

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.

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

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

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

6 (II) IS NECESSARY FOR THE RECONSTRUCTION OF ~~AN EXISTING STRUCTURE~~ STRUCTURES OR  
7 INFRASTRUCTURE DAMAGED BY FLOOD, FIRE, OR OTHER DISASTER; ~~OR~~

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

13  
14 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW  
15 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD  
16 CONTROL FOR EXISTING DEVELOPMENT;

17  
18 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF THE  
19 DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN  
20 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE  
21 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER  
22 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE  
23 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE BE  
24 REQUIRED BY LAW; OR

25  
26 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY OR  
27 OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE ON  
28 PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES THE  
29 SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO MORE  
30 THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES THAT  
31 EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.  
32

1   **SUBTITLE 7. - FLOODPLAIN**

2  
3   **Sec. 16.711. - Variances.**

4   (a) *Generally.*

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

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

17       (3) *Notification to Applicant.* The Floodplain Administrator, through the Director of the  
18          Department of Inspections, Licenses and Permits, shall notify, in writing, any Applicant to  
19          whom a variance is granted to construct or substantially improve a building or structure with  
20          its lowest floor below the elevation required by these regulations that the variance is to the  
21          floodplain management requirements of these regulations only, and that the cost of federal  
22          flood insurance will be commensurate with the increased risk, with rates up to \$25.00 per  
23          \$100.00 of insurance coverage and that the construction of structures below the base flood  
24          elevation increases risks to life and property.

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

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

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

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

- (3) A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
- (4) A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
- (5) A determination that the building, structure or other development is protected by methods to minimize flood damages.
- (6) A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

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

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

(2) A VARIANCE MAY NOT BE ISSUED FOR ANY PROPERTY LOCATED IN THE TIBER BRANCH WATERSHED UNLESS THE VARIANCE:

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

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

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

(IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR EXISTING DEVELOPMENT;

(V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER

1 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE  
2 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE  
3 BE REQUIRED BY LAW; OR

4  
5 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY OR  
6 OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE  
7 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES  
8 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO  
9 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES  
10 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.

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12  
13 **TITLE 18 - PUBLIC WORKS**

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

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

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

- 19 (1) Be in writing; [[and]]  
20 (2) Contain sufficient descriptions, drawings, and any other information that is necessary to  
21 demonstrate that ESD has been implemented to the MEP[.]; AND  
22 (3) BE PROHIBITED FOR ANY PROPERTY LOCATED IN THE TIBER BRANCH WATERSHED UNLESS  
23 THE WAIVER:

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

25 (II) IS NECESSARY FOR THE RECONSTRUCTION OF ~~AN EXISTING STRUCTURE~~ STRUCTURES OR  
26 INFRASTRUCTURE DAMAGED BY FLOOD, FIRE, OR OTHER DISASTER; ~~OR~~

27 (III) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR  
28 FLOOD CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT  
29 PROJECT INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD  
30 CONTROL FOR EXISTING DEVELOPMENT. CONTROL FACILITY AS PART OF A  
31 REDEVELOPMENT PROJECT;

32  
33 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW

1 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD  
2 CONTROL FOR EXISTING DEVELOPMENT;

3  
4 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF THE  
5 DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN  
6 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE  
7 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER  
8 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE  
9 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE  
10 BE REQUIRED BY LAW; OR

11  
12 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY OR  
13 OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE  
14 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES  
15 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO  
16 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES  
17 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.

18  
19 (b) *Criteria to Grant Waivers.* The approving agency may grant a waiver when it has been  
20 demonstrated that ESD has been implemented to the MEP and any grant shall:

- 21 (1) Be on a case-by-case basis;  
22 (2) Consider the cumulative effects waivers; and  
23 (3) Reasonably ensure the development will not adversely impact stream quality and one of the  
24 following requirements are satisfied:  
25 (i) Off-site ESD implementation for a drainage area comparable in size and percent of  
26 increased imperviousness to that of the project;  
27 (ii) Watershed stream restoration as approved by the approving agency;  
28 (iii) Retrofitting of an existing stormwater management system to meet or exceed the  
29 current design criteria;  
30 (iv) A fee in lieu, as established in section 18.909 of this subtitle, where physical constraints  
31 do not allow implementation of a MDE approved stormwater management system; or  
32 (v) Other practices approved by MDE and the County.

33 (c) *Quantitative Control Waivers—Requirement to have Watershed Management Plan.* Except as  
34 provided in subsection (e) of this section, the County shall grant stormwater management



1 quantitative control waivers only to those projects within areas where watershed management  
2 plans have been developed consistent with this section.

3 (d) *Watershed Management Plan.* A watershed management plan shall:

4 (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;

5 (2) Evaluate both quantity and quality management and opportunities for ESD implementation;

6 (3) Include a cumulative impact assessment of current and proposed watershed development;

7 (4) Identify existing flooding and receiving stream channel conditions;

8 (5) Be conducted at a reasonable scale;

9 (6) Specify where on-site or off-site quantitative and qualitative stormwater management  
10 practices are to be implemented;

11 (7) Be consistent with the general performance standards for stormwater management in  
12 Maryland found in the design manual; and

13 (8) Be approved by the administration.

14 (e) *Quantitative Control Waivers Without Watershed Management Plans.* If a watershed  
15 management plan consistent with this section has not been developed, a stormwater management  
16 quantitative control waiver may be granted provided that it has been demonstrated that ESD has  
17 been implemented to the MEP when the approving agency determines that circumstances exist  
18 that prevent the reasonable implementation of quantity control practices.

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

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

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

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

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

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

36

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

4 **Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland,**  
5 **that the Tiber Branch Watershed is depicted on the map attached to this Bill as Exhibit A for**  
6 **illustrative purposes only, and any property which will drain outside the Tiber Branch**  
7 **Watershed as demonstrated by site plans certified by a licensed professional engineer and**  
8 **approved by the Department of Planning and Zoning shall not be considered part of the Tiber**  
9 **Branch Watershed.**

10  
11 **Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland,**  
12 **that the requirements of this Act shall apply to all proposed development in the Tiber Branch**  
13 **Watershed, except for proposed development for which the subdivision or site development**  
14 **plan has been tested for adequate public school facilities prior to September 6, 2016.**

15  
16 **Section 34. Be it further enacted by the County Council of Howard County, Maryland, that this Act is**  
17 **an Emergency Bill that is necessary to protect the public health, safety, and welfare and is effective**  
18 **immediately upon enactment.**