

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **13**

Bill No. 61-2019

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the criteria for granting waivers from the requirements of the Howard County Subdivision and Land Development Regulations; requiring survey bearings and distances on plans to delineate wetlands and required wetland and stream buffers; prohibiting the impact on certain steep slopes established by the prior development of the property; requiring that the Office of Community Sustainability and the Department of Public Works review certain requests for necessary disturbances; establishing criteria for alternative compliance from the provisions of the Subdivision and Land Development Regulations; providing that the Office of Transportation will also review requests to eliminate sidewalk requirements; and generally relating to alternative compliance, waiver and variances of the Subdivision and Land Development Regulations.

Introduced and read first time _____, 2019. Ordered posted and hearing scheduled.

By order _____
Diane Schwartz Jones, 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 _____, 2019.

By order _____
Diane Schwartz Jones, Administrator

This Bill was read the third time on _____, 2019 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2019 at ___ a.m./p.m.

By order _____
Diane Schwartz Jones, Administrator

Approved/Vetoed by the County Executive _____, 2019

Calvin Ball, 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 amended as follows:

3
4 *By amending*

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

6 *Section 16.104. Waivers.*

7 *Section 16.116. Protection of wetlands, streams, and steep slopes*

8 *Sec. 16.134. Sidewalks and walkways.*

9
10 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

11 **Subtitle 1. Subdivision and Land Development Regulations.**

12 **Article I. General.**

13
14 **Section 16.104. –Waivers.**

15 (a) *Authority to Grant.*

16 (1) So that substantial justice may be done and the public interest secured, the Department of
17 Planning and Zoning may grant waivers of the requirements of this subtitle, except as
18 prohibited in subsection (d), in situations where the Department finds that [[extraordinary
19 hardships]]UNREASONABLE HARDSHIP, OTHER THAN ECONOMIC, or practical difficulties
20 may result from strict compliance with this subtitle [[or determines that the purposes of
21 this subtitle may be served to a greater extent by an alternative proposal]] AND ALL OF
22 THE FOLLOWING CRITERIA ARE MET:

23 (I) STRICT CONFORMANCE WITH THE REQUIREMENTS WILL DEPRIVE THE APPLICANT OF
24 RIGHTS COMMONLY ENJOYED BY OTHERS IN SIMILAR AREAS;

25 (II) THE UNIQUENESS OF THE PROPERTY OR TOPOGRAPHICAL CONDITIONS WOULD RESULT IN
26 PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP FROM STRICT ADHERENCE TO
27 THE REGULATIONS;

28 (III) THE VARIANCE WILL NOT CONFER ON THE APPLICANT A SPECIAL PRIVILEGE THAT
29 WOULD BE DENIED TO OTHER APPLICANTS AND;

1 (IV) THE MODIFICATION IS NOT DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY OR WELFARE
2 OR INJURIOUS TO OTHER PROPERTIES.

3 (2) WAIVERS MAY BE GRANTED WITHOUT MEETING THE CRITERIA OF SUBSECTION (A) IF THE
4 WAIVER:

5 (I) IS NECESSARY FOR THE RECONSTRUCTION OF EXISTING STRUCTURES OR INFRASTRUCTURE
6 DAMAGED BY FLOOD, FIRE, OR OTHER DISASTER;

7 (II) IS NECESSARY FOR THE CONSTRUCTION OF A STORMWATER MANAGEMENT OR FLOOD
8 CONTROL FACILITY AS PART OF A CAPITAL PROJECT; OR

9 (II) IS NECESSARY FOR THE RETROFIT OF EXISTING FACILITIES OR INSTALLATION OF NEW
10 FACILITIES INTENDED SOLELY TO IMPROVE STORMWATER MANAGEMENT OR FLOOD
11 CONTROL FOR EXISTING DEVELOPMENT.

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

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

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

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

22 (i) Modify any approval conditions;

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

24 (iii) Add or delete specific waiver requests.

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

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

29 (c) *Period of Validity.* The waiver petition, if approved, will remain valid for 12 months from the
30 date of approval or as long as a subdivision or site development plan is being actively processed

1 in accordance with the processing provisions of section 16.144 of this subtitle. Subdivisions or site
2 developments which fail to meet the processing requirements will be required to submit a new
3 waiver request. Waivers granted to extend time limits for plan processing will remain valid for the
4 time duration specified.

5 (d) *No Waivers of Floodplain, Wetland, Stream, or Steep Slope Regulations in the Tiber Branch*
6 *Watershed.* The Department may not grant waivers of any requirement of section 16.115 or section
7 16.116 of this title for any property located in the Tiber Branch Watershed unless the waiver:

- 8 (1) Was requested on or before November 7, 2016;
- 9 (2) Is necessary for the reconstruction of existing structures or infrastructure damaged by
10 flood, fire, or other disaster;
- 11 (3) Is necessary for the construction of a stormwater management or flood control facility as
12 part of a redevelopment project;
- 13 (4) Is necessary for the retrofit of existing facilities or installation of new facilities intended
14 solely to improve stormwater management or flood control for existing development;
- 15 (5) Is requested as part of a development proposal and the Director of the Department of Public
16 Works, or his designee serving as Floodplain Administrator, finds that upon completion of
17 construction of the development, which may include off-site improvements within the
18 Tiber Branch Watershed, there will be improvement to flood control in the Tiber Branch
19 Watershed at least ten percent more than what would otherwise be required by law; or
- 20 (6) Is necessary for the construction of an addition, garage, driveway or other accessory use
21 improvement of an existing residential structure on property located within the Tiber
22 Branch Watershed that increases the square footage of the impervious surfaces on the
23 property by no more than 25 percent over the square footage of impervious surfaces that
24 existed on the property prior to the effective date of this bill [Dec. 9, 2016].

25
26 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

27 **Subtitle 1. Subdivision and Land Development Regulations.**

28 **Article II. Design Standards and Requirements.**

29
30 **Section 16.116. - Protection of wetlands, streams, and steep slopes.**

1 (a) *Streams and Wetlands:*

2 (1) Grading, removal of vegetative cover and trees, paving, and new structures shall not be
3 permitted within 25 feet of a wetland in any zoning district.

4 (2) Grading, removal of vegetative cover and trees, paving, and new structures shall not be
5 permitted within:

6 (i) Fifty feet of an intermittent stream bank;

7 (ii) Seventy-five feet of a perennial stream bank for Use I streams as classified by the
8 Maryland Department of the Environment in residential zoning districts and residential
9 and open space land uses in the NT, PGCC, and MXD districts;

10 (iii) One hundred feet of a perennial stream bank for Use III and IV streams; and

11 (iv) Fifty feet of a perennial stream bank in nonresidential zoning districts.

12 (3) In residential subdivisions, wetlands, streams, and their buffers shall be located in required
13 open space or a nonbuildable preservation parcel rather than on residential lots except as
14 permitted by section 16.120 of this subtitle.

15 (4) Wetlands and the required buffers for wetland and streams shall be delineated on final plats
16 and site development plans with a clear notation of use restrictions. WETLAND LIMITS
17 SHALL BE IDENTIFIED WITH SURVEYED BEARINGS AND DISTANCES. Wetlands need not be
18 delineated for agricultural preservation subdivisions or rural cluster subdivisions if a
19 qualified professional certifies that wetlands and buffers will not be impacted by the
20 proposed lots or potential development.

21 (b) *Steep Slopes.* Steep slopes are slopes that average 25 percent or greater over ten vertical feet.

22 (1) Grading, removal of vegetative cover and trees, new structures, and paving shall not be
23 permitted on land with existing steep slopes, except when:

24 (i) The on-site and off-site contiguous area of steep slopes is less than 20,000 square feet[[;
25 and]]

26 (ii) There is sufficient area, a minimum ten feet, outside of stream and wetland buffers for
27 required sediment and erosion control measures[.]; AND

28 (iii) THE EXISTING STEEP SLOPES ARE MAN-MADE ESTABLISHED BY THE PRIOR DEVELOPMENT
29 OF THE PROPERTY

1 (2) In residential subdivisions steep slopes existing at the time of subdivision shall be located
2 in required open space or a nonbuildable preservation parcel, except as permitted by
3 section 16.120 of this subtitle.

4 (c) *Necessary Disturbance:*

5 (1) Grading, removal of vegetative cover and trees, and paving are not permitted in wetlands,
6 streams, wetland buffers, stream buffers or steep slopes unless the Department of Planning
7 and Zoning, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC WORKS AND OFFICE OF
8 COMMUNITY SUSTAINABILITY, determines based on a detailed justification provided by the
9 developer that:

10 (i) It is necessary for construction of public or private roads, driveways, utilities, trails,
11 pathways, or stormwater management facilities which are essential for reasonable
12 development of the property;

13 (ii) The design minimizes disturbance;

14 (iii) There is no other reasonable alternative; and

15 (iv) The cost of an alternative improvement shall not be a factor in deciding whether the
16 criteria in subject subsection (i) above can be met.

17 (2) Reasonable development, for the purpose of this subsection, does not guarantee maximum
18 possible development under the zoning regulations for density receiving subdivisions in
19 the RC and RR zoning districts. In any zoning district, achieving the maximum possible
20 density is not sufficient justification alone to allow disturbance.

21 (3) If permitted, the grading, removal of vegetative cover and trees, or construction shall only
22 be to the extent required to accommodate the necessary improvements. In these cases, the
23 Department of Planning and Zoning shall require the least damaging designs, such as
24 bridges, bottomless culverts or retaining walls, as well as environmental remediation,
25 including the planting of the areas where grading or removal of vegetative cover or trees
26 has taken place utilizing best practices for ecological restoration and water quality
27 enhancement projects.

28 (4) An applicant shall request permission from the Department of Planning and Zoning for a
29 necessary disturbance exception in writing for the grading, removal of vegetative cover
30 and trees, or paving as described in subsection (c) of this section.

1 (5) The Department of Planning and Zoning shall make available to the County Council and
2 the public on the Department's webpage a monthly report that includes the following
3 information for each application for a necessary disturbance exception:

4 (i) The name of the applicant;

5 (ii) The date of the application;

6 (iii) Project name;

7 (iv) Project type;

8 (v) A description of the project;

9 (vi) The action of the Department to deny the application, approve the application, or advise
10 the applicant to seek alternative compliance; and

11 (vii) If approved, include in the report the applicant's mitigation requirement.

12 (D) *WAIVERS.*

13 (1) FOR PRIVATE DEVELOPMENT PROJECTS, THE DIRECTOR OF THE DEPARTMENT OF PLANNING
14 AND ZONING, THE ADMINISTRATOR OF THE OFFICE OF COMMUNITY SUSTAINABILITY AND
15 THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS MAY GRANT WAIVERS WHICH
16 ALLOW FOR ALTERNATIVE COMPLIANCE TO THIS SECTION IF THE APPLICANT CAN
17 DEMONSTRATE IN SUFFICIENT DETAIL THROUGH EVIDENCE THAT THE PROJECT MEETS THE
18 CRITERIA SET FORTH IN SECTION 16.104 AND THE FOLLOWING ADDITIONAL CRITERIA:

19 (I) ANY AREA OF DISTURBANCE IS RETURNED TO ITS NATURAL CONDITION TO THE
20 GREATEST EXTENT POSSIBLE;

21 (II) MITIGATION IS PROVIDED TO MINIMIZE ADVERSE IMPACTS TO WATER QUALITY AND
22 FISH, WILDLIFE, AND VEGETATIVE HABITAT; AND

23 (III) GRADING, REMOVAL OF VEGETATIVE COVER AND TREES, OR CONSTRUCTION SHALL
24 ONLY BE THE MINIMUM NECESSARY TO AFFORD RELIEF AND TO THE EXTENT REQUIRED
25 TO ACCOMMODATE THE NECESSARY IMPROVEMENTS. IN THESE CASES, THE LEAST
26 DAMAGING DESIGNS SHALL BE REQUIRED, SUCH AS BRIDGES, BOTTOMLESS CULVERTS
27 OR RETAINING WALLS, AS WELL AS ENVIRONMENTAL REMEDIATION, INCLUDING THE
28 PLANTING OF THE AREAS WHERE GRADING OR REMOVAL OF VEGETATIVE COVER OR
29 TREES HAS TAKEN PLACE, UTILIZING BEST PRACTICES FOR ECOLOGICAL RESTORATION
30 AND WATER QUALITY ENHANCEMENT PROJECTS.

1 (2) TO DETERMINE IF THE WAIVER IS WARRANTED, THE DEPARTMENTS MAY REQUEST AN
2 ALTERNATIVES ANALYSIS, THAT MAY INCLUDE DIFFERENT PLAN CONCEPTS AND THAT
3 CLEARLY DEMONSTRATES THAT NO OTHER FEASIBLE ALTERNATIVE EXISTS AND THAT
4 MINIMAL IMPACTS WILL OCCUR AS A RESULT OF GRANTING THE MODIFICATION.
5

6 **TITLE 16. PLANNING, ZONING, AND SUBDIVISIONS AND LAND**
7 **DEVELOPMENT REGULATIONS.**

8 **SUBTITLE 1. SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.**

9 **ARTICLE III. REQUIRED IMPROVEMENTS.**
10

11 **Section 16.134. Sidewalks and walkways.**

12 (a) *Sidewalks Required.* The developer shall provide for the construction of sidewalks pursuant to
13 this section and the Design Manual.

14 (1) *Residential development.* In residential subdivisions and site developments the developer
15 shall construct sidewalks on both sides of all streets in the project and along the project
16 frontage except that:

17 (i) Sidewalks are required on only one side of cul-de-sacs and local streets of single-family
18 detached subdivisions.

19 (ii) No sidewalks are required on cul-de-sacs or private streets of any development with
20 ten or fewer dwelling units except along the portion of the development that fronts on
21 a County or State road. For minor subdivisions, if a developer chooses not to construct
22 sidewalks along the portion of the development that fronts on a County or State road,
23 the developer shall pay a fee-in-lieu of sidewalk construction. The fee-in-lieu shall be
24 based on the unit prices for the cost to construct the sidewalk, including the associated
25 curb and gutter, and shall be spent on sidewalks in the same general plan planning area
26 as the development.

27 The Department of Planning and Zoning may accept a fee-in lieu from developers for
28 developments of five to ten dwelling units located on local roads if there are:

- 29 1. No existing adjacent sidewalks; or
- 30 2. No institutional, school, public or retail facilities, within 1,000 feet.

1 Any residential sidewalk requirement that was satisfied by paying a fee-in-lieu may
2 be subsequently constructed by the County through the capital budget process.

3 (iii) No sidewalks are required in the RC or RR zoning district.

4 (iv) Sidewalks on State roads may not be required if the State Highway Administration
5 determines that sidewalks are not appropriate in a specific location.

6 (2) *Nonresidential developments.* In nonresidential subdivisions and site developments the
7 developer shall construct sidewalks on one or both sides of the street, if the Department of
8 Planning and Zoning deems it necessary to serve anticipated internal pedestrian traffic, to
9 provide access to transit stops, or to make connections to surrounding land uses.

10 (b) *No Sidewalks Required.* APPROVAL BY THE [[The]] Department of Planning and Zoning AND
11 OFFICE OF TRANSPORTATION IS REQUIRED TO [[may]] eliminate all or part of the sidewalk
12 requirement where:

13 (1) One side of a street adjoins a landscaped parking island, park, golf course or other type of
14 use which does not require a sidewalk and where continuity is not essential.

15 (2) Adjacent development (recorded plat) has been substantially completed without sidewalks,
16 pursuant to prior approvals, and there is no need for sidewalks to serve commercial or
17 institutional uses, schools, parks, or other public facilities, or make connections to nearby
18 streets or transit service.

19 (3) Sidewalks would be detrimental to the character of a scenic road and are not needed to
20 serve school, shopping or active recreation areas.

21 (4) Sidewalks on State roads may not be required if the State Highway Administration
22 determines that sidewalks are not appropriate in a specific location.

23 (c) *Sidewalks beyond Subdivision.* At the County's sole option, a developer may be required to
24 extend the sidewalk construction up to 250 feet beyond the proposed development to the nearest
25 public sidewalk or pathway or pay the cost of such construction if:

26 (1) The continuation of the sidewalk is necessary to provide safe pedestrian travel or to
27 complete a sidewalk or pathway system;

28 (2) The Director of Planning and Zoning has determined that the nearest public sidewalk or
29 pathway is in close proximity to the proposed subdivision; and

30 (3) The necessary rights-of-way exist or have been acquired by the developer or the County.

1 (d) *Walkways:*

2 (1) *Residential development.* If the Department of Planning and Zoning determines that
3 construction of sidewalks is infeasible or insufficient, an on-site pedestrian walkway to
4 provide access to commercial or institutional uses, schools, or other public facilities such
5 as parks, nearby streets or connections to transit service may be required.

6 (2) *Nonresidential development.* The design of site development plans for nonresidential
7 development shall incorporate on-site pedestrian circulation.

8

9 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
10 *this Act shall become effective 61 days after its enactment.*