



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

May 25, 2021

Elms at Elkridge, LC
c/o Elm Street Development
5074 Dorsey Hall Drive
Ellicott City, MD 21042
Attn: Jason Van Kirk

RE: WP-21-015 Elms at Elkridge

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 May 20, 2021 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 alternative compliance with respect to **Sections 16.116(a)(1), 16.116(a)(2)(ii) and 16.116(b)(1)** of the Subdivision and Land Development Regulations to grade, remove vegetative cover and trees, paving and new structures within wetland, streams, their buffers and steep slopes to remove contaminants and construction debris, construct a stream crossing and develop a mixed-use development. Please see the attached Final Decision Action Report for more information.

On May 20, 2021 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 16.1209(b)(2)** of the Subdivision and Land Development Regulations to allow removal of 38 of the 88 on-site specimen trees and provide less than 75% of the forest conservation obligation on-site. Please see the attached Final Decision Action Report for more information.

On May 21, 2021 and pursuant to Section 16.104, the Director of the Department of Planning and Zoning, considered and **approved** your request for alternative compliance with respect to **Sections 16.115(c)(2), 16.120(b)(4)(iii)(d) and 16.120(c)(4)** of the Subdivision and Land Development Regulations to disturb 100-year floodplain for a replacement stream crossing, allow environmental features associated with the private road stream crossing to be located within a residential lot and not an open space lot, and to construct single-family attached lots on 5 separate private roads that exceed 200 feet in length.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of Sections 16.115(c)(2), 16.120(b)(4)(iii)(d) and 16.120(c)(4) 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 16.104(a)(1):

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

The property contains three perennial streams that flow southward under US Route 1 and onto the site. The first stream runs along the entire eastern boundary. The second stream runs adjacent to the western boundary and converges with the third stream, Shallow Run, which traverses in a clockwise direction through the site before exiting midway along the southern boundary. A riparian buffer of forest, wetlands, steep slopes and 100-year floodplain are associated with the stream systems. An existing dilapidated stream crossing is constructed over Shallow Run which provides access the southwest portion of the property, Zoning Board has approved this portion of the site to be developed into two apartment buildings with accessory parking. The property's developable area is constrained by certain physical conditions such as these environmental features and the widespread presence of environmental contaminants. The subject property has operated as an automotive junk yard, a concrete crushing and demolition company, and a contractor's storage yard. Decades of salvage material have been dumped throughout the site, and onto adjoining properties, including within the forest and environmentally sensitive features. Strict conformance with the floodplain regulations would deprive the applicant of rights to construct a replacement stream crossing that will provide private road access to developable land and allow removal of debris and contaminants.

Parcel B is for the apartment development and fronts on Route 1 and the western side of public Road A. The parcel is bisected in the middle by Shallow Run and its associated environmental features. A new private road will replace an existing dilapidated stream crossing in order to access the southwest portion of the parcel, which is landlocked by the environmental features and adjoining properties. Parcel B will include the apartment complexes adjacent to Route 1, the narrow area for the private road stream crossing, and the two apartment complexes in the southwest portion of the parcel. The environmental features on both sides of the stream crossing will be dedicated to the County as protected open space. However, the environmental buffers that extend perpendicular to the private road will be contained in Parcel B and not within open space. To comply with Section 16.120(b)(4)(iii)(d) of the regulations, the road could be converted to a public road with a 50-foot public road right-of-way, or the private road could be placed on a separate open space lot. It is typical for apartment complexes to have private roads, which are on residential parcels and do not have designated right-of-ways. Providing a public road would create a wider right-of-way and eliminate 15 feet of environmental features placed in permanent protection. Placing the private road in an open space lot will not provide an environmental benefit and will separate the southwest proportion of the parcel from public road frontage. Strict conformance with the lot design regulations will deprive the applicant of developing the apartments within one parcel, which is typical of apartment developments.

This development proposes two public roads from Route 1. Road A bisects the middle of the property and ends in a cul-de-sac, and Road B aligns across from Duckett's Lane and curves west to end at Road A. The 89 single-family attached lots are east of Road A and south of Road B. The townhomes are situated in blocks perpendicular to Road A and are accessed by private alleys or roads that exceed 200 feet in length. To comply with Section 16.120(c)(4) of the regulations and reduce the length of private road below 200 feet, the first section of the road would be public and terminate into a mid-block T-turnaround with the remaining portion of the road being private with access off the end of the public T-turnaround. These short segments of public roads would cause maintenance issues for DPW, including snow removal and trash pick-up, and safety concerns with mid-block vehicular turn

around movements. Strict conformance with the frontage requirements would result in a confusing organization of multiple T-turnarounds within each of the blocks. Since the private roads would be constructed to County standards, the appearance and function of the roads would match those commonly enjoyed by others in similar areas and eliminate the additional vehicular safety concerns resulting from misplaced mid-block turn around locations.

Furthermore, the CEF-M zoning is contingent on the site's development design according to the approved Documented Concept Plan (DCP). Major changes to the development design cannot occur since the zoning only permits the development shown on the DCP and any significant changes would nullify the zoning approval. Strict conformance with the regulations would deprive the landowner of rights associated with the CEF-M zoning, as is customary for properties that use the rezoning process.

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

The property's developable area is constrained by certain physical conditions such as floodplain, steep slopes, wetlands, streams, their buffers, forest resources, and the widespread presence of environmental contaminants and construction debris. A stream system with an existing dilapidated stream crossing provides access to the landlocked southwestern portion of the site. Strict adherence to the floodplain regulations would prevent the applicant from creating a safe access across the stream for reasonable development of the property. It would also prevent removal of contaminated soils and debris from the junk yard use. Strict adherence to the lot design regulations would prevent a private road stream crossing and would require a public road right-of-way, or require a private road be placed in non-credited open space and landlock the southwest portion of the property. Neither option would be typical of apartment developments or desired by the County for public maintenance.

The overall layout and organization of the public roads have been designed to meet broad circulation patterns within the community by aligning Road B with an existing intersection, to preserve environmental features, and to arrange the commercial development along Route 1, in accordance with the Route 1 Design Guidelines. As such, the placement of the townhomes and their access alleyways have been set in the area available after accommodating those elements. Practical difficulties can be attributed to limited placement options for the townhomes given the fixed position of the public roads, the location of the environmental features, and the design of the commercial development. To accomplish optimal placement of the homes, the applicant has opted to use private roads to achieve a more compact design by significantly reducing impervious surfaces and stormwater run-off. This is accomplished because a private alley or road does not have a designed road right-of-way and setbacks can be taken from the road bed, reducing the distance between structures. A design alternative to meet the regulations would feature shortened private roads off an extension of public road from Road A. This would not be practical because a portion of each of these private roads would need to be established as a public road and at the termination of those public sections, a T-turnaround with public right-of-way would be required. These T-turnarounds would establish where the public maintenance ends, provide a place for the maintenance vehicles to turn around, and would create a "double tee" scenario on each road. This design would cause several practical difficulties and safety concerns based on this specific site. Other alternatives that require moving the townhome sticks, result in the need for significant design changes that would nullify the zoning approval and increase the amount of impervious surface. Therefore, the preferred alternative is to allow the private roads with reduced impervious surface and larger green space areas.

3. The Variance will not confer to the applicant a special privilege that would be denied to other applicants and;
The granting of the alternative compliance will not confer a special privilege that would be denied to other applicants. Disturbance to the 100-year floodplain is needed to safely replace a dilapidated stream crossing to provide reasonable access to the property and remove contaminated soils and debris. The environmental features adjacent to the stream crossing will be placed in open space lots dedicated to Howard County; however, the crossing itself is a private road that will be maintained by the Homeowner's Association. This is preferable because the County does not want ownership or maintenance responsibility. Allowing the environmental features for the stream crossing to be within the buildable lot does not provide any benefit, as the features outside of the road improvements must remain undisturbed in compliance with the Subdivision Regulations. Construction of private roads exceeding 200 feet in length is commonly permitted because short segments of public roads ending as mid-block T-turnarounds are not desirable due to maintenance and safety concerns.

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.
The modification allows for a safer stream crossing and safer alleyways and therefore, there is no evidence they will be detrimental to the public health, safety or welfare, or injurious to other properties. The applicant has stated that the modifications will provide the affected lots with safe roads that will be constructed to public road standards and will be maintained privately, with public utilities provided through easements. The allowance for private roads over 200 feet in length to service the townhomes will provide for more open space within the affected area by eliminating the additional public road right-of-way and provide the opportunity for the townhome lots to be closer to the road and thus provide a larger green open area in the front yards between the rows of townhomes.

Furthermore, the site has operated as an automotive junk yard, a concrete crushing and demolition company, and a contractor's storage yard and is considered a brownfield development. In order to improve the environmental quality of the site, mass voluntary clean-up is required. The applicant was awarded a specific density through the rezoning process based on the community enhancements and improvements the development would provide. The granting of this alternative compliance will allow for critical environmental clean-up of this site and the adjoining County-owned property, to the highest Maryland Department of the Environment (MDE) standards.

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


1. The disturbances to the 100-year floodplain shall be limited to the grading required to construct the private stream crossing that will be approved under the final subdivision plan. Any natural vegetation disturbed during the grading for the private stream crossing 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 included on the final road construction plan.
2. A copy of the Maryland Department of Environment (MDE) permit approval for the disturbance to the 100-year floodplain must be provided to DPZ prior to the recordation of the final plat and referenced as a note on the plat.
3. The private roads and alleys must meet the design standards as required by the DPW's Design Manual.

4. A fire access road must be constructed at the end of Alley 1 and “No Parking” signs must be posted in all alleys. Construction and implementation of these design features must be approved by the Department of Fire and Rescue Services.

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 Julia Sauer at (410) 313-2350 or email at jsauer@howardcountymd.gov.

Sincerely,

DocuSigned by:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/js

cc: Research [Section 16.1205(a)(3) - 38 tree req/ 38 tree app]
DED
DLD - Julia Sauer
Marian Honecny- DNR
GLW
SP-21-001



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-21-015 Elms at Elkridge**
Request for a variance to Sections 16.1205(a)(3) and 16.1209(b)(2) of the Subdivision and Land Development Regulations.

Applicant: Elms at Elkridge, LC
c/o Elm Street Development
5074 Dorsey Hall Drive
Ellicott City, MD 21042
Attn: Jason Van Kirk

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 **Sections 16.1205(a)(3) and 16.1209(b)(2)** of the Forest Conservation Regulations. The purpose is to allow removal of 38 of the 88 on-site specimen trees and provide less than 75% of the forest conservation obligation on-site. The Directors deliberated the application in a meeting on May 20, 2021.

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 seven (7) 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 property contains three perennial streams that flow southward under US Route 1 and onto the site. The first stream runs along the entire eastern boundary. The second stream runs adjacent to the western boundary and converges with the third stream, Shallow Run, which traverses in a clockwise direction through the site before exiting midway along the southern boundary. A riparian buffer of forest, wetlands, and floodplain are associated with the stream systems. Steep slopes adjoin the western banks of the first stream and the northern bank of Shallow Run stream. Most of the northern portion of the site is used as an automotive junk yard and contractor's storage yard with man-made rubble and coarse debris filled steep slopes, often steeper than 2:1, between and adjacent to these land uses. The special condition peculiar to the property is the addition of fill material, grading and placement of salvage material that have been dumped throughout the site, and onto adjoining properties, for more than a century, including within the forest and environmentally sensitive features. This requires significant environmental restoration in order to mitigate the site and remove construction debris and

contaminants, including, but not limited to, asphalt, wood fragments, metal scrap, trace iron, cemented soil, and petroleum. Additionally, the CEF-M zoning and development design was approved by the Howard County Zoning Board and the applicant was awarded a specific density based on the community enhancements and improvements the development would provide, including stream restoration, and clean-up of the site to the highest Maryland Department of the Environment (MDE) standards. As such, the development use is only permitted if developed in accordance with the Documented Concept Plan (DCP). Major changes to the development design cannot occur since the zoning only permits the development as shown on the DCP and any significant changes would nullify the zoning approval.

There is 11.2 acres of existing forest cover within the 26.5-acre net tract area and 88 specimen trees on the entire site, confirmed by DLD staff on a site visit. Consideration was given, during the planning and design of the subdivision, to preserve 4.2 acres of existing net forest, plant 1.7 acres, and retain specimen trees when possible while ensuring the plan remains consistent with the approved DCP. The design of the roads, lots and buildings were adjusted to minimize impacts to environmental features, including specimen trees. Under zoning approval, the DCP provided for the removal of 50 specimen trees; however, subsequent design modifications were made, and the current proposal reduced that number and now provides removal of 38 specimen trees. The Department of Recreation and Parks inspected the site on March 2, 2021 and determined that 7 of the 38 trees to be removed are in poor condition and recommended removal due to hazardous conditions, alone. DLD staff recommends the approval for the removal of all 38 trees as necessary to construct roads, utilities, stormwater management facilities, zoning approved buildings, and the clean-up the property to the highest MDE standards.

The DCP was approved to allow the replacement of a dilapidated stream crossing and private road over Shallow Run to access the southwest portion of the site to construct two apartment buildings and accessory parking, which will require removal of 20 specimen trees (Trees # 39, 41, 44, 45, 50, 51, 52, 53, 57, 58, 61, 62, 82, 83, 86, 102 & 103), three of which are in poor condition (Trees # 40, 54 & 110). These trees and their critical root zones are within the limited core development area available on the southwest side of Shallow Run, which is bounded by environmental features and adjoining development. The area near these trees contains 2 feet of unregulated fill containing contaminants such as organics and glass shards (See, Boring No. B-19). In order to achieve the environmental clean-up of the site it is necessary to excavate to a depth of not less than 2 feet in the vicinity of these trees. This excavation will require the removal of these trees and/or the disturbance of more than 30% of their critical root zones. The layout of this development area has been modified from the original DCP to make it as compact possible. The revised layout shown on the alternative compliance exhibit allows 7 additional trees around the perimeter to be saved (Trees # 38, 42, 46, 60, 55, 56, & 104).

Construction of the remaining apartment buildings, community center and associated internal private roads, on Parcel B north of Shallow Run, will require removal of five specimen trees (Trees # 72, 80, 82 & 88), one of which is in poor condition (Tree # 89). The extreme grade changes created by man-made placement of fill material must be mass graded to allow for construction of a cohesive mixed used development, including internal private roads, parking and stormwater management. The grading cut-to-fill on this parcel ranges from 30' of cut to 30' of fill. It is not possible to save these trees and keep their critical root zone undisturbed without drastic changes to the layout that would expand the limit of disturbance into other environmentally sensitive areas that are currently preserved. The layout of this development area has been modified from the original DCP to make it as compact

as possible. The revised layout shown on the alternative compliance exhibit allows 3 additional trees around the perimeter to be saved (Trees # 71, 73 & 74).

This development proposes two public roads from Route 1. Road A bisects the middle of the property and ends in a cul-de-sac, and Road B aligns across from Duckett's Lane and curves west to end at Road A. Road B must intersect Route 1 opposite of Duckett's Lane, and in order to be constructed to public road standards, it will require removal of one specimen tree (Tree # 87).

The 89 single-family attached lots are east of Road A, south of Road B and adjacent to the easternmost stream. The townhomes are situated in blocks perpendicular to Road A and are accessed by private alleys or roads that terminate at the edge of the stream buffer. The area for the townhomes and alleyways is limited by the public road layout and stream and requires removal of three specimen trees (Trees #10, 13 & 14). The area around these trees either contains or is near 7 feet of unregulated fill containing contaminants such as concrete fragments and glass shards (See, Boring No. B-14). Excavation of these materials will require the removal of these trees or disturbance of more than 30% of their critical root zones.

Private Road C extends from the cul-de-sac of Road A and provides access and parking for the townhomes and will require removal of four specimen trees (Trees # 77, 78 & 79), one of which is in poor condition (Tree #76). This section of Road C is in significant fill, ranging from 6-18 feet (See, Boring No. B-11). The excavation and removal of unregulated and contaminated fill materials in this area will require significant disturbance and removal of these trees.

Stormwater management Pond #1 is placed at the low point in the drainage area, south of the townhomes and east of Shallow Run, and is required to provide 100-year plus management per the zoning approval. The area for this pond is limited by the stream buffers on either side and will require removal of five specimen trees (Trees # 27, 20 & 33), two of which are in poor condition (Trees # 28 & 29). In addition, the area around these trees either contains or is near 4 feet of unregulated fill containing contaminants such as wood and asphalt fragments (See, Boring No. B-15). In order to achieve the environmental clean-up of the site it is necessary to excavate to a depth of not less than 4 feet in the vicinity of these trees. This excavation will require the removal of these trees or disturbance of more than 30% of their critical root zones.

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. The site has limited opportunities for access at the southwest portion of the site due to the concentration of existing environmental features and adjoining developed properties. Two public road access points are provided from Route 1 that allows access to the development, and replacement of a private stream crossing allows access to the southwest portion of the site. The road infrastructure sets the buildable areas, utilities and stormwater management. The widespread presence of environmental contaminants and fill requires mass grading to clean-up the property to the highest MDE standards. As a result of such considerations, the site design minimizes impacts to the site's environmental features, including the specimen tree removal, by compacting the design while not affecting the overall design in a way that would conflict with the zoning approval. The removal of the specimen trees is needed for the required public roads, internal private road circulation,

stormwater management, the replacement stream crossing and the development of the southwest portion of the site. The enforcement of the regulations would significantly reduce the applicant's ability to develop and utilize a large portion of the property because access through the environmental features and removal of select specimen trees would not be permitted. The ability to create a functional and safe road network are rights commonly enjoyed by others in similar areas.

Furthermore, the CEF-M zoning is contingent on the site's development according to the approved DCP. Strict enforcement of the regulations would deprive the landowner of rights associated with the CEF-M zoning, as is customary for properties that use the rezoning process. This design allows remediation on the site, including the excavation and removal of widespread environmental contaminants, under the MDE Voluntary Cleanup Program without affecting the overall design in a way that would conflict with the current zoning approval.

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

There is no evidence that granting of this variance will adversely affect water quality. Industrial uses include; automotive junk yard, a concrete crushing and demolition company, and a contractor's storage yard have occupied the site. Decades of salvage material have been dumped throughout the site, and onto adjoining properties, including within the forest and environmentally sensitive features. Pursuant to zoning approval, the applicant is required to implement several environmental remediation projects to clean the property of contaminants, such as providing \$350,000 in funding to improve stream banks for the stream at the rear of the property, clean-up of the property to the highest MDE standards and clean-up the adjacent County-owned property. Additionally, this redevelopment project will provide stormwater management with both Environmental Site Design and 110% 100-year management. Granting of the variance will allow the applicant to proceed with the removal of buried contaminants through the MDE Voluntary Cleanup Program and will greatly improve the water quality on-site.

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

Under zoning approval, the DCP provided for the removal of 50 specimen trees; however, considerations were made during the planning and design of the subdivision to further reduce the number of specimen trees that need removal. The ability to provide roads, utilities, meet stormwater management requirements, and clean-up the site to highest MDE standards are not special privileges and are necessary for 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 applicant has previously met the conditions for rezoning the subject site to CEF-M and designed the development, including the forest retention areas, prior to enactment of the forest conservation law that required 75% of the forest conservation obligation to be met on-site. The unique conditions of the property, namely the three large riparian systems surrounding and bisecting the property, are not conditions or circumstances which are the result of actions by the applicant. The property's man-made steep slopes and environmental soil contamination pre-dated the applicant's interest in the property and is not a result of actions by the applicant. It has been demonstrated that the proposed development provides a greater public service by enforcing widespread cleanup of the site to the highest MDE standards.

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.

The variance request is a result of the property's physical characteristics and 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 specimen tree table, a tree assessment, photos of the specimen trees to be removed, forest stand delineation, and plan exhibits that details the location of forest and specimen trees to be removed.

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

1. The alternative compliance approval applies only to this CEF-M development and grants the applicant the authority to remove the following 38 specimen trees: Specimen Tree Nos. 10, 13, 14, 27, 28, 29, 30, 33, 39, 40, 41, 44, 45, 50, 51, 52, 53, 54, 57, 58, 61, 62, 72, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 102, 103, 110 (as shown on the alternative compliance plan exhibit 'J'). The removal of any other specimen tree on the subject property is not permitted under this approval.
2. The removal of 38 specimen trees is permitted and requires the planting of 76 native shade trees onsite per Section 16.1216(d) of the Forest Conservation regulations. The trees shall be a minimum of 3" DBH and shall be shown on the final subdivision landscape and forest conservation plan sheets. The trees must be bonded along with the developer's required landscaping or forest conservation.
3. 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 measure on the final subdivision plan.
4. The applicant must satisfy the remaining forest conservation reforestation obligation by purchasing credits from an established forest mitigation bank and/or fulfilling the obligation by planting at a suitable off-site location, preferably within high-priority locations, to be approved by the County during the final subdivision plan stage.
5. The on-site forest conservation easement areas must be planted with a mixture of larger stock plantings (1- to 3-gallon and 1- and 2-inch caliper) in accordance with the standards in the Forest Conservation Manual.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:

Raul Delorme

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Raul Delorme, Director
Department of Recreation and Parks

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

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



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 PUBLIC WORKS
OFFICE OF COMMUNITY SUSTAINABILITY

RE: **WP-21-015 Elms at Elkridge (formerly Roberts Property)**
Request for an alternative compliance to Sections 16.116(a)(1), 16.116(a)(2)(ii) & 16.116(b)(1) of the Subdivision and Land Development Regulations.

Applicant: Elms at Elkridge, LC
c/o Elm Street Development
5074 Dorsey Hall Drive
Ellicott City, MD 21042
Attn: Jason Van Kirk

Pursuant to Section 16.116(d), the Director of the Department of Planning Zoning, Director of the Department of Public Works and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for an alternative compliance with respect to **Sections 16.116(a)(1), 16.116(a)(2)(ii) and 16.116(b)(1)** of the Subdivision and Land Development Regulations. The purpose is to grade, remove vegetative cover and trees, paving and new structures within wetland, streams, their buffers and steep slopes to remove contaminants and construction debris, construct a stream crossing and develop a mixed-use development. The Directors deliberated the application in a meeting on May 20, 2021.

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 alternative compliance 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 of rights commonly enjoyed by other in similar areas.

The property contains three perennial streams that flow southward under US Route 1 and onto the site. The first stream runs along the entire eastern boundary. The second stream runs adjacent to the western boundary and converges with the third stream, Shallow Run, which traverses in a clockwise direction through the site before exiting midway along the southern boundary. An existing dilapidated stream crossing is constructed over Shallow Run which provides access to the southwest portion of the property. A riparian buffer of forest, wetlands, steep slopes and 100-year floodplain are associated with the stream systems. Steep slopes adjoin the western banks of the first stream and the northern bank of Shallow Run. Most of the northern portion of the site is used as an automotive junk yard and contractor's storage yard with man-made rubble and coarse debris filled steep slopes,

often steeper than 2:1, between and adjacent to these land uses, the streams, and Old Washington Boulevard. Borings have determined that most of the steep slopes appear to be man-made from the continuous addition of fill material and grading that has occurred on the site for more than a century. The intent of the regulation is to protect environmentally sensitive features; however, contaminants have significantly degraded the environmental quality of the steep slopes and protection offers no environmental benefit. The applicant is requesting disturbance to the wetlands, stream (Shallow Run), and their buffers for the replacement stream crossing, and disturbances to the eastern stream bank buffer to remove buried debris, and grade for the community park, Road B and townhome units. The applicant requests six separate disturbances to the steep slopes to remove contaminants and level the property for construction of the mixed-use development per the zoning approval.

Strict conformance with Section 16.116 of the Subdivision and Land Development Regulations would deprive the applicant of rights to construct a replacement stream crossing that will provide private road access to developable land, the ability to remove debris and contaminants from the property created by decades of industrial use, and the right to develop the property per the zoning approval. The CEF-M zoning is contingent on the site's development design according to the approved Documented Concept Plan (DCP). Major changes to the development design cannot occur since the zoning only permits the development shown on the DCP and any significant changes would nullify the zoning approval. Strict conformance with the regulations would deprive the landowner of rights associated with the CEF-M zoning, as is customary for properties that use the rezoning process.

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.

As stated above, the property's developable area is constrained by certain physical conditions such as floodplain, steep slopes, wetlands, streams, their buffers, forest resources, and the widespread presence of environmental contaminants and construction debris. The unregulated man-made fills on the site have been determined to contain contaminants such as asphalt, rebar, and unsuitable soils (organics) that can contribute to ground water and surface water contamination and can endanger the water quality of the nearby streams. The Applicant's justification provides a description of each of steep slope disturbance and the unique circumstances for their creation.

Strict adherence to Section 16.116 of the Subdivision and Land Development Regulations would prevent the applicant from creating a safe access across the stream for reasonable development of the property and would prevent removal of contaminated soils and debris from the junk yard use. Furthermore, the CEF-M zoning is contingent on the site's development design according to the approved DCP. Major changes to the development design cannot occur since the zoning only permits the development shown on the DCP and any significant changes would nullify the zoning approval.

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

The granting of the alternative compliance will not confer a special privilege that would be denied to other applicants. Disturbance to the stream, wetland, their buffers and steep slopes are needed to safely replace a dilapidated stream crossing to provide reasonable access to the property, remove contaminated soils and debris, and develop per the zoning approval.

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

The modification allows for a safer stream crossing, environmental remediation and reasonable development of the property per the zoning approval. There is no evidence that this work will be detrimental to the public health, safety or welfare, or injurious to other properties. The applicant has stated that the modifications will provide the development with a safe stream crossing that will be constructed to public road standards and will be maintained privately, with public utilities provided through easements.

Furthermore, the site has operated as an automotive junk yard, a concrete crushing and demolition company, and a contractor's storage yard and is considered a brownfield development. In order to improve the environmental quality of the site, mass voluntary clean-up is required. To satisfy the costs of the clean-up effort, the applicant was awarded a specific density through the rezoning process based on the community enhancements and improvements the development would provide. Since the granting of this alternative compliance will allow for critical environmental clean-up of this site and the adjoining County-owned property to the highest Maryland Department of the Environment (MDE) standards, it will not be detrimental to the public health, safety and welfare.

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

The proposed steep slope, wetland, stream, and buffer disturbances will be returned to their natural conditions to the greatest extent possible. Most, if not all, of the steep slope area proposed to be disturbed are man-made slopes consisting of unregulated fill and environmentally contaminated soils. These man-made slopes are proposed to be removed such that the grade of the disturbed area will more closely reflect its natural condition prior to the introduction of fill materials. All environmental areas outside of the steep slope disturbances will be protected during construction. The steep slopes remaining on the site after development will be minimized, reduced in size and placed into forest conservation easements around the perimeter of the developed area. For the stream crossing, a pipe is proposed to convey water and connect the two wetland areas on the south side of the crossing so that the eastern wetland area does not dry up and can naturally flourish.

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

As part of the zoning approval, this project is required to provide \$350,000 to be used for stream restoration and mitigation, and the site must undergo critical environmental clean-up to the highest Maryland Department of the Environment (MDE) standards. The design of the stream crossing utilizes a 55' bottomless arch design to minimize disturbance of the stream channel and stream banks. The design includes the use of a private road to limit the area or impact to wetland, stream and their buffers and to reduce impervious surfaces and the associated storm water run-off. Enhanced stormwater management is proposed in excess of the Design Manual requirements. For the stream crossing, a pipe is proposed to convey water and connect the two wetland areas on the south side of the crossing so that the eastern wetland area does not dry up and can naturally flourish. The unregulated man-made fills on the site have been determined to contain contaminants such as asphalt, rebar, and unsuitable soils (organics) that can contribute to ground water and surface water contamination and can endanger the water quality of the nearby streams and will be mitigated as part of the environmental clean-up. As a result of these mitigating efforts, adverse impacts to water quality, fish, wildlife, and vegetative habitat will be minimized.

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.

The proposed construction of a replacement stream crossing with a 55' bottomless arch bridge and private road, and disturbance to the steep slopes is the minimum necessary to afford relief and to the extent required to accommodate the removal of environmental contaminants and construction debris and reasonable development of the property in compliance with the zoning approval. The Applicant has chosen the least damaging designs such as bridges, bottomless arch culverts and retaining walls in order to minimize disturbance to the areas within the stream, wetland, their buffer and steep slopes. As part of the zoning approval, this project is required to provide \$350,000 to be used for stream restoration and mitigation, and the site must undergo critical environmental clean-up to the highest MDE standards to provide ecological restoration and water quality enhancement. The design also provides for environmental remediation including the planting trees in certain areas where grading or removal of vegetative cover or trees has taken place, including planting areas that will be placed in permanent forest conservation easements.

Directors Action: Approval of alternative compliance of Sections 16.116(a)(1), 16.116(a)(2)(ii) and 16.116(b)(1) is subject to the following conditions:

1. The disturbances to the steep slopes, stream, wetlands and their buffers shall be limited to the grading as shown on the alternative compliance exhibits. Any natural vegetation disturbed during the grading for the improvements 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 included on the final road construction plan.
2. A copy of the Maryland Department of Environment (MDE) permit approval for the disturbance to the stream channel and wetlands and wetland buffers must be provided to DPZ prior to the recordation of the final plat and referenced as a note on the plat.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

DocuSigned by:

Thomas Meunier

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Thomas Meunier, Director
Department of Public Works

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

cc: Research
DED
OCS, Joshua Feldmark
DPW, Thomas Meunier



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

(410) 313-2350

DPZ Office Use only:
 File No. *WP-21-015*
 Date Filed *8/20/26*

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: Roberts Property

Subdivision Name/Property Identification: Roberts Property

Location of property: Rt 1 / Ducketts Lane

Existing Use: Auto Salvage Yard **Proposed Use:** Mixed Use

Tax Map: 38 **Grid:** 13 **Parcel No:** 279, 352, 84 **Election District:** 1

Zoning District: CEF-M **Total site area:** 32.3

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:

ZB-1116M, ECP-21-007, SP-21-001

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. Please use the additional page if needed.

Section Reference No.	Brief Summary of Request
Section 16.1209(b)(2)	Residential developments with more than one acre of obligation shall meet a minimum of 75 percent of their obligation on-site...
Section 16.116(b)(1)	Grading, removal of vegetative cover and trees, new structures, and paving shall not be permitted on land with existing steep slopes...

Section Reference No.	Brief Summary of Request
Section 16.1205(a)(3)	Subdivision, site development, and grading shall leave the following vegetation and specific areas in an undisturbed condition... trees 30 inches in diameter or larger.
Section 16.120(c)(4)	Single-family attached. Single-family attached lots shall have a minimum of 15 feet of frontage on a public road. Single-family attached lots may be approved without public road frontage provided they front on a commonly owned area containing a parking area or private road not exceeding a length of 200 feet measured from the edge of the public right-of-way along the centerline of the private road.

Signature of Property Owner:



Date:

8-17-20

Signature of Petitioner Preparer:



Date:

8/19/20

Name of Property Owner: James Roberts

Name of Petition Preparer: GLW

Address: 6767 Washington Blvd

Address: 3909 National Drive, Suite 250

City, State, Zip: Elkrdige, MD 21075

City, State, Zip: Burtonsville, MD 20866

E-Mail: jvankirk@elmstreetdev.com

E-Mail: dsweeney@glwpa.com

Phone No.: 410-720-3021

Phone No.: 410-880-1820

Contact Person: Jason Van Kirk

Contact Person: Dan Sweeney



Owner's Authorization Attached

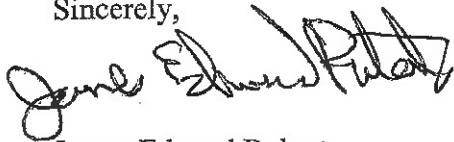
June 16, 2017

Re: Owner's Authorization to Make Submissions for the Roberts development.

To Whom It May Concern:

Please be advised that Elm Street Development is the contract purchaser of the real property located in Howard County in Elkridge, MD (Map 38, Parcel 279, 352, and 847). As part of the Agreement of Sale, Elm Street Development has been granted the right to submit and obtain approval of any and all applications for zoning, residential subdivision plans, variances, conditional uses, alternative compliances, as well as any other applications for permits, waiver or variances to any federal, state and local jurisdictions or other organizations that Elm Street Development deems appropriate in order to achieve plan approvals.

Sincerely,

A handwritten signature in black ink, appearing to read "James Edward Roberts", written in a cursive style.

James Edward Roberts