



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

August 16, 2018

Elm Street Development
Attn: Jason Van Kirk
5074 Dorsey Hall Road, Suite 205
Columbia, MD 21042

RE: WP-17-105, Simpson
& Denualt Properties
Alternative Compliance Request

Dear Mr. Van Kirk:

The Director of the Department of Planning and Zoning considered your request for an alternative compliance from the Howard County Subdivision and Land Development Regulations.

As of the date of this letter, the Planning Director **approved** your request for an alternative compliance of **Section 16.1205(a)(7), Section 16.147, and Section 16.116**. Approval is subject to the following conditions:

1. Removal of the forty (40) specimen trees will require replacement mitigation at a ratio of two (2) larger caliper trees (at least 3 ½ to 4 inches dbh) for each specimen tree removed. The mitigation planting can be provided as part of the required perimeter landscaping for this project. You must submit a Supplemental Plan with your Final Subdivision Plan for this property that shows how you plan to address this alternative landscape mitigation. Removal of any additional specimen trees will require a new alternative compliance petition.
2. An adjoinder deed must be prepared to deed the fee simple pipestems to the Leaf Property, Parcel 111 and Mauck Property, Parcel 98, and create an easement for access until the public road that is proposed with the subdivision is dedicated (at which time the easement must be terminated). A revertible clause must be included in the deed.
3. Non-buildable bulk parcels must be created on the plat that will then be deeded to the respective property owners (Leaf/Sines, Clinton Simpson, and Mauck) to provide access to the public right-of-way that is proposed with the subdivision.
4. The adjoinder deeds shall be recorded in the Land Records Office prior to submission of the final subdivision plan for this project. A copy of the approved alternative compliance plan exhibit shall be attached as an exhibit to the recorded deeds.
5. Recorded copies of the adjoinder deed shall be submitted to this Department for file retention purposes within 30 days of recordation.
6. The adjoinder deed shall reference the alternative compliance petition file number (WP-17-105).
7. The two parcels reconfigured by the adjoinder deed shall comply with the RR-DEO Zoning Regulations, including, but not limited to, the building setbacks and accessory structure uses.

8. Approval of this alternative compliance petition is to create the two private strips of land to allow access to Parcel 111 and Parcel 98. No other lots are being legally endorsed. No additional lots are being created and no new development, construction, or improvements are permitted under this request.
9. Any future subdivision of either parcel will require full compliance with the Zoning and Subdivision and Land Development Regulations unless alternative compliance petitions are approved.
10. Approval of Section 16.116 authorizes disturbances within the wetlands, wetlands buffer, and stream buffer as depicted on the alternative compliance petition plan exhibit. No additional activities within the wetlands, 25-foot wetlands buffer, and 50-foot stream buffer are authorized by this approval, unless it can be demonstrated by the applicant at the final plan submission to be justified.
11. Approval from MDE and the Army Corps of Engineers are required for the environmental disturbance within the wetlands, stream, and their buffers. The MDE tracking permit number shall be listed and described as a general note on the final plan.

Our decision was made based on the following:

Extraordinary Hardships or Practical Difficulties:

Extraordinary hardship would result from the applicant retaining the specimen trees located on the property due to the location of the trees in relation to other environmental features being preserved on the parcel. Because of these factors, it is not possible to retain the forty (40) specimen trees and still maintain reasonable development of the property. The retention of the specimen trees cannot be accomplished without severely restricting the proposed subdivision and intended use of the site. Additionally, extraordinary hardships or practical difficulties would arise from not allowing the disturbance of streams, stream buffers, wetlands, and floodplains, since the existing farm pond is located in the path of an existing stream and must be removed for health and safety reasons. The Planning Board reviewed the petitioner's proposal on June 21, 2018, and found that there were no potential environmental issues or natural resources affected by the proposed subdivision.

Finally, extraordinary hardships or practical difficulties would arise from not allowing the property owner to process adjoiner deeds to allow access for neighboring property owners while the plan is being processed.

Alternative Proposal:

An alternative proposal would require the applicant to retain all specimen trees on the parcel. However, due to the location of the trees in relation to other environmental features being preserved on the parcel, retention of the specimen trees cannot be accomplished without severely restricting the proposed subdivision and intended use of the site. Therefore, in this situation, it is reasonable to allow the applicant to remove the forty (40) specimen trees and permit alternative compliance with replacement mitigation planting for the removed specimen trees. Additionally, the only alternative to allowing the disturbance of streams, stream buffers, wetlands, and floodplains, would be to keep the existing farm pond intact. However, that existing farm pond was not built to code and presents a health and safety hazard to residents downstream. Therefore, in this situation, removal of the farm pond is preferred. Again, the Planning Board reviewed the petitioner's proposal on June 21, 2018, and found that there were no potential environmental issues or natural resources affected by the proposed subdivision.

Finally, the petitioner must execute adjoiner deeds for existing residents to have access to their properties while the plans are being processed. Without processing adjoiner deeds, this project cannot be accomplished without completely eliminating the intended use of the site.

Not Detrimental to the Public Interest:

The alternative compliance request will not be detrimental to the public interest since the applicant will be required to provide enhanced landscaping around the perimeter of the property. The enhanced perimeter landscaping will require the applicant to provide two (2) large caliper (at least 3 ½ to 4 inches dbh) shade trees for every one (1) specimen tree removed to help mitigate the loss of the forty (40) specimen trees. Additionally, since the existing farm pond must be removed because of health and safety concerns, constructing a road and utilities will not cause any greater disturbance than already proposed. Again, the Planning Board reviewed the petitioner's proposal on June 21, 2018, and found that there were no potential environmental issues or natural resources affected by the proposed subdivision.

Finally, allowing adjoinder deeds will provide continued access for existing residents, and will not be detrimental to the public interest.

Will not nullify the intent or purpose of the regulations:

Approval of this alternative compliance request will not nullify the Intent or Purpose of the Regulation because the Subdivision Regulations allow the Department of Planning and Zoning to authorize, "planting in an alternate location," if it is deemed to have a "greater environmental benefit." This Division has determined that the required enhanced landscaping around the perimeter of the property is deemed to have a "greater environmental benefit" than retention of the specimen trees. The enhanced perimeter landscaping will require the applicant to provide two (2) large caliper (at least 3 ½ to 4 inches dbh) shade trees for every one (1) specimen tree removed, and will help to mitigate the loss of the three specimen trees. Therefore, approval of this alternative compliance request will satisfy the Intent of the Regulations by creating an environmental benefit. Additionally, because of the current lot configuration, any alternate proposal would severely restrict or completely eliminate the proposed subdivision and intended use of the site. Therefore, allowing the proposed subdivision configuration, with minimal disturbance to streams, stream buffers, wetlands, and floodplains, would promote fairness and consistency in the application of the plan processing procedures.

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 J.J. Hartner at (410) 313-2350 or email at jehartner@howardcountymd.gov.

Sincerely,



Kent Sheubrooks, Chief
Division of Land Development

KS/JH

cc: Research
DED
Real Estate Services
Bohler Engineering, Attn: Brandon Rowe
File #'s WP-17-105 & SP-17-002