



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

February 8, 2022

Ms. Christine Lowe
cslowe@howardcountymd.gov

Howard County Department of Public Works
9801 Broken Land Parkway
Columbia, MD 21046

Dear Ms. Lowe:

RE: WP-22-005, Wharff Lane Gully Stabilization Project

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 2, 2022 and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, and Administrator of the Office of Community Sustainability considered and **approved** your request for alternative compliance with respect to **Section 16.115(c) and Section 16.116(a)(1)&(2)** of the Subdivision and Land Development Regulations to disturb floodplain, streams, and wetlands to repair an eroding stream. Please see the attached Final Decision Action Report for more information.

On February 2, 2022 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 16.1201(v) and Section 16.1205(a)(3) of the Subdivision and Land Development Regulations to allow for the removal of 2 specimen trees and to allow the limit of disturbance to serve as the net tract area for forest conservation purposes. Please see the attached Final Decision Action Report for more information.

On February 2, 2022 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 Section 16.155(a)(1)(i) of the Subdivision and Land Development Regulations to allow the alternative compliance exhibit to serve as the site development plan.

The Department of Planning and Zoning hereby determines that you have demonstrated to its satisfaction that strict enforcement of Section 16.155(a)(1)(i) would result in an unreasonable hardship or practical difficulty. This determination is made with consideration of your alternative compliance application and the one (1) item you were required to address, pursuant to Section 16.104(a)(1):

1. Unreasonable hardship or practical difficulties may result from strict compliance with the regulations.

Strict compliance with the regulations would require the applicant to submit a formal Site Development Plan for the proposed project. This would result in an unreasonable hardship since the alternative compliance plan exhibit contains all necessary information for permitting and construction. The purpose of the project is to

stabilize two eroding streams in the Patapsco River watershed that are negatively impacting County infrastructure. The County is performing this stabilization work as a Capital Project where the “Water Quality Improvement Capital Project Design Plan Process” for Stream Restoration Projects is being enforced. This process uses the Capital Project plans as the record drawing and serves as an exhibit for the alternative compliance application. There is no change to the existing land use or zoning and approval of the alternative compliance promotes efficiency of the plan review process as the alternative compliance drawings included all relevant information needed for this project’s improvements.

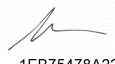
Approval of this Alternative Compliance is subject to the following conditions:

1. The alternative compliance plan exhibit shall serve as the substitute for a site development plan. No disturbance is permitted beyond the 1-acre limit of disturbance as shown on the alternative compliance exhibit, unless it can be sufficiently demonstrated by the applicant to be justified.
2. The applicant shall comply with all grading permit requirements from the Department of Inspections, Licenses and Permits and Howard Soil Conservation District.
3. The applicant shall obtain all required authorizations from the Maryland Department of the Environment and the U.S. Army Corps of Engineers. Provide approval letters from MDE and/or USACE prior to the filing of the grading permit application.

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 Brenda Lubert at (410) 313-2350 or email at BLubert@howardcountymd.gov.

Sincerely,

DocuSigned by:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/bl

cc: Research
DLD - Julia Sauer
Real Estate Services
Marian Honecny- DNR (marian.honecny@maryland.gov)
Katie Talley (KTalley@biohabitats.com) - Biohabitats



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ALTERNATIVE COMPLIANCE FINAL DECISION ACTION REPORT

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

RE: WP-22-005, Wharff Lane Gully Stabilization Project, Capital Project D-1176

Applicant: Howard County Department of Public Works
Stormwater Management Division
Christine Lowe

Pursuant to Section 16.116(d), the Director of the Department of Planning Zoning, and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for an alternative compliance with respect to **Section 16.115(c) and Section 16.116(a)(1)&(2)** of the Subdivision and Land Development Regulations to disturb floodplain, streams, and wetlands to repair an eroding stream. Since this is a capital project, the Department of Public Works recused itself from consideration of this application.

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 16.1201(v) and Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations to allow for the removal of 2 specimen trees and to allow the limit of disturbance to serve as the net tract area for forest conservation purposes.

The Directors deliberated the application in a meeting on February 2, 2022.

Subtitle 1: Section 16.115(c) and Section 16.116(a)(1)&(2)

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in unreasonable hardship or practical difficulty. This determination is made with consideration of the 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.

DPW, Stormwater Management Division proposes a Capital Project to stabilize the eroding stream beds and banks of the Wharff Lane Tributary and Gully. This project will provide a stable slope that will be vegetated to reduce erosion. The stream is severely incised and degraded where its floodplain is located within the stream area. To fix the degraded stream, temporary impacts to the floodplain are needed to excavate the stream banks to a stable slope that allows the County to resolve the existing issue and not alter the existing drainage pattern. Strict conformance with the requirements would prohibit the County from completing this Capital Project and the stream would continue to degrade and release sediment and nutrients into the County waterways. The Wharff Lane Gully Stabilization Capital Project is occurring within a public 100-year floodplain, drainage and utility easement granted to Howard County as part of the Smith Property subdivision. Completion of this capital project

fulfills the County's maintenance responsibility for providing a stable stormwater conveyance through this drainage easement. The project's main goal is to improve the ecological function of the stream and floodplain. Upon completion, all impacted areas will be restored to a more stable environment and replanted with native species.

The County's Capital Project looks to stabilize two existing stream channels and their banks, which results in the temporary impact to the stream, stream buffer, 100-year floodplain, wetland buffer, and steep slopes. Strict conformance with the requirements would not allow the County to complete the project. The Wharff Lane Gully Stabilization Capital Project is occurring within a public 100-year floodplain, drainage and utility easement granted to Howard County. Completion of this capital project fulfills the county's maintenance responsibilities for providing a stable stormwater conveyance through this drainage easement. The project's main goal is to improve the ecological function of the stream and floodplain. Upon completion, all impacted areas will be restored to a more stable environment and replanted with native species.

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.

The existing stream banks are eroding and nearly vertical with little to no vegetation stabilizing them. To remedy this condition, work in and adjacent to the stream, wetland and its floodplain is required. The project goals could not be achieved working outside the limits of the 100-year floodplain.

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

This variance would not confer the County a special privilege that would be denied to other applicants looking to also temporarily impact a floodplain, streams, stream buffers, floodplain and/or wetland to stabilize eroding stream banks.

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

The modification to allow temporary impacts to the floodplain, stream, stream buffer, floodplain, and wetland is beneficial to public health by reducing sediment and nutrients entering the County's waterways. Safety is improved by grading the stream banks to a stable slope and stabilizing them with native vegetation to reduce future erosion from occurring.

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

The temporary impacts will result in an improvement to the stream channel and banks. The stream banks, buffers and other disturbed areas will be planted with native herbaceous seed, shrubs and trees to restore the natural condition.

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

The project is considered self-mitigating and the stream and buffer conditions will be improved as a result of the project. During construction, pump around practices and filter bags are provided to ensure clean water is either being diverted around the active construction area or any dirty water is filtered before leaving the construction area.

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 limits of disturbance were delineated to minimize impacts to existing vegetation and trees while disturbance outside of the stream channel will be planted with native herbaceous seed, shrubs, and trees once construction is complete.

Directors Action: Approval of alternative compliance of Section 16.115(c) and Section 16.116(a)(1)&(2) is subject to the following conditions:

1. The disturbance to the 100-year floodplain, 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 stream repair must be restored to its natural condition to the greatest extent possible once the construction is completed.
2. A copy of the Maryland Department of the Environment (MDE) permit approval for the disturbance to the stream channel and wetlands and wetland buffers must be provided to DPZ prior to the filing of a grading permit application.

DocuSigned by:

Amy Gowan

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Amy Gowan, Director
Department of Planning and Zoning

Recused – DPW Capital Project

Thomas Meunier, Director
Department of Public Works

DocuSigned by:

Joshua Feldmark

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Joshua Feldmark, Administrator
Office of Community Sustainability

Subtitle 12: Section 16.1201(v) and 16.1205(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 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 County is temporarily impacting several private properties to perform work within their drainage easement. Using the LOD as the net tract area will allow the county to perform work without incorporating the undisturbed privately-owned lands outside the project limits into the forest conservation requirement.

The two specimen trees are proposed for removal are in poor condition and affect the contractor's ability to access the project area and complete the work. The 51" tulip poplar is partially downed and lays within the middle of the LOD and within the newly proposed stream channel alignment. Without the removal of this specimen tree, the project could not be completed. The 31" black cherry is in poor condition and is located within the proposed access path. Saving this tree will cause additional impacts to the root zones of healthier specimen trees or result in the removal of younger healthy trees.

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. The adjacent landowners support the project and enforcement of the regulations would deprive the landowners from the County completing the work, which would stabilize the stream bed and banks that impact their properties. Without the removal of the specimen trees, the County will not be able to fulfill their obligation under the terms of the "Public 100-Year Floodplain, Drainage and Utility Easement" located on these private properties.

Permitting the LOD to be used as the Net Tract Area allows the forest conservation regulations to be applied to the portions of property that are physically impacted by this work. It would represent an unwarranted hardship for the County and adjacent property owners to be responsible for the forest conservation obligation that would be created with the inclusion of the entirety of the parcels impacted.

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

Granting the variance will not adversely affect water quality as the project goal is to repair two stream channels and their associated banks that are actively eroding and depositing sediment and nutrients into the County's waterways affecting its water quality. The removal of the specimen trees is necessary for the completion of the stream repair. Their removal will be mitigated with the plantings of six 3" DBH native trees onsite.

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

Granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants. Removal of trees in such poor condition within a developed area is considered best practice among arborists and land management professionals. The two specimen trees have reached a state of decline and without their removal the eroding stream could not be repaired. Mitigation will be provided for the removal of these trees.

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

The variance request is not based on conditions or circumstances which are the result of actions by the applicant. The condition of the trees is a result of their natural life cycle. The removal is needed for the stream repair and will provide growth for healthy adjacent trees. The request to use the LOD as the net tract area is intended to delineate the forest conservation burden for the Capital Project and not affect the private landowners.

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.

A site visit confirmed that the 2 specimen trees proposed for removal are in poor condition as represented in the alternative compliance application.

Directors Action: Approval of alternative compliance of Section 16.1201(v) and 16.1205(a)(3) is subject to the following conditions:

1. The alternative compliance approval applies only to the proposed development and grants the applicant the authority to remove the 2 specimen trees (51" tulip poplar and 31" black cherry) as shown on the alternative compliance exhibit. The removal of any other specimen tree on the subject property is not permitted under this approval.
2. The removal of 2 specimen trees is permitted and requires the planting of 6 native shade trees onsite which exceeds the requirements per Section 16.1216(d) of the Forest Conservation regulations. The native trees shall be a minimum of 3" DBH.
3. Protective measures shall be utilized during construction to protect the specimen tree that is to remain, including how the critical root zones are to be protected.

4. Prior to the commencement of the proposed stream restoration project, the Department of Public Works shall pay a fee-in-lieu in the amount of \$21,780.00 for the reforestation obligation totaling 0.4 acres. The payment shall be made through the transfer of funds to SAP Account 2060000000-3000-3000000000-PWPZ000000000000-432521. A copy of the transfer receipt shall be submitted to DPZ- Division of Land Development prior to applying for grading permits.

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

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Joshua Feldmark, Administrator
Office of Community Sustainability

cc: Research
OCS, Joshua Feldmark
DRP, Raul Delerme

Certificate Of Completion

Envelope Id: D8C7DF64AA2847DD9B420DEF157DBDAF	Status: Completed
Subject: Please DocuSign: WP-22-005 Wharff Lane - approval letter.docx, WP-22-005 -Wharff Lane -DAR.docx.pdf	
Source Envelope:	
Document Pages: 7	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Disabled	Envelope Originator:
Envelope Stamping: Disabled	Anthony Cataldo
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	Ellicott City, MD 21043
	acataldo@howardcountymd.gov
	IP Address: 167.102.191.18

Record Tracking

Status: Original	Holder: Anthony Cataldo	Location: DocuSign
2/7/2022 1:08:29 PM	acataldo@howardcountymd.gov	

Signer Events

Anthony Cataldo
 acataldo@howardcountymd.gov
 Division Chief
 Howard County Government
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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 Signature Adoption: Uploaded Signature Image
 Using IP Address: 167.102.191.18

Timestamp

Sent: 2/7/2022 1:09:01 PM
 Viewed: 2/7/2022 1:09:06 PM
 Signed: 2/7/2022 1:09:14 PM
 Freeform Signing

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	2/7/2022 1:09:06 PM
Signing Complete	Security Checked	2/7/2022 1:09:14 PM
Completed	Security Checked	2/7/2022 1:09:14 PM

Payment Events	Status	Timestamps
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Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

September 16, 2021

Ms. Christine Lowe
Howard County Department of Public Works
9801 Broken Land Parkway
Columbia, MD 21046

Dear Ms. Lowe:

RE: WP-22-005, Wharff Lane Gully Stabilization Project

Regarding the above referenced alternative compliance petition, this Division is advising you that no action can be taken until the alternative compliance request has been fully justified by explaining how the required criteria has been met (see the attached comments). Once submitted, this information will need to be uploaded into ProjectDox for the SRC agencies to review.

Copies of the exhibit/plan and the supplemental information and a response letter to the comments for each agency should be submitted to this Division for distribution in the following manner:

<u>Agency</u>	<u>#Copies</u>
DLD	1
Research	1
DED	1
OCS	1
Recreation and Parks	1
Health	1

The requested information/**revised plans** must be submitted to this Division within **45 days*** of the date of this letter (**on or before October 31, 2021**), or this Division will recommend that the Planning Director deny this alternative compliance petition.

Once the requested information has been received and reviewed, this office will coordinate agency comments and will prepare a recommendation for the Planning Director's action.

In accordance with adopted Council Bill 51-2016, effective 10/05/16, if the deadline date is a Saturday, Sunday or holiday or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.

Submissions can be mailed to Howard County Planning and Zoning, 3430 Court House Drive, Ellicott City, MD 20143 or dropped into the bin labeled 'DPZ' in the George Howard Building lobby. Submission materials can also be emailed to planning@howardcountymd.gov for processing.

Please include a copy of this letter with your submission.

If you have any questions, please contact Brenda Luber at (410) 313-2350 or email at BLuber@howardcountymd.gov.

Sincerely,



Anthony Cataldo, AICP, Chief
Division of Land Development

AC/bl

cc: Research
File
DLD – Julia Sauer

Howard County Department of Planning and Zoning
Division of Land Development

ALTERNATIVE COMPLIANCE APPLICATION

[Alternative Compliance from Subdivision and Land Development Regulations]

Date Submitted/Accepted _____ DPZ File Number _____

I. **Site Description**

Subdivision Name/Property Identification: _____

Location of property: _____
(Street Address and/or Road Name)

(Existing Use)

(Proposed Use)

(Tax Map No.)

(Grid/Block No.)

(Parcel No.)

(Election District)

(Zoning District)

(Total Site Area)

Provide a brief site history including reference to all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.)

II. **Alternative Compliance Request**

In accordance with Section 16.104 of the Howard County Subdivision and Land Development Regulations, the Department of Planning and Zoning, in conjunction with the Subdivision Review Committee **may grant alternative compliances or modifications to the minimum requirements stipulated within the Regulations if it is determined that extraordinary hardships or practical difficulties may result from strict compliance with the regulations, or if it is determined that the regulations may be served to a greater extent by an alternative proposal.**

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 regulation. Attach a separate sheet if additional information is appropriate.

<u>Section Reference No.</u>	<u>Summary of Regulation</u>
1. _____	_____ _____
2. _____	_____ _____
3. _____	_____ _____
4. _____	_____ _____
5. _____	_____ _____

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 *

Christine Lowe

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

(Date)

(Signature of Petition Preparer) *

(Date)

(Name of Property Owner)

(Name of Petition Preparer, Surveyor/Engineering/Architect
or Agent/Developer)

(Address)

Address)

(City, State, Zip Code)

(City, State, Zip Code)

E-Mail _____

E-Mail _____

(Telephone)

(Fax)

(Telephone)

(Fax)

Contact Person: _____

Contact Person: _____