



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
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Marsha S. McLaughlin, Director

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November 22, 2010

Don Reuwer  
Fal Properties  
5300 Dorsey Hall Drive, Suite 102  
Ellicott City, MD, 21042

RE: WP-11-065 Cherrytree View (SP-11-001)

Dear Mr. Reuwer:

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 **Section 16.120(b)(4)(iii)(c)** – For R-20 infill subdivisions that are restricted in using optional lot sizes under Section 16.121(a), steep slopes, floodplains, wetlands, wetlands buffers, streams, and stream buffers may be located on lots with a 35' setback from the building envelope (from which a deck may project 10' beyond). The applicant seeks to be covered under Section 16.120(b)(4)(iii)(c) even though they are not restricted in using optional lot sizes as defined under Section 16.121(a).

Approval is subject to the following conditions:

1. A 35-foot setback will be maintained from environmental features and buffers located on all residential lots. A deck may project 10' beyond the building envelope.
2. An open space lot (Lot 12) containing a portion of the required 6% of open space must be provided and the required recreation open space will be provided at this location. This open space is to be owned by the Homeowners Association of this subdivision.
3. An additional open space lot to be owned by the Department of Recreation and Parks will be provided as a 35' wide strip between Lots 3 and 4 (also to wrap to the property corner behind Lot 3 to encompass the majority of stream buffer), to be known as Open Space Lot 13, and containing the remaining portion of the required 6% open space areas.
4. No grading, removal of vegetative cover and trees, paving and new structures are permitted within the 25' wetlands buffer and the 50' stream buffer.

Our decision was made based on the following:

**Extraordinary Hardship or Practical Difficulty** - Under the 2007 MDE Stormwater Management Regulations, it would be practically difficult to reduce all of the lots to less than 20,000 square feet each if the stormwater management apparatus are to remain on the lots. Furthermore, the location of the environmental features are dispersed into very localized areas on the project site, which makes it more difficult to create an open space lot that encompasses the environmental features throughout the site while meeting the minimum open space requirements. The result would likely be a significant amount of open space above the minimum required or small, isolated open space lots on the site. Since the Department of Recreation and Parks indicated that the environmental features were too

isolated and minor in size to interest them for individual ownership, and they identified a location on site that would more fully meet the Department's needs in providing public access to a larger county-owned property, continuing to require isolated environmental features onto open space while reducing the lot yield for the subdivision can be determined as an extraordinary hardship or practical difficulty.

**Implementation of an Alternative Proposal** – Alternatively, environmental features can be placed on individual open space lots throughout the site or in one large, irregularly shaped open space lot along the project perimeter. However, it may still be difficult for the developer to meet other suitability requirements in doing so, such as creating additional recreational open space that can serve as a focal point along the street or subdivision entrance. The alternative proposed site plan layout which provides the 6% open space lots and a recreation area will be able to meet this suitability requirement.

**Not Detrimental to the Public Interest** – Since the minimum required open space and recreation open space will still be provided for this subdivision, and the environmental features on the lots will be required to have a minimum 35' setback maintained of similarly sized lots not able to use the optional lot size clause of Section 16.121a, staff believes that allowing the environmental features to remain on the rear of these lots not to be detrimental to the public interest. The requested waiver will not alter the residential character of the community and will not impair the appropriate use or development of surrounding properties.

**Will Not Nullify the Intent or Purpose of the Regulations** – The intent of Section 16.121(a) for public sites and open space is to properly locate and preserve open space which protect environmental resources and provides for recreation and public use, and to equitably apportion costs of providing the sites necessary to serve the additional families brought into the community by subdivision or developments on the basis of the additional need created. The intent of Section 16.120(b)(4)(iii) is to ensure that the lot design allows for a usable lot in which building can be situated at a suitable distance that is safe for both the structures and for maintaining the quality of the environmental features. Since the minimum required open space and recreation open space will still be provided for the site and there will be no impacts to the environmental features and buffers, the Department of Recreation and Parks does not express interest in obtaining the environmental features on-site, and the environmental features will not be allowed any closer to the building envelope than allowed for other similarly sized lots, the approval of this waiver does not nullify the intent or purpose of the regulations.

Indicate this waiver 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 requested waiver will remain valid for one year from the date of this letter or as long as this subdivision / remains in active processing.

If you have any questions, please contact Jill Manion-Farrar at (410) 313-2350 or email at [jfarrar@howardcountymd.gov](mailto:jfarrar@howardcountymd.gov).

Sincerely,



Kent Sheubrooks, Acting Chief  
Division of Land Development

KS/JMF

cc: Research  
DED  
Fisher Collins and Carter  
SP-11-001