



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

August 25, 2017

Brian Goldstein
6314 Golden Star Place
Columbia, MD 21044

RE: WP-17-112, Oak Hill Subdivision
Alternative Compliance Decision

Dear Mr. Goldstein:

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 alternative compliance of **Section 16.1205(a)(7)** to allow removal of the eight (8) trees 30" in diameter or larger. The Planning Director also **approved** your request for alternative compliance of **16.145** to allow the project to skip preliminary equivalent sketch plan stage and proceed directly to final plan stage. The Planning Director **denied** your request for alternative compliance of **16.120(b)(4)(iii)c** to allow the building envelope on lots 4 and 5 to encroach into the 35 foot setback from stream buffers.

Approval is subject to the following conditions:

1. Removal of the eight (8) specimen trees will require replacement mitigation at a ratio of two (2) larger caliper native tree species (at least three (3) inches dbh) for each specimen tree removed (16 trees for this Alternative Compliance request (WP-17-112) and 18 trees for previously approved WP-17-014 (34 trees total)). 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 forest conservation/landscape mitigation.
2. All specimen trees except Specimen Tree "S" must be protected during construction. A registered arborist must inspect the trees and implement recommendations for professional pruning of roots and foliage. All pruning must be performed by a Maryland licensed tree expert. Tree protection fencing must be installed around the entire perimeter of each specimen tree to the greatest extent possible to prevent root and foliage damage during construction. Alternative designs of the site must be conducted by the consultant in order to minimize root damage.
3. The proposed driveway to serve new Lots 2 through 7 shall comply with Section 16.120(b)(6)(vi) of the Howard County Subdivision Regulations. Per Section 16.120(b)(6)(vi), "The driveways for pipestem lots shall be located at least ten feet from the project boundary to provide space for required perimeter landscaping to buffer the adjacent property. Where a ten-foot buffer is not possible due to the existing parcel's configuration, drainage, or easement constraints, or is undesirable because future subdivision of the adjoining parcel may require sharing the use-in-common driveway under subsection (c)(2)(iv) of this section, the Department of Planning and Zoning may approve a five-foot driveway buffer. In such instances, a hedge, solid fence, wall, or Type D landscape edge is required, except in the front setback from a public road, where a solid screen would block sight distance."

4. There shall be no disturbance within the stream buffer other than what was approved under WP-17-014.

Denial was based on the following reasons:

The request for alternative compliance of **16.120(b)(4)(iii)c** to allow the building envelope on lots 4 and 5 to encroach into the 35 foot setback from stream buffers was denied because the proposed encroachment is significant and a viable alternative is feasible. As an alternative proposal to encroaching into the 35 foot setback to a stream buffer, it is suggested that this project be redesigned, reducing the minimum lot sizes by increasing the open space percentage, and moving the smaller lots away from the stream buffer and stream buffer setback. This will allow the applicant to develop six lots while protecting sensitive environmental features on the site. It should be noted that to reduce the lot sizes further for this development, an alternative compliance request must be submitted and approved for smaller minimum lot sizes than allowed under Section 16.121.

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 unique shape of the existing parcels, the existing topography, the location of the existing sanitary sewer main, and the need to meet the latest MDE and Howard County stormwater management regulations. Because of these factors, it is not possible to retain the eight (8) specimen trees and still maintain reasonable development of the property. The retention of the specimen trees cannot be accomplished without severely restricting or completely eliminating the proposed subdivision and intended use of the site. The applicant's proposal will preserve 7 of 24 existing specimen trees on site. Extraordinary hardships or practical difficulties would also arise from requiring a preliminary equivalent sketch plan prior to submitting a final plan since the plan is not proposing any public roads, storm drain, or stormwater management facilities, and the final plans will be able to provide the detail required to demonstrate adequacy of public facilities and meet all of the required checklist items.

Extraordinary hardships or practical difficulties would not arise if the applicant is not permitted to encroach into the 35 foot setback from the stream buffer since it is possible to redesign the proposal and reduce the minimum lot sizes by increasing the open space percentage. This would allow for smaller lot sizes that could be shifted away from the stream buffer and stream buffer setback.

Alternative Proposal

The alternative proposal would require the applicant to retain all specimen trees on the parcel. However, due to the location of the trees and the size of the parcel, the retention of the specimen trees cannot be accomplished without severely restricting or completely eliminating the proposed subdivision and intended use of the site. Therefore, in this situation, it is reasonable to allow the applicant to remove the eight (8) specimen trees and permit alternative compliance with replacement mitigation planting for the removed specimen trees. Also, the applicant's engineer designed the use-in-common driveway so that it avoids specimen trees and allows for an overall site design that limits the removal of specimen trees where possible. An alternative proposal would require the applicant to submit a preliminary equivalent sketch plan prior to submitting a final plan. However, since there are no public roads, storm drain, or stormwater management facilities, and the final plans will be able to provide the detail required to demonstrate adequacy of public facilities and meet all of the required checklist items, requiring a preliminary equivalent sketch plan is not recommended by this Division.

As an alternative proposal to encroaching into the 35 foot setback to a stream buffer, it is suggested that this project be redesigned, reducing the minimum lot sizes by increasing the open space percentage, and moving the smaller lots away from the stream buffer and stream buffer setback. This will allow the applicant to develop six lots while protecting sensitive environmental features on the site. Since the encroachment is significant, and a viable alternative is feasible, this Division is recommending that Alternative Compliance for this section of the regulations be denied and that the project be redesigned.

Not Detrimental to the Public Interest

The alternative compliance request for specimen tree removal 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" dbh) shade trees for every one (1) specimen tree removed to help mitigate the loss of the eight (8) specimen trees. Since there are no public roads, storm drain, or stormwater management facilities associated with this project, and the final plans will be able to provide the detail required to demonstrate adequacy of public facilities and meet all of the required checklist items, not requiring a preliminary equivalent sketch plan will not be detrimental to public interest in any way.

Since the proposed encroachment into the 35 foot setback from the stream buffer is significant, and viable alternatives are available, it would be detrimental to public interest to proceed with the proposed design since it impacts environmentally sensitive features on the site.

Will not nullify the intent or purpose of the regulations

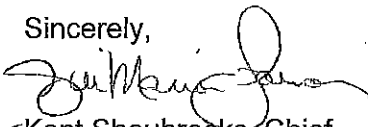
Approval of the alternative compliance request for specimen tree removal will not nullify the Intent or Purpose of the Regulation because the Subdivision Regulations allow the Department of Planning and Zoning to authorize, "planting in an alternate location," if it is deemed to have a "greater environmental 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" dbh) shade trees for every one (1) specimen tree removed, and will help to mitigate the loss of the eight (8) specimen trees and provide an additional buffer to the adjoining community. Therefore, approval of this alternative compliance request will satisfy the Intent of the Regulations by creating an environmental benefit. Additionally, not requiring a preliminary equivalent sketch plan would promote fairness and consistency in the application of the plan processing procedures.

Because the regulations specifically state that the building envelope may not be any closer than 35 feet from stream buffers, and an alternative design that avoids the 35 foot setback is feasible, approval of the proposed design would nullify the intent of the regulations.

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