

MUKESH KUMAR

: BEFORE THE

AND

: HOWARD COUNTY

AGILA SUNDARAM

: BOARD OF APPEALS

Appellants

: HEARING EXAMINAR

v.

**HOWARD COUNTY DEPARTMENT OF
PLANNING AND ZONING IN WP-25-045**

: BA Case No. 819D

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).

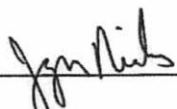
ORDER

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.



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

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:

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Anthony Cataldo, AICP, Chief
Division of Land Development

AC/js

cc: Research
DLD - Julia Sauer
JNM Engineering (jnmengineeringllc@gmail.com)
Cindee White (cindeevelleballet@verizon.net)
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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

AE800003A3F04A0...

Timothy Lattimer, Administrator
Office of Community Sustainability

cc: Research
OCS
DPW

ALTERNATIVE COMPLIANCE COMMENT FORM

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

The Development Engineering Division recommends DEFERRAL subject to Revising stormwater management to reflect the current proposed improvements shown on the plans. The stormwater facility should be removed from the stream buffer. Additionally, show the driveway width at the minimum of 12' once it serves a single user

Philip M. Thompson, P.E. **04.24.2025**

Print Name **Date**



August 6, 2024

Alternative Compliance Justification

On behalf of our client, owners of the property known as 3956 Old Columbia Pike, Ellicott Maryland. We are requesting alternative compliance to the following Section of the Howard County Subdivision and Land Development Regulations:

SECTION 16.116(A)(2)(II) 75-FOOT BUFFER

Justification for Alternative Compliance to Section 16.116(a)(2)(ii) which specifies that grading, removal of vegetative cover and trees, paving, and new structures shall not be permitted within 75-feet of a perennial stream bank for Use 1 streams as classified by the MDE in residential zoning districts and residential open space land uses in the NT, PGCC, and MXD districts.

Criteria 1) *Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas;*

The purpose of the disturbances to the stream buffer is required in order to provide legal access and water to the adjoining rear property addressed as 3958 Old Columbia Pike. Currently, the property located as 3958 Old Columbia Pike utilizes an offsite shared driveway for access. The owner of the existing driveway has voiced concerns over the use of this drive so as part of the subdivision we have proposed an easement that can be granted to the owner to establish a legal access for them. The rear property is also currently in private water. With this development we have proposed a public water and utility easement which would extend water from Old Columbia Pike to rear property. The water main will have to be constructed through the stream buffer. Lastly, and due to the enhanced stormwater management obligations as part of the Tiber Drainage Basin, we are required to provide additional stormwater management. The stormwater management location has been chosen so the entire developed area could be captured. Additionally, this SWM device will be utilized to treat runoff from the future driveway so locating in the lowest possible area is critical. Other properties in this area currently enjoy legal driveway access and also the ability to connect to the public water supply. By permitting the disturbance to the stream buffer, we will be extending this right to the rear property (3958 Old Columbia Pike).

Criteria 2) *Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations;*

The property at 3958 Old Columbia Pike is currently land locked. The adjoining property owner does allow the owners of 3958 Old Columbia Pike to utilize this driveway but there is no recorded easement or agreement. By allowing a disturbance to the stream buffer to construct a future driveway it will eliminate the owners practical difficulty of not having legal access. As part of the future driveway construction, we have also proposed a public water main extension and the SWM needed to treat the improvements. Please note that the SWM obligation is significantly more than usual due to being located in the Tiber Branch.

Criteria 3) *The Variance will not confer to the applicant a special privilege that would be denied to other applicants.*

This variance would not confer special privilege due to the significance of the land locked parcel and our proposal to resolve this issue. The driveway access is critical to allow the owners the benefit of legal access to and from Old Columbia Pike.

Criteria 4) *The modification is not detrimental to the public health; safety or welfare, or injurious to other properties*

The requested modification would not be detrimental to the public health; safety or welfare, or injurious to other properties. The driveway would provide legal access, the water extension would allow for future water connections, and the stormwater management device will be utilized to capture and treat stormwater runoff based on the new impervious areas.

Criteria 5) *Disturbance is returned to its natural condition to the greatest extent possible*

The existing area where the proposed SWM will be located, as part of this subdivision, is currently maintained lawn area. As part of the subdivision, we have proposed a SWM device which will provide water quality and quantity management before reaching the downstream channel. The proposed SWM device will be a net benefit to the stream and buffer by capturing and treating runoff from existing and proposed impervious areas that are currently unmanaged. All disturbed buffer areas, aside from the future driveway area, will be vegetatively stabilized to the maximum extent possible.

Criteria 6) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat.

As noted above, we have proposed a SWM device which will provide water quality and quantity management for existing and proposed runoff / impervious surfaces before reaching the downstream channel. The proposed SWM device will be a net benefit to the stream and buffer by capturing and treating runoff from existing and proposed impervious areas that are currently unmanaged.

Criteria 7) 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

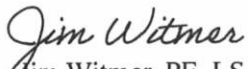
The proposed disturbances associated with this SWM installation will be the minimum necessary to ensure the required SWM obligations have been met for the site. The SWM device shall be located within the stream buffer (above the stream channel) where water quality and quantity management can occur prior to reaching the existing stream channel. When a design is complete for the future driveway and utility crossing, we will utilize measures to avoid impacts to the stream channel and only proposed disturbances where absolutely critical to allow access to the rear property. Areas that have to be vegetatively stabilized will be planted as required to prohibit erosion.

Additionally, under section 16.104(d) we believe a waiver is not required based on 16.104(d)(2). As part of this project, we will have to construct a large stormwater management device to capture peak flood control due to the watershed. The appropriate location for the stormwater device is downhill from all proposed improvements which is why we have located it where it has been proposed. We have engineered the facility to have a low flow orifice and overflow weir to control storm discharge to the maximum extent. Below is a table showing the changes in site runoff discharge for the required design storms.

Design Storm Event	Max. Allowable Discharge (cfs)	Design Discharge (cfs)	Percent Reduction Achieved
10-year	4.16	2.50	40%
100-year	10.67	9.37	12%
6.6" storm	11.58	9.85	15%

We believe, due to the justification provided above, we have demonstrated that our request satisfies all criteria for approval. An approval of this alternative compliance would give the owners of 3958 Old Columbia Pike the ability to establish a legal access to Old Columbia Pike that other residents in the area currently enjoy. The access to public water would also be granted.

Sincerely,


Jim Witmer, PE, LS
Principal



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

January 15, 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 property was reviewed and no action can be taken until the review comments in ProjectDox have been addressed, and the following additional information is provided.

The requested information and revised plans must be submitted within **45 days** of the date of this letter (**on or before March 1, 2025***), or this Division will recommend that the Planning Director or Director Committee deny this alternative compliance petition. **The resubmission of revised plans in ProjectDox must be completed by the applicant and payment of any required additional fees, if applicable, shall be verified by DPZ staff prior to 5:00 p.m. of the deadline date to ensure acceptance of the plan for processing.**

Once the requested information has been received and reviewed, this office will coordinate agency comments and will prepare a recommendation for the Planning Director's action. If you have any questions regarding a specific comment, please contact the review agency prior to preparing the revised plans and information. Compliance with all items indicated above is required before the revised plans and information will be accepted.

***In accordance with adopted Council Bill 51-2016, effective 10/05/16, if the deadline date is a Saturday, Sunday or holiday or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.**

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 (jnmengineeringllc@gmail.com)
Cindee White (cindeevellballet@verizon.net)
Rebecca & David Bohning (rebboh@verizon.net)



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2355

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

Patrick Smith

11/7/2024

Print Name

Date



Howard Soil Conservation District
Phone (410) 313-0680
FAX (410) 489-5674
www.howardscd.org

14735 Frederick Road, Cooksville, MD 21723

JNM Engineering
1 Park Avenue
Suite 1A
Mount Airy, MD 21771

Date: November 8, 2024

Re: Mitchell Greens
WP-25-045

The above referenced plan has been reviewed by the Howard Soil Conservation District for compliance with sediment control, pond safety, temporary stormwater management, and sensitive area protection requirements. Results of the review are as follows:

- (X) Howard SCD approval is not required. However, the following recommendations and requests are being made to the Department of Planning & Zoning.
- () The plan is approved, subject to signatures being placed on the original(s). Any alterations to the plan shall void approval.
- () Address all comments which, due to their minor nature, may be addressed directly on the original(s) at the time of formal signature approval. There is no need to resubmit the plan.
- () Address all comments as noted below and resubmit the plan for further review.

REVIEW COMMENTS:

1. No objection to granting alternative compliance, provided all Howard SCD comments on the F-24-063 plan are addressed.

Warning: All soils have limitations, ranging from slight to severe, for building homes, constructing roads and ponds, and various other uses. Please consult the *Soil Survey of Howard County* for determining soil types and their suitability for development, engineering and building.

Technical Review by: Alexander Bratchie
Alexander Bratchie, PE



ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/07/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Comprehensive & Community Planning	DPZ – Development Engineering Division
DPZ – Research Division	DPZ – Resource Conservation Division
Department of Fire and Rescue Services	Recreation and Parks
Department of Inspections, Licenses & Permits	Office of Transportation
DPW, Real Estate Services & Directors Office	Office of Community Sustainability
Health Department	Soil Conservation District
Public School System	State Highway Administration

COMMENTS:

The Mitchell Greens residential development project does not fall within the Design Advisory Panel study area and was not required to be reviewed by the Design Advisory Panel. The request for stream buffer encroachments will not trigger DAP review of the project. There is no objection or comments to this alternative compliance request and DAP review is not required.

Nicholas Haines

11-08-24

Print Name

Date



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division

DPZ – Research Division

Department of Fire and Rescue Services

Department of Inspections, Licenses & Permits

DPW, Real Estate Services & Directors Office

Health Department

Public School System

DPZ – Resource Conservation Division

Recreation and Parks

Office of Transportation

Office of Community Sustainability

Soil Conservation District

State Highway Administration

COMMENTS:

The Development Engineering Division takes NO EXCEPTION to the request to disturb the 75-foot stream buffer due to access requirements and the need for a future water connection for a land locked parcel (3958 Old Columbia Pike) based on the justification presented in the application.

Chad Edmondson 11-12-24
Print Name Date



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

No exceptions taken for the limited work in the stream buffer as submitted with one request. The applicant notes that “the areas that have to be vegetatively stabilized will be planted as required to prohibit erosion”. This stabilization should include planting new trees to the extent possible within the stream buffer area in addition to grass.

Mark S Richmond

November 16, 2024

Print Name

Date



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024 Comment Due Date: 11/21/2024 DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

RCD has no comments.

Margaret S. Melikian 11.19.2024

Print Name Date



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024 Comment Due Date: 11/21/2024 DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

Our office has no comment.

Jeremy Zeller 11/20/2024

Print Name **Date**



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 11/7/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

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Department of Fire and Rescue Services	Office of Transportation
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DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

Health has no objections to this waiver request.

Zack Silvast

11/21/24

Print Name

Date



Howard County Maryland
Department of Planning and Zoning
3430 Courthouse Drive, Ellicott City, MD 21043

(410) 313-2350

DPZ Office Use only:
Case No: WP-25-045
Date Filed: 11/7/2024

ALTERNATIVE COMPLIANCE COMMENT FORM

Date: 12/16/2024

Comment Due Date: 11/21/2024

DPZ File No: WP-25-045

Mitchell Greens

This request for comments has been distributed to the following Departments.

DPZ – Development Engineering Division	DPZ – Resource Conservation Division
DPZ – Research Division	Recreation and Parks
Department of Fire and Rescue Services	Office of Transportation
Department of Inspections, Licenses & Permits	Office of Community Sustainability
DPW, Real Estate Services & Directors Office	Soil Conservation District
Health Department	State Highway Administration
Public School System	

COMMENTS:

It would be better if the applicant explained the claims of [things will be addressed to the] “maximum extent practical”. Particular species and numbers of plants should be noted. We should probably know what kind of SWM is going in before approving this as well.

Bill Mahoney

12.16.24

Print Name

Date

Plan Review - Review Comments Report

Project Name: **WP-25-045**
Workflow Started: **10/10/2024 3:19:10 AM**
Report Generated: **10/21/2025 11:57 AM**

REVIEW COMMENTS						
REF #	CYCLE	REVIEWED BY	TYPE	FILENAME	DISCUSSION	STATUS
1		DLD_Intake Justin Schleicher 10/17/24 7:51 AM	Checklist Item Please provide a narrative of justification to support the alternative compliance request. Justification must be specific to the subject property. The justification provided by the applicant should include all factors that rationalize or substantiate the request in accordance with the requisite criteria in the Code. Multiple exhibits showing design alternatives, including a scenario of relief is strongly encouraged (not required for procedural requests). For Section 16.116, please justify all 7 criteria.		Responded by: jim witmer - 10/28/24 12:24 PM added	Resolved
2		DLD_Intake Justin Schleicher 10/17/24 7:51 AM	Checklist Item Please provide a plan exhibit or exhibits related to the alternative compliance request.			Resolved
3		DLD_Intake Justin Schleicher 10/17/24 7:51 AM	Checklist Item Presubmission Community Meeting may be required for requests to Section 16.155. A pre-submission community meeting is required prior to acceptance of the alternative compliance application. Provide the following information with this submission: (1) Certification the meeting notices were mailed to adjoining property owners and each Village Board, Columbia Association and property owner located within the same downtown neighborhood (if applicable); (2) Verification meeting notices were emailed to any citizen registered online; (3) Meeting attendees list; (4) Copy of the meeting minutes and written responses to the meeting attendees questions; and (5) Verification that the meeting minutes and responses were sent within 60 days to all meeting attendees.			Resolved
4		DLD_Intake Justin Schleicher 10/17/24 7:51 AM	Checklist Item Alternative compliance requests are only accepted if the initial development plan is in review, unless the request is to waive the subdivision or SDP process. The ECP is not considered an initial development plan. Please resubmit the alternative compliance request once the intake for the initial development plan is considered acceptable/complete.			Resolved
5	1	DRP Paul Walsky 11/13/24 3:05 PM	Comment The Department refers to Section 16.116(a)(1) that disturbance within the environmental buffers shall not be permitted.		Responded by: jim witmer - 2/26/25 4:16 PM noted	Unresolved



Plan Review - Review Comments Report

Project Name: **WP-25-045**
Workflow Started: **10/10/2024 3:19:10 AM**
Report Generated: **10/21/2025 11:57 AM**

REF #	CYCLE	REVIEWED BY	TYPE	FILENAME	DISCUSSION	STATUS
6	1	DLD Julia Sauer 1/7/25 2:44 PM	Changemark Changemark note #01 In accordance with Section 16.104(d) of the Subdivision and Land Development Regulations, the Department may not grant waivers of any requirement of Section 16.116 for any property located in the Tiber Branch Watershed, unless certain criteria are met. Please explain how this project will comply with the criteria in Section 16.104(d) of the Regulations.	Supplimental Plan.Sheet 5.pdf	Responded by: jim witmer - 2/26/25 3:56 PM added to the justification	Resolved
7	1	DLD Julia Sauer 1/7/25 2:48 PM	Changemark Changemark note #02 Please explain why the SWM facility is so large. Will the facility capture stormwater from the future impervious area created by an onsite or offsite expansion of the driveway? Does the facility provide 10% more flood control that what would otherwise be required by law per Section 16.104(d)(4) of the Subdivision and Land Development Regulations. Please explain why this design is the best design and what other design options were considered but determined less feasible.	Supplimental Plan.Sheet 5.pdf	Responded by: jim witmer - 2/26/25 4:02 PM yes, this devise is well oversized to provide SWM for all peak runoff events as required in the Tiber. We have provide more then 10% of flood control above what is required. We have provided a table in the justification showing each storm event, the maximum allowable discharge, and the	Resolved
8	1	DLD Julia Sauer 1/7/25 2:48 PM	Changemark Changemark note #04 Please see and provide a response to all agencies comments that are either listed on the Reviews tab or uploaded to the Reviewer Comments folder.	Supplimental Plan.Sheet 5.pdf	Responded by: jim witmer - 2/26/25 4:02 PM okay	Resolved
9	1	DLD Julia Sauer 1/8/25 10:46 AM	Changemark Changemark note #03 Please explore shifting the driveway and utility easement to the greatest extent south in order to provide the driveway and utility crossing at the narrowest part of the stream. If infeasible, please explain why. Please provide a conceptual design of the future driveway extension.	Supplimental Plan.Sheet 5.pdf	Responded by: jim witmer - 2/26/25 4:15 PM Note. We have shifted it as far as we could while still allowing sufficient room to install the driveway. A little room is needed on both sides for grading. We believe we are crossing at the narrowest point. I have attached an exhibit shown the driveway alignment.	Resolved





Alternative Compliance Application Form Submitted
Howard County Department of Planning and Zoning
3430 Court House Drive | Ellicott City | MD | 21043
TEL: 410.313.2350

The following Application has been submitted: AC-1433

PROJECT IDENTIFICATION

Site Description: Mitchell Greens
Location Address: 3956 Old Columbia Pike, Ellicott City, MD, 21043
Existing Use: Residential
Proposed Use: Residential
Tax Map: 25
Grid: 13
Parcel No: 134
Election District: 2
Zoning: R-20
Total Site Area: 1.04

PREVIOUSLY SUBMITTED OR CURRENTLY ACTIVE PLANS ON FILE

Currently F-24-063, ECP-20-040

SECTION REFERENCE INFORMATION

Your initial Application Fees cover up to 2 Section References for this application.

1.) Section Reference No.: 16.116(A)(2)(ii)

Brief Summary of Request: Due to access requirements and the need for a future water connection for a land locked parcel (3958 Old Columbia Pike) we are requesting permission to disturb the 75-foot stream buffer.

2.) Section Reference No.:

Brief Summary of Request:

Adding more than 2 Section Reference Numbers will incur an additional fee. You can the additional Section Reference Numbers below.

3.) Section Reference No.:

Brief Summary of Request:

4.) Section Reference No.:

Brief Summary of Request:

5.) Section Reference No.:

Brief Summary of Request:

6.) Section Reference No.:

Brief Summary of Request:

7.) Section Reference No.:

Brief Summary of Request:

8.) Section Reference No.:

Brief Summary of Request:

PROPERTY OWNER INFORMATION

Name: Agila Sundaram

Owner Company Name:

Address: 3958 Old Columbia Pike, Ellicott City, , 21043

Phone: 5132930598

Email: mukeshagila@gmail.com

PREPARER INFORMATION

Preparer Company Name: JNM Engineering

Name: James Witmer

Address: 1 Park Avenue, suite 1A, Mount Airy, MD, 21771

Phone: 3015142808

Email: jim@jnmengineeringllc.com



JNM Engineering, LLC

Civil Engineering, Surveying, Land Planning, Environmental Planning, Arboriculture

1105 Leafy Hollow Circle
Mount Airy, MD 21771
301-514-2808(C)
JNMEngineeringllc@gmail.com
JNMEngineeringllc.com

August 6, 2024

Alternative Compliance Justification

On behalf of our client, owners of the property known as 3956 Old Columbia Pike, Ellicott Maryland. We are requesting alternative compliance to the following Section of the Howard County Subdivision and Land Development Regulations:

SECTION 16.116(A)(2)(II) 75-FOOT BUFFER

Justification for Alternative Compliance to Section 16.116(a)(2)(ii) which specifies that grading, removal of vegetative cover and trees, paving, and new structures shall not be permitted within 75-feet of a perennial stream bank for Use 1 streams as classified by the MDE in residential zoning districts and residential open space land uses in the NT, PGCC, and MXD districts.

Criteria 1) *Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas;*

The purpose of the disturbances to the stream buffer is required in order to provide legal access and water to the adjoining rear property addressed as 3958 Old Columbia Pike. Currently, the property located as 3958 Old Columbia Pike utilizes an offsite shared driveway for access. The owner of the existing driveway has voiced concerns over the use of this drive so as part of the subdivision we have proposed an easement that can be granted to the owner to establish a legal access for them. The rear property is also currently in private water. With this development we have proposed a public water and utility easement which would extend water from Old Columbia Pike to rear property. The water main will have to be constructed through the stream buffer. Lastly, and due to the enhanced stormwater management obligations as part of the Tiber Drainage Basin, we are required to provide additional stormwater management. The stormwater management location has been chosen so the entire developed area could be captured. Additionally, this SWM device will be utilized to treat runoff from the future driveway so locating in the lowest possible area is critical. Other properties in this area currently enjoy legal driveway access and also the ability to connect to the public water supply. By permitting the disturbance to the stream buffer, we will be extending this right to the rear property (3958 Old Columbia Pike).

Criteria 2) *Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations;*

The property at 3958 Old Columbia Pike is currently land locked. The adjoining property owner does allow the owners of 3958 Old Columbia Pike to utilize this driveway but there is no recorded easement or agreement. By allowing a disturbance to the stream buffer to construct a future driveway it will eliminate the owners practical difficulty of not having legal access. As part of the future driveway construction, we have also proposed a public water main extension and the SWM needed to treat the improvements. Please note that the SWM obligation is significantly more than usual due to being located in the Tiber Branch.

Criteria 3) *The Variance will not confer to the applicant a special privilege that would be denied to other applicants.*

This variance would not confer special privilege due to the significance of the land locked parcel and our proposal to resolve this issue. The driveway access is critical to allow the owners the benefit of legal access to and from Old Columbia Pike.

Criteria 4) *The modification is not detrimental to the public health; safety or welfare, or injurious to other properties*

The requested modification would not be detrimental to the public health; safety or welfare, or injurious to other properties. The driveway would provide legal access, the water extension would allow for future water connections, and the stormwater management device will be utilized to capture and treat stormwater runoff based on the new impervious areas.

Criteria 5) *Disturbance is returned to its natural condition to the greatest extent possible*

The existing area where the proposed SWM will be located, as part of this subdivision, is currently maintained lawn area. As part of the subdivision, we have proposed a SWM device which will provide water quality and quantity management before reaching the downstream channel. The proposed SWM device will be a net benefit to the stream and buffer by capturing and treating runoff from existing and proposed impervious areas that are currently unmanaged. All disturbed buffer areas, aside from the future driveway area, will be vegetatively stabilized to the maximum extent possible.

Criteria 6) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat.

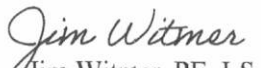
As noted above, we have proposed a SWM device which will provide water quality and quantity management for existing and proposed runoff / impervious surfaces before reaching the downstream channel. The proposed SWM device will be a net benefit to the stream and buffer by capturing and treating runoff from existing and proposed impervious areas that are currently unmanaged.

Criteria 7) 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 proposed disturbances associated with this SWM installation will be the minimum necessary to ensure the required SWM obligations have been met for the site. The SWM device shall be located within the stream buffer (above the stream channel) where water quality and quantity management can occur prior to reaching the existing stream channel. When a design is complete for the future driveway and utility crossing, we will utilize measures to avoid impacts to the stream channel and only proposed disturbances where absolutely critical to allow access to the rear property. Areas that have to be vegetatively stabilized will be planted as required to prohibit erosion.

We believe, due to the justification provided above, we have demonstrated that our request satisfies all criteria for approval. An approval of this alternative compliance would give the owners of 3958 Old Columbia Pike the ability to establish a legal access to Old Columbia Pike that other residents in the area currently enjoy. The access to public water would also be granted.

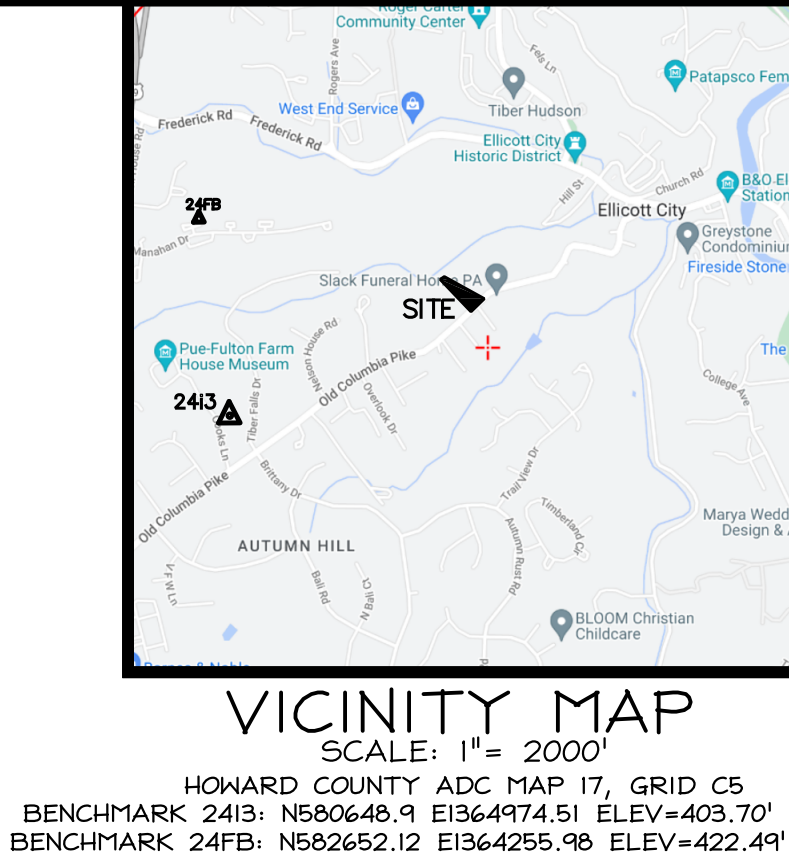
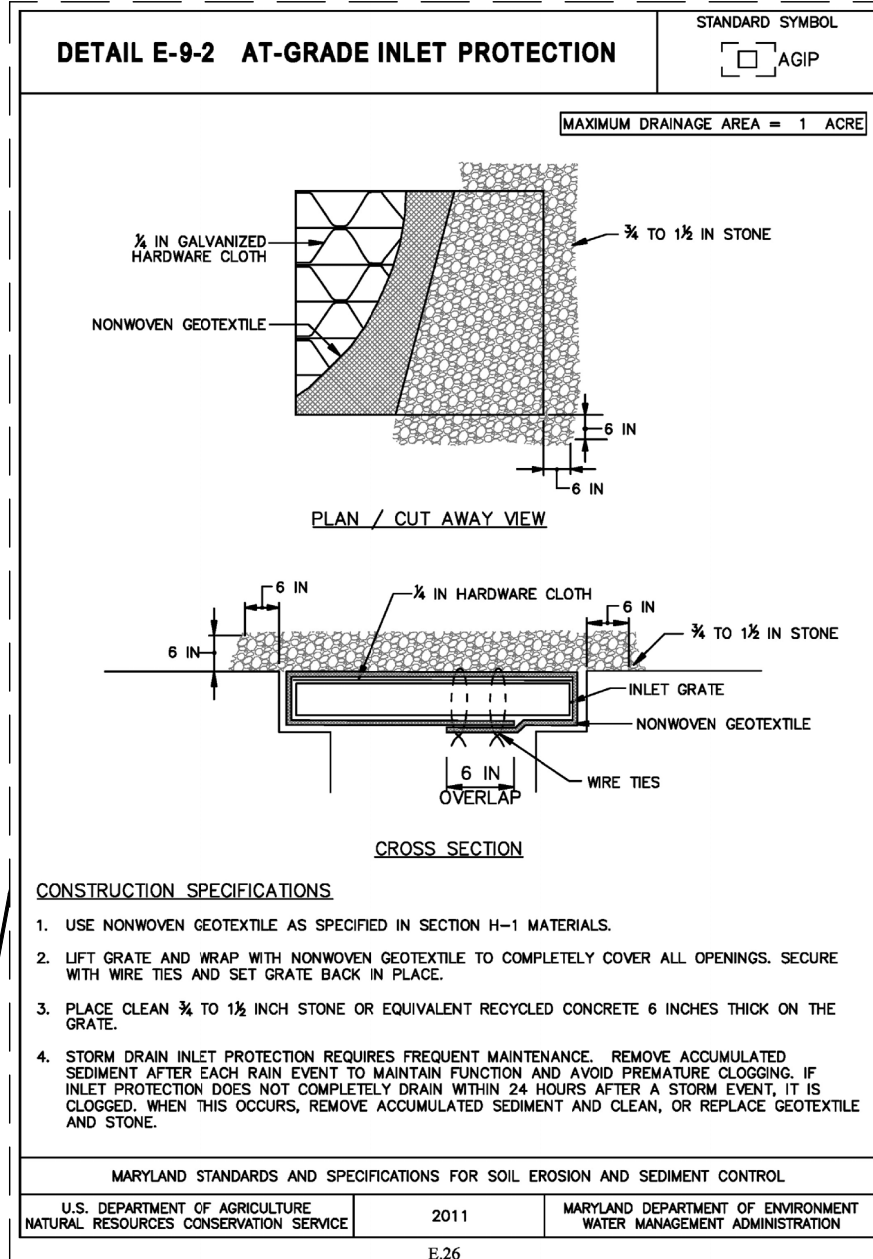
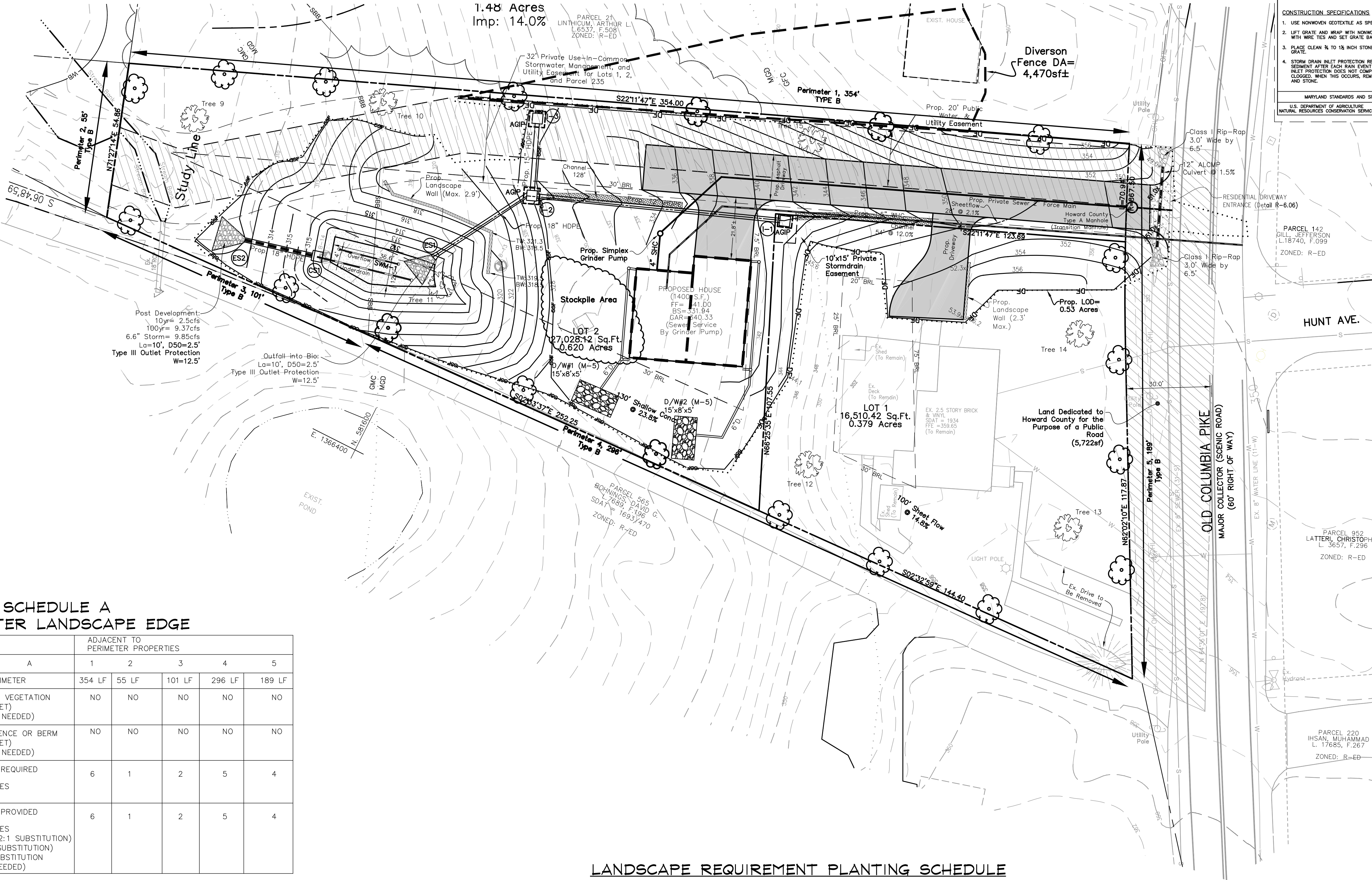
Sincerely,


Jim Witmer, PE, LS
Principal

CERTIFICATION OF QUALIFIED PROFESSIONAL AND ISA CERTIFIED ARBORIST:
I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON HAS BEEN PREPARED IN ACCORDANCE WITH MARYLAND AND HOWARD COUNTY FOREST CONSERVATION LAWS.

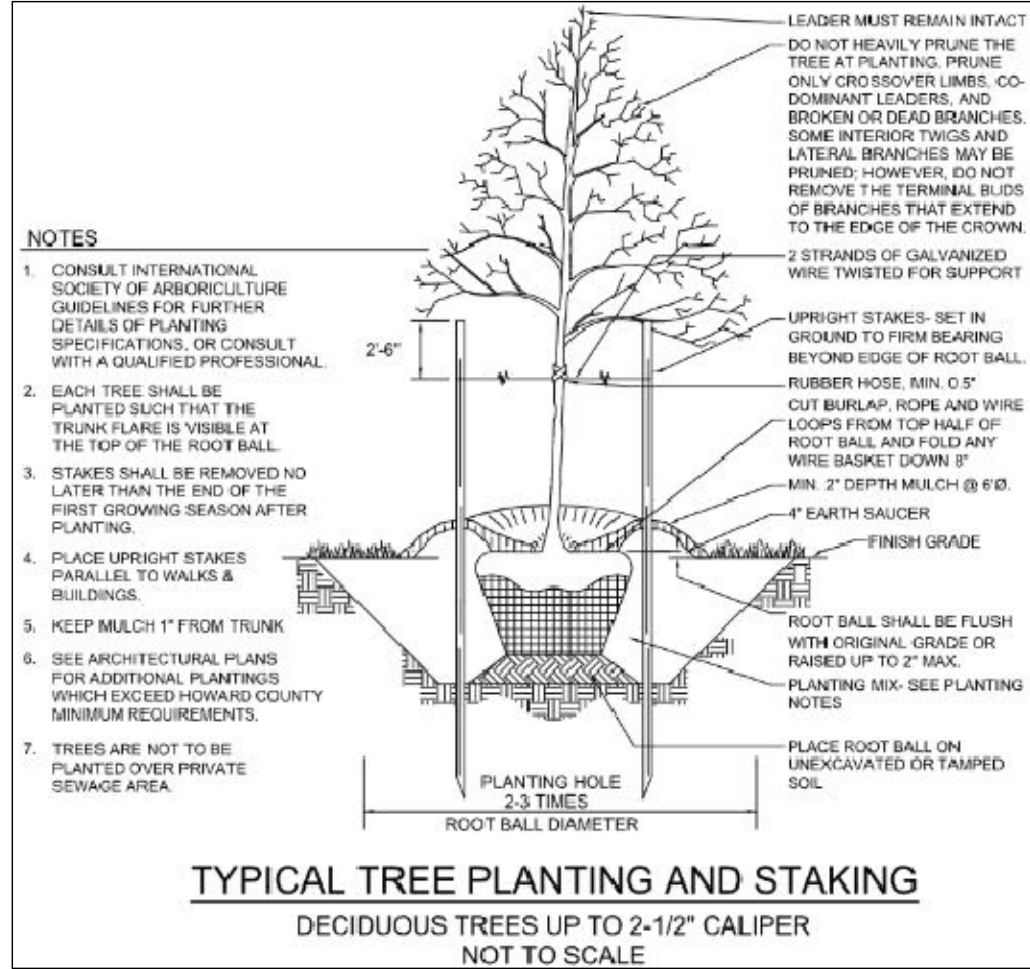
JAMES W. WITMER, QUALIFIED PROFESSIONAL
MDNR / COMAR 08.19.06.01
ISA CERTIFIED ARBORIST MA-4587A

8/25/24



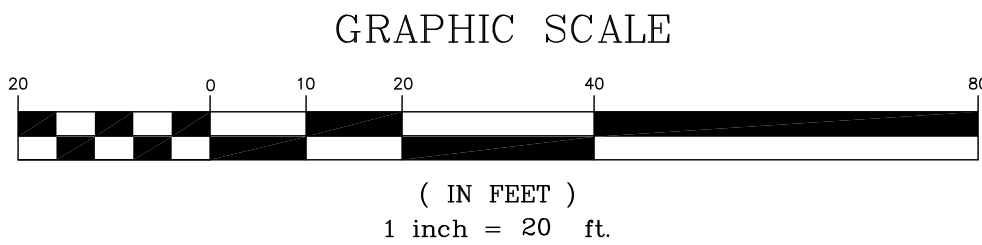
GENERAL NOTES

- THE LANDSCAPE PLAN WAS PREPARED IN ACCORDANCE WITH SECTION 16.124 OF THE HOWARD COUNTY CODE AND LANDSCAPE MANUAL. A FINANCIAL SURETY FOR THE REQUIRED PERIMETER LANDSCAPING SHALL BE POSTED WITH THE BUILDERS GRADING PERMIT IN THE AMOUNT OF \$6,400.00 FOR 18 SHADE TREES.
- LANDSCAPING REVIEW AND APPROVAL SHALL BE DEFERRED TO SITE DEVELOPMENT PLAN.
- AT THE TIME OF INSTALLATION, ALL PLANTINGS LISTED HEREWITH AND APPROVED FOR THIS SITE SHALL BE OF THE PROPER HEIGHT REQUIREMENTS IN ACCORDANCE WITH THE HOWARD COUNTY LANDSCAPE MANUAL. IN ADDITION, NO SUBSTITUTIONS OR RELOCATION OF REQUIRED PLANTINGS MAY BE MADE WITHOUT PRIOR REVIEW AND APPROVAL FROM THE DEPARTMENT OF PLANNING AND ZONING. ANY DEVIATION FROM THIS APPROVED LANDSCAPE PLAN MAY RESULT IN DENIAL OR DELAY IN THE RELEASE OF LANDSCAPE SURETY UNTIL SUCH TIME AS ALL REQUIRED MATERIALS ARE PLANTED AND/OR REVISIONS ARE MADE TO APPLICABLE PLANS AND CERTIFICATES.



LANDSCAPE REQUIREMENT PLANTING SCHEDULE

QUANTITY	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE
18		ACER RUBRUM 'RED SUNSET' OR EQUIVALENT AS OUTLINED IN THE HOWARD COUNTY LANDSCAPE MANUAL	RED SUNSET RED MAPLE OR EQUIVALENT AS OUTLINED IN THE HOWARD COUNTY LANDSCAPE MANUAL	2 1/2"-3" CAL.



SCHEDULE A PERIMETER LANDSCAPE EDGE

CATEGORY	ADJACENT TO PERIMETER PROPERTIES	1	2	3	4	5
LANDSCAPE TYPE	A	1	2	3	4	5
LINEAR FEET OF PERIMETER		354 LF	55 LF	101 LF	296 LF	189 LF
CREDIT FOR EXISTING VEGETATION (YES, NO, LINEAR FEET) (DESCRIBE BELOW IF NEEDED)		NO	NO	NO	NO	NO
CREDIT FOR WALL, FENCE OR BERM (YES, NO, LINEAR FEET) (DESCRIBE BELOW IF NEEDED)		NO	NO	NO	NO	NO
NUMBER OF PLANTS REQUIRED SHADE TREES EVERGREEN TREES SHRUBS		6	1	2	5	4
NUMBER OF PLANTS PROVIDED SHADE TREES EVERGREEN TREES OTHER TREES (2:1 SUBSTITUTION) SHRUBS (10:1 SUBSTITUTION) (DESCRIBE PLANT SUBSTITUTION CREDITS BELOW IF NEEDED)		6	1	2	5	4

DEVELOPER'S / BUILDER'S CERTIFICATE

"I/We hereby certify that the Landscaping shown on this plan will be done in accordance to the plan, section 16.124 of the Howard County code and the Howard County landscape manual. I/We further certify that upon completion, a certification of landscape installation, accompanied by an executed one (1) year guarantee of plant materials, will be submitted to the Department of Planning and Zoning.

Signature of Developer DATE

APPROVED: DEPARTMENT OF PLANNING & ZONING

CHIEF, DEVELOPMENT ENGINEERING DIVISION DATE

CHIEF, DIVISION OF LAND DEVELOPMENT DATE

MITCHELL GREENS

TAX MAP 25, GRID 13, PARCEL 134, 1.04 ACRES

2ND ELECTION DISTRICT HOWARD COUNTY, MARYLAND

JNM ENGINEERING, LLC

CIVIL ENGINEERING, SURVEYING, LAND PLANNING,
ENVIRONMENTAL, AGRICULTURE, LEED PROFESSIONALS
1105 LEAF HOLLOW CIRCLE, TROUT AIRT, MD 2171
(301) 514-2808, JNTEENGINEERINGLLC.COM



5 of 5

MITCHELL GREENS
3956 OLD COLUMBIA PIKE
PROPOSED LOTS 1-2, 1.04 ACRES
PARCEL 134, TAX MAP 25, GRID 13
ELECTION DISTRICT 2, ACCT#02-227339
LANDSCAPE PLAN