



Howard County Department Of Planning And Zoning

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Marsha S. McLaughlin, Director

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July 18, 2011

John E. Hartner, Sr.
620 Sobrina Farms Court
Woodbine, MD 21797

RE: WP-11-190 Hartner Property

Dear Mr. Hartner:

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 16.120(b)(4)(iii).b of the Amended Fifth Edition – For a lot or buildable preservation parcel of 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.

Section 16.1209(a) of the Amended Fifth Edition – A person required to provide retention, afforestation or reforestation under this Subtitle shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the county.

Approval is subject to the following ten (10) conditions:

- 1) The applicant shall prepare and submit a final resubdivision plat for the subject property for review and approval by the Department of Planning and Zoning.
- 2) On the plat of resubdivision provide a brief description of the waiver petition (WP-11-190), as a general note to include request(s), section(s) of the regulations, action, date of action and all conditions of approval.
- 3) A presubmission community meeting shall be held prior to the submission of the final plat for this property.
- 4) The submission and approval of an environmental concept plan (ECP) for stormwater management purposes is required prior to submission of the resubdivision plat.
- 5) The forest conservation easement must be established and conservation management practices must be adhered to in accordance with the Forest Conservation Manual.

Conditions of Approval continued....

- 6) A professionally certified **environmental analysis report** for this property must accompany the plat submission.
- 7) No grading, removal of vegetative cover and trees, paving and new structures are permitted within the 100 year floodplain, stream and its buffer for proposed Lot 11.
- 8) At the final resubdivision plat submission, the applicant should make all practical efforts to keep the distance between the proposed house sites and the forest retention easement areas at a maximum to avoid future encroachments by homeowners into the forest conservation easement areas.
- 9) At the final plat submission, the applicant shall provide the required 35-foot BRL from the stream buffer and forest conservation easements.
- 10) The approval of this resubdivision plan is subject to the approval by the Health Department for the well sites and septic easement.

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

By requiring the petitioner to comply with Section 16.120(b)(4)(iii)b. of the Subdivision Regulations, an undue hardship would be imposed on the petitioner. Since the proposed design of the subdivision will be influenced by the location of septic easement areas, a subdivision with a cluster design (1-acre buildable lots with the forest and stream on a separate preservation parcel), will not be practical due to the Health Department's specific requirements for well location and septic areas (based on the percolation test). Furthermore, strict compliance to require the petitioner to cluster would result in an unnecessary hardship of redesigning a subdivision plan that features a traditional 3-acre lot size design; the re-evaluation of percolation testing and well location studies; and the non-compatibility that a cluster design may cause with the surrounding existing community of 3 plus acre lots.

By requiring the petitioner to comply with Section 16.1209(a) of the Subdivision Regulations, it would impose a financial hardship to the petitioner. The petitioner is not a large developer and is not in the business of land development. He is simply seeking to create 3 additional lots from 2. The petitioner stresses that the current economic environment poses a significant extraordinary hardship in accumulating funds necessary to secure financial surety for the proposed forest retention areas. Furthermore, the County has recently enacted a policy not requiring the developer to post retention surety for forest conservation. Nonetheless, the petitioner is requesting that this Section of the Regulations (the posting of forest conservation retention surety) still be considered for a waiver, based on the hardship justification, just in case the "No Retention" surety policy ceases to exist prior to the recording of the proposed subdivision.

Alternative proposal:

The only other alternative proposal is to cluster the lots and to have the forest conservation (forest retention) placed in a preservation parcel, but as cited (above), creating 1-acre lots would not be practical due to the Health Department's requirements for percolation and well locations. The developer has proposed to preserve the environmental areas by placing the required buffers around the credited forested areas, where a small stream is located, thus retaining existing forest resources that would be protected by conservation easements.

Not detrimental to public interest:

By granting this waiver, it will not have any detrimental impacts to the public interests, will not alter the essential character of the area (the proposed lots will be at the 3-acre lot size minimum) and will not impair the use or development of the surrounding properties. The entire site is zoned for residential use and the proposed forest retention area and environmental features are in close proximity to other priority forest and environmental areas. Therefore, the applicant is seeking to preserve the natural ambiance that presently exists in the area. In regards to the on-site forest retention easements, the petitioner understands his responsibility to educate the public about the easement areas and plans to do so. The petitioner has indicated that these efforts to protect and preserve these forest conservation areas will provide for more naturalized areas located, within the scope of the planned resubdivision to provide an increased quality of life for the residents.

Not nullify the intent or purpose of the regulations:

Based upon all of the above justifications, approval of this waiver request will not nullify the intent or purpose of the Regulations which allows the petitioner to locate environmental features on lots less than 10 acres in size. A total of 4.9 acres of on-site forest will be preserved as "forest retention" and will be protected by a forest conservation easement. A stream will be protected by buffers and a 35-foot environmental setback from the buffers and the forest conservation easement will be provided for additional protection. Even after ensuring the protection of environmental features, usable yard/lot area shall be available for both the existing and newly created lots.

Indicate this waiver petition file number, request, section of the regulations, action, conditions of approval, and date on all future DPZ plans and building permits. **This requested waiver will remain valid for one year from the date of this letter or as long as the plat of resubdivision remain 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

Enc: DLD, DED, Health

cc: Research

DED

Forest Conservation Coordinator

Health Department