

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
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.

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Introduced and read first time on \_\_\_\_\_, 2022.

By order \_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

Read for a second time and a public hearing held on \_\_\_\_\_, 2022.

By order \_\_\_\_\_  
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This Resolution was read the third time and was Adopted \_\_\_\_, Adopted with amendments \_\_\_\_, Failed \_\_\_\_, Withdrawn \_\_\_\_ by the County Council on \_\_\_\_\_, 2022.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.

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:

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4 *By Amending:*

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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*

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13 *Subtitle 12. – Forest Conservation*

14 *Section 16.1209. – Site design requirements.*

15 *Section 16.1216. – Variances.*

16 *Subsection(a).*

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

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

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30 **ARTICLE I. – General**

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**Sec. 16.104 – Waivers.**

*(a) Authority to Grant.*

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

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

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

- (i) Is necessary for the reconstruction of existing structures or infrastructure damaged by flood, fire, or other disaster;
- (ii) Is necessary for the construction of a stormwater management or flood control facility as part of a capital project; or
- (iii) 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.

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

- (1) The developer has presented a petition demonstrating the desirability of waiver; if the County requests additional justifying information, the information must 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.

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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.

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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.*

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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.*