

**MUKESH KUMAR**

: BEFORE THE

**AND**

: HOWARD COUNTY

**AGILA SUNDARAM**

: BOARD OF APPEALS

Appellants

: HEARING EXAMINAR

v.

**HOWARD COUNTY DEPARTMENT OF**

: BA Case No. 818D

**PLANNING AND ZONING IN WP-25-066**

Appellee

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.....

**DECISION AND ORDER**

On July 31, 2025, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Mukesh Kumar and Agila Sundaram (Appellants). Appellants are appealing the Department of Planning and Zoning's May 5, 2025 letter attaching the Alternative Compliance Final Decision Action Report (Department of Planning and Zoning (DPZ), Department of Recreation and Parks, and Office of Community Sustainability) denying WP-25-066, Applicants request for Alternative Compliance for Mitchell Greens at 3956 Old Columbia Pike, Ellicott City, Maryland. The appeal is filed pursuant to §130.0.A.3 of the Howard County Zoning Regulations (HCZR).

The Appellants certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Mr. Sang Oh, Esq. appeared on behalf of Appellants. Samer Alomer, civil engineer, testified on behalf of the Appellants. Mark and Erika Ragonese testified in opposition.

Appellants presented the following Exhibits:

Ex. 1. Application for Alternative Compliance

Ex. 2. Supplemental Plan

### **BACKGROUND**

The approximately 1.04-acre property is located on the south side of Main Street, west of its intersection with Old Columbia Pike, east of its intersection with Church Road, and east of Md Rt 29, also identified as 3956 Old Columbia Pike, Ellicott City, Maryland (the Property). The Subject Property is improved with a single family detached dwelling with access drive onto Old Columbia Pike, and lies in Council District 1, the 2nd Election District, and is identified as Tax Map 25, Grid 13, Parcel 134, in the R-ED (Residential: Environmental Development) Zoning District.

On February 14, 2025, the Appellants requested Alternative Compliance from §16.1205(a)(3) of the Howard County Code in accordance with §16.1216. Section 16.1205(a)(3), Forest Retention Policies, requires the retention of trees with a diameter of 30 inches or greater.

WP-25-066 is requesting the removal of 3 Specimen Trees:

Tree 10- 35.5" Tulip Poplar- Good Condition

Tree 11-57.5" Multi Stem Silver Maple- Very Poor Condition

Tree 15-34.5" Twin Silver Maple- Fair Condition

On May 5, 2025, by cover letter from DPZ, WP-25-066 was unanimously denied, stating that "On April 24, 2025, and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the (sic) Recreation and Parks, and Administrator of the Office of Community Sustainability considered and **denied** your request for a variance with respect to **Section 16.1205(a)(3)** of the Subdivision and Land Development Regulations to remove specimen trees." The Alternative Compliance Final Action Report found "After considering the alternative compliance application and the items required to be addressed pursuant to Section 16.1216(c), they find enforcement of this subtitle would not result in unwarranted hardship and agree unanimously to **DENY** the request for a variance with respect to **Section 16.1209(b)(5)** of the Forest Conservation Regulations.". By Administrative Appeal Petition dated June 4, 2025, Appellants appealed the denial of the request for Alternative Compliance to remove three (3) Specimen Trees.

### **JURISDICTION**

WP-25-066 is a request for Alternative Compliance to remove three (3) specimen trees filed pursuant to §16.1216, Subtitle 12, Forest Conservation Act, of the Howard County Code. §16-1216(b) provides

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

By letter dated May 5, 2025 the Department of Planning and Zoning informed the Appellants that on April 24, 2025 "the Director of the Department of Planning and Zoning, Director of the Recreation and Parks (sic), and Administrator of the Office of Community Sustainability considered and **denied** your request...". Appended to this letter is the Alternative Compliance Final Decision Action Report signed by Lynda Eisenburg, AICP, Director, Department of Planning and Zoning, Bryan Moody for Director Mooneyhan, Department of Recreation and Parks, and Timothy Lattimer, Administrator, Office of Community Sustainability.

### **STANDARD OF REVIEW**

The right to appeal an administrative decision is wholly statutory. Howard County v. JJM, Inc., 301 Md. 256, 261, 482 A.2d 908, 910 (1984) (citing Maryland Bd. V. Armacost, 286 Md. 353, 354-55, 407 A.2d 1148, 1150 (1979); Criminal Injuries Comp. Bd. V. Gould, 273 Md. 486, 500, 331 A.2d 55, 64 (19751); Urbana Civic Ass'n v. Urbana Mobile VIII, Inc., 260 Md. 458, 461, 272 A.2d 628, 630 (1971).



Pursuant to Howard County Code §16.1215, appeals to the Board of Appeals of decisions made pursuant to the Director of Planning and Zoning's administrative decision-making authority shall be heard in accordance with the Board of Appeal's Rules of Procedures. Subtitle 2.-Rules of Procedure of the Board of Appeals, Section 2.210 provides that administrative appeals such as the instant appeal are *de novo* and the burden of proof is on the appellant to show that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. Per Howard County Code § 16.302(a) Jurisdiction of Hearing Examiner), when a matter is authorized to be heard and decided by the Board of Appeals, the matter will first be heard and decided by a Hearing Examiner. Hearing Examiner Rule of Procedure 10.2(c) assigns the burden of proof in an appeal from an administrative agency decision of showing by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law. See also, Hearing Examiner Rules of Procedure, Rule 10.2.(c)

In a *de novo* (meaning as new) appeal, the role of the Hearing Examiner is akin to a trial court, and the appeal may be a contested case, in which the evidence is adduced, and the Hearing Examiner is the trier of fact awarded deference on appellate review as the Examiner saw the witnesses and the evidence firsthand. Appellants burden of proof is to provide substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

**APPLICABLE LAW****Section 16.1205. - Forest retention priorities.**

- (a) *On-Site Forest Retention Required.* Subdivision, site development, and grading shall leave the following vegetation and specific areas in an undisturbed condition.

\* \* \* \* \*

- 3) State champion trees, trees 75 percent of the diameter of state champion trees, and trees 30 inches in diameter or larger.

**Section 16.1216. - Variances.**

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

#### **Sec. 16.104. - Waivers**

**(d) *No Waivers of Floodplain, Wetland, Stream, Forest Conservation, or Steep Slope Regulations in the Tiber Branch Watershed.*** The Department may not grant waivers of any requirement of section 16.115 or section 16.116, or variances under section 16.1216 of this title, for any property located in the Tiber Branch Watershed unless the waiver:

- (1) Is necessary for the reconstruction of existing structures or infrastructure damaged by flood, fire, or other disaster;
- (2) Is necessary for the construction of a stormwater management or flood control facility as part of a redevelopment project;
- (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;
- (4) Is requested as part of a development proposal 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;**

- (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**
- (6) Is requested to use the limit of disturbance to calculate the 'net tract area' as defined in section 16.1201(v); or**
- (7) Is necessary for the removal of 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.**

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The first finding for Approval of Alternative Compliance pursuant to §16.1216(c)(1) requires the **Applicant** to satisfy the uniqueness prong of the variance test. Section 16.1216(c)(1) requires a showing of uniqueness. "Maryland cases have used the terms 'unique,' 'unusual,' and 'peculiar' to describe [the uniqueness] step in the variance analysis." *Dan's Mountain Wind Force, LLC v. Allegany Cnty. Bd. of Zoning Appeals*, 236 Md. App. 483,494 (2018). Section 16.1216 states that a variance to the tree conservation provisions may only be granted if the Subject Property has "special conditions peculiar to the property." § 16.1216(c)(1). Thus, § 16.1216(c)(1) requires the Applicants to satisfy the uniqueness prong of the variance test to show that the Subject Property has "special conditions peculiar to the property."



The uniqueness prong of the variance test requires the Applicants to prove, and the Directors to find, that the alleged special conditions on the Subject Property are not shared by other nearby properties - that "the plight of the owner [is] due to unique circumstances and not to general conditions in the neighborhood." *Marino v. City of Balt.*, 215 Md. 206, 219 (1957). "It must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood." *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950). "[T]he property whereon structures are to be placed (or uses conducted) [must be] - in and of itself - unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, 102 Md. App. 691, 694 (1995); see also *Dan's Mountain Wind Force, LLC v. Allegany Cty. Bd. of Zoning Appeals*, 236 Md. App. 483, 492 (2018).

The Appellants allege that the Subject Property is unique because it has limited road frontage, the shape of the property, the existing topography of the site, and because the Subject Property is located within the Tiber Branch Watershed. However, the Appellants failed, in both their Alternative Compliance

Justification (which the Directors used as the basis of their Final Decision Action Report), and later during the evidentiary hearing, to actually analyze properties nearby as required by §16.1216(c)(1).

The Appellants failed to compare the Subject Property with any other property and thus failed to demonstrate that the alleged special conditions are in fact unique or peculiar to the Subject Property. Therefore, the Directors' decision to deny the requested variance is in accordance with law because nothing in the record satisfies the proposition that the special conditions identified by the Applicants are unique or peculiar conditions compared to surrounding properties.

The Appellants' state that their justification for the requested variance is to provide legal access and water to facilitate the development of a parcel to be subdivided for development from the Subject Property and to provide additional stormwater management to the Tiber Branch Watershed. The proposed design exceeds the disturbance necessary to develop a two-lot subdivision on the Subject Property. The Subject Property has legal access to the continued use of the property.

Appellants argue that their location within the Tiber Branch Watershed requires a larger stormwater management facility than projects not located within the Tiber Branch

Watershed. Any development in the Tiber Branch and Plum Tree Branch are required to meet the same stormwater management requirements. This is not a condition unique to the Subject Property.

The uniqueness prong of the variance test is designed to determine whether a property, due to inherent characteristics of the land itself, will be impacted differently by the County's ordinances than other properties nearby. When many properties share the same constraints, the properties are not unique, and any variance request must be denied. Here, the evidence failed to demonstrate that the conditions identified by the Applicants are unique to the Subject Property but are not shared by other properties in the area. Therefore, as a threshold matter, the Directors' decision was in compliance with law because the Subject Property has not been demonstrated to be in fact unique.

Assuming *arguendo* the shape of the Subject Property, the topography, the access and the location within the Tiber Branch Watershed were nominally "unique," the Appellants would still have not have met their burden of proof because nothing on in the record satisfies the proposition that those conditions have a meaningful nexus to the relief sought. As the Court opined in *Dan's Mountain*:

[T]he unique aspect of the property must relate to-have a nexus with-the aspect of the zoning law from which a variance is sought. Without the nexus requirement, a motivated sophist could always find similarities or differences between any two properties so as to defeat or support a uniqueness finding. Every property is similar to every other property in some respect (for example, "there are some living things on this property"). And every property can be distinguished from every other property in some other respect (for example, "this property contains exactly x number of trees and y number of woodrats"). Rather than

semantic tricks, the proper question is whether the property is unique in the way that this particular aspect of the zoning code applies to it.

236 Md. App. at 496. A unique aspect of a property is only unique in the context of a variance application if that particular unique aspect is what is preventing adherence to the ordinance.

Where a property's physical peculiarities do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not "unique" in the law of variances. For example, if a property has physical characteristics that might justify variance relief from drainage or sewage regulations, those attributes probably would have no bearing on how the property is affected by an ordinance establishing the maximum height for a fence.

*Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 407 Md. 53, 82 (2008). A variance needs a nexus between the relief sought and the unique aspect. In this case, such a nexus does not exist for any tree requested for removal.

Here, there are essentially two categories of trees that the Applicants request permission to remove - trees to accommodate the location of the proposed access to the Subject Property (Tree 11) and trees to accommodate the proposed stormwater management facility (Tree 10 and Tree 15). Thus, the Applicants must show that the alleged need to remove each of the three (3) specimen trees relates to, or has a nexus with, the alleged uniqueness of the Property.

The Appellants assert that they must have the proposed access drive located along the northern side of the Property, adjacent to the Ragonese's home, due to



Appellants desire to subdivide and build an additional home on the to be subdivided parcel. However, the desire to subdivide off a currently landlocked parcel in order to create an additional building lot is not a characteristic of the land - instead Appellants civil engineer stated that access to the rear of the existing home for a proposed building lot could probably be accessed via the existing driveway but that would require a redesign of the proposed new building lot. Mr. Alomar did opine that he thought the existing proposed layout would be superior to a redesign using the exiting driveway, however no analysis of access via the existing paved driveway has been made. There is no nexus between any of the alleged unique features on the Subject Property and the Appellants' desire to remove the three (3) specimen trees. Instead, the only nexus is between the Appellants' desire to maximize the density on the Subject Property and the inconvenience to the Appellants of having to preserve these trees.

Even assuming *arguendo* that the Appellants could have satisfied the uniqueness prong of the variance test, a variance cannot be approved unless the Appellants demonstrate that they would experience an unwarranted hardship (which is stricter than the practical difficulties test) if the variance is not granted. §16-1216(c)(1).

The Appellants admit that they could redesign the access using the existing pave driveway. Thus, the alleged hardship is not a hardship supported by the evidence on the record because the Appellants could have pursued an alternative design for a private driveway that preserves all of the specimen trees.

Section 16.1216(c) states that a variance cannot be approved unless the Applicants demonstrate that they would experience an unwarranted hardship. Although Section 16.1216(c) does not define unwarranted hardship, it does clarify that "increased cost or inconvenience of meeting the requirements of these regulations does not constitute an unwarranted hardship to the applicant." § 16.1216(c). The Howard County Forest Conservation Manual provides that "an acceptable site plan will balance minimizing forest clearing with achieving reasonable use of the property, which may mean achieving less than the maximum permitted density or square footage." Howard County Forest Conservation Manual, pg. 19. In other words, "reasonable use" of the Subject Property does not inherently include achieving the maximum density allowed under the County's ordinances.

The phrase "unwarranted hardship" requires an applicant demonstrate that "unless [its] application is granted, it will be 'impossible to make reasonable use of [its] property.'" See *Montgomery Cnty. v. Rotwein*, 169 Md. App. 716, 728-29; see also *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 282 (1999).

Here, the evidence on the record demonstrates clearly that the Appellants have other economically viable options for using the Subject Property that would preserve the specimen trees on the Subject Property. Therefore, the Directors' determination that the Appellants would not face an unwarranted hardship is in accordance with law because the only alleged hardship is an inability to maximize density and profit on the site and the Appellants have other economically viable options available.

Howard County's Forest Conservation Act requires property owners to "leave [specimen trees] in an undisturbed condition." § 16.1205. To remove a specimen tree, the Applicants must demonstrate that they satisfy each of the elements under § 16.1216. Neither section authorizes the Directors to approve a variance based on the health of the specimen trees.

The goal of the Howard County Forest Conservation Act is to "protect and maintain forest vegetation and forest areas in Howard County." § 16.1200(c). Baselessly allowing a property owner to remove specimen trees that will continue to provide ecological benefits to forested areas frustrates the stated purpose of the Forest Conservation Act and is not permitted thereunder.

### **CONCLUSION**

The Alternative Compliance Final Decision Action Report, dated May 5, 2025, which denied WP-25-066, is in accordance with law, and the evidence presented during the evidentiary hearing made clear that Appellants failed to meet their threshold burden of proof as required by §16-1216(c)(1). Since Appellants failed to meet their requirement of §16.1216(c)(1) there is no need to analyze the additional requirements of §16.1216(c)(2)-(7). Additionally, Appellants failed to provide any evidence to overcome the prohibition on variances from §16.1216 in the Tiber Branch Watershed.

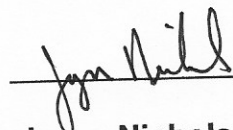
**ORDER**

Based upon the foregoing, it is this 4th day of August, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Appellants' appeal of the May 5, 2025 letter from the Department of Planning and Zoning attaching the Alternative Compliance Final Decision Action Report denying Alternative Compliance for the removal of 3 Specimen Trees for WP-25-066, at 3956 Old Columbia Pike, Ellicott City, Maryland, in the R-ED (Residential: Environmental Development) Zoning District, Council District 1, Election District 2, Map 25, Grid 13, Parcel 134, be and is hereby **DENIED**.

**HOWARD COUNTY**

**HEARING EXAMINER**

  
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**Joyce Nichols**

**NOTICE:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.