



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

■ Ellicott City, Maryland 21043

■ 410-313-2350

Voice/Relay

FAX 410-313-3467

February 18, 2021

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

RE: **WP-21-064 Bethany Glen** (SP-21-002)  
Age-Restricted Adult Housing subdivision

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 February 11, 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 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 two public roads (Roads A and B), water and sewer lines, stormwater management facilities and culverts in Neighborhoods C, D and E of the proposed Bethany Glen Age Restricted Adult Housing subdivision. Please see the attached Final Decision Action Report for more information.

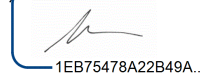
On February 11, 2021 and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the removal of 18 and **denied** the removal of 1 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 two public roads (Roads A and B), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen Age Restricted Adult Housing 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](mailto:djones@howardcountymd.gov).

Sincerely,

DocuSigned by:

A blue DocuSigned signature box containing a handwritten signature in black ink. Below the signature is a long alphanumeric string: 1EB75478A22B49A...

Anthony Cataldo, AICP, 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  
H. Mark Bobotek, Esq.  
Community Members



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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## 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-21-064 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 two public roads (Roads A and B), water and sewer lines, stormwater management facilities and culverts in Neighborhoods C, D and E of the proposed Bethany Glen age-restricted adult housing (ARAH) development as illustrated on the plan exhibit. These environmental features are concentrated in Neighborhoods C, D and E and are detailed on the plan exhibit as "Points 1,2 and 3".

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 18 and **DENIED** the removal of 1 of the proposed 19 specimen trees to be removed as included in the applicants request for a variance with respect to **Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations for the purposes of constructing two public roads (Roads A and B), water and sewer lines, stormwater management facilities and culverts in Neighborhoods D and E of the proposed Bethany Glen ARAH development as illustrated on the plan exhibit.

The Directors deliberated the application for all Sections in a meeting on February 11, 2021.

### **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 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 Sections 16.104(a)(1) and 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 is one newly proposed public road (Road A) that provide access to Neighborhoods C, D and E and one existing off-site public road (Longview Drive) that will be extended to provide access to Neighborhoods D and E. The requested environmental disturbances are limited to three areas identified as Inset Points #1, #2 and #3 on the applicant's plan exhibit, where road crossings and culverts are necessary to access Neighborhoods D and E. Inset Points #1, #2 and #3 requires disturbance to the intermittent stream, the stream bank buffer, wetlands, wetland buffer and the floodplain. Strict conformance with the requirements would deprive the applicant rights enjoyed by others by denying access to most of the site's developable area, the installation of utilities and establishing a viable internal road network.

**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.**

Neighborhoods C and D contains areas (delineated as Inset Points #1, #2 and #3 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 develop Neighborhood D and to establish a viable internal road network. 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 considered as part of this project's Conditional Use application and, as part of that plan, efforts were made to minimize impacts to the environmental features.

**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 the development and as such, public water main looping is required. The looping will lead to efficiencies in the public system and has been designed within the proposed roadbed crossings, where feasible, and then connect through the site to close the loops in the least impactful way. As a result of such considerations, the site design minimizes impacts to the site's environmental features and 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 three environmentally sensitive areas where roads (public roads A and B), utilities, storm drains and culverts 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 while providing adequate and safe 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. 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. 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 road crossings of the streams shall be designed with sunken culverts that provide 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.**

For the reasons noted above, impacts to the environmental features were coordinated and kept at a minimum to provide necessary services to Neighborhoods D and E for access, water, sewer, and stormwater management. Additionally, for the road crossings, the sunken culverts shall be designed in a manner that will have 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 roads A and B, water and sewer lines, culverts and storm water management facilities and related infrastructure as featured in Points #1, #2 and #3 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 included 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*

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Amy Gowan, Director  
Department of Planning and Zoning

DocuSigned by:

*Joshua Feldmark*

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Joshua Feldmark, Administrator  
Office of Community Sustainability

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*Thomas Meunier*

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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 center

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. Additionally, the ARAH use was permitted by the Howard County Hearing Authority, Hearing Examiner. As such, the ARAH use is only permitted if developed in accordance with the approved Conditional Use Plan. Any deviations from that Plan, other than minor ones, would require a new Conditional Use approval. 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 sizes are located specifically in Neighborhoods D and E. Consideration was given, during the planning and design of the subdivision, to preserve specimen trees when possible and ensure the plan remains consistent with the Conditional Use plan approved by the Hearing Examiner. The design of the roads and lots were adjusted to minimize impacts to environmental features, including specimen trees.

The Department of Recreation and Parks inspected the site on June 29, 2020 and determined that 5 of the 19 trees to be removed are in poor condition and recommended removal due to hazardous conditions, alone. DLD staff recommended the approval for the removal of 17 specimen trees of the 19 requested specimen trees and discussed the possibility of saving two specimen trees (ST-35 and T-46). The removal of the 17 trees is necessary to construct roads, utilities, and stormwater management facilities. DLD staff reviewed the potential use of retaining walls to provide the opportunity for ST-35 and ST-46, which are located within or close to forest conservation easements, to be retained. During the meeting, specimen trees (ST-35 and ST-46) were reviewed in detail to determine if they should be approved for removal or not. The Department of Recreation and Parks assessed that ST-35 and ST-46 are in only in fair condition and should be removed due to unlikelihood of survival and potential hazard risks. In addition, the prospects for retaining ST-24, ST-25, ST-26 and ST-41 were reviewed in detail as all four trees are in good condition. The Directors determined that ST-24, ST-25 and ST-26 be approved for removal due to their proximity to Road B and the lack of space to adjust the lots to save trees. Through their review, the Directors did determine that that there is an opportunity to save ST-41 by relocating and/or adjusting Lots 32 and 33 and include ST-41 as part of Open Space Lot 165 and the forest conservation easement area. Therefore, the final determination of the Directors review is approving removal of 18 of the 19 specimen trees and denying the removal of ST-41.

**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. Public water is a right commonly enjoyed by others and is therefore proposed as part of the development, and as such, public water main looping is required. The looping will lead to efficiencies in the public system and has been designed within the proposed roadbed crossings, where feasible, and then connect through the site to close the loops in the least impactful way. As a result of such considerations, the site design minimizes impacts to the site's environmental features, including the specimen trees outside the roadbeds. The removal of these specimen trees is 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. The ability to create a functional and safe road and utility network are rights commonly enjoyed by others in similar areas.

**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 as part of the Conditional Use review to avoid the removal of all 40 specimen trees in Neighborhoods C, D and E. 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.

**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 this age-restricted adult housing project and grants the applicant the authority to remove the following 18 specimen trees: Specimen Tree Nos. 1, 2, 3, 21, 23, 24, 25, 26, 27, 28, 31, 35, 37, 38, 39, 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.
2. 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.



3. The critical root zone for the specimen trees to remain must be shown on the Final subdivision plans. If significant root disturbance is necessary, a method must be provided to explain how the trees are to be protected.
  
4. The removal of the 18 specimen trees approved will require the planting of 36 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 development's required landscaping.

DocuSigned by:

*Amy Gowan*

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Amy Gowan, Director  
Department of Planning and Zoning

DocuSigned by:

*Joshua Feldmark*

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Joshua Feldmark, Administrator  
Office of Community Sustainability

DocuSigned by:

*Raul Delerme*

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Raul Delerme, Director  
Department of Recreation and Parks

cc: DLD, Derrick Jones  
OCS, Joshua Feldmark  
DPW, Thomas Meunier  
Rec and Parks, Raul Delerme



<b>DPZ Office Use only:</b>
File No.
Date Filed

## ALTERNATIVE COMPLIANCE APPLICATION

**Site Description:** 9891 Old Frederick Road - Route 99

**Subdivision Name/Property Identification:** Bethany Glen -ARAH SP-21-002 and ECP-21-017

**Location of property:** 9891 Old Frederick Road - Route 99

**Existing Use:** Residential      **Proposed Use:** Age Restricted - Attached & Detached Dwellings

**Tax Map:** 17      **Grid:** 15      **Parcel No:** 34      **Election District:** 5th

**Zoning District:** R-20      **Total site area:** 68.56

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:

BA-17-018C, SP-21-002, ECP-21-017

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)(3)	Specimen Tree Removal, Specimen Trees are to remain undisturbed unless reasonable efforts have been made to protect them. Requesting removal of 19 Specimen Trees.
16.115	Floodplain Preservation - Requesting approval of 3 necessary disturbances to existing floodplains, totaling approximately 10,717 square feet.
16.116	Protection of Wetlands, Streams, and Steep Slopes - Requesting approval of 3 necessary impacts to streams, totaling approximately 6,686 SF of stream disturbance and approximately 43,303 SF of stream buffer disturbance.

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

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

**Name of Property Owner:** The Estate of Ruth L. Harbin  
C/O Mark BoboTek, Esq. **Name of Petition Preparer:** Elm Street Development - Jason Van Kirk

**Address:** P.O. Box 66 **Address:** 5074 Dorsey Hall Drive, Suite 205

**City, State, Zip:** Ellicott City, MD 21042 **City, State, Zip:** Ellicott City, MD 21042

**E-Mail:** [Redacted] **E-Mail:** jvankirk@elmstreetdev.com

**Phone No.:** 410-964-9700 **Phone No.:** 410-720-3021

**Contact Person:** H. Mark BoboTek, Esq. **Contact Person:** Jason Van Kirk

**Owner's Authorization Attached**