



DPZ office use only:

BA Case No.: BA-819D

Date Submitted: 9/02/2025

**PETITION OF APPEAL OF
HEARING EXAMINER DECISION
TO THE HOWARD COUNTY BOARD OF APPEALS**



A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.¹ The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

1. **Name of Case** Agila Sundaram and Mukesh Kumar
 BA Case No. 819-D
 Date Decision and Order Mailed August 4, 2025. A copy of the Decision & Order is attached hereto.

2. **Reason for Appeal** See attached continuation sheet.

3. **Name of Appellant** Agila Sundaram and Mukesh Kumar
 Trading as (if applicable) _____
 Mailing address c/o Talkin & Oh, LLP - 5100 Dorsey Hall Drive, Ellicott City, MD 21042
 Phone number(s) _____
 Email mukeshagila@gmail.com; mukeshk_singh@hotmail.com
 Name of principal contact (if different) _____

4. **Counsel for Appellant** Sang W. Oh, Talkin & Oh, LLP
 Mailing Address 5100 Dorsey Hall Drive, Ellicott City, MD 21042
 Phone number(s) 410-964-0300
 Email soh@talkin-oh.com
 Secondary contact for counsel (if any) gpagani@talkin-oh.com

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.

5. Declaration of Interest

- The Appellant is the original petitioner
- The Appellant was a party to the original case

6. Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

- I elect to proceed on the original petition
- N/A
- I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. Copies: The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10** complete sets must be submitted.

8. Public Notice Requirements

a. Posting: If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an a Affidavit of Posting as required by Section 2.203(c).

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.

b. Advertising: The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. Responsibility for Compliance: In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.

9. On The Record Appeals

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.

10. Signatures

By signing below, the Appellant hereby affirms that:

- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

[Signature] 8/25/2025 Agila Sundaram
Signature of Appellant Date Print Name of Appellant

M.K. Singh 08/25/2025 Mukesh Kumar
Signature of Appellant Date Print Name of Appellant

[Signature] W. ol 8/27/25
Signature of Attorney (If any)

Make checks payable to "Director of Finance."

| | |
|--|----------|
| For DPZ use only: Filing Fee is \$2,050.00 plus \$50.00 per poster if required. | |
| Hearing fee: | \$ _____ |
| Poster fee: | \$ _____ |
| TOTAL: | \$ _____ |
| Receipt No. | _____ |

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

County Website: www.howardcountymd.gov

CONTINUATION SHEET

Agila Sundaram and Mukesh Kumar (“Appellants”)

RE: BA-819-D (WP-25-045, Mitchell Greens)

3956 Old Columbia Pike, Ellicott City, MD 21043 (the “Property”)

2. Reason for Appeal:

This appeal arises from the Hearing Examiner’s August 4, 2025 Decision & Order (“D&O”) denying Appellants’ appeal of the Department of Planning and Zoning’s (“DPZ”) decision letter dated May 5, 2025 (attached hereto) denying alternative compliance application WP-25-045 (“the DPZ letter”). Appellants assert the Hearing Examiner’s decision that Appellants failed to produce any evidence required to meet the criteria was clearly erroneous and contrary to law.

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 reassert that they adequately demonstrated the need to remove the proposed three specimen trees and grade within the stream bank buffer to not be deprived use of the proposed second lot, which is both a significant and reasonable use of their Property.

Appellants reserve the right to raise additional issues at the hearing on this matter including, but not limited to, the issues identified in Appellants' Supplement to the Administrative Appeal Petition in the June 4, 2025 Appeal of the DPZ Letter which is attached hereto and incorporated herein by reference.

MUKESH KUMAR

: BEFORE THE

AND

: HOWARD COUNTY

AGILA SUNDARAM

: BOARD OF APPEALS

Appellants

: HEARING EXAMINAR

v.

HOWARD COUNTY DEPARTMENT OF

: BA Case No. 819D

PLANNING AND ZONING IN WP-25-045

Appellee

.....
.....

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 Public Works, and Office of Community Sustainability) denying WP-25-045, Appellants request for Alternative Compliance to §16.116(a)(2)(ii) 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
- Ex. 3. Address Points and Property Boundaries Overlay

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 August 6, 2024, the Appellants requested Alternative Compliance from §16.116(a)(2)(ii) of the Howard County Code in accordance with §16.116(d). Section 16.116(a)(2)(ii), Protection of wetlands, streams, and steep

slopes, requires that grading, removal of vegetative cover and trees, paving, and new structures shall not be permitted within the 75-foot perennial stream bank buffer.

On May 5, 2025, by cover letter from DPZ, WP-25-045 was unanimously denied, stating that "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 a variance with respect to **Section 16.116(a)(2)(ii)** of the Subdivision and Land Development Regulations to grade within the stream bank buffer." The Alternative Compliance Final Action Report found "that the applicants 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)(2)(ii)** of the Subdivision and Land Development Regulations.". By Administrative Appeal Petition dated June 4, 2025, Appellants appealed the denial of the request for Alternative Compliance to grade within the 75-foot stream buffer bank.

JURISDICTION

WP-25-045 is a request for Alternative Compliance to grade within the 75-foot perennial stream buffer bank filed pursuant to §16.116, Subtitle 1, Subdivision and Land Development Regulations, Article 2. Design Guidelines and Regulations. Section 16.116 Protection of wetlands, streams and steep slopes, provides

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:.....

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 Department of Public Works, 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, Yosef Kebede, Director, Department of Public Works, 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 §16.105, 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

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 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.

(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.

Sec. 16.116. - Protection of wetlands, streams, and steep slopes.

(a) Streams and Wetlands:

- (1) Grading, removal of vegetative cover and trees, paving, and new structures shall not be permitted within 25 feet of a wetland in any zoning district.
- (2) Grading, removal of vegetative cover and trees, paving, and new

structures shall not be permitted within:

- (i) Fifty feet of an intermittent stream bank;**
- (ii) Seventy-five feet of a perennial stream bank for Use I streams as classified by the Maryland Department of the Environment in residential zoning districts and residential and open space land uses in the NT, PGCC, and MXD districts;**

(d) *Waivers.*

- (1) 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.**
- (2) To determine if the waiver is warranted, the Departments may request an alternatives analysis, that may include different plan concepts and that clearly demonstrates that no other feasible alternative exists and that minimal impacts will occur as a result of granting the modification.**
- (3) Waivers under this subsection shall be reported by the**

Department of Planning and Zoning in the same manner as required under subsection (c)(5) applicable to necessary disturbance exceptions.

- (4) The Department of Public Works shall recuse itself from consideration of any capital projects seeking waivers.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) Section 16.104(d)(1) 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;

Appellants do not propose to return the area of disturbance to its natural condition.

- (ii) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat;

Appellants argue that by providing a larger stormwater management facility through grading and removal of vegetation and specimen trees the water quality will be improved. These actions are apposite to this required finding.

- (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 large stormwater management facility being proposed is to facilitate the development of another dwelling on land to be subdivided from the Subject Property. The Subject Property is experiencing no access, utility or water issues.

- (2) **Sec.16.104. 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;**

Appellant argues that the requirement for additional stormwater management in the Tiber Branch Watershed, which results in a larger stormwater management facility would deprive Appellants of rights commonly enjoyed by others in similar areas. 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 scale of the proposed improvements for the development of one home on the site as proposed by the minor subdivision is not reasonable.

(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;

This finding requires the Appellants to satisfy both the uniqueness prong of the variance test and the practical difficulty or unreasonable hardship test. 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).

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 Bait.*, 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 §16.104(a)(ii).

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 and has sufficient water and utilities.

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 the proposed grading denuding of vegetation, and removal of specimen trees within the 75-foot stream bank buffer.

The Appellants assert that they must have the grading, removal of vegetation,

and removal of specimen trees within the 75-foot stream buffer 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 accessible parcel in order to create an additional landlocked building lot is not a characteristic of the land.

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. §16-104(a)(ii).

The phrase "unreasonable 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 not require grading, removal of vegetation, and removal of specimen within the 75-foot stream bank buffer on the Subject Property. Therefore, the Directors' determination that the Appellants would not face an unreasonable 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.

(iii) The variance will not confer on the applicant a special privilege that would be denied to other applicants;

The granting of a waiver of the requirements of the Tiber Branch

Watershed would grant a special privilege that is not available to all the other properties in the Tiber Branch and the Plum Branch Watersheds. Appellants presented no evidence to the contrary.

- (iv) **The modification is not detrimental to the public health, safety or welfare or injurious to other properties.**

Appellants failed to provide any evidence that the grading for a large stormwater management facility which denudes the vegetation and removes specimen trees within the 75-foot stream bank buffer is not detrimental to other properties in the Tiber Branch and Plum Branch Watersheds.

(3) Section 16-104(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:

- (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 redevelopment project;**
- (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;**
- (iv) **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;**
- (v) **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

- (vi) Is requested to use the limit of disturbance to calculate the 'net tract area' as defined in section 16.1201(v); or**
- (vii) 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.**

Appellants failed to produce any evidence required to meet these criteria.

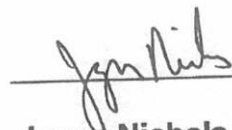
CONCLUSION

The Alternative Compliance Final Decision Action Report, dated May 5, 2025, which denied WP-25-045, 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 §16-104(a) and (d) and §16.116(d)(c)(1).

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 grading within the 75-footstream bank buffer for WP-25-045, 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**

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.

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.



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

42208635863942E...

Lynda Eisenberg, AICP, Director
Department of Planning and Zoning

Signed by:

Yosef Kebede

B4217725E8EC47C...

Yosef Kebede, Director
Department of Public Works

Signed by:

Timothy Lattimer

AEB000C3A0F04A0...

Timothy Lattimer, Administrator
Office of Community Sustainability

cc: Research
OCS
DPW