

Introduced 02.05.2024
Public Hearing 02.20.2024
Council Action 03.04.2024
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2024 Legislative Session

Legislative Day No. 2

Bill No. 8 -2024

Introduced by: Liz Walsh

AN ACT amending the process for approving waivers which allow for alternative compliance to protections of wetlands, streams, and steep slopes; requiring the Departments that grant the waivers to adhere to certain requirements; and generally relating to the alternative compliance for protection of wetlands, streams, and steep slopes.

Introduced and read first time Feb 5, 2024. Ordered posted and hearing scheduled.
By order Michelle Harrod
Michelle Harrod, 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 Feb 20, 2024.

By order Michelle Harrod
Michelle Harrod, Administrator

This Bill was read the third time on Mar 4, 2024 and Passed , Passed with amendments , Failed X.

By order Michelle Harrod
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this _____ day of _____, 2024 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2024

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 County
2 Code is amended as follows:

3 *By amending:*

4 *Title 16 – Planning, Zoning and Subdivision and Land Development Regulations*

5 *Subtitle 1. – Subdivision and Land Development Regulations*

6 *Article II. – Design Standards and Requirements*

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

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9 **Title 16 – Planning, Zoning and Subdivision and Land Development Regulations**

10 **Subtitle 1. – Subdivision and Land Development Regulations**

11 **Article II. – Design Standards and Requirements**

12 **Sec. 16.116. Protection of wetlands, streams, and steep slopes.**

13 (a) *Streams and Wetlands:*

- 14 (1) Grading, removal of vegetative cover and trees, paving, and new structures shall not be
15 permitted within 25 feet of a wetland in any zoning district.
- 16 (2) Grading, removal of vegetative cover and trees, paving, and new structures shall not be
17 permitted within:
- 18 (i) Fifty feet of an intermittent stream bank;
- 19 (ii) Seventy-five feet of a perennial stream bank for Use I streams as classified by the
20 Maryland Department of the Environment in residential zoning districts and
21 residential and open space land uses in the NT, PGCC, and MXD districts;
- 22 (iii) One hundred feet of a perennial stream bank for Use III and IV streams; and
- 23 (iv) Fifty feet of a perennial stream bank in nonresidential zoning districts.
- 24 (3) In residential subdivisions, wetlands, streams, and their buffers shall be located in
25 required open space or a nonbuildable preservation parcel rather than on residential
26 lots except as permitted by section 16.120 of this subtitle.
- 27 (4) Wetlands and the required buffers for wetland and streams shall be delineated on final
28 plats and site development plans with a clear notation of use restrictions. Wetland
29 limits shall be identified with surveyed bearings and distances. Wetlands need not be
30 delineated for agricultural preservation subdivisions or rural cluster subdivisions if a
31 qualified professional certifies that wetlands and buffers will not be impacted by the
32 proposed lots or potential development.

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

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

1 (i) The on-site and off-site contiguous area of steep slopes is less than 20,000 square
2 feet; and

3 (ii) There is sufficient area, a minimum ten feet, outside of stream and wetland
4 buffers for required sediment and erosion control measures.

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

8 (c) *Necessary Disturbance:*

9 (1) Grading, removal of vegetative cover and trees, and paving are not permitted in
10 wetlands, streams, wetland buffers, stream buffers or steep slopes unless the
11 Department of Planning and Zoning, in consultation with the Department of Public
12 Works and Office of Community Sustainability, determines based on a detailed
13 justification provided by the developer that:

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

17 (ii) The design minimizes disturbance;

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

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

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

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

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

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

38 (i) The name of the applicant;

39 (ii) The date of the application;

40 (iii) Project name;

- 1 (iv) Project type;
- 2 (v) A description of the project;
- 3 (vi) The action of the Department to deny the application, approve the application, or
- 4 advise the applicant to seek alternative compliance; and
- 5 (vii) If approved, include in the report the applicant's mitigation requirement.

6 (d) *Waivers.*

- 7 (1) The Director of the Department of Planning and Zoning, the Administrator of the
- 8 Office of Community Sustainability and the Director of the Department of Public
- 9 Works may grant waivers which allow for alternative compliance to this Section if the
- 10 applicant can demonstrate in sufficient detail through evidence that the project meets
- 11 the criteria set forth in section 16.104 and the following additional criteria:
 - 12 (i) Any area of disturbance is returned to its natural condition to the greatest extent
 - 13 possible;
 - 14 (ii) Mitigation is provided to minimize adverse impacts to water quality and fish,
 - 15 wildlife, and vegetative habitat; and
 - 16 (iii) Grading, removal of vegetative cover and trees, or construction shall only be the
 - 17 minimum necessary to afford relief and to the extent required to accommodate the
 - 18 necessary improvements. In these cases, the least damaging designs shall be
 - 19 required, such as bridges, bottomless culverts or retaining walls, as well as
 - 20 environmental remediation, including the planting of the areas where grading or
 - 21 removal of vegetative cover or trees has taken place, utilizing best practices for
 - 22 ecological restoration and water quality enhancement projects.
- 23 (2) WHEN THE DIRECTORS AND THE ADMINISTRATOR CONSIDER WAIVER PETITIONS UNDER
- 24 THIS SECTION, THEY SHALL MEET TOGETHER IN OPEN SESSION IN ACCORDANCE WITH THE
- 25 OPEN MEETINGS ACT FOUND IN TITLE 3 OF THE GENERAL PROVISIONS ARTICLE OF THE
- 26 ANNOTATED CODE OF MARYLAND, AS AMENDED IN THE FOLLOWING MANNER:
 - 27 (I) THE DEPARTMENT OF PLANNING AND ZONING SHALL NOTIFY IN WRITING:
 - 28 A. ALL INTERESTED PARTIES ON FILE WITH THE DEPARTMENT OF PLANNING AND
 - 29 ZONING; AND
 - 30 B. ALL OWNERS OF PROPERTY WITHIN 100 YARDS OF THE EDGE OF PROJECT, IN ALL
 - 31 DIRECTIONS;
 - 32 (II) AGENDAS SHALL BE MADE AVAILABLE AT LEAST FIVE BUSINESS DAYS PRIOR TO THE
 - 33 MEETING IN AN ELECTRIC MEDIUM READILY AVAILABLE TO THE PUBLIC; AND
 - 34 (III) MINUTES OF OPEN MEETINGS SHALL BE MADE AVAILABLE AS SOON AS PRACTICABLE
 - 35 IN AT LEAST ONE ELECTRIC MEDIUM READILY AVAILABLE TO THE PUBLIC.
- 36 [[[2]]] (3) To determine if the waiver is warranted, the Departments may request an
- 37 alternatives analysis, that may include different plan concepts and that clearly
- 38 demonstrates that no other feasible alternative exists and that minimal impacts will
- 39 occur as a result of granting the modification.

1 [[3]] (4) [[Waivers]] WAIVER PETITIONS under this subsection shall be reported by the
2 Department of Planning and Zoning in the same manner as required under subsection
3 (c)(5) applicable to necessary disturbance exceptions; THIS REPORT SHALL INCLUDE
4 THE DIRECTORS' AND ADMINISTRATORS' WRITTEN DECISION GRANTING OR DENYING THE
5 PETITION.

6 [[4]] (5) The Department of Public Works shall recuse itself from consideration of any
7 capital projects seeking waivers.

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

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