

Introduced 09.06.2022
Public Hearing 09.19.2022
Council Action 10.31.2022
Executive Action 11.09.2022
Effective Date 01.09.2023

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 13

BILL NO. 54 - 2022

Introduced by: Liz Walsh

AN ACT amending the Howard County Code to prohibit the issuance of certain waivers or variances to Forest Conservation regulations for properties located in the Tiber Branch Watershed; requiring certain site design requirements in the Tiber Branch Watershed; altering the existing floodplain, wetland, stream, and steep slope waiver provisions for the Tiber Branch Watershed; requiring development in the Tiber Branch Watershed to meet its forest conservation obligations on-site; ~~allowing certain waivers for capital projects;~~ and generally relating to waivers or variances.

Introduced and read first time Sept 6, 2022. Ordered posted and hearing scheduled.

By order

Michelle R. Harrod
Michelle R. 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 Sept 19, 2022.

By order

Michelle R. Harrod
Michelle R. Harrod, Administrator

This Bill was read the third time on Oct 31, 2022 and Passed ✓, Passed with amendments ✓, Failed .

By order

Michelle R. Harrod
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 1 day of Nov, 2022 at 4⁰⁰ a.m./p.m.

By order

Michelle R. Harrod
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive November 9, 2022

Calvin Ball
Calvin Ball, County Executive

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

Tabled 10.3.2022 Michelle Harrod

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 (d). No Waivers of Floodplain, Wetland, Streams, or Steep Slope Regulations*
11 *in the Tiber Branch Watershed*

12
13 *Subtitle 12. – Forest Conservation*

14 *Section 16.1209. – Site design requirements.*

15 *Section 16.1216. – Variances.*

16 *Subsection(a).*

17
18 *By Adding:*

19 *Title 16 – Planning, Zoning and Subdivisions and Land Development Regulations*

20 *Subtitle 12. – Forest Conservation*

21 *Section 16.1216. – Variances.*

22 *Subsection (f). Variance Prohibited.*

23
24
25 **TITLE 16 – PLANNING, ZONING AND SUBDIVISIONS AND LAND DEVELOPEMNT**
26 **REGULATIONS**

27
28 **SUBTITLE 1. – SUBDIVISION AND LAND DEVELOPMENT REGULATIONS**

29
30 **ARTICLE I. – General**
31

1
2 **Sec. 16.104 – Waivers.**

3 (a) *Authority to Grant.*

4 (1) So that substantial justice may be done and the public interest secured, the Department
5 of Planning and Zoning may grant waivers of the requirements of this subtitle, except
6 as prohibited in subsection (d), in situations where the Department finds that
7 unreasonable hardship or practical difficulties may result from strict compliance with
8 this subtitle or alter the requirements in article II and article III of this subtitle all of the
9 following criteria are met:

- 10 (i) Strict conformance with the requirements will deprive the applicant of rights
11 commonly enjoyed by others in similar areas;
12 (ii) The uniqueness of the property or topographical conditions would result in
13 practical difficulty, other than economic, or unreasonable hardship from strict
14 adherence to the regulations;
15 (iii) The variance will not confer on the applicant a special privilege that would be
16 denied to other applicants; and
17 (iv) The modification is not detrimental to the public health, safety or welfare or
18 injurious to other properties.

19 (2) Waivers may be granted without meeting the criteria of subsection (a) if the waiver:

- 20 (i) Is necessary for the reconstruction of existing structures or infrastructure
21 damaged by flood, fire, or other disaster;
22 (ii) Is necessary for the construction of a stormwater management or flood
23 control facility as part of a capital project; or
24 (iii) Is necessary for the retrofit of existing facilities or installation of new
25 facilities intended solely to improve stormwater management or flood
26 control for existing development.

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

- 29 (1) The developer has presented a petition demonstrating the desirability of waiver;
30 if the County requests additional justifying information, the information must
31 be submitted within 45 days of the Department's letter of request. If the

1 information is not submitted by the deadline, the Department shall deny the
2 petition.

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

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

8 (i) Modify any approval conditions;

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

10 (iii) Add or delete specific waiver requests.

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

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

16 (c) *Period of Validity.* The waiver petition, if approved, will remain valid for 12 months from
17 the date of approval or as long as a subdivision or site development plan is being actively
18 processed in accordance with the processing provisions of section 16.144 of this subtitle.
19 Subdivisions or site developments which fail to meet the processing requirements will be
20 required to submit a new waiver request.

21 (d) *No Waivers of Floodplain, Wetland, Stream, FOREST CONSERVATION, or Steep Slope*
22 *Regulations in the Tiber Branch Watershed.* The Department may not grant waivers of any
23 requirement of section 16.115[[],] or section 16.116, OR VARIANCES UNDER SECTION
24 16.1216 of this title, for any property located in the Tiber Branch Watershed unless the
25 waiver:

26 (1) [[Was requested on or before November 7, 2016;]]

27 [[(2)]] Is necessary for the reconstruction of existing structures~~d~~ or infrastructure damaged
28 by flood, fire, or other disaster;

29 ~~[[3)]]~~ ~~[[2]]~~ Is necessary for the construction of a stormwater management or flood control
30 facility as part of a redevelopment ~~CAPITAL~~ project;]]

31 ~~[[4)]]~~ ~~(2)~~ (3) 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;

[[~~(5)~~]] ~~(3)~~ (4) Is requested as part of a development proposal ~~CAPITAL PROJECT~~ and the Director of the Department of Public Works, or his designee acting as Floodplain Administrator, finds that upon completion of construction of the development, which may include off-site improvements within the Tiber Branch Watershed, there will be improvement to flood control in the Tiber Branch Watershed at least ten percent more than what would otherwise be required by law; ~~or~~

[[~~(6)~~]] ~~(4)~~ (5) Is necessary for the construction of an addition, garage, driveway, or other accessory use improvement of an existing residential structure on property located within the Tiber Branch Watershed that increases the square footage of the impervious surfaces on the property by no more than 25 percent over the square footage of impervious surfaces that existed on the property prior to the effective date of this bill; OR

~~(5)~~ (6) IS REQUESTED AS PART OF A PUBLIC INFRASTRUCTURE CAPITAL PROJECT TO USE THE LIMIT OF DISTURBANCE TO CALCULATE THE 'NET TRACT AREA' AS DEFINED IN SEC. 16.1201(V); OR

~~(6)~~ (7) IS NECESSARY FOR THE REMOVAL OF ~~DEAD OR CERTIFIABLY DISEASED TREES THAT A LICENSED FORESTER, LICENSED LANDSCAPE ARCHITECT, OR A CERTIFIED ARBORIST DETERMINES TO BE DISEASED, DAMAGED, DEAD, OR DECLINING IN A WAY THAT CREATES A HAZARD TO PEOPLE OR PROPERTY.~~

SUBTITLE 12. – FOREST CONSERVATION

Sec. 16.1209. Site design requirements.

(a) Site design should address the Forest Conservation Program goals of maximizing forest retention and meeting forest conservation obligations on-site.

(b) Before mitigation banks, off-site compliance, or fee-in-lieu requests will be considered, forest conservation obligations shall be met on-site, in accordance with the following site design requirements:

(1) Nonresidential developments shall establish Forest Conservation Easements with retained or planted forest in all on-site sensitive areas, including floodplains, wetlands, wetland buffers, steep slopes and stream buffers. To ensure protection of riparian areas, the Forest

1 Conservation Easements shall be a minimum 75-foot width from the banks of any perennial and
2 intermittent stream. The area outside the required stream buffer, as defined by subdivision
3 regulations, and the Forest Conservation Easement may be disturbed during construction then
4 reforested.

5 (2)(Residential developments with more than one acre of obligation shall meet a minimum
6 of 75 percent of their obligation on-site by reducing lot sizes, clustering lots and maximizing open
7 space to the maximum extent permitted by the Subdivision and Land Development Regulations.
8 Infill subdivisions of ten lots or less are exempt from this requirement.

9 (3) Residential developments in the RC or RR zoning districts that propose to import
10 development density, shall accommodate all forest conservation obligations within the boundaries
11 of a receiving property before importing development density.

12 (4) To ensure adequate setbacks from Forest Conservation Easements on residential
13 lots, a 35-foot setback shall be provided from rear and side lot lines for a detached or attached
14 dwelling unit and any on-site or off-site planted Forest Conservation Easement. The setback may
15 be eliminated if larger stock (two rows of one-inch minimum caliper) is planted along the edge of
16 the Forest Conservation Easement.

17 (5) IN THE TIBER BRANCH WATERSHED, ALL RESIDENTIAL DEVELOPMENT THAT IS NOT A
18 CAPITAL PROJECT SHALL MEET 100 PERCENT OF ITS OBLIGATION ON-SITE AND THE APPLICANT SHALL
19 NOT BE PERMITTED TO PAY A FEE-IN-LIEU OF ANY PART OF THIS OBLIGATION.

20 **Sec. 16. 1216. – Variances**

21 (a) ~~[[The]]~~ THE Department may grant waivers to the requirements of this subtitle in
22 accordance with the procedures of subsection 16.104(b), ~~[[and]]~~ subsection 16.104(c),
23 AND SUBSECTION 16.104(D) of the Subdivision Regulations.

24 (b) A variance to the provisions of this subtitle shall be considered and approved or denied in
25 writing by the Directors of the Department of Planning and Zoning, the Administrator of
26 the Office of Community Sustainability, and the Director of Recreation and Parks.

27 (c) Consideration of a variance requested under this section shall include a determination as to
28 whether an applicant has demonstrated to the satisfaction of each Department that
29 enforcement of this subtitle would result in unwarranted hardship. Increased cost or
30 inconvenience of meeting the requirements of these regulations does not constitute an
31 unwarranted hardship to the applicant. The applicant shall:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - (2) Describe how enforcement of these regulations would deprive the landowner of rights commonly enjoyed by others in similar areas;
 - (3) Verify that the granting of a variance will not adversely affect water quality;
 - (4) Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - (5) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
 - (6) Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - (7) Provide any other information appropriate to support the request.
- (d) Any native specimen tree removed shall be replaced on-site by at least two native trees with a DBH (diameter at breast height) of at least three inches.
- (e) Notice of a request for a complete variance of the Forest Conservation Program shall be given by the Department of Planning and Zoning to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance. Notice of a request for a variance to individual program requirements, temporary deferral or phasing of obligations within the Forest Conservation Program requirements shall be given by the Department of Planning and Zoning to the Maryland Department of Natural Resources after a decision on the variance request is rendered by the Department.

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.

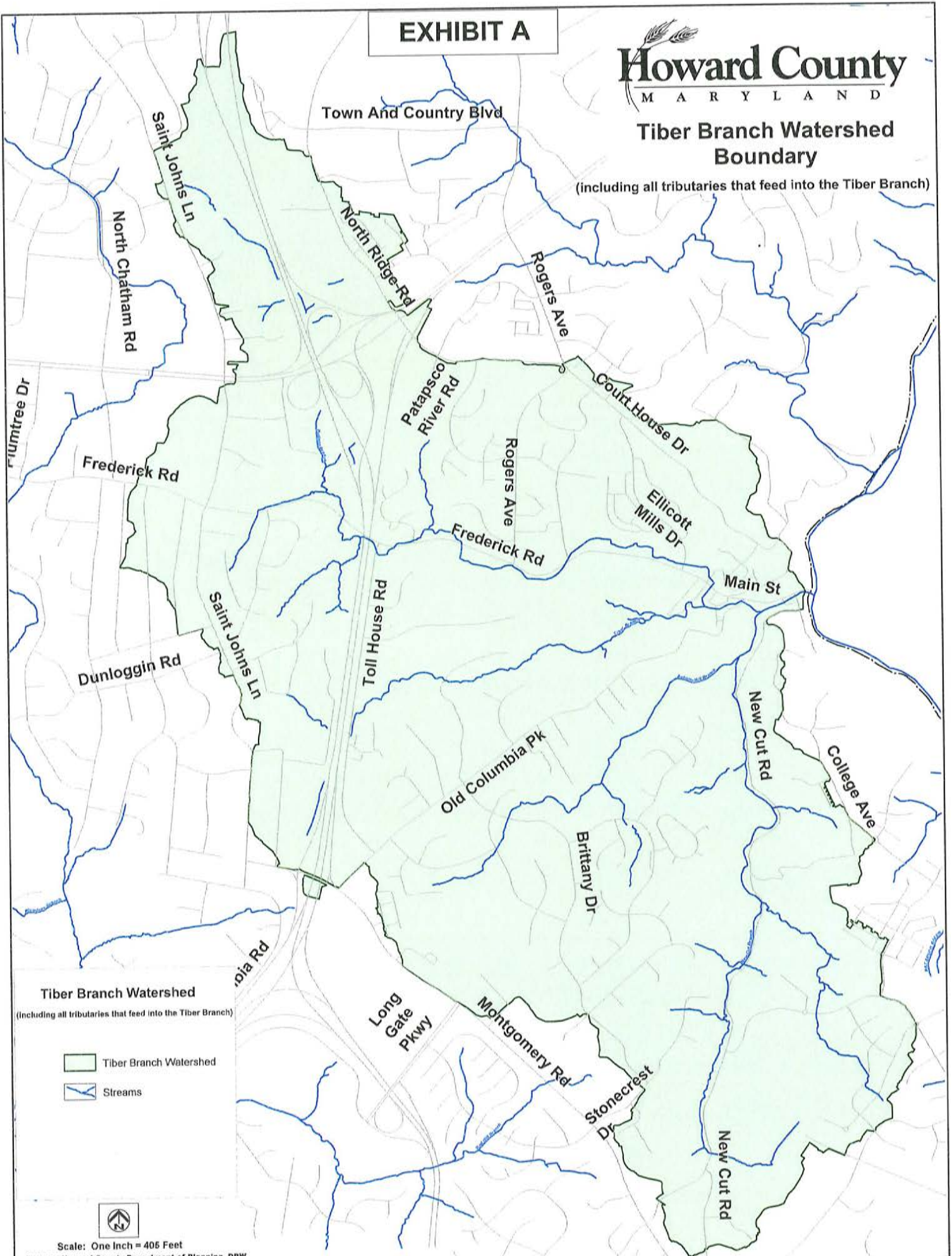
Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that this Act shall become effective 61 days after its enactment.

EXHIBIT A



Tiber Branch Watershed Boundary

(including all tributaries that feed into the Tiber Branch)



Tiber Branch Watershed

(including all tributaries that feed into the Tiber Branch)

- Tiber Branch Watershed
- Streams



Scale: One Inch = 405 Feet

Source: Howard County Department of Planning, DPW

Copyright: Project to the watershed boundary of the Tiber Branch Watershed in Howard County, Maryland, 2018. boundary2018.png

Amendment 1 to Council Bill No. 54 - 2022

BY: Liz Walsh

Legislative Day 14

Date: October 3, 2022

Amendment No. 1

(This amendment adds the calculation of net tract area for ~~public infrastructure~~ capital projects to the list of acceptable waivers that can be granted by DPZ.)

1 On page 4, in line 8, strike “or”.

2
3 On page 4, in line 13, strike the period and substitute “; OR”.

4
5 On page 4, immediately following line 13, insert the following:

6 “(5) IS REQUESTED AS PART OF A PUBLIC INFRASTRUCTURE CAPITAL PROJECT TO USE THE LIMIT
7 OF DISTURBANCE TO CALCULATE THE ‘NET TRACT AREA’ AS DEFINED IN SEC. 16.1201(V).”.
8
9

I certify this is a true copy of

Am 1 to CB 54 - 2022

passed on October 31 2022

Michelle Harwood
Council Administrator

Amendment 1 Amendment 1 to Council Bill No. 54-2022

BY: Liz Walsh

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 1

(This Amendment substitutes nomenclature for consistency.)

1 In the parenthetical, strike "public infrastructure" and substitute "capital".

2

3 In line 6, strike "PUBLIC INFRASTRUCTURE" and substitute "CAPITAL".

4

I certify this is a true copy of

Am 1 to Am 1 to CB 54-2022

passed on October 31, 2022

Michelle Haggard
Council Administrator

Amendment 2 to Amendment 1 to Council Bill No. 54-2022

BY: Christiana Rigby

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 2

(This Amendment strikes the reference to a public infrastructure project.)

1 In line 6, strike "AS PART OF A PUBLIC INFRASTRUCTURE PROJECT".

I certify this is a true copy of

Am 2 to Am 1 CB 54-2022

passed on

October 31, 2022

Nicholas D'Amico
Council Administrator

*Withdraw
Introduction*

Amendment 3 to Amendment 1 to Council Bill No. 54-2022

BY: Christiana Rigby

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 3

(This Amendment strikes the reference to a capital project.)

1 In line 6, strike "AS PART OF A CAPITAL PROJECT".

I certify this is a true copy of
Am 3 to Am 1, CB 54-2022
passed on Michelle Hazen
10/31/2022
Council Administrator

Amendment 2 to Council Bill No. 54 - 2022

BY: Liz Walsh

Legislative Day 14

Date: October 3, 2022

Amendment No. 2

(This amendment adds the removal of dead or certifiably diseased trees to the list of acceptable waivers that can be granted by DPZ.)

1 On page 4, in line 8, strike "or".

2
3 On page 4, in line 13, strike the period and substitute "; OR".

4
5 On page 4, immediately following line 13, insert the following:

6 "(5) IS NECESSARY FOR THE REMOVAL OF DEAD OR CERTIFIABLY DISEASED TREES THAT A
7 LICENSED FORESTER, LICENSED LANDSCAPE ARCHITECT, OR A CERTIFIED ARBORIST DETERMINES TO
8 BE DISEASED, DAMAGED, DEAD, OR DECLINING IN A WAY THAT CREATES A HAZARD TO PEOPLE OR
9 PROPERTY."

10
I certify this is a true copy of

Am 2 to CB 54

passed on October 31, 2022

Michelle Harrison
Council Administrator

Amendment 1 to Amendment 2 to Council Bill No. 54-2022

BY: Liz Walsh

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 1

(This Amendment clarifies the process by which certain trees can be removed.)

1 On page 1, in line 6 strike "DEAD OR CERTIFIABLY DISEASED" and after "TREES" insert "THAT A
2 CERTIFIED ARBORIST DETERMINES TO BE DISEASED, DAMAGED, DEAD, OR DECLINING IN A WAY
3 THAT CREATES A HAZARD TO PEOPLE OR PROPERTY".
4

I certify this is a true copy of

Am 1 to Am 2 CB 54-2022
passed on October 31, 2022

Melinda Dutton
Council Administrator

Amendment 2 to Amendment 2 to Council Bill No. 54-2022

BY: Christiana Rigby

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 2

(This Amendment allows a certain determination to be made by a licensed forester or licensed landscape architect.)

1 On page 1, in line 6 strike "DEAD OR CERTIFIABLY DISEASED" and after "trees" insert "THAT A
2 LICENSED FORESTER, LICENSED LANDSCAPE ARCHITECT, OR A CERTIFIED ARBORIST DETERMINES TO
3 BE DISEASED, DAMAGED, DEAD, OR DECLINING IN A WAY THAT CREATES A HAZARD TO PEOPLE OR
4 PROPERTY".

I certify this is a true copy of
Am 2 to Am 2 CB 54-2022
passed on October 31, 2022
Nichole Howard
Council Administrator

Amendment 3 to Council Bill No. 54 - 2022

BY: Liz Walsh

Legislative Day 14

Date: October 3, 2022

Amendment No. 3

(This amendment removes any consideration of fee-in-lieu requests in the Tiber Branch Watershed.)

- 1 On page 5, in line 11, before the period, insert "AND THE APPLICANT SHALL NOT BE PERMITTED TO
2 PAY A FEE-IN-LIEU OF ANY PART OF THIS OBLIGATION.".
3
4

I certify this is a true copy of

Am 3 to CB54-2022

passed on October 31, 2022

Michelle [Signature]
Council Administrator

Amendment 4 to Council Bill No. 54-2022

BY: Liz Walsh

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 4

(This Amendment clarifies that this bill does not apply to capital projects.)

1 On the title page, in the purpose paragraph, after "on-site," insert the following: "allowing
2 certain waivers for capital projects;".

3
4 On page 3, in lines 29-30, strike all brackets.

5
6 On page 3, in line 30, strike "redevelopment" and substitute "CAPITAL".

7
8 On page 4, in line 3, immediately strike "development proposal" and substitute "CAPITAL
9 PROJECT".

10
11 Page 5, in line 10, immediately following "development," insert "THAT IS NOT A CAPITAL
12 PROJECT".

13
14 Renumber accordingly.

I certify this is a true copy of
Am 4 to CB 54-2022
passed on October 31, 2022
Michelle Hazzey
Council Administrator

Amendment 1 to Amendment 4 to Council Bill No. 54-2022

BY: Christiana Rigby

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 1

(This Amendment alters the kinds of projects covered.)

- 1 Delete lines 1 to 3 in their entirety.
- 2 Delete lines 5 to 13 in their entirety.

I certify this is a true copy of
Am 1 to Am 4 to CB 54-2022
passed on October 31, 2022
Nichelle Harrison
Council Administrator

Amendment 5 to Council Bill No. 54-2022

BY: Christiana Rigby

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 5

(This Amendment clarifies what kind of development is covered.)

1 On page 5, in line 10, after "ALL" insert "RESIDENTIAL".

certify this is a true copy of
Am 5 to CB 54-2022
passed on October 31, 2022
Michelle Daxred
Council Administrator

Amendment 6 to Council Bill No. 54-2022

BY: David Yungmann

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 6

(This Amendment clarifies the kinds of development subject to the on-site requirement.)

- 1 On page 5, in line 10, after "DEVELOPMENT" insert "THAT IS AT LEAST 25% RESIDENTIAL".
2

*Withdrawn
Introduction*

*certify this is a true copy of
Amendment to CB 54-2022
passed on October 31, 2022
Michelle H. Hays
Council Administrator*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on Nov 9, 2022.

Michelle Harrod
Michelle Harrod, 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 _____, 2022.

Michelle Harrod, 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 _____, 2022.

Michelle Harrod, 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 _____, 2022.

Michelle Harrod, 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 _____, 2022.

Michelle Harrod, 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 _____, 2022.

Michelle Harrod, Administrator to the County Council

Introduced 09.06.2022
Public Hearing 09.19.2022
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 13

BILL NO. 54 - 2022

Introduced by: Liz Walsh

AN ACT amending the Howard County Code to prohibit the issuance of certain waivers or variances to Forest Conservation regulations for properties located in the Tiber Branch Watershed; requiring certain site design requirements in the Tiber Branch Watershed; altering the existing floodplain, wetland, stream, and steep slope waiver provisions for the Tiber Branch Watershed; requiring development in the Tiber Branch Watershed to meet its forest conservation obligations on-site; and generally relating to waivers or variances.

Introduced and read first time on Sept 6, 2022.

By order

Michelle Harrod
Michelle Harrod, Administrator to the County Council

Read for a second time and a public hearing held on Sept 19, 2022.

By order

Michelle Harrod
Michelle Harrod, Administrator to the County Council

This Resolution was read the third time and was Adopted __, Adopted with amendments __, Failed __, Withdrawn __ by the County Council on _____, 2022.

Certified by

Michelle Harrod, Administrator to the County Council

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

Tabled 10-3-2022
Michelle Harrod

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12
13 *Subtitle 12. – Forest Conservation*

14 *Section 16.1209. – Site design requirements.*

15 *Section 16.1216. – Variances.*

16 *Subsection(a).*

17
18 *By Adding:*

19 *Title 16 – Planning, Zoning and Subdivisions and Land Development Regulations*

20 *Subtitle 12. – Forest Conservation*

21 *Section 16.1216. – Variances.*

22 *Subsection (f). Variance Prohibited.*

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26 **REGULATIONS**

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30 **ARTICLE I. – General**
31

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2 **Sec. 16.104 – Waivers.**

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4 (1) So that substantial justice may be done and the public interest secured, the Department
5 of Planning and Zoning may grant waivers of the requirements of this subtitle, except
6 as prohibited in subsection (d), in situations where the Department finds that
7 unreasonable hardship or practical difficulties may result from strict compliance with
8 this subtitle or alter the requirements in article II and article III of this subtitle all of the
9 following criteria are met:

- 10 (i) Strict conformance with the requirements will deprive the applicant of rights
11 commonly enjoyed by others in similar areas;
12 (ii) The uniqueness of the property or topographical conditions would result in
13 practical difficulty, other than economic, or unreasonable hardship from strict
14 adherence to the regulations;
15 (iii) The variance will not confer on the applicant a special privilege that would be
16 denied to other applicants; and
17 (iv) The modification is not detrimental to the public health, safety or welfare or
18 injurious to other properties.

19 (2) Waivers may be granted without meeting the criteria of subsection (a) if the waiver:

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21 damaged by flood, fire, or other disaster;
22 (ii) Is necessary for the construction of a stormwater management or flood
23 control facility as part of a capital project; or
24 (iii) Is necessary for the retrofit of existing facilities or installation of new
25 facilities intended solely to improve stormwater management or flood
26 control for existing development.

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

- 29 (1) The developer has presented a petition demonstrating the desirability of waiver;
30 if the County requests additional justifying information, the information must
31 be submitted within 45 days of the Department's letter of request. If the

1 information is not submitted by the deadline, the Department shall deny the
2 petition.

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

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

8 (i) Modify any approval conditions;

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

10 (iii) Add or delete specific waiver requests.

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

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

16 (c) *Period of Validity.* The waiver petition, if approved, will remain valid for 12 months from
17 the date of approval or as long as a subdivision or site development plan is being actively
18 processed in accordance with the processing provisions of section 16.144 of this subtitle.
19 Subdivisions or site developments which fail to meet the processing requirements will be
20 required to submit a new waiver request.

21 (d) *No Waivers of Floodplain, Wetland, Stream, FOREST CONSERVATION, or Steep Slope*
22 *Regulations in the Tiber Branch Watershed.* The Department may not grant waivers of any
23 requirement of section 16.115[[,]] or section 16.116, OR VARIANCES UNDER SECTION
24 16.1216 of this title, for any property located in the Tiber Branch Watershed unless the
25 waiver:

26 (1) [[Was requested on or before November 7, 2016;]]

27 [[(2)]] Is necessary for the reconstruction of existing structured or infrastructure damaged
28 by flood, fire, or other disaster;

29 [[(3)]] [[Is necessary for the construction of a stormwater management or flood control
30 facility as part of a redevelopment project;]]

31 [[(4)]] (2) Is necessary for the retrofit of existing facilities or installation of new facilities

1 intended solely to improve stormwater management or flood control for existing
2 development;

3 [[(5)] (3) Is requested as part of a development proposal and the Director of the
4 Department of Public Works, or his designee acting as Floodplain Administrator, finds that
5 upon completion of construction of the development, which may include off-site
6 improvements within the Tiber Branch Watershed, there will be improvement to flood
7 control in the Tiber Branch Watershed at least ten percent more than what would otherwise
8 be required by law; or

9 [[[6)] (4) Is necessary for the construction of an addition, garage, driveway, or other
10 accessory use improvement of an existing residential structure on property located within
11 the Tiber Branch Watershed that increases the square footage of the impervious surfaces
12 on the property by no more than 25 percent over the square footage of impervious surfaces
13 that existed on the property prior to the effective date of this bill.
14

15 **SUBTITLE 12. – FOREST CONSERVATION**

16 **Sec. 16.1209. Site design requirements.**

17 (a) Site design should address the Forest Conservation Program goals of maximizing forest
18 retention and meeting forest conservation obligations on-site.

19 (b) Before mitigation banks, off-site compliance, or fee-in-lieu requests will be considered,
20 forest conservation obligations shall be met on-site, in accordance with the following site design
21 requirements:

22 (1) Nonresidential developments shall establish Forest Conservation Easements with
23 retained or planted forest in all on-site sensitive areas, including floodplains, wetlands, wetland
24 buffers, steep slopes and stream buffers. To ensure protection of riparian areas, the Forest
25 Conservation Easements shall be a minimum 75-foot width from the banks of any perennial and
26 intermittent stream. The area outside the required stream buffer, as defined by subdivision
27 regulations, and the Forest Conservation Easement may be disturbed during construction then
28 reforested.

29 (2) Residential developments with more than one acre of obligation shall meet a minimum
30 of 75 percent of their obligation on-site by reducing lot sizes, clustering lots and maximizing open
31 space to the maximum extent permitted by the Subdivision and Land Development Regulations.

1 Infill subdivisions of ten lots or less are exempt from this requirement.

2 (3) Residential developments in the RC or RR zoning districts that propose to import
3 development density, shall accommodate all forest conservation obligations within the boundaries
4 of a receiving property before importing development density.

5 (4) To ensure adequate setbacks from Forest Conservation Easements on residential
6 lots, a 35-foot setback shall be provided from rear and side lot lines for a detached or attached
7 dwelling unit and any on-site or off-site planted Forest Conservation Easement. The setback may
8 be eliminated if larger stock (two rows of one-inch minimum caliper) is planted along the edge of
9 the Forest Conservation Easement.

10 (5) IN THE TIBER BRANCH WATERSHED, ALL DEVELOPMENT SHALL MEET 100 PERCENT OF
11 ITS OBLIGATION ON-SITE.

12 **Sec. 16. 1216. – Variances**

13 (a) [[The]] THE Department may grant waivers to the requirements of this subtitle in
14 accordance with the procedures of subsection 16.104(b), [[and]] subsection 16.104(c),
15 AND SUBSECTION 16.104(d) of the Subdivision Regulations.

16 (b) A variance to the provisions of this subtitle shall be considered and approved or denied in
17 writing by the Directors of the Department of Planning and Zoning, the Administrator of
18 the Office of Community Sustainability, and the Director of Recreation and Parks.

19 (c) Consideration of a variance requested under this section shall include a determination as to
20 whether an applicant has demonstrated to the satisfaction of each Department that
21 enforcement of this subtitle would result in unwarranted hardship. Increased cost or
22 inconvenience of meeting the requirements of these regulations does not constitute an
23 unwarranted hardship to the applicant. The applicant shall:

24 (1) Describe the special conditions peculiar to the property which would cause the
25 unwarranted hardship;

26 (2) Describe how enforcement of these regulations would deprive the landowner of rights
27 commonly enjoyed by others in similar areas;

28 (3) Verify that the granting of a variance will not adversely affect water quality;

29 (4) Verify that the granting of a variance will not confer on the applicant a special privilege
30 that would be denied to other applicants;

31 (5) Verify that the variance request is not based on conditions or circumstances which are

1 the result of actions by the applicant;

2 (6) Verify that the condition did not arise from a condition relating to land or building use,
3 either permitted or nonconforming, on a neighboring property; and

4 (7) Provide any other information appropriate to support the request.

5 (d) Any native specimen tree removed shall be replaced on-site by at least two native trees
6 with a DBH (diameter at breast height) of at least three inches.

7 (e) Notice of a request for a complete variance of the Forest Conservation Program shall be
8 given by the Department of Planning and Zoning to the Maryland Department of Natural
9 Resources within 15 days of receipt of a request for a variance. Notice of a request for a
10 variance to individual program requirements, temporary deferral or phasing of obligations
11 within the Forest Conservation Program requirements shall be given by the Department of
12 Planning and Zoning to the Maryland Department of Natural Resources after a decision on
13 the variance request is rendered by the Department.

14
15
16 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland, that
17 *the Tiber Branch Watershed is depicted on the map attached to this bill as Exhibit A for illustrative*
18 *purposes only, and any property which will drain outside the Tiber Branch Watershed as*
19 *demonstrated by site plans certified by a licensed professional engineer and approved by the*
20 *Department of Planning and Zoning shall not be considered part of the Tiber Branch Watershed.*

21
22 ***Section 3. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
23 *this Act shall become effective 61 days after its enactment.*

Amendment 1 to Council Bill No. 54 - 2022

BY: Liz Walsh

Legislative Day 14

Date: October 3, 2022

Amendment No. 1

(This amendment adds the calculation of net tract area for public infrastructure projects to the list of acceptable waivers that can be granted by DPZ.)

1 On page 4, in line 8, strike "or".

2
3 On page 4, in line 13, strike the period and substitute "; OR".

4
5 On page 4, immediately following line 13, insert the following:

6 "(5) IS REQUESTED AS PART OF A PUBLIC INFRASTRUCTURE PROJECT TO USE THE LIMIT OF
7 DISTURBANCE TO CALCULATE THE 'NET TRACT AREA' AS DEFINED IN SEC. 16.1201(V).".
8
9

Amendment 2 to Council Bill No. 54 - 2022

BY: Liz Walsh

Legislative Day 14

Date: October 3, 2022

Amendment No. 3

(This amendment adds the removal of dead or certifiably diseased trees to the list of acceptable waivers that can be granted by DPZ.)

1 On page 4, in line 8, strike "or".

2

3 On page 4, in line 13, strike the period and substitute "; OR".

4

5 On page 4, immediately following line 13, insert the following:

6 "(5) IS NECESSARY FOR THE REMOVAL OF DEAD OR CERTIFIABLY DISEASED TREES.".

7

8

Amendment 4 to Council Bill No. 54-2022

BY: Liz Walsh

Legislative Day No. 15

Date: October 31, 2022

Amendment No. 4

(This Amendment clarifies that this bill does not apply to capital projects.)

1 On the title page, in the purpose paragraph, after “on-site,” insert the following: “allowing
2 certain waivers for capital projects;”.

3
4 On page 3, in lines 29-30, strike all brackets.

5
6 On page 3, in line 30, strike “redevelopment” and substitute “CAPITAL”.

7
8 On page 4, in line 3, immediately strike “development proposal” and substitute “CAPITAL
9 PROJECT”.

10
11 Page 5, in line 10, immediately following “development,” insert “THAT IS NOT A CAPITAL
12 PROJECT”.

13
14 Renumber accordingly.