

Introduced 11/7/16
Public hearing 11/21/16
Council action 12/5/16
Executive action 12/9/16
Effective date 12/9/16

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 November 7, 2016. Ordered posted and hearing scheduled.

By order Jessica Feldmark
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 November 21, 2016.

By order Jessica Feldmark
Jessica Feldmark, Administrator

This Bill was read the third time on December 5, 2016 and Passed , Passed with amendments ✓, Failed .

By order Jessica Feldmark
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7th day of December, 2016 at 5 a.m./p.m.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive Dec 9, 2016

Allan H. Kittleman
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.*

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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 FLOOD
9 CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT PROJECT
10 INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR
11 ~~EXISTING DEVELOPMENT.~~ CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;

12
13 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW
14 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD
15 CONTROL FOR EXISTING DEVELOPMENT;

16
17 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF THE
18 DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN
19 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE
20 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER
21 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE
22 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE BE
23 REQUIRED BY LAW; OR

24
25 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY OR
26 OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE ON
27 PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES THE
28 SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO MORE
29 THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES THAT
30 EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.

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32 **SUBTITLE 7. - FLOODPLAIN**

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Sec. 16.711. - Variances.

(a) *Generally.*

- (1) *Authority to consider.* The Floodplain Administrator, through the Director of the Department of Inspections, Licenses and Permits, shall have the power to consider and authorize or deny variances from the strict application of the requirements of these regulations for construction adjacent to a floodplain in accordance with section 3112.4 of the Howard County Building Code. A variance shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.
- (2) *Conditions.* Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the Floodplain Administrator, through the Director of the Department of Inspections, Licenses and Permits, may attach such conditions to variances as it deems necessary to further the purposes of these regulations.
- (3) *Notification to Applicant.* The Floodplain Administrator, through the Director of the Department of Inspections, Licenses and Permits, shall notify, in writing, any Applicant to whom a variance is granted to construct or substantially improve a building or structure with its lowest floor below the elevation required by these regulations that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk, with rates up to \$25.00 per \$100.00 of insurance coverage and that the construction of structures below the base flood elevation increases risks to life and property.
- (4) *Records.* A record of all variance actions, including justification for issuance shall be maintained pursuant to section 16.709 of this subtitle.

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

- (1) A showing of good and sufficient cause.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the 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.

- 1 (4) A determination that the granting of a variance will not result in additional threats to public
2 safety; extraordinary public expense, nuisances, fraud or victimization of the public, or
3 conflict with existing local laws.
- 4 (5) A determination that the building, structure or other development is protected by methods to
5 minimize flood damages.
- 6 (6) A determination that the variance is the minimum necessary to afford relief, considering the
7 flood hazard.
- 8 (c) *Variance Prohibited.* [[A variance shall not be issued within any designated regulatory floodway
9 if any increase in flood levels during the base flood discharge would result.]]
- 10 (1) A VARIANCE SHALL NOT BE ISSUED WITHIN ANY DESIGNATED REGULATORY FLOODWAY IF
11 ANY INCREASE IN FLOOD LEVELS DURING THE BASE FLOOD DISCHARGE WOULD RESULT.
- 12 (2) A VARIANCE MAY NOT BE ISSUED FOR ANY PROPERTY LOCATED IN THE TIBER BRANCH
13 WATERSHED UNLESS THE VARIANCE:
- 14 (I) WAS REQUESTED ON OR BEFORE NOVEMBER 7, 2016;
- 15 (II) IS NECESSARY FOR THE RECONSTRUCTION OF ~~AN EXISTING STRUCTURE~~ STRUCTURES OR
16 INFRASTRUCTURE DAMAGED BY FLOOD, FIRE, OR OTHER DISASTER; OR
- 17 (III) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR FLOOD
18 CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT OR A RETROFIT PROJECT
19 INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD CONTROL FOR
20 EXISTING DEVELOPMENT; CONTROL FACILITY AS PART OF A REDEVELOPMENT
21 PROJECT;
- 22
- 23 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW
24 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD
25 CONTROL FOR EXISTING DEVELOPMENT;
- 26
- 27 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF THE
28 DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN
29 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE
30 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER
31 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE
32 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE
33 BE REQUIRED BY LAW; OR

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2 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY OR
3 OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE
4 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
5 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO
6 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
7 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.
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10 TITLE 18 - PUBLIC WORKS

11 12 SUBTITLE 9. - STORMWATER MANAGEMENT

13 14 Sec. 18.908. - Waivers; watershed management plans.

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

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

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

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

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

29
30 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW
31 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD
32 CONTROL FOR EXISTING DEVELOPMENT;
33

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

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

15
16 (b) *Criteria to Grant Waivers.* The approving agency may grant a waiver when it has been
17 demonstrated that ESD has been implemented to the MEP and any grant shall:

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

30 (c) *Quantitative Control Waivers—Requirement to have Watershed Management Plan.* Except as
31 provided in subsection (e) of this section, the County shall grant stormwater management
32 quantitative control waivers only to those projects within areas where watershed management
33 plans have been developed consistent with this section.

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

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

- (2) Evaluate both quantity and quality management and opportunities for ESD implementation;
- (3) Include a cumulative impact assessment of current and proposed watershed development;
- (4) Identify existing flooding and receiving stream channel conditions;
- (5) Be conducted at a reasonable scale;
- (6) Specify where on-site or off-site quantitative and qualitative stormwater management practices are to be implemented;
- (7) Be consistent with the general performance standards for stormwater management in Maryland found in the design manual; and
- (8) Be approved by the administration.

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

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

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

- (1) In-fill development projects where ESD has been implemented to the MEP and it has been demonstrated that other BMPs are not feasible;
- (2) Redevelopment projects if the approving agency determines that the requirements of this subtitle are satisfied; or
- (3) Sites where the approving agency determines that circumstances exist that prevent the reasonable implementation of ESD to the MEP.

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

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

Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland,

1 that the Tiber Branch Watershed is depicted on the map attached to this Bill as Exhibit A for
2 illustrative purposes only, and any property which will drain outside the Tiber Branch
3 Watershed as demonstrated by site plans certified by a licensed professional engineer and
4 approved by the Department of Planning and Zoning shall not be considered part of the Tiber
5 Branch Watershed.

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

11
12 **Section 3.4. Be it further enacted by the County Council of Howard County, Maryland, that this Act is**
13 an Emergency Bill that is necessary to protect the public health, safety, and welfare and is effective
14 immediately upon enactment.

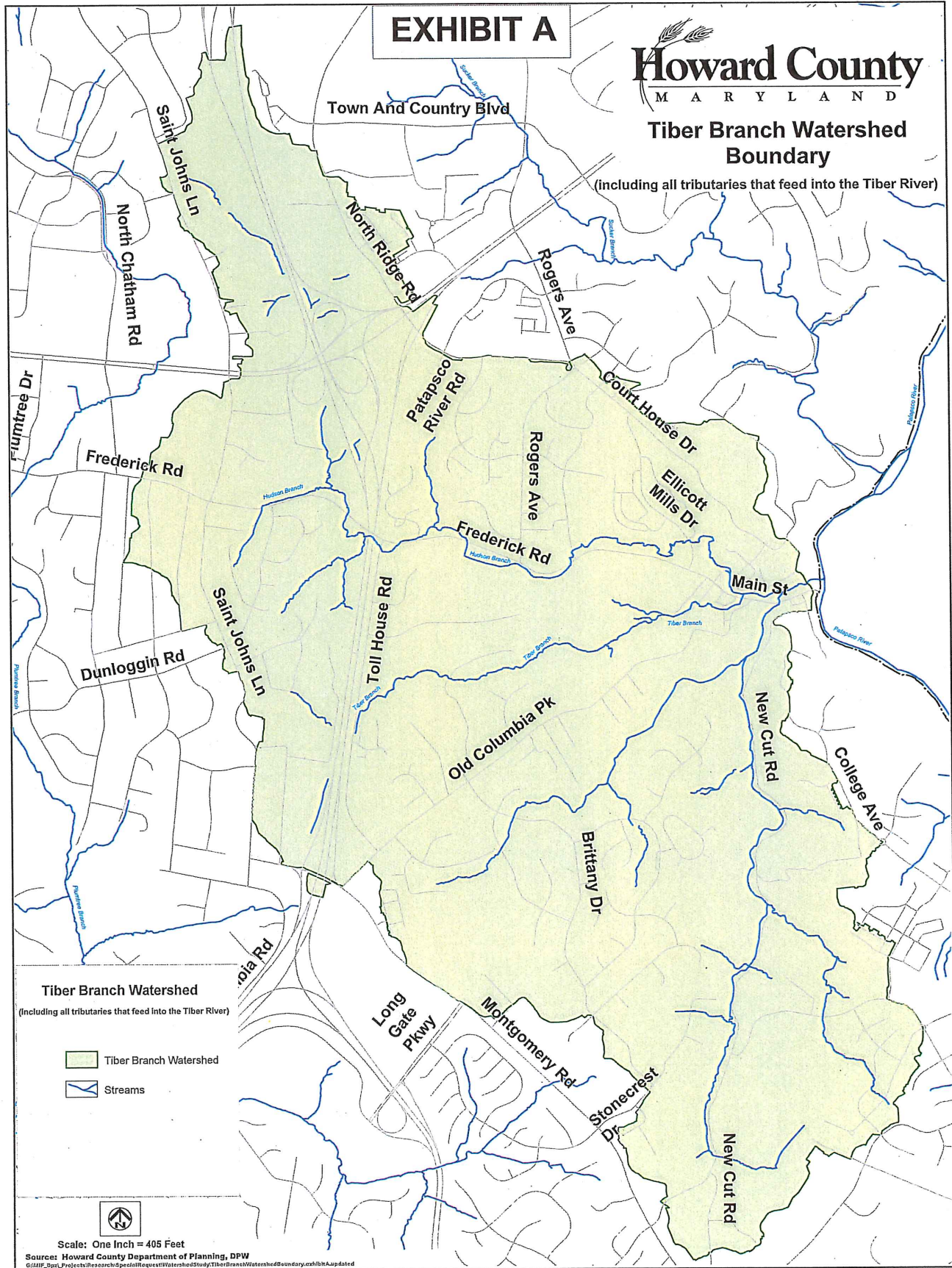
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EXHIBIT A



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

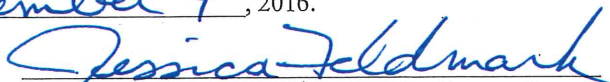


Scale: One Inch = 405 Feet

Source: Howard County Department of Planning, DPW
G:\244F_Spnl_Projects\Research\SpecialRequest\WatershedStudy\TiberBranchWatershedBoundary\exhibitA_updated

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on December 9, 2016.


Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2016.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2016.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2016.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2016.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2016.

Jessica Feldmark, Administrator to the County Council

Amendment 1 to Council Bill 80-2016

BY: Jon Weinstein
Calvin Ball

Legislative Day No: 19
Date: December 5, 2016

Amendment No. 1

1 (This amendment would add infrastructure to the reconstruction exemption and specifies
2 additional exemptions).

3
4 On page 3, in line 9, delete "AN". In the same line, delete "STRUCTURE" and substitute
5 "STRUCTURES OR INFRASTRUCTURE".

6
7 On the same page, in line 10, strike "OR".

8
9 Also on the same page, strike lines 12-14 in their entirety and substitute the following:

10 "CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;

11
12 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF
13 NEW FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR
14 FLOOD CONTROL FOR EXISTING DEVELOPMENT;

15
16 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF
17 THE DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN
18 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE
19 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER
20 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE
21 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE
22 BE REQUIRED BY LAW; OR

23
24 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY
25 OR OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE

1 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
2 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO
3 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
4 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”.
5

6 On page 5, in line 4, delete “AN”. In the same line, delete “STRUCTURE” and substitute
7 “STRUCTURES OR INFRASTRUCTURE”.
8

9 Also on page 5, in line 5, strike “OR”.
10

11 Also on page 5, strike lines 7-9 in their entirety and substitute the following:
12

13 “CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;
14

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

18 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF
19 THE 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
24 BE REQUIRED BY LAW; OR
25

26 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY
27 OR OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE
28 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
29 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO

1 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
2 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”
3

4 On page 5, in line 24, delete “AN”. In the same line, delete “STRUCTURE” and substitute
5 “STRUCTURES OR INFRASTRUCTURE”.

6
7 Also on page 5, in line 25, strike “OR”.

8
9 Also on page 5, strike lines 27-29 in their entirety and substitute the following:

10 “CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;

11
12 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF
13 NEW FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR
14 FLOOD CONTROL FOR EXISTING DEVELOPMENT;

15
16 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF
17 THE DEPARTMENT OF PUBLIC WORKS, OR HIS DESIGNEE SERVING AS FLOODPLAIN
18 ADMINISTRATOR, FINDS THAT UPON COMPLETION OF CONSTRUCTION OF THE
19 DEVELOPMENT, WHICH MAY INCLUDE OFF-SITE IMPROVEMENTS WITHIN THE TIBER
20 BRANCH WATERSHED, THERE WILL BE IMPROVEMENT TO FLOOD CONTROL IN THE
21 TIBER BRANCH WATERSHED AT LEAST 10% MORE THAN WHAT WOULD OTHERWISE
22 BE REQUIRED BY LAW; OR

23
24 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY
25 OR OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE
26 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
27 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO
28 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
29 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”.

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On page 7, strike lines 21 through 23 in their entirety and substitute:

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

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

On page 7, in line 25, strike “3” and substitute “4”.

ADOPTED 12/5/16
FAILED
SIGNATURE Jessica Feldman

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.***
28

1 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
2 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO
3 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
4 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”.

5
6 On page 5, in line 4, delete “AN”. In the same line, delete “STRUCTURE” and substitute
7 “STRUCTURES OR INFRASTRUCTURE”.

8
9 Also on page 5, in line 5, strike “OR”.

10
11 Also on page 5, strike lines 7-9 in their entirety and substitute the following:

12 “CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;

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

17
18 (V) IS REQUESTED AS PART OF A DEVELOPMENT PROPOSAL AND THE DIRECTOR OF
19 THE 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
24 BE REQUIRED BY LAW; OR

25
26 (VI) IS NECESSARY FOR THE CONSTRUCTION OF AN ADDITION, GARAGE, DRIVEWAY
27 OR OTHER ACCESSORY USE IMPROVEMENT OF AN EXISTING RESIDENTIAL STRUCTURE
28 ON PROPERTY LOCATED WITHIN THE TIBER BRANCH WATERSHED THAT INCREASES
29 THE SQUARE FOOTAGE OF THE IMPERVIOUS SURFACES ON THE PROPERTY BY NO

1 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
2 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”.

3
4 On page 5, in line 24, delete “AN”. In the same line, delete “STRUCTURE” and substitute
5 “STRUCTURES OR INFRASTRUCTURE”.

6
7 Also on page 5, in line 25, strike “OR”.

8
9 Also on page 5, strike lines 27-29 in their entirety and substitute the following:

10 “CONTROL FACILITY AS PART OF A REDEVELOPMENT PROJECT;

11
12 (IV) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF
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14 FLOOD CONTROL FOR EXISTING DEVELOPMENT;

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

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28 MORE THAN 25 PERCENT OVER THE SQUARE FOOTAGE OF IMPERVIOUS SURFACES
29 THAT EXISTED ON THE PROPERTY PRIOR TO THE EFFECTIVE DATE OF THIS BILL.”.

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On page 7, strike lines 21 through 23 in their entirety and substitute:

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

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

On page 7, in line 25, strike “3” and substitute “4”.

FILE COPY

Testimony on Council Bill 80

BT Bruce Taylor <btaylor@taylorservice.com>
Fri 11/18, 10:45 PM
CouncilMail; Weinstein, Jon; Ball, Calvin B; Terrasa, Jen; Sigaty, Mary K+3 more

Reply all |

Keep

CB 80 Testimony of Bru...
167 KB

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| Action Items

Attached and below please find written testimony on CB80.

Written Testimony of Bruce Taylor for CB 80
November 18, 2016

Dear Council Members,

Council Bill 80 has an excellent objective of attempting to reduce flooding in Ellicott City, but unfortunately it will not achieve this goal and is likely to make things worse. The facts are that development according to existing standards, even with waivers, provides for better water standards for runoff than having no development on the same property: water quality leaving a property is improved and controlled and in most instances water volume is also better controlled. Allowing for alternative compliances or waivers will not necessarily increase storm water runoff. Disallowing all alternative compliances and waivers can have a negative impact and may actually lead to unintended negative consequences including more runoff under certain conditions.

Furthermore, State regulations require state review and approval before changing county practices as noted in COMAR* in regard to storm water management "...a county shall submit any proposed amendments to the administration for approval." One of the likely reasons for this is that changes in one county may affect other counties, particularly those downstream.

As an owner of property both above and in Historic Ellicott City, I am acutely aware of the challenges involved. The hilly terrain is an essential part of the natural beauty of our area, but it also requires some flexibility to be able to enjoy its use in an environmentally sensitive manner. If we were to say no waivers should exist, we should bulldoze almost all of the Historic District, and compensate the property owners for the loss. Clearly that is not acceptable or the goal of CB80, but it is one of the implications of this proposed legislation.

In regard to Taylor Village developments in particular, and which have been ongoing for over 30 years, and are planned to continue to grow for another 15-25 years, some existing areas require minor waivers to accommodate desired features.

In particular, our engineers anticipate a need for minor variances, waivers and alternative compliances in order to achieve the following important desired features (among others):

- A road from the development directly to New Cut Road for public safety.
- Expanded storm water management for 100 year storm retention on site.
- A sewer outfall to direct sewerage to the New Cut Pump Station instead of through Ellicott City.

If CB 80 is passed without amendments to accommodate these types of needs for plans which have been in development for years, according to the established regulations, there could be a variety of unintended consequences for the Taylor Highlands section of Taylor Village:

- No direct access to New Cut Road, increasing traffic on Village Crest, Hillsborough, Taylor Way and perhaps Callalilly.
 - i. There would be only two access roads for regular use and public safety instead of three for a community of potentially 1200 residents.
- Access if at all to New Cut would be by using a steeper, twisting and much more limited sight distance service drive off of New Cut as exists today. Emergency services generally cannot use this 40 degree private drive with their vehicles.
- Storm water containment areas could not be further increased to hold larger volumes where some steep slope use may be needed.
- Sewerage would need to be directed to the College Avenue main which flows to Historic Ellicott City and existing flows to that line would not get diverted as currently planned. Public works and the town already experience problems with this line now.
- This could represent a taking or condemnation of lands with a cost to the county since these areas would otherwise be developed

As a result of these concerns we believe if the bill is to proceed at all, it should be amended to accommodate applications for exemptions to the no waiver / no alternative compliances for:

- Development plans proposed to the county within the last 24 months.
- Plans which demonstrate no increased storm water flows to the watershed
- Plans which demonstrate reduced storm water flows to the watershed

And amendments are needed to allow for:

- Areas incorrectly shown on the map as draining to Historic Ellicott City that do not
- A sunset provision to accommodate new data after the planned 9 months of additional study

Furthermore, the current system allows DPZ to approve those waivers and alternative compliances it deems appropriate and necessary. I do not believe this needs to be changed, as I am not aware of instances where the decisions of DPZ have contributed to flooding or had a negative impact on the environment or community.

Thanks for your consideration of these important issues,

Bruce T. Taylor, M.D.
Office: 410-465-3674



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Written Testimony for CB 80

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Bruce T. Taylor, M.D.

Bruce T. Taylor, M.D.
President

*COMAR 26.11.02.03 A (2) (a) and 26.11.01.04 A