



For DPZ Office use only:
BA Case No. <u>BA-819D</u>
Date Submitted: <u>6/4/25</u>

**ADMINISTRATIVE APPEAL PETITION
TO THE HOWARD COUNTY HEARING AUTHORITY**

A person who wishes to appeal a departmental decision must use this petition form. It is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person¹. The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of issuance of the departmental ruling or action.

1. APPEAL REQUEST

BRIEF DESCRIPTION OF RULING OR ACTION FROM WHICH THIS APPEAL IS TAKEN: See attached supplement.

DATE OF RULING OR ACTION: May 5, 2025

BRIEF DESCRIPTION OF ERROR OF FACT, OR LAW, IF ANY, PRESENTED BY THIS APPEAL: See attached supplement.

MANNER IN WHICH THE APPELLANT IS AGGRIEVED BY THE RULING OR ACTION: See attached supplement.

OTHER FACTORS WHICH THE APPELLANT WISHES THE HEARING AUTHORITY TO CONSIDER: To be set forth at the hearing on this matter.

¹ As a brief explanation of this concept: Generally speaking, ...a person "aggrieved"...is one whose personal or property rights are adversely affected by the decision...The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally. The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.

2. **APPELLANT'S NAME** Agila Sundaram and Mukesh Kumar
TRADING AS (IF APPLICABLE) _____
ADDRESS c/o Talkin & Oh, LLP, 5100 Dorsey Hall Drive, Ellicott City, MD 21042
PHONE NO. (H) _____ (W) _____
EMAIL mukeshagila@gmail.com; mukeshk_singh@hotmail.com

3. **COUNSEL FOR APPELLANT** Sang W. Oh, The Law Offices of Talkin & Oh, LLP
COUNSEL'S ADDRESS 5100 Dorsey Hall Drive, Ellicott City, MD 21042
COUNSEL'S PHONE NO. 410-964-0300
EMAIL soh@talkin-oh.com

4. **RESPONDENT** Howard County Department of Planning and Zoning
RESPONDENT'S ADDRESS 3430 Court House Drive, Ellicott City, MD 21043

5. **PROPERTY IDENTIFICATION (IF REAL PROPERTY IS INVOLVED)**
ADDRESS OF SUBJECT PROPERTY _____
3956 Old Columbia Pike, Ellicott City, MD 21043
TOTAL ACREAGE OF PROPERTY 1.04±
PROPERTY LOCATION 3956 Old Columbia Pike, Ellicott City, MD 21043
COUNCIL DISTRICT 1 ELECTION DISTRICT 2 ZONING DISTRICT R-ED
TAX MAP # 25 GRID # 13 PARCEL/LOT # 134

6. **APPELLANT'S INTEREST IN SUBJECT PROPERTY**
 OWNER (Including joint ownership) OTHER (Describe and give name and address of owner) _____

7. **ADDITIONAL MATERIAL, FEES, POSTING, AND ADVERTISING**
A) The Appellant must submit **one (1) signed original and nine (9) copies of the signed original**, for a total of **ten (10) copies**, of this petition. If supplementary documents or other materials are included, **ten (10) complete sets** must be submitted.
B) The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an "on the record" appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a Memorandum addressing the points of law upon which the appeal is based.

- C) The undersigned agrees in matters involving land use, except in administrative appeals from the issuance of a notice of violation of County laws or regulations, to properly post the property at least thirty (30) days immediately prior to the hearing and to maintain the posters as required and submit an affidavit of posting at, or before the time of the hearing. If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.
- D) The undersigned also agrees in matters involving land use, except in administrative appeals from the issuance of a notice of violation of County laws or regulations, to insert legal notices, to be published one (1) time in at least two (2) newspapers of general circulation in Howard County, as prepared and approved by the Department of Planning and Zoning, within at least thirty (30) days prior to the hearing, and to pay for such advertising costs; and further agrees to submit (2) approved certificates of the text and publication date(s) of the advertisement at or before the time of the hearing.
- E) The undersigned also agrees to furnish such additional plats, reports, plans, or other materials as may be required by the Department of Planning and Zoning and/or the Hearing Authority in connection with the filing of this petition.
The undersigned agrees to pay all costs in accordance with the current schedule of fees.

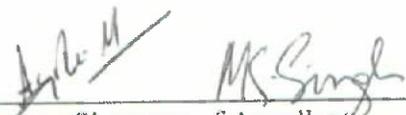
8. SIGNATURES

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct.

The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.



Signature of Attorney



Signature of Appellant

For DPZ office use only: (Filing fee is \$1,500.00 plus \$50.00 per poster)

Hearing Fee: \$ _____
Poster Fee: \$ _____
TOTAL: \$ 1550
Receipt No. 174873

County Website: howardcountymd.gov

(Make check payable to "Director of Finance")

**PLEASE READ CAREFULLY
DATA TO ACCOMPANY PETITION**

Drawings: Where a parcel of land and/or building(s) as defined in the Zoning Regulations is involved in that which is being appealed, petition forms must be accompanied by **(10) copies of required drawings** showing the following information:

- (a) Courses and distances of outline boundary lines and the size of the property
- (b) North arrow
- (c) Existing zoning of subject property and adjoining property
- (d) Location, extent, boundary lines and area of any current use and proposed change in use
- (e) Any existing or proposed building(s), structures, signs, points of access, natural features, landscaping, parking, and other objects and/or uses on subject property which may be relevant to the petition
- (f) Same as (e) above, if any, of adjoining property which may be required in the proper examination of the petition
- (g) Location of subject property in relation, by approximate dimension, to nearest intersection of two public roads
- (h) Ownership of effected roads
- (i) Election District in which the subject property is located
- (j) Tax Map number on which the subject property is located
- (k) Name and local community in which the subject property is located or name of nearby community
- (l) Name, mailing address, telephone number (and e-mail address, if any) of the appellant
- (m) Name, mailing address, telephone number (and e-mail address, if any) of attorney, if any
- (n) Name and mailing address of property owner
- (o) Any other information as may be necessary for full and proper consideration of the appeal.

BA Case # _____

PETITIONER: Agila Sundaram and Mukesh Kumar

ADDRESS: 3956 Old Columbia Pike, Ellicott City, MD 21043

Affidavit made pursuant to the pertinent provisions of Title 22 of the Howard County Code as amended.

THE UNDERSIGNED DOES HEREBY DECLARE THAT NO OFFICER OR EMPLOYEE OF HOWARD COUNTY, WHETHER ELECTED OR APPOINTED, HAS RECEIVED PRIOR HERETO OR WILL RECEIVE SUBSEQUENT HERETO, ANY MONETARY OR MATERIAL CONSIDERATION, ANY SERVICE OR THING OF VALUE, DIRECTLY OR INDIRECTLY, UPON MORE FAVORABLE TERMS THAN THOSE GRANTED TO THE PUBLIC GENERALLY IN CONNECTION WITH THE SUBMISSION, PROCESSING, ISSUANCE, GRANT OR AWARD OF THE WITHIN APPLICATION OR PETITION IN BA CASE # _____ FOR A ZONING CHANGE AS REQUESTED.

I, WE, DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE AFOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY, OUR, KNOWLEDGE, INFORMATION AND BELIEF.

AGILA MEENAKSHI SUNDARAM
Witness

Agila M. 6/2/2025
Signature Date

MUKESH KUMAR
Witness

M. Singh 06/02/2025
Signature Date

Witness

Signature Date

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

SUPPLEMENT TO ADMINISTRATIVE APPEAL PETITION
TO THE HOWARD COUNTY HEARING AUTHORITY

1. APPEAL REQUEST

BRIEF DESCRIPTION OF RULING OR ACTION FROM WHICH THIS APPEAL IS TAKEN:

Howard County Land Development's ("DLD") decision letter dated May 5, 2025 (attached hereto) denying alternative compliance applications WP-25-045, submitted for the Mitchell Greens project (the "Mitchell Greens Alternative Compliance Requests").

WP-25-045 is a request for an alternative compliance to Section 16.116(a)(1)(ii) of the Howard County Code (Subdivision and Land Development Regulations), specifically, requesting to allow grading within the 75-foot stream bank buffer. In the WP-25-045 denial letter, the Department of Planning and Zoning ("DPZ"), Department of Public Works ("DPW"), and the Office of Community Sustainability ("OCS") erroneously concluded that strict enforcement of Section 16.116(a)(1)(ii) of the Howard County Code would not result in practical difficulty or unreasonable hardship.

BRIEF DESCRIPTION OF ERROR OF FACT, OR LAW, IF ANY, PRESENTED BY THIS APPEAL:

Appellants assert that the analysis of the Mitchell Greens Alternative Compliance Requests is erroneous and violates Maryland law. Appellants seek to subdivide the existing property at 3956 Old Columbia Pike, Ellicott City, MD 21043 (the "Property") into two lots with the intention of building one residence on each. The proposed subdivision is in accordance with the Property's zoning (R-20) and the denial of an additional lot due to regulations pertaining to specimen trees and stream buffer disturbance is a regulatory taking of the Property and the rights inherent thereto without just compensation. In a similar matter, the Appellate Court has ruled that "[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance." *West Montgomery County Citizens Ass'n v. Montgomery County Planning Bd.*, 248 Md. App. 314 (2019). Appellants in the instant appeal have adequately demonstrated the need to remove the proposed three specimen trees and to grade within the stream bank buffer in order to not be deprived of use of the second lot, which is both a significant and reasonable use their Property. The approval of the sought second lot cannot be accomplished on the Property without the approval of the Mitchell Greens Alternative Compliance Requests for the primary reason that the required stormwater management for the Subject Property creates the inability to also accommodate the strict compliance with Section 16.116(a)(1)(ii).

Alternative compliance requests are allowed so that substantial justice may be done and the public interest secured. Unreasonable hardship or practical difficulties result from strict compliance and strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas. The uniqueness of the property, its topography, size, shape and its environmental features result in practical difficulty, other than economic, or unreasonable hardship from strict adherence to the regulations. The variance will not confer on the applicant a special privilege that would be denied to other applicants. The modification is not detrimental to the public health, safety or welfare or injurious to other properties.

Section 16.104(d)(2) provides that waivers may be granted for any property located in the Tiber Branch Watershed if necessary for the construction of stormwater management as part of a redevelopment project.

Other information is available and will be presented at the hearing on this matter.

MANNER IN WHICH THE APPELLANT IS AGGRIEVED BY THE RULING OR ACTION:

Appellants are the owners of the property that is the subject of the May 5, 2025 denial letter and are aggrieved by DLD's determination that strict enforcement of Section 16.116(a)(1)(ii) of the Subdivision would not result in practical difficulty or unreasonable hardship.



May 5, 2025

Mukesh Kumar & Agila Sundaram
3958 Old Columbia Pike
Ellicott City, MD 21043
Sent via email to mukeshagila@gmail.com; mukeshk_singh@hotmail.com

RE: WP-25-045 Mitchell Greens
Alternative Compliance to Section 16.116

Dear Owners:

This letter is to inform you that your request for alternative compliance to the Howard County Subdivision and Land Development Regulations for the subject project was reviewed.

On April 24, 2025, and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, Director of the Department of Public Works, and Administrator of the Office of Community Sustainability considered and **denied** your request for alternative compliance with respect to **Section 16.116(a)(2)(ii)** of the Subdivision and Land Development Regulations to grade within the stream bank buffer. Please see the attached Final Decision Action Report for more information.

If you have any questions, please contact Julia Sauer at (410) 313-4342 or email at jsauer@howardcountymd.gov.

Sincerely,

DocuSigned by:

1EB75478A22B49A...

Anthony Cataldo, AICP, Chief
Division of Land Development

AC/js

cc: Research
DLD - Julia Sauer
JNM Engineering (jnengineeringllc@gmail.com)
Cindee White (cindeevelleballet@verizon.net)
Rebecca & David Bohning (rebboh@verizon.net)
Andrew Burkowske (andrewburkowske@hotmail.com)
Liz Walsh (ewalsh@howardcountymd.gov)



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350
Lynda D. Eisenberg, AICP, Director FAX 410-313-3467

**ALTERNATIVE COMPLIANCE
FINAL DECISION ACTION REPORT**

DEPARTMENT OF PLANNING AND ZONING
DEPARTMENT OF PUBLIC WORKS
OFFICE OF COMMUNITY SUSTAINABILITY

RE: **WP-25-045 Mitchell Greens**
Request for an alternative compliance to Section 16.116(a)(1)(ii) of the Subdivision and Land Development Regulations.

Applicant: Mukesh Kumar & Agila Sundaram (owners)

Pursuant to Section 16.116(d), the Director of the Department of Planning Zoning, Director of the Department of Public Works and the Administrator of the Office of Community Sustainability considered and denied the applicants request for an alternative compliance with respect to **Section 16.116(a)(1)(ii)** of the Subdivision and Land Development Regulations. The purpose is to grade within the 75-foot stream bank buffer for development of a two-lot subdivision. The Directors deliberated the application in a meeting on April 24, 2025.

Each Department hereby determines that strict enforcement of Section 16.116(a)(1)(ii) would not result in a practical difficulty or unreasonable hardship. The following factors were considered in making this determination:

Section 16.104(a) of the Subdivision Regulations states:

“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 and for requests to waive 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.”*

Section 16.116(d) of the Subdivision Regulations states:

“The Director of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability and the Director of the Department of Public Works may grant waivers which allow for alternative compliance to this Section if the applicant can demonstrate in sufficient detail through evidence that the project meets the criteria set forth in section 16.104 and the following additional criteria:

- (i) Any area of disturbance is returned to its natural condition to the greatest extent possible;*
- (ii) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat;*
and
- (iii) Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects."*

The Director of the Department of Planning and Zoning and the Administrator of the Office of Community Sustainability conducted a site visit to review current site conditions. The three Directors met to deliberate the application on April 25, 2025. They reviewed the justification and exhibit supplied by the applicant prior to the meeting to deliberate the merits of the applicant's justification and plan exhibit in the context of Section 16.104 and 16.116(d) of the Subdivision and Land Development Regulations and found:

1. The applicant's position provided in the justification states the purpose of the disturbance to the stream bank buffer is to provide legal access and water to the adjoining property located at 3958 Old Columbia Pike and the requirement to provide additional stormwater management control in the Tiber Branch Watershed. The Directors discussed the applicant's justification and proposal to facilitate development of an adjoining parcel and determined that the design does not provide the minimum disturbance necessary to afford relief and to the extent required to accommodate the necessary improvements for a two-lot subdivision. The adjoining parcel is currently developed with a single-family dwelling and has established legal access to continue use of that property.
2. The justification cites the requirement for additional stormwater management in the Tiber Branch Watershed, which results in a larger stormwater management facility. Projects in the Tiber Branch and Plum Tree Branch Watersheds are required to provide stormwater management controls to meet the storm of record as outlined in Design Manual Volume I Chapter 5. Any development in the same watershed is required to meet the same stormwater management requirements. This is not a condition unique to this property that would create an unnecessary hardship. The Directors did not find that the scale of the proposed improvements were required for the development of one home on the site as proposed by the minor subdivision.
3. The applicant's justification did not persuade the Directors that the subject property had any special conditions unique to itself which would cause an unnecessary hardship or practical difficulty for the proposed 2-lot subdivision.
4. The Directors discussed the sensitive nature of this specific watershed and the application of Subdivision and Land Development regulations prohibition, currently in place, in order to protect and enhance the existing environmental features.
5. The Directors reviewed the applicant's written justifications and plan exhibit and determine that it fails to demonstrate why compliance with the regulations would constitute an unnecessary hardship or practical difficulty.

The meeting concluded with the Director of the Department of Planning Zoning, Director of the Department of the Department of Public Works and the Administrator of the Office of Community Sustainability finding that the applicant's criteria justifications have not met the unreasonable hardship or practical difficulty threshold. After considering the alternative compliance application and the items required to be addressed pursuant to Section

16.116(d) they find enforcement of this subtitle would not result in unreasonable hardship or practical difficulty and agreed unanimously to **DENY** the request for a variance with respect to **Section 16.116(a)(1)(ii)** of the Subdivision and Land Development Regulations.

DocuSigned by:

Lynda Eisenberg

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Lynda Eisenberg, AICP, Director
Department of Planning and Zoning

Signed by:

Yosef Kebede

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Yosef Kebede, Director
Department of Public Works

Signed by:

Timothy Lattimer

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Timothy Lattimer, Administrator
Office of Community Sustainability

cc: Research
OCS
DPW