

Introduced _____
Public hearing _____
Council action _____
Executive action _____
Effective date _____

County Council of Howard County, Maryland

2016 Legislative Session

Legislative day # 17

BILL NO. 80 – 2016

Introduced by: Jon Weinstein and Calvin Ball

AN ACT amending the Howard County Code to prohibit the issuance of waivers or variances to floodplain, wetland, stream, or steep slope regulations for properties located in the Tiber Branch Watershed; and generally relating to waivers or variances; and making this Act an emergency measure.

Introduced and read first time _____, 2016. Ordered posted and hearing scheduled.

By order _____
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2016.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2016 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2016 at ____ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2016

Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is hereby amended as follows:

3
4 *By Amending:*

5
6 *Title 16 - Planning, Zoning and Subdivisions and Land Development Regulations*

7 *Subtitle 1. - Subdivision and Land Development Regulations*

8 *Article I. - General*

9 *Section 16.104. - Waivers.*

10 *Subsection (a). Authority to Grant*

11
12 *Subtitle 7. - Floodplain*

13 *Section. 16.711. - Variances.*

14 *Subsection (c).Variance Prohibited.*

15
16 *Title 18 - Public Works*

17 *Subtitle 9. - Stormwater Management*

18 *Section. 18.908. - Waivers; watershed management plans.*

19 *Subsection (a) Waiver Requests.*

20
21 *By Adding:*

22 *Title 16 - Planning, Zoning and Subdivisions and Land Development Regulations*

23 *Subtitle 1. - Subdivision and Land Development Regulations*

24 *Article I. - General*

25 *Section 16.104. - Waivers.*

26 *Subsection (D). No Waivers of Floodplain, Wetland, Streams, or Steep Slope Regulations in the*
27 *Tiber Branch Watershed.*

1 **TITLE 16 - PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPMENT**
2 **REGULATIONS**

3
4 **SUBTITLE 1. - SUBDIVISION AND LAND DEVELOPMENT REGULATIONS**

5
6 **ARTICLE I. - General**

7
8 **Sec. 16.104. - Waivers.**

9 (a) *Authority to Grant.* So that substantial justice may be done and the public interest secured, the
10 Department of Planning and Zoning may grant waivers of the requirements of this subtitle,
11 EXCEPT AS PROHIBITED IN SUBSECTION (D), in situations where the Department finds that
12 extraordinary hardships or practical difficulties may result from strict compliance with this
13 subtitle or determines that the purposes of this subtitle may be served to a greater extent by an
14 alternative proposal.

15 (b) *Conditions under Which Waiver May Be Granted.* The Department of Planning and Zoning may
16 approve a waiver to a provision of this subtitle provided that:

17 (1) The developer has presented a petition demonstrating the desirability of waiver; if the
18 County requests additional justifying information, the information must be submitted within
19 45 days of the Department's letter of request. If the information is not submitted by the
20 deadline, the Department shall deny the petition.

21 (2) The waiver shall not have the effect of nullifying the intent and purpose of this subtitle.

22 (3) Within 30 days of the date of the Department's decision letter regarding a waiver petition,
23 the developer may submit additional information to support a request for the Department to:

24 (i) Modify any approval conditions;

25 (ii) Reverse the Department's denial; or

26 (iii) Add or delete specific waiver requests.

27 (4) After 30 days, requests for reconsideration will require a new petition for a waiver and
28 payment of fees in accordance with the adopted fee schedule.

29 (5) Any waiver to the minimum requirements of this subtitle in regard to a particular subdivision
30 or development shall be appropriately noted on the final plat or site plan.

31 (c) *Period of Validity.* The waiver petition, if approved, will remain valid for 12 months from the
32 date of approval or as long as a subdivision or site development plan is being actively processed
33 in accordance with the processing provisions of section 16.144 of this subtitle. Subdivisions or

1 site developments which fail to meet the processing requirements will be required to submit a
2 new waiver request. Waivers granted to extend time limits for plan processing will remain valid
3 for the time duration specified.

4 (D) NO WAIVERS OF FLOODPLAIN, WETLAND, STREAM, OR STEEP SLOPE REGULATIONS IN THE
5 TIBER BRANCH WATERSHED. THE DEPARTMENT MAY NOT GRANT WAIVERS OF ANY
6 REQUIREMENT OF § 16.115 OR § 16.116 OF THIS TITLE FOR ANY PROPERTY LOCATED IN THE
7 TIBER BRANCH WATERSHED UNLESS THE WAIVER:

8 (I) WAS REQUESTED ON OR BEFORE NOVEMBER 7, 2016;

9 (II) IS NECESSARY FOR THE RECONSTRUCTION OF AN EXISTING STRUCTURE DAMAGED BY
10 FLOOD, FIRE, OR OTHER DISASTER; OR

11 (III) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR FLOOD
12 CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT PROJECT
13 INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR
14 EXISTING DEVELOPMENT.

15
16 **SUBTITLE 7. - FLOODPLAIN**

17
18 **Sec. 16.711. - Variances.**

19 (a) *Generally.*

20 (1) *Authority to consider.* The Floodplain Administrator, through the Director of the Department
21 of Inspections, Licenses and Permits, shall have the power to consider and authorize or deny
22 variances from the strict application of the requirements of these regulations for construction
23 adjacent to a floodplain in accordance with section 3112.4 of the Howard County Building
24 Code. A variance shall be approved only if it is determined to not be contrary to the public
25 interest and where, owing to special conditions of the lot or parcel, a literal enforcement of
26 the provisions of these regulations, an unnecessary hardship would result.

27 (2) *Conditions.* Upon consideration of the purposes of these regulations, the individual
28 circumstances, and the considerations and limitations of this section, the Floodplain
29 Administrator, through the Director of the Department of Inspections, Licenses and Permits,
30 may attach such conditions to variances as it deems necessary to further the purposes of
31 these regulations.

1 (3) *Notification to Applicant.* The Floodplain Administrator, through the Director of the
2 Department of Inspections, Licenses and Permits, shall notify, in writing, any Applicant to
3 whom a variance is granted to construct or substantially improve a building or structure with
4 its lowest floor below the elevation required by these regulations that the variance is to the
5 floodplain management requirements of these regulations only, and that the cost of federal
6 flood insurance will be commensurate with the increased risk, with rates up to \$25.00 per
7 \$100.00 of insurance coverage and that the construction of structures below the base flood
8 elevation increases risks to life and property.

9 (4) *Records.* A record of all variance actions, including justification for issuance shall be
10 maintained pursuant to section 16.709 of this subtitle.

11 (b) *Considerations for Granting Variances.* The Floodplain Administrator, through the Director of
12 the Department of Inspections, Licenses and Permits shall make an affirmative decision on a
13 variance request for construction adjacent to a floodplain only upon:

14 (1) A showing of good and sufficient cause.

15 (2) A determination that failure to grant the variance would result in exceptional hardship due to
16 the physical characteristics of the property. Increased cost or inconvenience of meeting the
17 requirements of these regulations does not constitute an exceptional hardship to the
18 Applicant.

19 (3) A determination that the granting of a variance for development within any designated
20 floodway, or flood hazard area with base flood elevations but no designated floodway, will
21 not result in increased flood heights beyond that which is allowed in these regulations.

22 (4) A determination that the granting of a variance will not result in additional threats to public
23 safety; extraordinary public expense, nuisances, fraud or victimization of the public, or
24 conflict with existing local laws.

25 (5) A determination that the building, structure or other development is protected by methods to
26 minimize flood damages.

27 (6) A determination that the variance is the minimum necessary to afford relief, considering the
28 flood hazard.

29 (c) *Variance Prohibited.* [[A variance shall not be issued within any designated regulatory floodway
30 if any increase in flood levels during the base flood discharge would result.]]

31 (1) A VARIANCE SHALL NOT BE ISSUED WITHIN ANY DESIGNATED REGULATORY FLOODWAY IF
32 ANY INCREASE IN FLOOD LEVELS DURING THE BASE FLOOD DISCHARGE WOULD RESULT.

- 1 (2) A VARIANCE MAY NOT BE ISSUED FOR ANY PROPERTY LOCATED IN THE TIBER BRANCH
2 WATERSHED UNLESS THE VARIANCE:
- 3 (I) WAS REQUESTED ON OR BEFORE NOVEMBER 7, 2016;
- 4 (II) IS NECESSARY FOR THE RECONSTRUCTION OF AN EXISTING STRUCTURE DAMAGED BY
5 FLOOD, FIRE, OR OTHER DISASTER; OR
- 6 (III) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR FLOOD
7 CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT PROJECT
8 INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR
9 EXISTING DEVELOPMENT.

10
11
12 **TITLE 18 - PUBLIC WORKS**

13
14 **SUBTITLE 9. - STORMWATER MANAGEMENT**

15
16 **Sec. 18.908. - Waivers; watershed management plans.**

17 (a) *Waiver Requests.* A request for a waiver under this section shall:

- 18 (1) Be in writing; [[and]]
- 19 (2) Contain sufficient descriptions, drawings, and any other information that is necessary to
20 demonstrate that ESD has been implemented to the MEP[[]]; AND
- 21 (3) BE PROHIBITED FOR ANY PROPERTY LOCATED IN THE TIBER BRANCH WATERSHED UNLESS
22 THE WAIVER:
- 23 (I) WAS REQUESTED ON OR BEFORE NOVEMBER 7, 2016;
- 24 (II) IS NECESSARY FOR THE RECONSTRUCTION OF AN EXISTING STRUCTURE DAMAGED BY
25 FLOOD, FIRE, OR OTHER DISASTER; OR
- 26 (III) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR FLOOD
27 CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT PROJECT
28 INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR
29 EXISTING DEVELOPMENT.

30
31 (b) *Criteria to Grant Waivers.* The approving agency may grant a waiver when it has been
32 demonstrated that ESD has been implemented to the MEP and any grant shall:

- 33 (1) Be on a case-by-case basis;

- 1 (2) Consider the cumulative effects waivers; and
- 2 (3) Reasonably ensure the development will not adversely impact stream quality and one of the
3 following requirements are satisfied:
- 4 (i) Off-site ESD implementation for a drainage area comparable in size and percent of
5 increased imperviousness to that of the project;
- 6 (ii) Watershed stream restoration as approved by the approving agency;
- 7 (iii) Retrofitting of an existing stormwater management system to meet or exceed the
8 current design criteria;
- 9 (iv) A fee in lieu, as established in section 18.909 of this subtitle, where physical constraints
10 do not allow implementation of a MDE approved stormwater management system; or
- 11 (v) Other practices approved by MDE and the County.
- 12 (c) *Quantitative Control Waivers—Requirement to have Watershed Management Plan.* Except as
13 provided in subsection (e) of this section, the County shall grant stormwater management
14 quantitative control waivers only to those projects within areas where watershed management
15 plans have been developed consistent with this section.
- 16 (d) *Watershed Management Plan.* A watershed management plan shall:
- 17 (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
- 18 (2) Evaluate both quantity and quality management and opportunities for ESD implementation;
- 19 (3) Include a cumulative impact assessment of current and proposed watershed development;
- 20 (4) Identify existing flooding and receiving stream channel conditions;
- 21 (5) Be conducted at a reasonable scale;
- 22 (6) Specify where on-site or off-site quantitative and qualitative stormwater management
23 practices are to be implemented;
- 24 (7) Be consistent with the general performance standards for stormwater management in
25 Maryland found in the design manual; and
- 26 (8) Be approved by the administration.
- 27 (e) *Quantitative Control Waivers Without Watershed Management Plans.* If a watershed
28 management plan consistent with this section has not been developed, a stormwater management
29 quantitative control waiver may be granted provided that it has been demonstrated that ESD has

1 been implemented to the MEP when the approving agency determines that circumstances exist
2 that prevent the reasonable implementation of quantity control practices.

3 (f) *Quantitative Control Waiver—Additions, Extensions, or Modifications.* If there are subsequent
4 additions, extensions, or modifications to a development that has received a quantitative control
5 waiver, a separate written waiver request is required that shall comply with subsection (b) of this
6 section.

7 (g) *Qualitative Control Waiver.* A stormwater management qualitative control waiver applies only to:

8 (1) In-fill development projects where ESD has been implemented to the MEP and it has been
9 demonstrated that other BMPs are not feasible;

10 (2) Redevelopment projects if the approving agency determines that the requirements of this
11 subtitle are satisfied; or

12 (3) Sites where the approving agency determines that circumstances exist that prevent the
13 reasonable implementation of ESD to the MEP.

14 (h) Stormwater management quantitative and qualitative control waivers may be granted for phased
15 development projects if a system designed to meet the Administration's 2000 regulatory
16 requirements and Howard County Code requirements for multiple phases, as set forth in this
17 subtitle, has been constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met
18 for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in
19 future phases must be demonstrated.

20
21 ***Section 2. Be it further enacted by the County Council of Howard County, Maryland, that all***
22 ***references to the Tiber Branch Watershed in this ordinance are geographically located on the map***
23 ***entitled, “Tiber Branch Watershed Boundary” attached to this Bill as Exhibit A,***

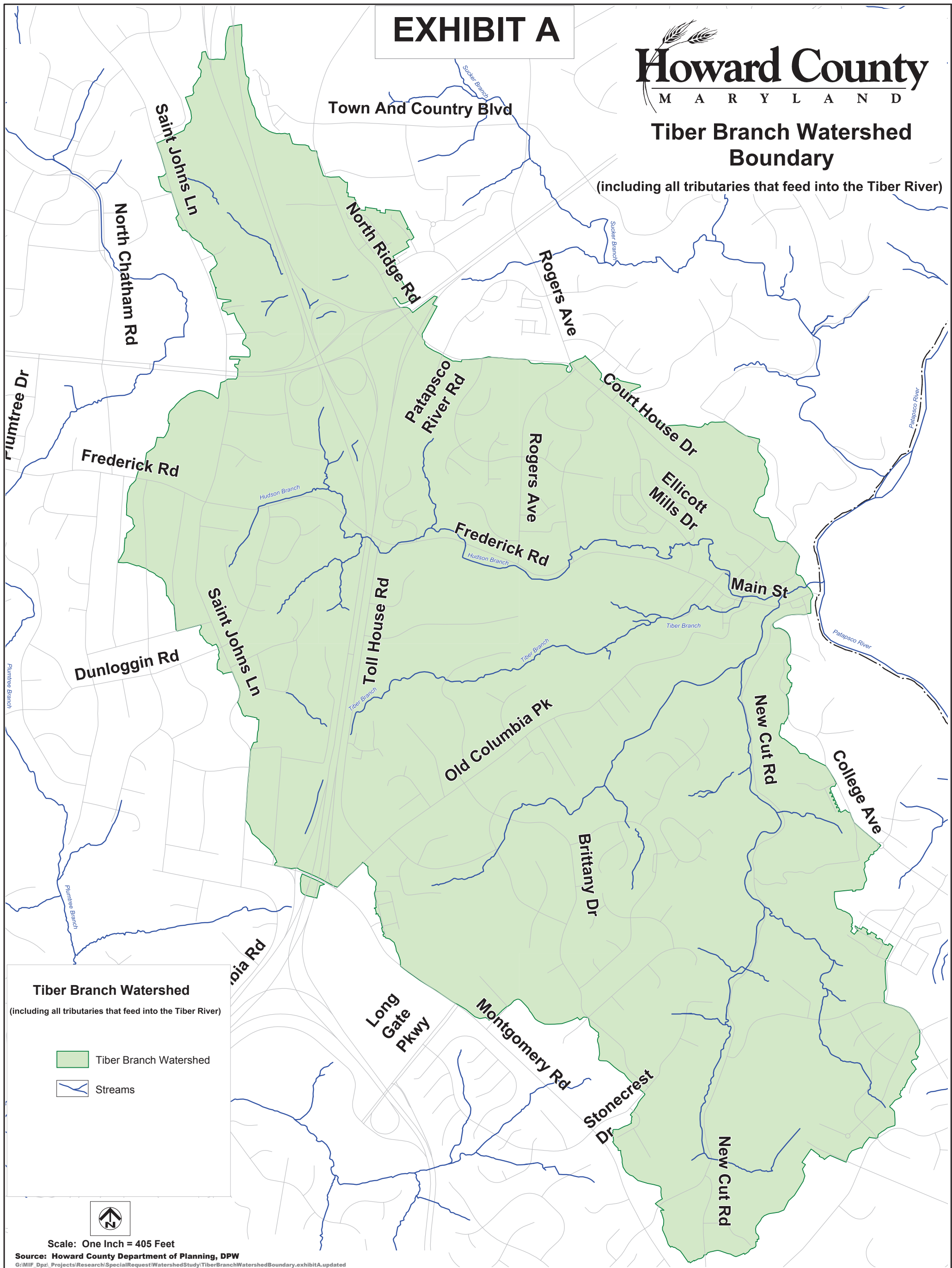
24
25 ***Section 3. Be it further enacted by the County Council of Howard County, Maryland, that this Act is***
26 ***an Emergency Bill that is necessary to protect the public health, safety, and welfare and is effective***
27 ***immediately upon enactment.***

EXHIBIT A





Tiber Branch Watershed Boundary

(including all tributaries that feed into the Tiber River)



Tiber Branch Watershed
(including all tributaries that feed into the Tiber River)

-  Tiber Branch Watershed
-  Streams



Scale: One Inch = 405 Feet

Source: Howard County Department of Planning, DPW

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