



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

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December 13, 2011

George and Shirley Harbin
15055 Old Frederick Road
Woodbine, MD 21797

Dear Mr. and Mrs. Harbin:

RE: WP-12-079, Harbin Acres (F-12-046)

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) (5) (i) and (ii)** which states for residential subdivision, a noise study may be required in accordance with the Design Manual. The subdivision layout shall ensure that the noise level in the rear yard does not exceed the standard set in the Design Manual and where residential lots are impacted by excessive noise levels from a highway, noise mitigation shall be provided, and to **Section 16.120(c)(2)(i)** which requires all lots, preservation parcels, or bulk parcels for single-family detached dwellings shall have minimum lot frontages on approved streets within a public right-of-way which provides access to the property as follows: 20 feet for single pipestem and non-pipestem lots and preservation parcels which cannot be further divided under the current zoning. This waiver applies to new Lot 6 which has a proposed 12-foot wide pipestem for frontage.

Approval is subject to the following conditions:

1. Compliance with the Development Engineering Division comments dated November 16, 2011.
2. The Maryland State Highway Administration is not responsible for noise mitigation now or in the future for the subject Lots 4, 5 and 6.
3. The petitioner shall add a note on the plat across Lots 4 and 6 to read as follows: "This lot is within an area considered to exceed generally accepted noise levels established by the U.S. Department of Housing and Urban Development."
4. The petitioner shall add a General Note to the plat indicating the Waiver Petition number, section of regulations waived, and description of the regulation waived, action and date of action.
5. The petitioner shall provide evergreen plantings between the new house for Lot 6 and the I-70 noise source to help lessen excessive noise levels. The number and type of evergreen trees are to be evaluated and determined on the supplemental landscape plan under F-12-046.
6. The following house design guidelines shall apply to the new house for Lot 6 to be constructed:
 - a) The new house shall be located on the subject lot as close as possible to the front 75' building restriction line away from the I-70 right-of-way.
 - b) The new house shall be oriented on the subject lot to afford the optimal protection from the I-70 noise source.
 - c) The new house shall be constructed with acoustical insulation and other noise attenuation materials such as insulated siding, double or triple pane windows and insulated doors, etc. to provide maximum protection from excessive noise levels.
7. Compliance with SRC agency comments for F-12-046.

Our decision was made based on the following:

Extraordinary Hardship or Practical Difficulty: Strict compliance with the Regulations will cause unnecessary hardship and practical difficulties if the applicant were not permitted to reduce the 20' required frontage to a 12-foot wide pipestem.

Extraordinary hardship will occur if the owner has to construct a noise mitigation wall along I-70 for new Lot 6 because although the 65 dba noise line encroaches within the rear portion of Lot 6, the new house and its usable rear yard area must be located at least 25 feet from the noise line. Therefore, the new house will not be located within the 65 dba noise line area.

Alternative Proposals: All lots will share one common access point onto Old Frederick Road via a shared driveway. The new house will be constructed with acoustical insulation and other noise attenuation materials and will be located as far as possible from the I-70 right-of-way.

Not Detrimental to the Public Interest: Approval of this waiver request, for a reduction in the 20' frontage requirement along Old Frederick Road, will not be detrimental to the public interest because safe vehicular access will be provided. All lots will access Old Frederick Road at one location with a shared driveway. The access point onto Old Frederick Road will be safe, adequately located and designed to comply with minimum Howard County Design Manual Standards. The new house will be constructed with acoustical insulation and other noise attenuation materials and will be located as far as possible from the I-70 right-of-way.

Not Nullify the Intent or Purpose of the Regulations: The intent of the Regulations is to ensure that properties have sufficient, legal and safe access onto an approved County road. A reduction in the lot frontage for the proposed lot will continue to provide safe access onto Old Frederick Road. The approval of the waiver request will not nullify the intent or purpose of the Regulations since the proposed entrance complies with all required sight distance requirements and the lots will be served by a shared driveway.

The approval of the waiver request dealing with the noise study and noise mitigation will not nullify the intent of the Regulations. The new home will be constructed with acoustical insulation and will be located away from the I-70 right-of-way.

As of the date of this letter, the Planning Director **denied** your request to waive **Section 16.120(b)(4)(iii)b.** which prohibits floodplains, wetlands, streams, their buffers and forest conservation easements on lots or buildable preservation parcel under 10 acres in size. The waiver request is to allow forest conservation easements for afforestation on-site within Lot 4 which is 6.06 acres in size, and **Section 16.1201(n)** – "Net Tract Area" means the total area to the nearest 1/10 acre, whether forested or not, of a proposed development, exclusive of any 100-year floodplain, utility transmission line easements, or preservation parcel as referenced in the zoning regulations. "Net tract area" is to be used in calculating any reforestation or afforestation obligations that may be created by the proposed development. This request is to allow the net tract calculation to be based on Lots 5, 6 and the driveway portion of Lot 4.

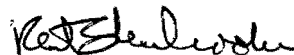
Denial was based on the following reasons:

1. The Director's office has implemented a forest easement protection policy which restricts or prohibits the establishment of new forest conservation easements especially new reforestation/afforestation planting areas within residential lots which are not also encumbered by other environmental features (i.e. wetlands, streams, 100-year floodplain) and buffers which act as an additional level of protection of the forested area.
2. All subdivision and resubdivisions plans must comply with the forest conservation plan obligation requirements at the time of subdivision plan submission to make sure calculations, priorities and preferred methods of addressing the forest obligation are properly evaluated.
3. A waiver to allow the limit of disturbance to serve as the Net Tract Area is only permitted for existing non-residential lots or parcels, not residential properties going through subdivision.
4. Lot 4 is 6.0672 acres and is therefore, eligible for additional resubdivision which will have detrimental impacts by decreasing the area of Lot 4 further from 6 to 3 acres for 2 lots and allow 2 dwellings to be located in close proximity to forest conservation planting easements.
5. The subject site is zoned "RC-DEO" which allows for subdivision of the property using the rural cluster subdivision procedures. The option to subdivide by clustering would afford protection of the forest conservation easement within a preservation parcel.
6. No justification was provided to explain why the afforestation obligation cannot be reasonably provided off-site or with the purchase of credits at a forest mitigation bank.
7. The narrow width strips proposed for the 1.3 acre afforestation easement fails to meet any of the 7 priority locations established under Section 16.1208(a) of the Howard County Code such as environmental areas or buffers, enhance wildlife habitat areas and adjacency to existing forests, etc.

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 Brenda Luber at (410) 313-2350 or email at BLuber@howardcountymd.gov.

Sincerely,



Kent Sheubrooks, Chief
Division of Land Development

KS/BL

Enclosure (DED comments)

cc: Research
DED
LDE
F-12-046