

IN THE MATTER OF	:	BEFORE THE
	:	
AGILA SUNDARAM and	:	HOWARD COUNTY
MUKESH KUMAR	:	
Appellant	:	BOARD OF APPEALS
	:	
v.	:	BA Case Nos. 818-D and 819-D
	:	
THE HOWARD COUNTY	:	
DEPARTMENT OF PLANNING AND	:	
ZONING IN WP-25-045 and WP-25-066	:	
	:	
Appellee	:	
	:	

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DECISION AND ORDER

The Howard County Board of Appeals (the “Board”) convened on October 16, 2025 and November 6, 2025 to hear and deliberate the Administrative Appeal Petition of Agila Sundaram and Mukesh Kumar (“Appellants”). The Appellants are appealing the decision of the Director of the Department of Planning and Zoning (“DPZ), the Director of the Department of Public Works, the Director of the Department of Recreation and Parks, and the Administrator of the Office of Community Sustainability to deny the Appellant’s request for Alternative Compliance (WP-25-045 and WP-25-066) for the property known as 3956 Old Columbia Pike, Ellicott City, MD 21043 with respect to Sections 16.1205(a)(3) and 16.116(a)(1)(ii) of the Howard County Code. This Appeal is filed pursuant to Howard County Zoning Regulations (“HCZR”) §130.A.3.

Board members Gene Ryan (Chair), Lynn Foehrkolb (Vice Chair), Robbyn Harris, Marisa McCurdy, and Felita Phillips were present at the hearings. Chairperson Ryan presided over the hearings. Tsega Girma Kyere, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Appellants filed the requisite certificates of advertising and affidavit of posting of the hearing date and time as required by the Howard County Code. The Board members indicated that they had viewed the subject property as required by the Howard County Zoning Regulations.

As a preliminary matter, the Board consolidated Appeal Petitions 818-D and 819-D into a single case for purposes of a hearing and disposition before the Board.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure, which places the burden of proof upon the Appellants "to show that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law." *See* Howard County Code § 2.210(a)(4)(ii).

The Howard County Code, the Howard County Charter, the HCZR, the Alternative Compliance Final Decision Action Report issued by DPZ, in consultation with the Department of Public Works and Office of Community Sustainability, regarding Appellants' request for an Alternative Compliance to Section 16.116(a)(1)(ii) of the Subdivision and Land Development Regulations of the Howard County Code, the Alternative Compliance Final Decision Action Report issued by DPZ, in consultation with the Department of Recreation and Parks and the Office of Community Sustainability, regarding Appellants' request for an Alternative Compliance to Section 16.1205(a)(3) of the Howard County Code, and the Petition of Appeal, including all materials submitted with it, were incorporated into the record by reference.

The Appellants were represented by counsel, Sang Oh, Esquire. The Department of Planning and Zoning, the Department of Recreation and Parks, the Department of Public Works, and the Office of Community Sustainability did not participate in the instant appeal. No individuals or entities appeared in opposition to the Petition.

Sam Alomer, P.E., President, Mildenberg, Boender and Associates, provided sworn testimony on behalf of the Appellants.

The Appellants offered, and the Board accepted, the following documents into evidence:

Exhibit 1 - Mitchell Greens Supplemental Plan of Subject Property

Exhibit 2 - Howard County GIS Aerial Map

Exhibit 3 - Regional Map of Tiber Watershed

Exhibit 4 - Howard County GIS Printout of Tiber Watershed with Streams

Exhibit 5 - Stormwater Management Summary Table Report

FINDINGS OF FACT

1. **Property Identification.** The subject property, identified as 3956 Old Columbia Pike, Ellicott City, Maryland, is located at Tax Map 25, Grid 13, Parcel 134, and is approximately 1.04 acres and is improved with a single detached dwelling with an access driveway onto Old Columbia Pike. The subject property is part of Councilmanic District 1.

2. **Property Description.** The property is in the Residential-Environmental Development (R-ED) Zoning District. Per the Howard County Zoning Regulations, “[t]he R-ED District is established to accommodate residential development at a density of two dwelling units per net acre in areas with a high proportion of sensitive environmental and/or historic resources.” HCZR Section 107.0. In this zoning district “[p]rotection of environmental and historic resources is to be achieved by minimizing the amount of site disturbance and directing development to the most appropriate areas of a site, away from sensitive resources. To accomplish this, the regulations allow site planning flexibility and require that development proposals be evaluated in terms of their effectiveness in minimizing alteration of existing topography, vegetation and the landscape setting for historic structures.” *Id.*

3. **Vicinal Properties.** The property is located east of Maryland Route 29, south of Main Street, and north of Old Columbia Pike. To the north, east, and west of the property are R-ED zoned properties improved with single family detached dwellings. To the south of the subject property are R-20 and R-ED zoned properties which are also improved with single family detached dwellings.

4. **Water and Sewer Services.** The property is served by public water and septic facilities.

5. **Alternative Compliance Applications.** Each Alternative Compliance Application filed by Appellants will be discussed separately here.

WP-20-045 (Case BA-819-D)—Stream Buffer Alternative Compliance Application

On August 6, 2024, Appellants requested Alternative Compliance from § 16.116(a)(2)(ii) of the Howard County Code pursuant to Sections 16.116 and 16.104 of the Howard County Code (WP-25-045). Appellants argued that 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 § 16.116(a)(2)(ii). Pursuant to “Alternative Compliance Justification” submitted by Appellants, the “the disturbance 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.” Providing legal access and public water to the adjoining rear property would preserve subdivision rights on that lot, which is also owned by Appellants. Section 16.116(a)(2)(ii) of the Howard County Code prohibits “[g]rading, removal of vegetative cover and trees, paving, and new structures” within “[s]eventy-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.”

On May 5, 2025, DPZ issued an “Alternative Compliance Final Decision Action Report” with a cover letter stating that the “Director of the Department of Planning and Zoning, Director of the Department of Public Works, and Administrator of the Office of Community Sustainability¹ 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.” (emphasis in original). The report stated that “[e]ach Department hereby determines strict enforcement of Section 16.116(a)(1)(ii) would not result in a practical difficulty or unreasonable hardship.” The Report further stated that Directors and Administrator determined that “the design” proposed by Appellants “does not provide the minimum disturbance necessary to afford relief and to the extent required to accommodate the necessary improvements of a two-lot subdivision.” The Report concluded that “the requirement for additional stormwater management in the Tiber Branch Watershed, which results in a larger stormwater management facility” is not “a condition unique to this property that would create unnecessary hardship.” Moreover, the Report concluded that Director of DPZ, Director of Department of Public Works (DPW), and Administrator of the Office of Community Sustainability (OCS) found that “the applicant’s criteria justification have not met the unreasonable hardship or practical difficulty threshold” and that enforcement of Section 16.116(a)(1)(ii) “would not result in unreasonable hardship or practical difficulty.” Finally, the Report stated that the decision to deny the request was unanimous.

¹ With respect to streams and wetlands, the County Code provides that “[t]he 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. . . .” Howard County Code § 16.116. This Decision and Order will refer to this panel as the “stream buffer panel.”

WP-25-066 (BA-818-D)—Forest Conservation Alternative Compliance Application

In a second application dated February 14, 2025, Appellants requested Alternative Compliance from the requirements of § 16.1205(a)(3) of the Howard County Code pursuant to § 16.1216 (WP-25-045). Appellants argued that 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 § 16.1205(a)(3). Pursuant to “Alternative Compliance Justification” submitted by Appellants, the purpose of the Alternative Compliance request is based on the need to provide “additional stormwater management due to the stormwater managements requirements within the Tiber Branch watershed” and to provide “a public utility easement and use-in-common access easement that can be utilized by the land locked parcel to the west,” which, as noted above, is also owned by Appellants. Section 16.1205(a)(3) requires that whenever there is subdivision, site development and grading on a site that “[s]tate champion trees, trees 75 percent of the diameter of state champion trees, and trees 30 inches in diameter or larger” shall be maintained in “an undisturbed condition.” With approval of the Alternative Compliance application, Appellants sought to remove three specimen trees.

On May 5, 2025, DPZ transmitted to Appellants a “Alternative Compliance Final Decision Action Report” with a cover letter stating that “the Director of the Department of Planning and Zoning, Director of the Recreation and Parks, and Administrator of the Office of Community Sustainability considered and denied your request for a variance with respect to **Section 16.1205(a)(3).**”² (emphasis in original). The report stated that “[e]ach Department

² With respect to the Forest Conservation Act, “[t]he Department [of Planning and Zoning] may grant waivers to the requirements of this subtitle in accordance with the procedures of subsection 16.104(b), subsection 16.104(c), and subsection 16.104(d) of the subdivision regulations.” Howard County Code § 16.1216. In addition, the Code requires that “[a] variance to the provisions of this subtitle [12 of title 16] shall be considered and approved or denied in writing

hereby determines that strict enforcement of Section 16.1205(a)(3) would not result in an unwarranted hardship.” The report further stated that Directors and Administrator determined that “the design” for Appellants’ “proposal to facilitate development of an adjoining parcel” “exceeds the disturbance necessary to develop a two-lot subdivision on this site, as proposed.” The Forest Conservation Panel added that “the adjoining is currently developed with a single-family dwelling and has established legal access to continue use of the property.” The report concluded that “the requirement for additional stormwater management in the Tiber Branch Watershed, which results in a larger stormwater management facility” is not “a condition unique to this property that would create an unwarranted hardship.” Moreover, the report concluded that the “applicant’s justification did not persuade the Directors that the subject property had any special condition unique to itself which would cause an unwarranted hardship for the proposed 2-lot subdivision.” Finally, the report stated that the decision to deny the request was unanimous.

By Petition of Appeal of Hearing Examiner Decision dated August 25, 2025, Appellants timely appealed to the Board the denials of the request for Alternative Compliance with §§ 16.1205(a)(3) and 16.116(a)(2)(ii) of the Howard County Code.

6. **Appellants’ Witness.** Sam Alomer, licensed Civil Engineer since 1997, testified on behalf of Appellants. Mr. Alomer testified that he has worked on projects in Howard County for the last 13 years. Mr. Alomer also testified that the subject property has environmental features including a stream buffer and wetland buffer. It also has a few specimen trees, some of which are in good condition and others are in poor condition. The subject property has a trapezoid shape where it is wider along Old Columbia Pike and narrows significantly in the

by the Directors of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability, and the Director of the Department of Recreation and Parks.” *Id.* This Decision and Order will also refer to this panel as the “forest conservation panel.”

northern direction towards the rear of the property. The property slopes down from south to north.

Referring to Appellants' Exhibit 1, the Mitchell Greens Supplemental Plan for subdivision, Mr. Alomer testified that the plan contains two easements on the eastern boundary of the subject property. The first easement which crosses the northern boundary of the property is intended to be a "use in common driveway easement" to serve both the existing house and the proposed house on the subject property and the adjacent rear parcel located at 3958 Old Columbia Pike, which is also owned by Appellants. Mr. Alomer testified that this adjacent rear lot is "landlocked." The second proposed easement is a public water connection easement to service the proposed subdivided lot as well as the adjacent rear property. With respect to his testimony that the adjacent rear property is landlocked, Mr. Alomer explained that the Howard County Subdivision and Land Development Regulations §16.119 requires that any proposed subdivision that joins a landlocked parcel must provide some access to the landlocked parcel at the time the property is subdivided. Mr. Alomer testified that this is a requirement often imposed by DPZ based on the provisions of § 16.119 of the Howard County Code. Section 16.119(a)(8) requires, in relevant part, that when "designing a highway, street or road system":

Proposed public streets shall be extended to the boundary lines of the proposed subdivision so that a connection can be made to all adjacent properties. However, if the Department of Planning and Zoning determines after consultation with the review committee that such extension is not desirable due to environmental conditions or is not necessary for the coordination of existing streets or the most advantageous development of adjacent tracts, the Department may require transfer of a fee simple right-of-way to the adjacent property that is sufficient to accommodate a use in common driveway. If the adjacent property owner will not accept fee simple right-of-way transfer, then an access easement of equivalent size shall be recorded.

No subdivision shall be designed so as to create or perpetuate the landlocking of adjacent undeveloped land. The County Council may by its resolution terminate the extension of an existing street.

(emphasis added). Based on this provision, Mr. Alomer testified that it is his professional opinion that any subdivision that abuts a landlocked parcel must resolve access issue for the landlocked parcel at the time of subdivision. Mr. Alomer testified that this requirement may be satisfied in one of three ways: (1) by a fee simple conveyance which provides access to the landlocked parcel; (2) extending a public Right of Way to the landlocked property if a public Right of Way is proposed within the subdivision plan; or (3) at minimum, providing an easement that offers a point of access to the landlocked parcel. Per Mr. Alomer, the adjacent rear lot owned by Appellants is 4.3 acres and subdividable per the Howard County Subdivision and Land Development regulations. Mr. Alomer further testified that the ten-foot wide driveway along the western boundary of the subject property which currently provides access to the adjacent rear lot which he identified as landlocked is not on the Appellants' property but located on the abutting parcel located on the western boundary of the subject property identified as Parcel 565. This easement provides only access rights to the adjacent rear lot but affords no right to subdivide the adjacent rear lot or add users to utilize the driveway as required by § 16.119 of the Howard County Code. Mr. Alomer testified that this access driveway is not adequate access that would permit Appellants to subdivide and/or develop the adjacent rear lot in the future.

During his testimony, Mr. Alomer acknowledged that the Alternative Compliance Final Decision Action Report for both Alternative Compliance requests made by Appellants state that the "adjoining parcel is currently developed with a single-family dwelling and has established legal access to continue use of the property." According to Mr. Alomer, this statement suggests that both panels did not understand that the existing driveway is not located on the subject property but located on another property located at 3962 Old Columbia Pike, which is not owned by Appellants. Mr. Alomer also testified that extending the existing driveway at the

southwestern corner of the subject property to provide access to the adjacent rear lot is not feasible for two reasons: (1) this driveway does not have the minimum 50 foot separation from the neighbor's driveways as required under the Howard County Design Manual; and (2) the stormwater management pond for the proposed subdivision will be located there.

Mr. Alomer also testified that he has thoroughly investigated the subject property and, based on the size of the property, which is just over 1.0 acre, there is no other plausible location for the proposed shared driveway and public utility easement.

Mr. Alomer also testified that he disagrees with the panels' conclusion that there is no site condition unique to the subject property that would create an unwarranted hardship which would justify the panels granting Appellants' request for Alternative Compliance. Mr. Alomer explained that the combination of the trapezoid shape of the property, existence of the stream and stream buffer on the northern portion of the property, and its location in the Tiber Branch Watershed make this property unique. Mr. Alomer explained that properties located in the Tiber Branch Watershed have more stringent stormwater management requirements because it drains to Historic Ellicott City which endured two significant flood events in 2016 and 2018. Specifically, stormwater management facilities in the Tiber Branch Watershed must manage 10-year, 100-year and 6.6-inch flood events. This requirement imposes larger stormwater management ponds which occupy larger land area and are associated with higher cost.

Mr. Alomer further testified that Tiber Branch Watershed is about 2,300-2,400 acres and the entire County comprises 162,000 acres. Therefore, the Tiber Branch Watershed area only comprises about 1.4% of the entire County's land area. In addition, Mr. Alomer testified that he estimates that only 10-15% of properties within the watershed have streams or stream buffers

located on them which makes the subject property unique, even within the Tiber Branch Watershed.

Mr. Alomer testified that alternative compliance to forest conservation requirements is required on the subject property for various reasons. Specifically, the specimen tree identified as Tree 10 (35.5 feet Tulip Poplar) which is in good condition must be removed to permit necessary grading required for the proposed stormwater management facility on the subject property subject to subdivision. In addition, Tree 10 is also located along the edge of the proposed public water and access easements. Per Mr. Alomer's testimony, there is no feasible way to realign the easements to avoid significant disturbance to the tree's critical root zone. With respect to Tree 11 (57.5 feet Multi Stem Silver Maple) which is in poor condition and exhibits rot/decay, Mr. Alomer testified that its removal is required because it is located within the proposed stormwater management facility area. The stormwater management facility is required to be placed where Tree 11 is located because of the topography of the subject property. Mr. Alomer testified that this tree has a high probability of failure. Lastly, Mr. Alomer testified that Tree 15 (34.5 feet Twin Silver Maple) must be removed because it is located within the public water and use-in-common driveway easements.

In addition, the larger stormwater management pond requires disturbance of the stream buffer area. Mr. Alomer explained that because the stream on the subject property is located along the entire width of the northern boundary of the subject property abutting the adjacent rear lot, there is no way to provide an access or utility easement without disturbing the stream and stream buffer area. The stream buffer panel's decision to deny Appellants' Alternative Compliance request to disturb the stream buffer area essentially precludes the potential of ever subdividing the adjacent rear lot which is nearly 4.3 acres. Mr. Alomer testified that it is his

professional opinion that inability to subdivide the subject property and the adjacent rear lot is a “significant and reasonable loss of property rights” for Appellants.

Mr. Alomer testified regarding the Hearing Examiner’s conclusion that the Howard County Code precluded any waivers in the Tiber Branch Watershed area; however, he further testified that the Department of Planning and Zoning did not adopt that interpretation and did not determine that a waiver was categorically prohibited in the Tiber. *See* Howard County Code § 16.104. During questioning, Petitioner’s counsel stated that the panel’s Alternative Compliance Final Decision Action Report did not include a finding that waivers are categorically prohibited in the Tiber Branch Watershed, unlike the Hearing Examiner’s ruling. Mr. Alomer agreed with counsel’s characterization.

Mr. Alomer’s substantive testimony addressed the applicable stormwater management standards. He explained that the Howard County Code requires a property owner to demonstrate that post-development stormwater flow, measured in cubic feet per second (CFS), is equal to or less than pre-development flow for specified storm events. This involves calculating pre-development runoff for a 10-year storm, a 100-year storm, and a 6.6-inch storm event, and showing that post-development runoff does not exceed those levels.

For the subject property, pre-subdivision runoff was calculated at 4.16 CFS (10-year storm), 10.67 CFS (100-year storm), and 11.58 CFS (6.6-inch storm). Post-subdivision runoff was projected to decrease to 2.50 CFS, 9.37 CFS, and 9.85 CFS, respectively.

Mr. Alomer testified that these reductions represent more than a 10% improvement in stormwater flow, as required by Howard County Code § 16.104(d)(4). He concluded that the project satisfies the Howard County Code stormwater standards and therefore provides a sufficient basis for granting a waiver in the Tiber Branch Watershed.

CONCLUSIONS OF LAW

Criteria for approval of Alternative Compliance with Sections 16.116(a)(2)(ii) concerning wetlands, streams, and steep slopes, and 16.1205(a)(3) relating to forest conservation requirements, are similar in some respects. Pursuant to the County Code, the Director of DPZ, Director of DPW, and Administrator of OCS “may grant waivers which allow for alternative compliance” as it pertains to protections for streams articulated in the Code:

“[I]f 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. See Section

See Howard County Code § 16.116. Section 16.104 of the Howard County Code permits approval of waivers³

“in situations where the Department finds that unreasonable hardship or practical difficulties⁴ may result from strict compliance with this subtitle and for requests to

³ In this Decision and Order, the terms “waiver” and “alternative compliance” are used synonymously.

⁴In *Belvoir Farms Homeowners Ass'n, Inc. v. North*, the Maryland Supreme Court held that “[w]hen the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” 355 Md. 259, 276 n. 10 (1999). While Appellants are seeking an area variance in this matter, the Board finds that Appellants met their burden to prove an unwarranted and/or unreasonable hardship to strictly complying with the relevant zoning provisions, “which is clearly more restrictive than proving practical difficulties” under Maryland law. *Id.* Therefore, the Board will apply the heightened unwarranted and/or unreasonable standard in its analysis and note that the Appellants have also met their burden to prove practical difficulty would result from strict compliance with the relevant zoning provisions. See *North v. St. Mary's*

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.

Howard County Code § 16.104.

A variance to the Forest Conservation Act requirements articulated in the Code “shall be considered and approved or denied in writing by the Directors of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability, and the Director of the Department of Recreation and Parks.” *See* Howard County Code § 16.1216. Pursuant to the County Code “[c]onsideration of a variance” requested “shall include a determination as to whether an applicant has demonstrated to the satisfaction of each Department that enforcement of this subtitle would result in unwarranted hardship. Increased cost or inconvenience of meeting the requirements of the these [sic] regulations does not constitute an unwarranted hardship to the applicant.” *Id.* When requesting a variance pursuant to Section 16.1216,

The applicant shall: (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship; (2) Describe how enforcement of these regulations would deprive the landowner of rights commonly enjoyed by others in similar areas; (3) Verify that the granting of a variance will not adversely affect water quality; (4) Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants; (5) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant; (6) Verify that the condition did not arise from a condition relating to land or building use, either permitted or

Cnty., 99 Md. App. 502, 511 (1994) (“[W]hen the language states practical difficulties or unreasonable hardship ‘satisfaction of either of the conditions may warrant a variance.’”). The Board adopts this approach for simplicity because variances to the Forest Conservation Act may only be granted if an “applicant has demonstrated to the satisfaction of each Department that enforcement of this subtitle would result in unwarranted hardship.” *See* Howard County Code § 16.1216.

nonconforming, on a neighboring property; and (7) Provide any other information appropriate to support the request.

See Howard County Code § 16.1216.

First, the Board finds that strict compliance with the relevant provisions of the Howard County Subdivision and Land Development Regulations and Forest Conservation Act for approval of Appellants' proposed subdivision plan would result in unwarranted hardship for Appellants. Maryland law recognizes that "the purpose of a variance is to protect the landowner's rights from the unconstitutional application of zoning law." *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 281 (1999). However, "[t]his does not necessarily mean that a variance may only be granted in cases in which application of a particular zoning ordinance would result in an unconstitutional taking of property." *Id.* ("We hold, therefore, that the unnecessary or unwarranted hardship standard, or similar standards, are less restrictive than the unconstitutional taking standard."). When a zoning Code requires a finding of unwarranted or unreasonable hardship to strict compliance with zoning regulations as a condition precedent to granting a waiver, as in the instant case, Maryland courts have held that "[t]he unwarranted hardship standard, and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property." *Id.* at 282. Maryland Courts have also further clarified that "the 'unwarranted hardship' standard is not as demanding as the 'taking' standard" which requires "all economically beneficial or productive use of land." *Assateague Coastal Tr., Inc. v. Schwalbach*, 448 Md. 112, 128 (2016). "[U]nder the unwarranted hardship standard, the need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Assateague Coastal Tr., Inc. v. Schwalbach*, 223 Md. App. 631, 645 (2015), *aff'd*, 448 Md. 112, 136 A.3d 866 (2016).

Appellants have shown by a preponderance of evidence that they will be deprived of a reasonable and significant use of their property if they are denied their request for Alternative Compliance. Specifically, the evidence demonstrated that unless Alternative Compliance from zoning requirements is granted, Appellants would be unable to subdivide the subject property.. The proposed easements provide lawful access and public utilities to the new home on the proposed subdivision and the adjacent rear lot, but also require removal of specimen trees and disturbance of the stream buffer located along the entire width of the property's northern boundary. By denying alternative compliance to the relevant provisions of the Howard County Subdivision and Land Development Regulations and Forest Conservation Act, Appellants would be deprived subdivision rights on the subject property. The Board determines that this would constitute the loss of a significant and reasonable use of the Appellants' property which warrants the approval of Appellants' Alternative Compliance applications. The fact that the rear adjacent lot currently has legal access through an access easement on an abutting property is immaterial. Mr. Alomer provided convincing evidence that this easement provides only access rights to the adjacent rear lot but affords no right to subdivide the adjacent rear lot or add users to utilize the driveway, as required by Howard County Code:

The Board finds that Appellants have satisfied all criteria for approval of Alternative Compliance with the relevant provisions of the Howard County Subdivision and Land Development Regulations and Forest Conservation Act as follows:

1. **Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas and the variance will not confer on the applicant a special privilege that would be denied to other applicants.**

Maryland Courts have held that the “commonly enjoyed by others” and “special privilege” variance standards are “interrelated” and “they can be, and often are, considered

together.” *Assateague Coastal Tr., Inc. v. Schwalbach*, 223 Md. App. 631, 650 (2015), *aff’d*, 448 Md. 112, 136 A.3d 866 (2016). *See also Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 633, 97 A.3d 135, 162 (2014). Therefore, the Board will analyze these related variance standards together.

Consistent with its finding that strict compliance with the zoning regulations would result in unwarranted hardship for Appellants, the Board finds that denying Appellants’ request for Alternative Compliance would deprive them of rights commonly enjoyed by others. Specifically, developing the property with strict compliance relevant provisions of the Howard County Subdivision and Land Development Regulations and Forest Conservation Act would deprive the landowner of rights commonly enjoyed by other landowners. Specifically, without a waiver Appellants would be unable to subdivide their property which is a right commonly enjoyed by others in the area. Allowing Appellants to enjoy a benefit commonly enjoyed by others in the vicinal area does not equate to conferring a special privilege on Appellants. Therefore, this Board finds that Appellants have met their burden in proving that a waiver would allow Appellants to obtain a benefit commonly enjoyed by all and confers no special privilege upon them.

2. **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.**⁵

⁵ This criterion is identified in Howard County Code § 16.104 and must be satisfied to obtain alternative compliance from regulations pertaining to the protections for streams articulated in the County Code. *See* Howard County Code § 16.116. A variance to the Forest Conservation Act also includes a similar criterion which requires an applicant to prove that a “special conditions peculiar to the property” creates an “unwarranted hardship” if strict enforcement with the Forest Conservation Act is required. *See* Howard County Code § 16.1216. The Board finds that these two criteria are adequately similar to conduct a single analysis concerning both.

Maryland Courts have defined the requisite unique nature of a property which would be substantial basis to grant a variance. Under Maryland law, “[i]n the zoning context the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. *North v. St. Mary's Cnty.*, 99 Md. App. 502, 514, 638 A.2d 1175, 1181 (1994). Instead, “[u]niqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *Id.*

In this case, there was substantial evidence presented by Mr. Alomer proving that the subject property’s unique features create an unwarranted hardship which would justify the grant of a waiver. Specifically, the combination of the features and associated impacts of those features including the trapezoid shape and slope of the property, existence of the 75’ stream buffer on the northern portion of the property, and its location in the Tiber Branch Watershed make this property unique even within the zone. Properties located in the Tiber Branch Watershed have more stringent stormwater management requirements because this drainage area includes historic Ellicott City which endured two significant flood events in 2016 and 2018. Therefore, stormwater management requirements in this drainage area impose larger stormwater management ponds which occupy larger land area and are associated with higher cost.

In addition, the Tiber Branch Watershed is about 2,300-2,400 acres and the entire County comprises 162,000 acres. Therefore, the Tiber Branch Watershed area only comprises about 1.4% of the entire County land area. Even within the Tiber Branch Watershed, however, only 10-15% of properties within the watershed have streams or stream buffers located on them.

These inherent site features make the subject property unique in a specific way to justify approval of an Appellants' Alternative Compliance request.

3. The modification is not detrimental to public health, safety or welfare or injurious to other properties.

The Board finds that Appellants have adequately demonstrated that their requests for Alternative Compliance do not detrimentally affect public health, safety or welfare of others and is not injurious to other properties. The record in the instant case is devoid of any such evidence. Therefore, the Board finds no basis to make a finding to the contrary.

4. The grant of the variances will not adversely affect water quality.

Appellants provided substantial evidence that their request for Alternative Compliance will not adversely affect water quality. In fact, the evidence demonstrated that water quality will be enhanced by the stormwater management design proposed on Appellants' subdivision plan. To that end, Mr. Alomer provided convincing testimony that the proposed subdivision stormwater management plan includes data demonstrating that stormwater management and drainage conditions on the subject property improve after subdivision of the property. This is demonstrated by data measuring the flow of water before subdivision and/or development and after subdivision and/or development for a 10-year storm, 100-year storm, and 6.6-inch storm. Specifically, Mr. Alomer concluded that the data demonstrates that there is more than a ten percent improvement in flood control on the subject property after subdivision. This not only proves that the proposed subdivision plan does not adversely affect water, but such data would also be the basis of granting a waiver despite the property's location in the Tiber Branch Watershed in accordance with the Howard County Code. See Howard County Code § 16.104 (The Howard County Code which permits waivers in the Tiber Branch Watershed if "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.*") (emphasis added).

5. The variance requests are not based on conditions or circumstances which are the result of actions by the applicant.

Maryland courts have cautioned against granting waivers based on conditions or circumstances created by the actions of the applicant. "Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted." *Cromwell v. Ward*, 102 Md. App. 691, 722 (1995).

The Board finds that the Alternative Compliance request is not based on conditions which are the result of actions by the Appellants. The topographic conditions, shape of the lot, environmental features located on the property, inadequate access to the adjacent rear lot, and more extensive stormwater management regulations in the Tiber Branch Watershed limit the development area and potential subdivision of the subject property. These are inherent characteristics of the land and not due to the Appellants' actions.

6. The variance requests are not based on a condition that arose from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The alternative compliance requests pertaining to forest conservation requirement and stream buffer regulations did not arise from a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

7. **As it pertains to the stream buffer variance request, Appellants have proved that the grading, removal of vegetative cover and trees, or construction is the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements.**

Maryland Courts have given some guidance on how to determine whether a variance request is based on the minimum disturbance necessary to afford relief to the applicant. Under Maryland law, “[t]he question of whether the variances were the minimum necessary must be considered, however, in the context of the purpose of the proposed construction, *recognizing that appellants are entitled to build some type of reasonable structure.*” *Becker v. Anne Arundel Cnty.*, 174 Md. App. 114, 144 (2007).

In the instant case, the location of the proposed easement on the eastern boundary of the subject property as depicted on Appellants’ Exhibit 1 requires approval of the alternative compliance requests submitted by Appellants. Mr. Alomer provided convincing testimony that he has thoroughly investigated the subject property and, based on the size of the property, which is just over 1.0 acre, there is no other plausible location for the proposed shared driveway and easement other than the proposed location on the proposed plan. Therefore, this Board is satisfied that the site disturbance proposed for the subdivision is the minimum necessary to accommodate the necessary improvements of a two-lot subdivision.

Based on the above findings of fact and conclusions of law, the Board hereby grants the Appellants’ Petition of Appeal and reverses DPZ’s denial of WP-25-045 and WP-25-066. Accordingly, the Board approves the Alternative Compliance requests of Appellants in WP-25-045 and WP-25-066.

Howard County Code § 2.202(f) provides:

(f) Refund of Fees. On its own motion and with sufficient cause, the Board may order the Director of Finance to refund the filing and/or hearing fees. If the Board of Appeals reverses the decision of an Administrative Agency after an appeal

hearing pursuant to this subtitle, the Board shall order the Director of Finance to refund all administrative hearing and filing fees to the appellant.

See Howard County Code § 2.202(f).

The Board finds that the Appellants timely requested an award of fees. The Board further finds that, having reversed the decision of the Administrative Agency after an appeal hearing, the Appellants are entitled to a refund of all administrative hearing and filing fees pursuant to Howard County Code § 2.202(f).

Accordingly, it is ordered that, the Howard County Director of Finance shall refund all applicable administrative hearing and filing fees upon written issuance of this Decision and Order.

ORDER

Based upon the foregoing, it is this 26th day of February, 2026, by the Howard County Board of Appeals, **ORDERED**:

That the Petition of Appeal of Agila Sundaram and Mukesh Kumar in BA Case Nos. 818-D and 819-D are hereby **GRANTED**; that the Howard County Department of Planning and Zoning's denial of WP-25-045 and WP-25-066 is hereby **REVERSED**; and that Alternative Compliance Applications WP-25-045 and WP-25-066 are hereby **APPROVED**.

ATTEST:

Kel Berg
Kel Berg, Secretary

HOWARD COUNTY BOARD OF APPEALS

Gene Ryan 2/26/26
Gene Ryan, Chairperson

Lynn Foehrkolb 2/26/2026
Lynn Foehrkolb, Vice-Chairperson

Felita Phillips 2/26/2026
Felita Phillips

Robbyn Harris 2/26/2026
Robbyn Harris

DISGENT
Marissa McCurdy

⁶ The Board issued this Decision and Order following its action on November 6, 2025. Pursuant to Howard County Code § 2.201(g), the County Solicitor served as draftsperson and provided a draft for the Board's consideration. The Board utilized that draft as a foundation in preparing and formatting this final Decision and Order, which reflects the findings and conclusions adopted by the Board and is issued to ensure a timely disposition.

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor



Tsega Girma Kyere
Senior Assistant County Solicitor

that the project meets the criteria set forth in section 16.104. . . .” See Howard County Code § 16.116. With respect to the Forest Conservation Act, the Howard County Code requires that “[a] variance to the provisions of this subtitle [12 of title 16] shall be considered and approved or denied in writing by the Directors of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability, and the Director of the Department of Recreation and Parks.” See Howard County Code § 16.1216. The County Council amended the County Code to require that these County agencies confer to determine whether to grant or deny waivers or variances pertaining to stream buffer and forest conservation requirements of Title 16 in 2019. See Council Bill No. 62-2019; Council Bill No. 61-2019.¹ This amendment suggests that the County Council made a legislative determination that the collective expertise of the four decision making agencies was required to make expert decisions regarding whether a waiver or variance should be granted. See *Adventist Health Care Inc. v. Maryland Health Care Comm'n*, 392 Md. 103, 119 (2006) (“Administrative agencies possess an ‘expertise’ and, thus, have a greater ability to evaluate and determine the matters and issues that regularly arise, or can be expected to be presented, in the field in which they operate or in connection with the statute that they administer.”); *Christ by Christ v. Maryland Dep't of Nat. Res.*, 335 Md. 427, 445 (1994) (holding that legislatures may delegate to administrative agencies the authority to make “significant discretionary policy determinations.”).

Under Maryland law, “[w]hether an agency decision is arbitrary or capricious also depends, to some extent, on the degree of discretion that the Legislature has conferred on the particular agency with respect to the particular decision.” *Maryland Off. of People's Couns. v. Maryland*

¹ As with the Decision and Order of my colleagues, I will also refer to this conglomerate of County agencies as the “panel(s).”

Pub. Serv. Comm'n, 461 Md. 380, 399, 192 A.3d 744, 756 (2018). Based on this principle, “to the extent that the agency is expected to apply expertise to carry out its decision-making responsibility,” as in the instant case with both panels, “courts will accord it greater leeway before labelling its exercise of that responsibility as arbitrary or capricious.” *Id.* at 400. The Board should do the same. Under the Howard County Code, DPZ is delegated with the authority to “administer and enforce regulations governing zoning, except as otherwise provided by law.” *See* Howard County Zoning Regulations §16.801. Therefore, DPZ’s decision is entitled to deference. This is especially so because Appellants failed to meet their burden of proof with respect to demonstrating how the panels’ decisions were arbitrary, capricious, or contrary to law.

Based on the expertise of these panels and the discretion legislatively accorded to them, the appropriate course for this Board was to reverse and remand the matter for the Panels’ reconsideration in a manner consistent with this Board’s Decision and Order. In fact, the Board’s own Rules of Procedure recognizes and permits such a course of action by the Board. Pursuant to the Board’s Rules of Procedures, when considering an administrative appeal such as the instant matter, “[t]he Board may dismiss the administrative appeal or may affirm, reverse, or modify the Agency’s action, *remand the action to the Agency for further proceedings*, or an appropriate combination of the above.” *See* Howard County Code § 2.210 (emphasis added). Proceeding in this manner would both correct any error the Board identifies with the Panels’ decision but also defer to the expertise of these Panels in correcting such error.

Throughout the hearings, Appellants disregarded the expertise of the panels and provided speculative testimony about the basis of the panels’ decision to deny their Alternative Compliance requests. For example, during his testimony, Mr. Alomar acknowledged that the Alternative Compliance Final Decision Action Report for both Alternative Compliance requests state that the

“adjoining parcel is currently developed with a single-family dwelling and has established legal access to continue use of the property.” According to Mr. Alomar, this statement suggests that the panel did not understand that the driveway is not located on the subject property subject to subdivision which is owned by the Appellants but located on another parcel owned by different individual(s). This is speculative testimony, at best, especially because Mr. Alomar testified that another Engineer handled the Alternative Compliance review process on behalf of Appellants.

Relatedly, Mr. Alomar also testified that the Howard County Subdivision and Land Development Regulations require that any proposed subdivision that joins a landlocked parcel must provide some access to the landlocked parcel at the time the property is subdivided. Mr. Alomar testified that this is a requirement often imposed by DPZ based on the provisions of Howard County Code § 16.119 which requires, in relevant part, that when “[n]o subdivision shall be designed so as to create or perpetuate the landlocking of adjacent undeveloped land.” However, the express provisions of §16.119 are inconsistent with Mr. Alomar ‘s testimony. Specifically, the “guidelines” outlined in §16.119 “shall apply” only when “designing a highway, street, or road system.” Howard County Code § 16.119. Therefore, they are inapplicable in the instant case. Even assuming the “guidelines” articulated in § 16.119 are applicable in the instant matter, there was absolutely no evidence in the record that DPZ failed to consider or misapplied these guidelines. It was purely speculative to suggest that DPZ did not consider these provisions. Without such evidence, it is improper to reverse and grant the Alternative Compliance request of Appellants that was unanimously denied by two separate Panels entrusted to make such decisions based on this Code provision.

As yet another example, Appellants also presented speculative evidence about whether the relevant panel considered the County Code provision prohibiting the grant of waivers in the Tiber

Branch Watershed unless the waiver request complied with specific exceptions to the prohibition. *See* Howard County Code §16.104. As noted above, Mr. Alomar testified that he was not involved in the alternative compliance review process which was handled by another engineer on behalf of Appellants. Therefore, it was purely speculative for Mr. Alomar to assert that the panel either did or did not consider that the County Code prohibits granting waivers in the Tiber Branch Watershed or incorrectly concluded that none of the limited exceptions applied.²

Based on the above, I find that the decision to grant or deny the relevant Alternative Compliance requests was delegated to the panels identified in the Code. Therefore, under Maryland law, it was not lawful to reverse the decision of these panels and grant the relevant alternative compliance waivers which the panels had unanimously denied.

B. The purported fact that the adjacent rear property could not be subdivided without additional access rights is not a basis to grant the alternative compliance request of Appellants in this matter.

Appellants argued that DPZ, in conjunction with the other County agencies identified in the Code, committed error when it denied their alternative compliance requests for the subject property. This assertion was supported by Appellants' expert, Sam Alomar, licensed Civil Engineer since 1997, who testified regarding Appellants' proposed subdivision plan. Per Mr.

² Appellants could have entirely avoided the presentation of speculative evidence by ensuring the appearance of the agencies comprising the Panels by exercising their right to request the issuance of a subpoena to those agencies by the Board. *See* Howard County Code § 2.208 (“Persons requesting the Board to issue a subpoena shall submit a written request to the Board at least 21 days before the initial hearing.”). As the party with the burden of proof, exercise of this right would have been appropriate and certainly necessary based on the facts, circumstances, and nature of the instant case. *See* Howard County Code § 2.208 (“In all other *de novo* appeals, the burden of proof is upon 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.”).

Alomar, the adjacent rear lot located at 3958 Old Columbia Pike,³ which is also owned by Appellants, is 4.3 acres and subdividable per the Howard County Subdivision and Land Development regulations but is landlocked. Mr. Alomar testified that this adjacent rear lot is landlocked although it has an *existing 10-foot access driveway easement for ingress and egress* on an abutting parcel located on the western boundary of the subject property identified as Parcel 565. Mr. Alomar testified that the adjacent rear lot is “landlocked” despite this existing access driveway easement because that driveway easement provides only access rights to the adjacent rear lot but affords no right to subdivide the adjacent rear lot and add users to utilize the driveway in the future. In other words, Mr. Alomar testified that the adjacent rear lot is landlocked, because the existing driveway easement for ingress and egress would not permit Appellants to subdivide and/or develop the adjacent rear lot in the future. Mr. Alomar testified that in his professional opinion, this constitutes a “significant and reasonable loss of property rights” for Appellants justifying grant of a variance under the law.

Even assuming that the adjacent rear lot is landlocked despite having existing legal access, Maryland law rejects Mr. Alomar’s conclusions as to what constitutes a “significant and reasonable loss of property rights.” Under Maryland law, waivers “are granted sparingly, and under exceptional circumstances.” *Marino v. City of Baltimore*, 215 Md. 206, 216 (1957). The Courts recognize that “[t]o do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations, and thus detrimentally affect the marketability of property within zoned areas.” *Id.* Based on this premise, Maryland Courts have held that “[m]ere financial hardship or an opportunity to get an increased return from the property is not sufficient reason for granting an

³ Like my colleagues’ Decision and Order, all further references to “adjacent rear lot” or “adjacent rear property” pertains to the property located at 3958 Old Columbia Pike unless otherwise stated.

exception.” *Id.* at 218. Courts have taken this position because “[o]bviously, if unnecessary hardships referred only to economic disadvantage, an exception might always have to be granted as a matter of course.” *Id.* As a result, the Maryland Supreme Court has unequivocally differentiated between a “situation in which the applicant complains that he could secure a greater return from his property if granted an exception and a situation in which the applicant contends that it is impossible to secure a reasonable return from or to make a reasonable use of such property.” *Id.* “In the first instance, *his application would invariably be refused.*” *Id.* (emphasis added). The panel’s decision to deny Appellants’ requests for alternative compliance is supported by the law.

In this case, the facts were undisputed that the adjacent rear lot was improved with a single detached dwelling. It is also undisputed that the adjacent rear lot had a ten-foot existing driveway easement for ingress and egress. Appellants’ own expert presented exhibits and testimony regarding this existing driveway easement. Under Maryland law, this constitutes a significant and reasonable use of the adjacent rear lot and there would be no basis to grant a variance as proposed by Appellants. *See Pem Const. Co. v. City of Baltimore*, 233 Md. 372, 378 (1964) (Finding that when an applicant for a variance “did not rule out the possibility of residential use of the parcels by utilizing a different plot plan, *or of other uses permitted in residential districts*,” there was “*insufficient facts* to show indisputably that the residential use ordinance so restricts the use of their property that it *cannot be used for any reasonable purpose.*”) (emphasis added). Ultimately, “it is a *denial of reasonable use that creates an unwarranted hardship*” which would justify the grant of a variance. *North v. St. Mary's Cnty.*, 99 Md. App. 502, 517 (1994) (emphasis added). “If reasonable use exists, generally an unwarranted hardship would not.” *Id.* This case is not distinguishable from *North* where the Court found that denial of a variance was appropriate

because the applicant failed to prove that the property had no reasonable use without the grant of a variance. *Id.* (“In the present case, extensive reasonable use is already being made of the property. Under the appellees' theory, it would be unreasonable and an unwarranted hardship to deny Mr. Enoch anything he wants.”).

Based on the above, my colleagues’ decision to grant the Alternative Compliance Requests of Appellants is inconsistent and contrary with this law.

C. The Board’s Decision was based on the flawed premise that the purported “landlocked” status of an adjacent rear property located at 3958 Old Columbia Pike, a fact which is irrelevant to the matters at issue in this case, was a basis to grant Appellants’ request for alternative compliance.

Even assuming that the adjacent rear lot is landlocked despite having existing legal access, the County Code expressly prohibits the grant of a variance from Forest Conservation requirements when the condition(s) necessitating the variance “arise from a condition relating to land or building use, either permitted or nonconforming, *on a neighboring property.*” See Howard County Code § 16.1216 (emphasis added).

The purported landlocked status of the adjacent rear parcel was an essential consideration and fact underpinning my colleagues’ decision to reverse the Panels’ decision concerning Appellants’ Alternative Compliance request. Indeed, but for the purported landlocked status of the adjacent rear lot, the easement on Appellants’ subdivision plan granting access to that lot which required disturbance of the stream buffer and removal of the specimen trees on the subject property would not have been necessary. Therefore, my colleagues’ decision to grant the Alternative Compliance request of Appellants arose “from a condition relating to land or building...on a neighboring property” thus making their decision contrary to law.

D. The Board’s decision ignores County Code provisions prohibiting waivers in the Tiber Branch Watershed which undermines the public health, safety or welfare of others and risks injury to other properties

During the hearing, Appellants acknowledged that the Hearing Examiner's Decision and Order points out that the County Code prohibits waivers in the Tiber Branch Watershed unless limited and enumerated exceptions are satisfied by the waiver applicant. Pursuant to the Howard County Code

The Department may not grant waivers of any requirement of section 16.115 or section 16.116,⁴ 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.

Howard County Code § 16.104 (emphasis added). As noted by my colleagues in their Decision and Order, Mr. Alomar provided testimony that a waiver to the stream buffer requirements of the County Code is permissible in this instance because the data from the proposed subdivision

⁴ Appellants requested Alternative Compliance from § 16.116(a)(2)(ii) which prohibits “[g]rading, removal of vegetative cover and trees, paving, and new structures” within “[s]eventy-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.”

stormwater management plan demonstrates that there is more than a ten percent improvement to flood control on the subject property after subdivision. However, this is not sufficient basis to grant a waiver in the Tiber Branch Watershed. Under the Howard County Code, whether more than a ten percent improvement to flood control after subdivision is sufficient basis to grant a waiver in the Tiber Branch Watershed must be determined by the “Director of the Department of Public Works, or his designee acting as Floodplain Administrator.” *Id.* Appellants presented no evidence in the instant case that either the Director of the Department of Public Works, or his designee acting as Floodplain Administrator, ever made such a determination. Instead, Appellants asked the Board to make such a determination based on the testimony of Mr. Alomar and the Board did just that. This is contrary to law. Additionally, as stated above, reversing the Panels’ decisions and remanding the matter would have provided clarification on points such as this without trumping the expertise or discretion of any of these Panels.

For the foregoing reasons, I respectfully disagree with my colleagues’ Decision and Order in this matter.

ATTEST:

**HOWARD COUNTY BOARD OF
APPEALS**

Kel Berg
Kel Berg, Secretary

Marisa McCurdy
Marisa McCurdy

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor

Tsega Gyirma Kyere
Tsega Gyirma Kyere
Senior Assistant County Solicitor

Signature: *Marisa McCurdy*
Marisa McCurdy (Dec 23, 2025 16:14:07 EST)

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