



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-23-017 W.H. Boyer**
Request for a variance to Section 16.1201(v) and 16.1205(a)(3) of the Subdivision and Land Development Regulations.

Applicant: Evan Diamond
2955 E Route 97
Glenwood, MD 21738

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 Forest Conservation Regulations. The purpose is to utilize the proposed limits of disturbance as the net tract area to generate the forest conservation requirement for the project and for the potential removal of a single specimen tree as part of the site updates. The Directors deliberated the application in a meeting on January 12, 2023.

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

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

The property is comprised of 6 parcels totaling 40.05 acres but less than 2 acres will be disturbed. The applicant is working on adding to the existing business on the property and bringing the parcel into compliance with an existing code violation case. Strict enforcement of the regulations would require the applicant to address forest conservation for a largely disproportionate amount of land than what is proposed to be updated through the SDP. Requiring the forest conservation to apply to the full 40 acres would create an unwarranted hardship for the applicant for the roughly 2 acres of site improvements.

Disturbances to the critical root zone are proposed to be the minimum amount possible given the existing site conditions and tree protection measures will be in place to preserve the trees. Specimen tree number 3 (ST-3), a 32" sweetgum is located in very close proximity to one of the existing houses and a new proposed structure. The existing structure within the CRZ significantly reduces the applicant's ability to place new development adjacent to existing infrastructure. The applicant has attempted to limit impacts to the extent feasible however, the LOD impacts 37% of the CRZ of this tree. Although the applicant intends to protect and preserve the tree on site, this applicant seeks permission to remove it due to the CRZ impacts requested.

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

Enforcement of these regulations would deprive the landowner of right commonly enjoyed by others in similar areas. In similar areas, projects involving development of the entire site would apply the Forest Conservation obligation to the entire site acreage. When site disturbance is limited to a small portion of a large property, relief is typically granted to allow the LOD to serve as the NTA. Therefore, denial of this variance would deprive the landowner of rights commonly enjoyed by others in similar areas.

The proposed improvement and updates to the property will also correct zoning violations on site and will be taking place in currently hardscaped areas. The removal and shifting of structures on site are required and the proposed additions are being placed over existing paved areas. The location of the tree and associated CRZ adjacent to the residential structure limits the potential for expanded development within proximity to existing infrastructure. It is the intent for the applicant to preserve the tree but given the amount of disturbance to the critical root zone, its removal may be necessary to remove the trailers and storage containers and construct the new storage buildings on site.

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, which include small filtering processes to address water quality. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit. The onsite location for the proposed forest conservation area is being placed with in a stream buffer area which will improve and positively affect 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.

Granting the requested variance will not confer a special privilege on the applicant that would be denied to other applicants. The landscape contracting company has been in business at the subject property since about 1974. The applicant is working to bring the site into compliance and to correct the items in the Zoning violation. The proposed development was also designed to minimize the amount of disturbance to the existing environmental areas. The request to utilize the proposed limits of disturbance for the proportionally small areas of improvement as opposed to the entire property

Granting of this variance is not a special privilege, as similar alternative compliance requests have been granted to applicants to appropriately address the requisite amount of forest conservation for the proposed improvement and to address the potential removal of a specimen tree located within the main development portion 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 owner is working to bring the site into compliance and in line with the conditions of approval established under BA case BA-19-018C. The variance request will provide needed relief for the applicant and is based on reasonable compliance proportionate to the proposed disturbances for the project. The single specimen tree removal is requested as a precautionary measure should the tree's health deteriorate requiring its removal. The Directors discussed the actions leading to this violation and alternative compliance request. They have determined that two additional mitigation trees, (four total) shall be required for the removal of Specimen Tree #3.

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.

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

1. Completion of the Site Development Plan SDP-22-044 to show all the proposed site updates and infrastructure.
2. Disturbance to the site shall not exceed the area used to calculate the forest conservation requirements.
3. The generated forest conservation requirement will need to be addressed with the Site Development Plan SDP-22-044. The revised forest conservation sheet must include the Howard County Forest Conservation Worksheet using the limit of disturbance for the net land area for the project and identify the total obligation required. A note must be added to the general notes on Sheet 1 with an explanation of the forest conservation requirement, how it is being addressed, and any required fees.
4. A minimum of 4 native 3" DBH, shade trees shall be provided as mitigation for the removal of the specimen tree (ST#3) from the property. Landscaping surety in the amount of \$300.00 per tree shall be provided with the applicant's SDP.
5. Add the Alternative Compliance Request number, purpose, section, date, and conditions on all subsequent plan submissions.

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



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-23-017*
 Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: Agricultural nursery, Landscaping contractor, retail and residential dwellings

Subdivision Name/Property Identification: W.H.Boyer Inc.

Location of property: 2905 E. Route 87 Clarksburg, Maryland 21730

Existing Use: See Site Description

Proposed Use: No change

Tax Map: 14

Grid: 22

Parcel No: 00,03,204,209,206

Election District: 4th

Zoning District: RR-DEO

Total site area: 40.05

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:

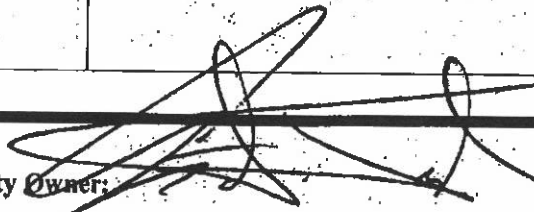
ECP-21-030, BOA Case No. BA-19-018C

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 16.1201(r)	To allow this to be the net tract area for the Forest Conservation requirements
Section 16.1201(v)	To use the LOD as the total area of a proposed development.

Section Reference No.	Brief Summary of Request

Signature of Property Owner:



Date:

8/1/2022

Signature of Petitioner Preparer:



Date:

8/2/2022

Name of Property Owner: Evan Diamond

Name of Petition Preparer: Sill Engineering Group, LLC

Address: 2955 E Route 97

Address: 16005 Frederick Road, 2nd floor

City, State, Zip: Glenwood, MD. 21738

City, State, Zip: Woodbine, MD. 21797

E-Mail: ediamond@whboyer.com

E-Mail: joanne@sillengineering.com

Phone No.: 410-442-2100

Phone No.: 443-325-5076 ext. 105

Contact Person: Evan Diamond

Contact Person: Joanne Carey

Owner's Authorization Attached