Mail:** _____

Phone No.: 410-313-0522 _____ **Phone No.:** _____

Contact Person: Christine Lowe _____ **Contact Person:** Christine Lowe _____

Owner's Authorization Attached

Section Reference No.	Brief Summary of Request