Mark Wedemeyer, Acting Director

Memorandum

To: MBIA, Review Agencies and the General Public

From: Mark Wedemeyer, Acting Director, Inspections and Permits MRW
Steve Kaii-Ziegler AICP, Planning and Zoning Officer SKZ

Subject: Floodplain Modification Requests

Date: July 13, 2021

Background

Under Anne Arundel County Code Article 16, Title 2, Subtitle 2, Development may not occur in the floodplain if an alternative location for the development exists. If a project proposes work in a floodplain, a modification under § 16-2-301 is required.

Under Article 17, Title 6, Subtitle 4, development restrictions are placed on "natural features", which include nontidal wetlands, streams, steep slopes and floodplains. If a project proposes work in any of these areas, a modification under § 17-2-108 is required.

Purpose

The purpose of this memo is to notify all interested parties of what is required to be submitted, at a minimum, with an application for a floodplain modification request and clarify floodplain modification review authority under Article 16 and Article 17.

Floodplain Modification Review Authority

Requests for floodplain modifications for anything (roads, utilities, storm drains, stormwater structures, stream restoration, or other infrastructure) proposed in the subdivision process shall be filed with the Office of Planning and Zoning. If a project requiring a floodplain modification is not associated with a subdivision, it shall be filed with the Department of Inspections & Permits.

Modification Request not associated with a Subdivision - Floodplain modification applications made to the Department of Inspections & Permits must contain, at a minimum, a justification enumerated in writing that addresses the following Article 16 criteria:

(1) set forth good cause accompanied by an engineering analysis;
(2) demonstrate that no reasonable alternative exists outside the floodplain district;
(3) explain the non-economic hardship to the applicant if relief is not granted; and
(4) demonstrate that the grant of a modification will not result in increased flood heights.

All development shall be consistent with applicable flood hazard and watershed management plans and shall be undertaken in a manner that minimizes adverse impact on aquatic or terrestrial habitats and related flora and fauna. Grading, necessary provisions for drainage, erosion, and sediment control, and vegetative establishments may not increase flooding.

It shall be noted that a community meeting and mailing notice requirements do not apply to floodplain modification requests filed under Article 16. Modification application fee of $250 does not apply to modifications submitted under Article 16 at this time.

Modification Request associated with a Subdivision

Generally. The Planning and Zoning Officer may approve an application for a modification to any provision of Article 17 other than § 17-2-107 or one contained in Titles 5, 8, or 9, except as allowed by §§ 17-5-203(b), 17-5-205(b), 17-8-201(b), 17-8-203(c), 17-8-403, 17-8-601(b)(2), 17-8-601(c), 17-8-901, or 17-9-401, and to any applicable regulations, manuals, or specifications, including the DPW Design Manual, upon making specific findings, enumerated in writing, that the modification request satisfies each of the following criteria:

(1) practical difficulties or unnecessary hardship will result from strict application of this article or, for a modification relating to forest conservation, unwarranted hardship will result due to special features of the site or other circumstances;
(2) the purposes of this article, including minimization and mitigation of environmental impacts through the use of clustering or other available design alternatives to preserve the character of the impacted area, will be served by an alternative proposal;
(3) the modification is not detrimental to the public health, safety, or welfare, is not injurious to other properties, or, if the modification relates to forest conservation, does not adversely affect water quality;
(4) the modification does not have the effect of nullifying the intent and purpose of this article, the General Development Plan, or Article 18 of this Code; and
(5) the applicant has submitted written verification to the Office of Planning and Zoning that:
    (i) the requested modification was disclosed and discussed at a community meeting required under this article; or
    (ii) all owners of property located within 300 feet of the affected property were mailed a notice explaining the reason for the modification, along with a copy of the request for modification.

It is noted that a modification approval can only be obtained upon findings by the Planning and Zoning Officer that each criterion is satisfied.

Under § 17-2-107 (a)(1)(i), a community meeting is required for any "modification to permit direct impact to environmentally sensitive areas." "Environmentally sensitive areas" means the area of a site which contains tidal and nontidal wetlands, bogs, 100-year floodplains, streams, steep slopes, and all associated buffers, and, in the critical area, also includes habitat protection areas.

An application for a modification may be denied if requested solely because compliance would add significantly to development costs or if requested solely for the convenience of the developer, such as when the land is not usable because of error or poor assumptions on the part of the developer.