



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Lynda D. Eisenberg, AICP, Director

FAX 410-313-3467

May 13, 2024

Radhika Wijetunge
Howard County Government
Stormwater Management Division
Bureau of Environmental Services
9801 Broken Land Parkway
Columbia, MD 21046

RE: WP-24-050, Cherrytree Farms SWM Pond Repair &
Stream Restoration Approval Letter

Dear Ms. Wijetunge:

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 April 23, 2024, 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 **Sections 16.1201(v) & 16.1205(a)(3)** of the Subdivision and Land Development Regulations to use the Limit of Disturbance as the net tract area to calculate the Forest Conservation obligation and to mark four (4) Specimen Trees for removal. Please see the attached Final Decision Action Report for more information.

On April 19th, 2024 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 use the Capital Improvement Design Plan to serve in lieu of a 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.

The County is performing work as a Capital Improvement Project where the "Water Quality Improvement Capital Project Design Plan Process" is being enforced and where the Capital Project plan set is being used as the record drawing and serves as the exhibit for this alternative compliance application. The purpose of the proposed project is to retrofit an existing stormwater management facility and its associated outfall channel, while stabilizing a 345 linear foot stream channel within the Patuxent River watershed. Stabilization of both the stream and outfall channels will help reduce continued sedimentation into the downstream channel and eventually Rocky Gorge Reservoir as well as future degradation of the surrounding forested riparian floodplain. The proposed

improvements include replacing the principal spillway outfall structure, barrel, riser, and low flow pipe with a concrete barrel and riser, regrading the embankment near the new principal spill way structure, installing a filter diaphragm around the principal spillway pipe, and adding riffle grade controls and boulder toe protection to stabilize the stream bed and banks.

Strict compliance with the regulations would require the applicant to submit a formal Site Development Plan for the proposed project that would require additional time and effort from the design team. This would result in an unreasonable hardship since the alternative compliance plan exhibit contains all of the necessary information for permitting and construction. Approval of the alternative compliance promotes efficiency of the plan review process as the alternative compliance drawings include all relevant information needed for this project's improvements.

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

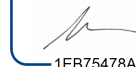
- 1. Mark Specimen Trees #727, #729, #731, & #748 for removal and reserve the right for future removal if necessary. Monitor the Specimen Trees during construction and through the following growing seasons and provide a post-construction management plan per the Howard County Forest Conservation Manual for the minimum three growing seasons.*
- 2. Provide two (2) 3" DBH native Maryland trees as mitigation for the marked removal of each Specimen Tree (ST-727, ST-729, ST-731, & ST-748) for a total of eight (8) mitigation trees.*
- 3. No grading or removal of vegetative cover or trees is permitted within any environmental features, except for the specific area approved under this alternative compliance request and necessary disturbance request approved on September 28, 2023.*
- 4. Prior to commencement of the Capital Project, the Department of Public Works shall identify and utilize a forest mitigation bank and complete the forest mitigation bank redline revision. If a forest mitigation bank is not available, the Department of Public Works may pay a fee-in-leu in the amount of \$10,890.00 to satisfy the 0.2-acre reforestation obligation for outside of the development watershed. The payment shall be made through the transfer of funds to SAP Account 206000000-3000- 3000000000-PWPZ000000000000-432521. A fee-in-lieu request form and a copy of the transfer receipt shall be submitted to DPZ – Division of Land Development once completed. Please note, the applicant shall be responsible for any modifications to the FIL rate should it increase at the time of payment.*
- 5. The applicant shall obtain all required authorizations and permits from the Department of Inspections, Licenses and Permits, and Maryland Department of the Environment and U.S. Army Corps of Engineers for disturbances within the floodplain, wetland, wetland buffer or stream. Reference the applicable MDE or USACOE permits or tracking numbers on the County permits.*

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 Jason Lenker at (410) 313-2350 or email at jlenker@howardcountymd.gov.

Sincerely,

DocuSigned by:



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Anthony Cataldo, AICP, Chief

Division of Land Development

AC/JL

cc: Research
DLD - Julia Sauer
Real Estate Services
DNR – fca.dnr@maryland.gov
Radhika Wijetunge - rwijetunge@howardcountymd.gov



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Lynda D. Eisenberg, AICP, 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-24-050, Cherry Tree Farms SWM Pond Repair**
Request for a variance to Sections 16.1201(v) & 16.1205(a)(3) of the Howard County Code.

Applicant: Radhika Wijetunge
Howard County Government
Stormwater Management Division
Bureau of Environmental Services
9801 Broken Land Parkway
Columbia, MD 21046

Pursuant to Section 16.1216, the Director of the Department of Planning Zoning, Director of the Department of Recreation and Parks and the Administrator of the Office of Community Sustainability considered and **approved** the applicants request for a variance with respect to **Sections 16.1201(v) & 16.1205(a)(3)** of the Forest Conservation Regulations. The purpose is to use the Limit of Disturbance as the net tract area to calculate the Forest Conservation obligation and to mark four (4) Specimen Trees for removal. The Directors deliberated the application in a meeting on April 23, 2024.

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 Limit of Disturbance (LOD) for this project is 0.69 acres and extends over three privately owned lots and one County owned lot. Strict compliance to the regulations would require the applicant to address the Forest Conservation obligation for the entirety of the four properties which would equal approximately 6.0 acres. Since the LOD is only 0.69 acres, the majority of these four properties will remain undisturbed. The applicant proposes to pay a fee-in-lieu to satisfy the forest conservation obligation. Requiring the applicant to address Forest Conservation for the entirety of the four lots would result in an unwarranted hardship for the applicant.

Due to the scope of the repair work that needs to be completed, there is no flexibility to shift the LOD to remove Specimen Trees #727 & #748 from within the LOD or reduce impacts to the critical root zones to less than 30% for Specimen Trees #729 & #731 The project was designed in a way that minimizes environmental impacts, however the disturbance to these four Specimen Trees is unavoidable while still

meeting the intent of the project. All four Specimen Trees are being requested for removal in order to reserve the right for future removal but are going to be retained, if possible, due to a large portion of work being fill which minimizes the actual impacts to the critical root zones. By requiring strict adherence to the regulations, the overall intent of the project to stabilize the stream channel would be unable to be met resulting in an unwarranted hardship.

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

Strict enforcement of the regulations would require the landowner to be responsible for a Forest Conservation obligation that is disproportionate to the scope of work that is being proposed. Most of the proposed work is occurring within the existing drainage and utility easement with only a small portion of the work occurring on private property outside of the existing easement. Permitting the LOD to be used as the Net Tract Area (NTA) allows the forest conservation regulations to be applied to the portion of the property that is physically impacted by this project. Similar projects to repair existing conditions have used the LOD and the NTA when impacts are temporary, necessary and the work returns the project area to an unimproved natural condition. Approval does not confer a special privilege, rather the intent is to right size the forest conservation obligation to the scale of the impacted area.

Strict enforcement of the regulations would deny the removal of these specimen trees prevent the project from adequately addressing the stream channel stabilization. This would result in continued erosion and destabilization of the stream channel which could create unsafe conditions for the landowners. Strict enforcement of the regulations would deprive the landowners of safe and sound living conditions which are rights commonly enjoyed by others.

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 express purpose of this project is to repair the failing storm water management pond and to address stream erosion which is intended to improve drainage and water quality in the area and overall watershed. The project footprint has been intentionally designed to minimize impacts. Additionally, 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.

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

The proposed upgrades to the existing storm water management facility are required to ensure that it continues to provide water quality and control benefits to the surrounding properties and the watershed. Protecting public safety with a project that meets the overall goals and intent of the regulations does not constitute a special privilege.

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

The existing storm water management pond is no longer functioning as designed and does not meet current safety standards. Despite regular standard maintenance, these repairs are needed to update the outdated facility. These circumstances and the location of the trees within the critical work area are not

the result of the applicant's actions.

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 functionality of the storm water management facility has degraded over time. The current conditions of this facility did not arise from and are not a result of any conditions related to land or building use on a neighboring property.

Directors Action: Approval of alternative compliance of Sections 16.120(v) & 16.1205(a)(3) is subject to the following conditions:

1. *Mark Specimen Trees #727, #729, #731, & #748 for removal and reserve the right for future removal if necessary. Monitor the Specimen Trees during construction and through the following growing seasons and provide a post-construction management plan per the Howard County Forest Conservation Manual for the minimum three growing seasons.*
2. *Provide two (2) 3" DBH native Maryland trees as mitigation for the marked removal of each Specimen Tree (ST-727, ST-729, ST-731, & ST-748) for a total of eight (8) mitigation trees.*
3. *No grading or removal of vegetative cover or trees is permitted within any environmental features, except for the specific area approved under this alternative compliance request and necessary disturbance request approved on September 28, 2023.*
4. *Prior to commencement of the Capital Project, the Department of Public Works shall identify and utilize a forest mitigation bank and complete the forest mitigation bank redline revision. If a forest mitigation bank is not available, the Department of Public Works may pay a fee-in-lieu in the amount of \$10,890.00 to satisfy the 0.2-acre reforestation obligation for outside of the development watershed. The payment shall be made through the transfer of funds to SAP Account 206000000-3000- 3000000000-PWPZ000000000000-432521. A fee-in-lieu request form and a copy of the transfer receipt shall be submitted to DPZ – Division of Land Development once completed. Please note, the applicant shall be responsible for any modifications to the FIL rate should it increase at the time of payment.*
5. *The applicant shall obtain all required authorizations and permits from the Department of Inspections, Licenses and Permits, and Maryland Department of the Environment and U.S. Army Corps of Engineers for disturbances within the floodplain, wetland, wetland buffer or stream. Reference the applicable MDE or USACOE permits or tracking numbers on the County permits.*

DocuSigned by:

Lynda Eisenberg

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Lynda Eisenberg, AICP, Director
Department of Planning and Zoning

DocuSigned by:

Nicholas Mooneyhan

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Nicholas Mooneyhan, Director
Department of Recreation and Parks

DocuSigned by:

Timothy Lattimer

AEB60003A8F04A0
Timothy Lattimer, Administrator
Office of Community Sustainability

cc: Research
OCS
DRP
Radhika Wijetunge - rwijetunge@howardcountymd.gov



DPZ Office Use only:
 File No.
 Date Filed

ALTERNATIVE COMPLIANCE APPLICATION

Site Description: Cherry Tree Farm 1 / 2 SWM Pond Repair

Subdivision Name/Property Identification: Cherry Tree

Location of property: 8411 Sand Cherry Lane, Laurel, MD 20723

Existing Use: Parks & Open Space **Proposed Use:** Parks & Open Space

Tax Map: 46 **Grid:** 10 **Parcel No:** 190 **Election District:** 6

Zoning District: R-20 **Total site area:** 0.69 AC

Please list all previously submitted or currently active plans on file with the County (subdivision plans, Board of Appeals petitions, alternative compliance petitions, etc.). If no previous plans have been submitted, please provide a brief history of the site and related information to the request:

This County Capital Project D-1158 has no subdivision plans or Board of Appeals petitions currently open. This project is located on three private lots and one County owned lot. The purpose of this project is to repair an existing stormwater management (SWM) facility and stabilize the adjacent stream channel in Laurel, MD. While the nature of this project requires unavoidable and necessary disturbances to the stream channel, steep slopes, existing forest, and the 100-year floodplain, the shown limits of disturbance were developed to reduce these impacts as best as possible while meeting the intent of the project goals.

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
16.155(a)(1)(i)	Allow the Capital Improvement Project design plan to serve in lieu of Site Development Plan. Additional justification has been provided as an additional page (Exhibit E).
16.1201(v)	Allow the LOD to serve as the net tract area for forest conservation calculations. Additional justification has been provided as an additional page (Exhibit E).

Section Reference No.	Brief Summary of Request
16.1205(a)(3)	Allow the removal of specimen tree due to more than 30% of critical root zone being disturbed includes tree #729. Specimen tree to be replaced using guidance provided in Howard County Forest Conservation Manual. Additional justification has been provided as an additional page (Exhibit E).

Signature of Property Owner:

[Handwritten Signature]

Date:

10/31/23

Signature of Petitioner Preparer:

Date:

Name of Property Owner:

Howard County DPW Stormwater Management Division

Name of Petitioner Preparer:

Address: 9801 Broken Land Parkway

Address:

City, State, Zip: Columbia, MD 21046

City, State, Zip:

E-Mail: rwijetunge@howardcountymd.gov

E-Mail:

Phone No.: 410-313-6429

Phone No.:

Contact Person: Radhika Wijetunge

Contact Person:

Owner's Authorization Attached