



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

October 1, 2020

Peter Engel
Howard County Housing Commission
9770 Patuxent Woods Drive Suite 100
Columbia, MD 21046

RE: WP-20-049, Ellicott Gardens II

Dear Mr. Engel:

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 16.1216, the Director of the Department of Planning and Zoning, Director of the Recreation and Parks and Administrator of the Office of Community Sustainability considered and **approved** your request for a variance with respect to **Section 16.1205(a)(3)** and **Section 16.1209(b)(2)** of the Forest Conservation Regulations. The purpose is to remove 5 specimen trees and to meet less than 75% of the required forest conservation obligation on site. The Directors deliberated the application in a meeting on September 24, 2020. Please see the attached Final Decision Action Report for more information.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of Section 16.1205(a)(3) and Section 16.1209(b)(2) would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the four (4) items you were required to address, pursuant to Section 16.1216:

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

The project received funding through the State of Maryland's Low-Income Housing Tax Credit program in September 2019. The award is based on a specific site design, building design and the number of units. This award predates the filing of the legislation that set higher standards on the removal of specimen trees and requires 75% of a forest conservation obligation to be met on-site. The 75% requirement would require 1.5 acres of on-site retention.

Ellicott Gardens II building was designed to complement the existing Ellicott Gardens apartment building on the adjacent property. The existing site is narrow and for the two buildings to share site access and accommodate grading tie-ins, stormwater management, access, parking and the density needed for viability results in little remaining, the proposed plan did not provide for on-site forest conservation easements. A small 0.04 acre of forest within the wetland buffer will be retained adjacent to an existing forest conservation easement north of the property. A redesign of the site at this time would result in a forfeiture of the grant and the housing project may not qualify under POR zoning. This would deprive the applicant from building any affordable housing at this site.

Additionally, the location of the specimen trees and their critical root zones bisect the property rendering reasonable use of a large portion of the property challenging. Retaining these trees to meet the regulation would deprive the landowner use of approximately 33% in the center of the property and force the development to occur in two small portions on either end of the site. This would result in an unwarranted hardship since the required design requirements could not be met without use of this area.

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

The purpose of the Planned Office Research (POR) zoning district is to “to permit and encourage diverse institutional, commercial, office research and cultural facilities” Therefore the district generally allows for non-residential uses, except for Housing Commission Housing Developments, that would not be required to meet the 75% on-site forest conservation requirement.

Additionally, the location of the specimen trees and their critical root zones bisect the property rendering reasonable use of a large portion of the property challenging. Retaining these trees to meet the regulation would deprive the landowner use of approximately 33% in the center of the property and force the development to occur in two small portions on either end of the site. This would result in a highly inefficient development that would deprive the landowner of the ability to develop a by right use in the POR zoning district.

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

The development is subject to Environmental Site Design criteria per the 2010 Stormwater Management Act, as well as the 10-year and 100-year quality control since it is in the Deep Run Watershed. The project will utilize a shallow gravel wetland and bioretention facilities in accordance to State and County regulations, which require run-off to mimic forest in good condition. Therefore, there is no evidence that the granting of a variance will adversely affect 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.

The granting of this variance will not confer a special privilege that would be denied to other applicants. The project still must fulfill its forest obligation, which will occur offsite. Non-residential development in the POR Zoning District is not required to meet the forest conservation obligation off-site. The location of the specimen trees clustered at the center of the site make it more challenging to reasonably utilize a majority of the property, and only two of the trees are determined to be in good condition.

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

The request is due to the process and criteria for obtaining a grant with the State’s Low-Income Housing Tax Credit program, which requires specific site design, building design, and unit quantities as part of the application process. The project received the grant in September of 2019 but the legislation was not introduced until November 2019. At the time the design was being developed and approved for the funding, some of these regulations did not exist. These exceptional circumstances are beyond the control of the applicant and non-compliance could risk forfeiture of the project.

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 requirement for this variance arose from a condition relating to a land or building use, either permitted or nonconforming, on a neighboring property.

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

As described by the applicant in the submitted justification letter, this project will result in additional affordable homes in Howard County by taking advantage of a competitive grant program. This goal is in keeping with the Howard County General Plan. Forest Conservation will still be fulfilled off-site and loss of specimen trees will be mitigated at a 2:1 ratio on site.

Approval of this Alternative Compliance is subject to the following conditions:

1. Alternative compliance approval is limited to the removal of specimen trees #1 through #5 as depicted on the modified alternative compliance exhibit. Any proposal to remove additional specimen trees will require a new alternative compliance request or an amendment to this alternative compliance request.
2. A minimum of 10 additional, **native**, 3" DBH trees shall be provided on site as part of the mitigation for the specimen tree removal (2:1 replacement). This mitigation will be addressed with the project known as "Ellicott Gardens II" and will be in addition to any required landscape or forest conservation plantings.
3. It shall be required to retain as much forest possible while keeping the design that received that competitive State grant viable.
4. The location of the off-site obligation shall be identified prior to receiving a technically complete on the SDP for the site.

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 Jill Manion at (410) 313-2350 or email at jmanion@howardcountymd.gov.

Sincerely,

DocuSigned by:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/JAM

cc: Research [Section 16.1205(a)(3) - 5 tree req/ 5 tree app]
DED
DLD - Julia Sauer
Real Estate Services
Marian Honecny- DNR
Timmons Group



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

ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

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

RE: **WP-20-049, Ellicott Gardens II**
Request for an alternative compliance to Section 16.1205(a)(3) and 16.1209(b)(2) of the Subdivision and Land Development Regulations.

Applicant: Peter Engel
Howard County Housing Commission
9770 Patuxent Woods Drive Suite 100
Columbia, MD 21046

Pursuant to Section 16.1216, the Director of the Department of Planning Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for a variance with respect to **Section 16.1205(a)(3)** and **Section 16.1209(b)(2)** of the Forest Conservation Regulations. The purpose is to remove 5 specimen trees and to meet less than 75% of the required forest conservation obligation on site. The Directors deliberated the application in a meeting on September 24, 2020.

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in an unwarranted hardship. This determination is made with consideration of the alternative compliance application and the six (6) items the applicant was required to address, pursuant to Section 16.1216:

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

The project received funding through the State of Maryland’s Low-Income Housing Tax Credit program in September 2019. The award is based on a specific site design, building design and the number of units. This award predates the filing of the legislation that set higher standards on the removal of specimen trees and requires 75% of a forest conservation obligation to be met on-site. The 75% requirement would require 1.5 acres of on-site retention.

Ellicott Gardens II building was designed to complement the existing Ellicott Gardens apartment building on the adjacent property. The existing site is narrow and for the two buildings to share site access and accommodate grading tie-ins, stormwater management, access, parking and the density needed for viability results in little remaining, the proposed plan did not provide for on-site forest conservation easements. A small 0.04 acre of forest within the wetland buffer will be retained adjacent to an existing forest conservation easement north of the property. A redesign of the site at this time would result in a forfeiture of the grant and the housing project

may not qualify under POR zoning. This would deprive the applicant from building any affordable housing at this site.

Additionally, the location of the specimen trees and their critical root zones bisect the property rendering reasonable use of a large portion of the property challenging. Retaining these trees to meet the regulation would deprive the landowner use of approximately 33% in the center of the property and force the development to occur in two small portions on either end of the site. This would result in an unwarranted hardship since the required design requirements could not be met without use of this area.

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

The purpose of the Planned Office Research (POR) zoning district is to “to permit and encourage diverse institutional, commercial, office research and cultural facilities” Therefore the district generally allows for non-residential uses, except for Housing Commission Housing Developments, that would not be required to meet the 75% on-site forest conservation requirement.

Additionally, the location of the specimen trees and their critical root zones bisect the property rendering reasonable use of a large portion of the property challenging. Retaining these trees to meet the regulation would deprive the landowner use of approximately 33% in the center of the property and force the development to occur in two small portions on either end of the site. This would result in a highly inefficient development that would deprive the landowner of the ability to develop a by right use in the POR zoning district.

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

The development is subject to Environmental Site Design criteria per the 2010 Stormwater Management Act, as well as the to 10-year and 100-year quality control since it is in the Deep Run Watershed. The project will utilize a shallow gravel wetland and bioretention facilities in accordance to State and County regulations, which require run-off to mimic forest in good condition. Therefore, there is no evidence that the granting of a variance will adversely affect 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.

The granting of this variance will not confer a special privilege that would be denied to other applicants. The project still must fulfill its forest obligation, which will occur offsite. Non-residential development in the POR Zoning District is not required to meet the forest conservation obligation off-site. The location of the specimen trees clustered at the center of the site make it more challenging to reasonably utilize a majority of the property, and only two of the trees are determined to be in good condition.

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

The request is due to the process and criteria for obtaining a grant with the State’s Low-Income Housing Tax Credit program, which requires specific site design, building design, and unit quantities as part of the application process. The project received the grant in September of 2019 but the legislation was not introduced until November 2019. At the time the design was being developed and approved for the funding, some of these regulations did not exist. These exceptional circumstances are beyond the control of the applicant and non-compliance could risk forfeiture of the project.

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 requirement for this variance arose from a condition relating to a land or building use, either permitted or nonconforming, on a neighboring property.

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

As described by the applicant in the submitted justification letter, this project will result in additional affordable homes in Howard County by taking advantage of a competitive grant program. This goal is in keeping with the Howard County General Plan. Forest Conservation will still be fulfilled off-site and loss of specimen trees will be mitigated at a 2:1 ratio on site.

Directors Action: Approval of alternative compliance of Section 16.1205(a)(3) and Section 16.1209(b)(2) is subject to the following conditions:

1. Alternative compliance approval is limited to the removal of specimen trees #1 through #5 as depicted on the modified alternative compliance exhibit. Any proposal to remove additional specimen trees will require a new alternative compliance request or an amendment to this alternative compliance request.
2. A minimum of 10 additional, **native**, 3" DBH trees shall be provided on site as part of the mitigation for the specimen tree removal (2:1 replacement). This mitigation will be addressed with the project known as "Ellicott Gardens II" and will be in addition to any required landscape or forest conservation plantings.
3. It shall be required to retain as much forest possible while keeping the design that received that competitive State grant viable.
4. The location of the off-site obligation shall be identified prior to receiving a technically complete on the SDP for the site.

DocuSigned by:
Amy Gowan
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Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:
Raul Delerme
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Raul Delerme, Director
Department of Recreation and Parks

DocuSigned by:
Joshua Feldmark
3241B974513F4B7...

Joshua Feldmark, Administrator
Office of Community Sustainability

cc: Research
DED
OCS, Joshua Feldmark
DRP, Raul Delerme

Section Reference No.	Brief Summary of Request

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

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

Name of Property Owner: Howard County Housing Commission **Name of Petitioner Preparer:** Vogel Engineering + Timmons Group

Address: 9770 Patuxent Woods Drive., Suite 100 **Address:** 3300 N. Ridge Road., Suite 110

City, State, Zip: Columbia, Maryland 21046 **City, State, Zip:** Ellicott City, Maryland 21043

E-Mail: pengel@househoward.org **E-Mail:** rob.vogel@timmons.com

Phone No.: 443-518-7825 **Phone No.:** 410-461-7666

Contact Person: Peter Engel **Contact Person:** Robert H. Vogel

Owner's Authorization Attached

VII. Owner's/Petitioner's Certification

I/WE the undersigned fee simple owner(s) hereby make application to the Howard County Department of Planning and Zoning to provide an alternative compliance request of the minimum requirements of the Howard County Subdivision and Land Development Regulations. The undersigned hereby certifies the information supplied herewith is correct and complete, confirms that the regulations and policies as referred to in the attached are understood, and authorizes periodic on-site inspections by the Howard County Subdivision Review Committee agencies. ***If the applicant is the owner's agent, written documentation from owner granting that authority is required at the time of the submission.**

Owner's authorization attached *

Peter Engel
 (Signature of Property Owner)
 (Fee Simple Owner Only)

9/30/2019
 (Date)

Rob Voel
 (Signature of Petition Preparer) *

11/11/19
 (Date)

Howard County Housing Commission
 (Name of Property Owner)

VOEL & Timmons Group
 (Name of Petition Preparer, Surveyor/Engineering/Architect
 or Agent/Developer)

9770 Retirement Woods Dr. Suite 100
 (Address)

3300 W. Ridge Road
 Address)

Columbia MD 21046
 (City, State, Zip Code)

ELLSWORTH CITY MD 21043
 (City, State, Zip Code)

E-Mail peugel@houschoward.org

E-Mail Rob.Voel@Timmons.com

443-518-7825 443-518-7829
 (Telephone) (Fax)

410 461-7666 410-461-8967
 (Telephone) (Fax)

Contact Person: Peter Engel

Contact Person: Rob Voel



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

REVISED

MAR 09 2020

DPZ Land Development

DPZ Office Use only:
 File No: **WP20-049**
 Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: [REDACTED]

Subdivision Name/Property Identification: ELLICOTT GARDENS II

Location of property: 5511 & 5513 WATERLOO ROAD

Existing Use: [REDACTED] **Proposed Use:** RESIDENTIAL

Tax Map: 31 **Grid:** 19 **Parcel No:** 428 & 467 **Election District:** 1ST

Zoning District: POR **Total site area:** 2.53 AC

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:

S-19-009
 BA-19-013V
 ECP-19-040

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)	RETAIN TREES 30" OR GREATER
[REDACTED]	[REDACTED]

Section Reference No.	Brief Summary of Request

* See original Petition For Owners Signature

Signature of Property Owner: * Date:

Signature of Petitioner Preparer: Robert Vogel Date: 3/9/20

Name of Property Owner: Howard County Housing Commission Name of Petitioner Preparer: Robert Vogel

Address: 9770 Potomac Woods Dr Address: 3300 N. Ridge Road #110

City, State, Zip: Columbia MD 21046 City, State, Zip: Ellicott City MD 21043

E-Mail: pengel@householders.org E-Mail: R.Vogel@Vogelenv.com

Phone No.: 410 730 3725 Phone No.: 410 461-7666

Contact Person: Peter Engel Contact Person: Robert Vogel

Owner's Authorization Attached