



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

■ Ellicott City, Maryland 21043

■ 410-313-2350

Voice/Relay

FAX 410-313-3467

October 6, 2020

Elm Street Development
attn: Jason Van Kirk
5074 Dorsey Hall Road, Suite 205
Ellicott City MD 21042

RE: **WP-19-118 Bethany Glen (SP-19-005)**

Dear Mr. Van Kirk:

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

On September 24, 2020 and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, Director of the Department of Public Works and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to Sections 16.115(c)(2), 16.116(a)(1) and 16.116(a)(2) of the Subdivision and Land Development Regulations to disturb streams, stream bank buffers, wetlands, wetlands buffers, and floodplains to construct a public road (Road F), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen subdivision. Please see the attached Final Decision Action Report for more information.

On September 24, 2020 and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the removal of 16 and **denied** the removal of 3 of the proposed 19 specimen trees included in your request for a variance with respect to Section 16.1205(a)(3) of the Subdivision and Land Development Regulations in order to construct a public road (Road F), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen subdivision. Please see the attached Final Decision Action Report for more information.

Indicate this alternative compliance petition file number, request, section of the regulations, action, conditions of approval, and date on all subdivision plans/plats, 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 development plan is being actively processed in accordance with the processing provisions of the Regulations

If you have any questions, please contact Derrick Jones (410) 313-2350 or email at djones@howardcountymd.gov.

Sincerely,



Anthony Cataldo, Chief
Division of Land Development

AC/dj
attach: Director's Report
cc: Research
DED
DLD - Julia Sauer
DLD - Brenda Luber
DNR - Marian Honeczy
Real Estate Services
Bohler Engineering
Community Members



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350
Voice/Relay

FAX 410-313-3467

**ALTERNATIVE COMPLIANCE
FINAL DECISION ACTION REPORT**

DEPARTMENT OF PLANNING AND ZONING
OFFICE OF COMMUNITY SUSTAINABILITY
DEPARTMENT OF PUBLIC WORKS
DEPARTMENT OF RECREATION AND PARKS

RE: WP-19-118 Bethany Glen

Applicant: Elm Street Development
5074 Dorsey Hall Road, Suite 205
Ellicott City MD 21041

Pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability and the Director of the Department of Public Works considered and **APPROVED** the applicants request for a waiver with respect to **Sections 16.115(c)(2), 16.116(a)(i) and 16.116(a)(2)** of the Subdivision and Land Development Regulations to disturb streams, stream bank buffers, wetlands, wetlands buffers, and floodplains to construct a public road (Road F), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen subdivision as illustrated on the plan exhibit. These environmental features are concentrated in two distinct areas in Neighborhoods D and E and are detailed on the plan exhibit as "Points 1 and 2".

Pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **APPROVED the removal of 16** and **DENIED the removal of 3** of the proposed 19 specimen trees included in the applicants request for a variance with respect to **Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations in order to construct a public road (Road F), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen subdivision as illustrated on the plan exhibit.

The Directors deliberated the application for all Sections in a meeting on September 24, 2020.

Subtitle 1: Sections 16.115(c)(2), 16.116(a)(i) and 16.116(a)(2)

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unreasonable hardship or practical difficulty. This determination is made with consideration of the variance application and the seven (7) items the applicant was required to address, pursuant to Section 16.104(a)(1) and Section 16.116(d):

1. Strict conformance with the requirements will deprive the applicant rights commonly enjoyed by others in similar areas.

The development is bisected by an interstate highway (I-70) creating two separate parcels, which are proposed to be subdivided into five distinct neighborhoods. The northern parcel contains Neighborhoods A and B and is predominately open field with one area of wetland on the eastern edge that will be undisturbed and placed within a forest conservation easement. The southern parcel contains Neighborhoods C, D and E and is bisected by two riparian systems. The two systems originate at separate locations under I-70 and converge in the middle of the property, between Neighborhoods D and E, and flow eastward before exiting the site near the southeast corner of Neighborhood E. There are two existing off-site public roads (Nollwick Drive and Longview Drive) that will be extended to provide access to Neighborhoods D and E; all other access points are either restricted or do not provide direct access to the two neighborhoods. The requested environmental disturbances are limited to two areas, identified as Points #1 and #2 on the applicant's plan exhibit, where road crossings and culverts are necessary to access Neighborhood D. Point #1 requires disturbance to floodplain and intermittent stream bank buffer and Point #2 requires disturbance to floodplain, stream channel and perennial stream bank buffer. Strict conformance with the requirements would deprive the applicant rights enjoyed by others by denying access to most of the site's developable area and the installation of utilities.

2. The uniqueness of the property or topographical conditions would result in practical difficulty, other than economic, or unreasonable hardship from strict adherence to the regulations.

Neighborhood D contains two distinct areas (delineated as Points #1 and #2 on the plan exhibit) where regulated environmental features are concentrated. The presence of these environmentally sensitive areas creates a unique condition where impacts to these areas are unavoidable to access Neighborhood D. Strict adherence to the regulations would render Neighborhood D undevelopable because there would be no other way to access most of this area without disturbing environmental features. The design of the roads and lots were adjusted to minimize these impacts and other means of access and utilities connections are very limited due to: 1) a lack of public road frontage opportunities from surrounding properties and 2) other available access points could result in greater environmental impacts and/or a roadway design that does not meet design manual standards.

3. The variance will not confer on the applicant a special privilege that would be denied to other applicants.

This variance will not confer to the applicant a special privilege that would be denied to other applicants. Neighborhood D has limited opportunities to be accessed without disturbing existing environmental features. Careful considerations were made during the planning and designing of this subdivision to avoid disturbance to the environmental features. Public water is proposed as part of this development and as such, public water main looping is required. The looping will lead to efficiencies in the public system and has been designed to within the proposed roadbed where feasible and then connect through the site to close the loops in the least impactful ways. Environmental disturbances for access purposes and required utility connections do not constitute any special privilege.

4. The modification is not detrimental to the public health, safety, or welfare or injurious to other properties.

There is no evidence that the modification will be detrimental to the public health, safety, or welfare or injurious to other properties. The requested disturbance will be limited to two environmentally sensitive

areas where a road (public road F), utilities, storm drains and culvers will be constructed. The evaluation of this request took into consideration the design of the proposed roads, utilities, and related infrastructure in relation to those environmental features at risk for impact and the proposed design limits the impact on these areas more than alternative approaches while providing adequate roadway geometries as per the Design Manual.

5. Any area of disturbance is returned to its natural condition to the greatest extent possible.

Disturbances to the environmental features shall be limited only to where the road, utilities, stormwater management facilities and culvert construction is necessary. Where possible, all disturbed areas shall be returned to its natural condition to the greatest extent possible. As a condition of approval, the applicant will be required to demonstrate how the disturbance shall be returned to its natural condition on the final plan.

6. Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat.

The applicant is required to provide best management practices in accordance with MDE standards to manage stormwater from impervious surfaces and to control and mitigate the impact to water quality and to the natural environment. Careful and strategic planning went into the design of this subdivision to lessen impact to environmental features. The applicant states that the impacts proposed could not be avoided; the existing environmental features are located where road construction and utility line installation are most practical and less impactful to the environment. The two road crossings of the streams shall be designed with sunken culverts that provides a natural bottom to the stream. The culverts will allow fish and wildlife to swim and traverse along the stream as it did prior to the disturbance. Finally, water quality measures are proposed to provide environmental site design to the maximum extent practicable that will enhance the water quality of runoff from the development.

7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements.

In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects. For the reasons noted above, impacts to the environmental features were coordinated and kept at a minimum to provide necessary services to Neighborhood D for access, water, sewer, and stormwater management. Additionally, for the road crossings, the sunken culverts shall be designed in a manner that will have be minimal impact to the integrity of the streams. Additionally, in these areas, retaining walls are to be utilized to help stabilize graded areas to minimize any further disturbances and restoration methods shall be provided to return as much of the disturbed areas possible to its natural condition.

Directors Action: Approval of this alternative compliance is subject to the following conditions:

1. The disturbances to the streams, wetlands, their buffers, and the floodplain shall be limited to the grading required to construct public road F, water and sewer lines, culverts and storm water management facilities and related infrastructure as featured in Points #1 and #2 of the plan exhibit submitted with this petition.

2. Any natural vegetation disturbed during the grading of the impacted environmental features must be restored to its natural condition to the greatest extent possible once construction is completed. A plan to demonstrate how these impacted areas shall be restored to its natural conditions must be demonstrated on the road construction plans with the Final subdivision plans.
3. A copy of the Maryland Department of Environment (MDE) permit approval for the disturbance to the two streams and floodplain must be provided to DPZ prior to the recordation of the final plat and referenced as a note on the plat.
4. Include this alternative compliance petition decision as a general note on the preliminary equivalent sketch plan, the plat and site development plan(s). This note shall include the petition's file number, the regulatory sections, the decision date, and the conditions of approval.

DocuSigned by:

Amy Gowan

584D5DD9470C4D4...

Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:

Joshua Feldmark

0244B974513F4B7...

Joshua Feldmark, Administrator
Office of Community Sustainability

DocuSigned by:

Thomas Meunier

87771202E3D14B4...

Thomas Meunier, P.E., Director
Department of Public Works

Subtitle 12: Section 1205(a)(3)

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unwarranted hardship. This determination is made with consideration of the variance application and the seven (7) items the applicant was required to address, pursuant to Section 16.1216(c)(1)-(7):

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship.

The development is bisected by an interstate highway (I-70) creating two separate parcels, which are proposed to be subdivided into five distinct neighborhoods. The northern parcel contains Neighborhoods A and B and is predominately open field with one area of wetland on the eastern edge that will be undisturbed and placed within a forest conservation easement. The southern parcel contains Neighborhoods C, D and E and is bisected by two riparian systems. The two systems originate at separate locations under I-70 and converge in the middle of the property, between Neighborhoods D and E, and flow eastward before exiting the site near the southeast corner of Neighborhood E. The special condition peculiar to the property are the concentration of two large environmentally sensitive areas that require significant design attention to place standard roadway, utility, and lot layout requirements in such a way as to mitigate any disturbance to these existing systems and specimen trees on site. There are 42 specimen trees on the entire site and confirmed by DLD staff on a field visit, 40 specimen trees of various species and sized are located specifically in Neighborhoods D and E. The applicant

made careful considerations during the planning and design of the subdivision to preserve as many specimen trees as possible. The design of the roads and lots were adjusted to minimize impacts to environmental features, including the specimen trees. The removal of 15 specimen trees, of the 19 requested, are necessary to construct roads, utilities, and stormwater management facilities. At least 5 of the 15 trees to be removed were determined to be in poor condition by the Department of Recreation and Parks during their on-site inspection and were recommended for removal due to hazardous conditions. During the meeting, 4 of the 19 requested specimen trees (ST-24, ST-25, ST-35 and ST-46) were reviewed in detail to determine if they should be approved for removal or not. It was determined that there may be opportunities for the lots 46-48 to be reorganized to allow ST-24 and ST-25 to be saved on site and that use of retaining walls may provide the opportunity for ST-35 which is located near or within forest conservation easements, to be retained. During the deliberations of the Directors meeting, all three Directors determined that ST-46 should be approved for removal because of its proximity to Road F – this tree will eventually die due to the construction of the road. Therefore, a total of 3 of the 19 specimen trees were not approved by the Directors for removal.

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas.

The enforcement of the regulations would deprive the landowner rights commonly enjoyed by others in the following manner. Neighborhood D has limited opportunities for access due to the concentration of existing environmental features. Considerations were made during the planning and designing of this subdivision to avoid disturbance to the environmental features. Public water is proposed as part of this development and as such, public water main looping is required. The looping will lead to efficiencies in the public system and has been designed to within the proposed roadbed where feasible and then connect through the site to close the loops in the least impactful ways. As a result of such considerations, the applicant proposed a development plan that sought to limit impacts to the environmental features, including the specimen trees outside of the roadbeds. The removal of these specimen trees are needed for the required public road and utility connections. The enforcement of the regulations would significantly reduce the applicant's ability to develop and utilize a large portion of their property because access through the environmental features (that divides Neighborhood D) and the removal of select specimen trees would not be permitted.

3. Verify that the granting of a variance will not adversely affect water quality.

There is no evidence that the granting of a variance will adversely affect water quality. The development is subject to the current Environmental Site Design criteria that include a combination of water treatment practices to address water quality. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants

Considerations were made during the planning and designing of this subdivision to avoid the removal of the 40 specimen trees in Neighborhoods C and D. The ability to provide roads, utilities and meet storm water management requirements are not special privileges and are necessary for any reasonable development of the site.

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

The unique conditions of the property, namely the two large riparian systems bisecting the southern parcel, are not conditions or circumstances which are the result of actions by the applicant. The design of the subdivision considered the location specimen trees and sought to preserve as many as possible. The removal of 16 specimen trees have been verified to be necessary to construct the roads, utilities, and stormwater management facilities.

6. Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

There is no evidence that the conditions arose from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

7. Provide any other information appropriate to support the request.

The applicant provided supporting data that includes a specimen tree table, a tree assessment, photos of the specimen trees to be removed, and plan exhibits that details the location of the specimen trees to be removed.

Directors Action: Approval of this alternative compliance is subject to the following conditions:

1. The alternative compliance approval applies only to Specimen Tree Nos. 1, 2, 3, 21, 23, 26, 27, 28, 31, 37, 38, 39, 41, 43, 46 and 48 as shown on the alternative compliance plan exhibit. The removal of any other specimen tree on the subject property is not permitted under this approval. Protective measures shall be utilized during construction to protect the specimen trees that are to remain, including how the critical root zones are to be protected. Include details of the proposed tree protection measures on the Final subdivision plans.

2. The removal of the 16 specimen trees approved will require the planting of 32 native shade trees onsite. The trees shall be a minimum of 3" DBH and shall be shown on the landscaping and forest conservation plan sheets. The trees will be bonded along with the subdivision's required perimeter landscaping.

DocuSigned by:

Amy Gowan

5B4D5DD9470C4D4...

Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:

Joshua Feldmark

32419974519F4D7...

Joshua Feldmark, Administrator
Office of Community Sustainability

DocuSigned by:

Raul Delorme

88D7437D827248A...

Raul Delorme, Director
Department of Recreation and Parks

CC: DLD, Derrick Jones; OCS, Joshua Feldmark; DPW, Thomas Meunier; Rec and Parks, Raul Delorme



Howard County Maryland
Department of Planning and Zoning
 3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
File No.
Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: PRELIMINARY EQUIVALENT SKETCH PLAN

Subdivision Name/Property Identification: Bethany Glen

Location of property: 9891 Old Frederick Road - Route 99

Existing Use: Vacant **Proposed Use:** Residential

Tax Map: 17 **Grid:** 15 **Parcel No:** 34 **Election District:** 2

Zoning District: R-20 **Total site area:** 68.57

Please list all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.). If no previous plans have been submitted, please provide a brief history of the site and related information to the request:

SP-19-005, WP-19-118, ECP-19-041

In the area below, the petitioner shall enumerate the specific numerical section(s) from the Subdivision and Land Development Regulations for which an alternative compliance is being requested and provide a brief summary of the request.

Section Reference No.	Brief Summary of Request
16.1205(A)(7)	REMOVAL OF TWENTY THREE (23) SPECIMEN TREES ONSITE.
16.115	IMPACTS TO THE EXISTING FLOODPLAIN REQUIRED FOR THE CONSTRUCTION OF ROAD CROSSINGS, GRADING, STORMWATER MANAGEMENT, AND SANITARY SEWER OUTFALLS
16.116	IMPACTS TO THE EXISTING WETLANDS, STREAMS, AND STEEPS REQUIRED FOR THE CONSTRUCTION OF ROAD CROSSINGS, GRADING, STORMWATER MANAGEMENT AND SANITARY SEWER OUTFALLS

Signature of Property Owner: [Redacted] Date: [Redacted]

Signature of Petitioner Preparer: [Redacted] Date: [Redacted]

Name of Property Owner: [Redacted] Name of Petition Preparer: Brandon Rowe

Address: [Redacted] Address: 901 Dulaney Valley Road, Suite 801

City, State, Zip: [Redacted] City, State, Zip: Towson, MD 21204

E-Mail: [Redacted] E-Mail: browe@bohlereng.com

Phone No.: [Redacted] Phone No.: 410-821-7900

Contact Person: [Redacted] Contact Person: Crissie Evans/Taylor Gelinis

Owner's Authorization Attached



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

February 13, 2020

Estate of Ruth Harbin
c/o H. Mark Bobotek, Esq.
PO Box 66
Ellicott City MD 21041

RE: WP-19-118 Bethany Glen (SP-19-005)
Deferral – New Application Required

Dear Mr. Bobotek:

Please be advised that Council Bill (CB) 61-2019 and CB-62-2019, effective February 5, 2020, established new review and approval criteria for alternative compliance petitions submitted for relief of the Subdivision and Land Development Regulations and Forest Conservation Regulations.

After review of your alternative compliance petition, the Department of Planning and Zoning has determined that the above referenced project does not meet the grandfathering requirements established in Section 16.102(h) of the Subdivision and Land Development Regulations and the petition must be resubmitted under the new review and approval criteria outlined in CB-61-2019 and CB-62-2019.


Please follow this link to the application and instructions for submittal: <https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Application-Forms-and-Fees> Two copies of the new application, supplemental information and exhibit/plan are required for the resubmission. No additional fees will be charged, unless additional sections are added to the petition request.

The requested new application and required supporting documentation must be submitted to this Division within **45 days** of the date of this letter (**on or before March 29, 2020**), or this Division will recommend that the Planning Director deny this alternative compliance petition.

Please contact Judy Edwards at 410-313-4351 or email juedwards@howardcountymd.gov to schedule a submission appointment. Once the requested information has been received and reviewed, this office will coordinate agency comments and will prepare a recommendation for the Planning Director's action.

If you have any questions regarding a specific comment, please contact the review agency prior to preparing the revised plans/information. Compliance with all items indicated above is required before the revised plans/information will be accepted. Please bring a copy of this letter with you to your submission appointment.

If you have any questions, please contact Derrick Jones at (410) 313-2350 or email at djones@howardcountymd.gov.

Sincerely,

Anthony Cataldo, AICP Chief
Division of Land Development

cc: Bohler Engineering Elm Street Development Community Members Research Division