

<p>HILLSTREET OVERLOOK, LLC</p> <p style="text-align: center;">Appellant</p> <p style="text-align: center;">v.</p> <p>HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING</p> <p style="text-align: center;">IN WP-24-119</p> <p style="text-align: center;">Appellee</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>BEFORE THE</p> <p>HOWARD COUNTY</p> <p>BOARD OF APPEALS</p> <p>HEARING EXAMINER</p> <p>BA Case No. 828D</p>
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DECISION AND ORDER

On March 18, 2026, 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 Hillstreet Overlook, LLC (Appellant). Appellant is appealing the Department of Planning and Zoning’s November 21, 2025 letter denying reconsideration of the Department of Planning and Zoning’s September 17, 2025 denying Appellants request for approval of WP-24-119, for alternative compliance from Howard County Subdivision and Land Regulations §16.116(b)(1) regarding steep slopes. The Subject Property is located at 8500 Hill Street, Ellicott City, Maryland. The appeal is filed pursuant to §130.0.B.4 of the Howard County Zoning Regulations (HCZR).

The Appellant 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. Christopher DeCarlo, Esq. appeared on behalf of Appellant Hillstreet Overlook, LLC. Mr. Frank Manalansan, engineer, testified on behalf of the Appellant. Barrett King participated on behalf of the Opposition and Diane Paulus, Gail Robinson, Josh Wicker, Nicholas Slater and Laura Janiszewski testified in Opposition.

Appellant presented the following Exhibits:

1. GIS Aerial
2. 2010 buildable lot letter
- 3.(a)-(d) Photos of Property
4. Slope Exhibit
5. Penkusky Property ECP
6. ACA Application June 2024
7. SDP w/ Initial Request
8. Soil Analysis Report Addendum
9. DPZ Denial Ltr-9/17/2025
10. Penkusky SDAT & WP-25-123
11. Reconsideration Letter
12. Reconsideration Letter
13. House Layout Plan

14. Reconsideration Denial 11/21/2025
15. DPZ Review Comments
16. D&O 4/6/15
17. D&O 11/10/16

BACKGROUND

The approximately .14-acre (6,721 sq ft) property is located on the east side of Hill Street, just south of Main Street and north/northwest of Old Columbia Pike, identified as 8500 Hill Street, Ellicott City, Maryland (the Property). The Property is rectangular in shape with steep slopes and a 75 ft stream bank buffer which is located in the southwest portion of the Property. The Subject Property lies in Council District 1, and is identified as Tax Map 25A, Grid 14, Parcel/Lot 319, in the R-VH (Residential: Village Housing) Zoning District.

On December 12, 1993, Regulations were adopted which prohibit the grading on 25 percent or greater steep slopes. Appellant purchased the property on December 8, 2003 (based on SDAT) records). The plan provided by the Appellant identified 78 percent of the parcel as containing steep slopes and a 75-foot stream buffer on the southwestern portion of the property. In addition, given the significant floodings in this area of the County, laws were adopted requiring applicants to provide at least 10 percent more than the required flood controls within this watershed.

Appellant applied for alternative compliance to HCZR §16.116(b)(1) (steep slopes). By letter dated September 17, 2025 DPZ notified Appellant "On September 4, 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(b)(1) of the Subdivision and Land Development Regulations to disturbance of steep slopes that average 25 percent or greater over 10 vertical feet for the construction of a single-family dwelling.”

Appellant requested reconsideration of this decision pursuant to HCZR §16.104(b)(3). By letter dated November 21, 2025, Appellant was notified

“On November 6, 2025, the Deputy Director of the Department of Planning and Zoning, the Director of the Department of Public Works, and the Administrator of the Office of Community Sustainability considered and denied your reconsideration request with respect to Section 16.116(b)(1) of Subdivision and Land Development Regulations to disturb steep slopes that average 25 percent or greater over 10 vertical feet for the construction of a single-family dwelling.

Reconsideration Denial of this Alternative Compliance to Section 16.116(b)(1) of the Subdivision and Land Development Regulations is based on the following:

The Deputy Director of the Department of Planning and Zoning, the Director of the Department of Public Works and the Administrator of the Office of Community Sustainability determined that you have not satisfactorily demonstrated that strict enforcement of Section 16.116(b)(1) would result in an unreasonable hardship or practical difficulty.

The Deputy Director of the Department of Planning and Zoning, the Director of the Department of Public Works and the Administrator of the Office of Community

Sustainability are denying the reconsideration request for relief from Section 16.116(b)(1) because the request does not meet the justifications required for approval under the alternative compliance criteria. The applicant is not being denied rights commonly enjoyed by others. Based on previous exhibits, the applicant has not demonstrated that a reasonable footprint of any size can be constructed on this property without the requested relief from Section 16.116(b)(1). The applicant purchased a parcel containing a 75' stream buffer and containing 25% or greater steep slopes. The reconsideration request indicates the house footprint is reduced, the carport/garage is eliminated, and the limit of disturbance is reduced from 54% to 29%. However, the provided exhibit does not demonstrate the limit of disturbance includes all improvements as the PVC pipe extending from the cistern is located outside limit of disturbance. In addition, the carport is shown on the exhibit thus in conflict with the reconsideration request. Based on the conflict in the documentation, it is difficult to determine the actual limit of disturbance required for this parcel, and if the carport is no longer proposed.

In addition, the applicant continues to claim the "buildable lot letter" issued by the Zoning Division is not be (sic) upheld. The purpose of this letter is to determine if the parcel was legally created. The letter states:

"Based on the findings as described above, this office has determined that the property as referenced above currently exists as a legal potentially buildable parcel. Any confirmation regarding its buildable status cannot be given until the County has reviewed and approved a Site Development Plan (as required in

accordance with Section 16.155 of the Code). You will need to have an approved Site Development Plan prior to our endorsement of a building permit.

Section 16.108(b)(47) of the Subdivision and Land Development Regulations defines Review Committee as an advisory group to the Department of Planning and Zoning, organized to coordinate the subdivision and site development plan review process. The group shall include, but not be limited to, representatives of the following agencies: Department of Public Works; Health Department; Department of Education; Department of Recreation and Parks; Department of Fire and Rescue Services; Department of Inspections, Licenses and Permits; Soil Conservation District; Maryland State Highway Administration; and Office of Transportation. Based on Section 16.108(b)(47), the Zoning Division does not have the ability or authority to review for compliance with the various County regulations and solely determine if a parcel is buildable”.

It is from this denial of reconsideration that the instant appeal is noted.

As a basis for the instant appeal, Appellant argues that:

1. The Departments failed to properly consider that the subject property is unable to be developed with any reasonable and productive use without the requested relief;
2. The Departments erroneously concluded that because the regulation was in effect prior to Appellant’s purchase of the subject property any hardship to comply with the regulation was self-created;
3. The Departments erroneously concluded that Appellant’s purchase of the subject property with environmental features was a self-created hardship;

4. The Departments failed to give proper consideration to the requested reduction in building footprint Appellant made as part of its reconsideration request;

5. The Departments failed to give proper consideration to the buildable lot letter issued by DPZ on October 12, 2010; and

6. The Departments misapplied the formula for calculating steep slopes on the Subject Property.

OPPOSITION

Ms. Paulus lives adjacent downhill from the subject Property in a home constructed around 1860 at 8392 Merryman Street. She testified to the slippage of the uphill properties and the fragile ecosystem. This slippage has increased at a more rapid rate since the two 100-yr flood events that dramatically impacted the subject Property and surrounding properties within the last 10 years. Ms. Paulus also testified to the property adjacent to the subject Property on Hill Street that has had to be stabilized with riprap, which riprap will fall down on the homes along Merryman if any further slippage occurs. Any construction on the subject Property will, by necessity, affect the topography and directly adversely affect her property detrimentally. Hill Street is sinking, rods will have to be placed into the bedrock to anchor the roadway. No parking signs have recently been placed along Hill Street, the sinking of Hill Street has made any parking areas unstable and it is unable to carry the weight of cars parked on the subject Properties side of the street. Construction traffic will destabilize the roadway further. Once an accident occurs

during construction, the resulting damage from the steep slopes will have destroyed their homes.

Ms. Robinson lives at 8388 Merryman Street, also directly downhill from the subject Property. Her home is located 5 ft from the Paulus' home. During the soil stabilization test performed by Appellant Ms. Robinson was subjected to loud noises and ground shaking and her dining room ceiling was cracked. Ms. Robinson was home during the day of testing and testified to its unbearability. The existing trees will be removed and their root structure, which is helping stabilize the steep slopes, will be removed as well. The large wooden structure filled with dirt, which is holding up the first terrace, will also be removed. There is severe water runoff from the adjacent yellow home, including water discharged from the sump pump, across the subject Property further degrading the steep slopes and reaching the stream on the Property. The overhead power lines across the subject Property have not been addressed.

Josh Wicker, 8407 Merryman Street, in addition to previous testimony, stated that the riprapped property, adjacent to the subject Property, is directly uphill from his home, which will be demolished if the riprap succumbs to the current slippage. Both Mr. Slater (8505 Hill Street) and Ms. Janiszewski (8497 Hill Street) (both across the street from the subject Property) testified to the facts that Hill Street and the subject Property are in crisis, that the street is sinking, the slopes are unstable, and on street parking in front of the subject Property has been prohibited with the last 3 months.

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 Vill., 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 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.

APPLICABLE LAW

The instant administrative appeal is from the denial of WP-24-119, a request for alternative compliance from HCZR §16.116(b)(1). HCZR §16.116(b)(1) states

- (a) **Steep Slopes. Steep slopes are slopes that average 25 percent or greater over ten vertical feet.**
- (1) **Grading, removal of vegetative cover and trees, new structures, and paving shall not be permitted on land with existing steep slopes, except when:**
- (i) **The on-site and off-site contiguous area of steep slopes is less than 20,000 square feet; and**
 - (ii) **There is sufficient area, a minimum ten feet, outside of stream and wetland buffers for required sediment and erosion control measures.**

HCZR §16.116(d)(1 d) establishes the required criteria for approval of alternative compliance from §16.116(b)(1).

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.**

HCZR §16.104 requires the following criteria for alternative compliance:

(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.**

CONCLUSIONS OF LAW

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 Appellants request for an alternative compliance with respect to Section 16.116(b)(1) of the Subdivision and Land Development Regulations. The request is to disturb steep slopes that average 25 percent or greater over ten vertical feet for the construction of a single-family dwelling. The Directors deliberated the application in a meeting on September 4, 2025. Each Department determined that strict enforcement of Section 16.116(b)(1) would not result in practical difficulty or unreasonable hardship. The following factors were considered in making this determination:

1. Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas.

Appellant stated 8500 Hill Street is a 6,721 square foot lot that is currently undeveloped and received a buildable lot letter on October 12, 2010. The site is rectangular in shape with steep slopes and a stream buffer. The proposed limit of disturbance for the entire site is under 5,000 sq ft and only minimal disturbance to the steep slopes. Since the site is encumbered with steep slopes, the development potential of the property is limited. The location of the steep slopes that are located on site impacts the reasonable use of the property which will deprive Appellant of rights commonly enjoyed by others in similar areas. Due to the size of the property constraints, avoidance is not possible while maintaining the reasonable development potential of the property.

The site is 0.14 acres in size. Steep slopes are located on 0.11 acres of the site. Also included is a 75-foot stream buffer. Appellant stated the County deemed the

property a buildable lot. This information is incorrect as the Division of Public Service and Zoning Administration determined "the property currently exists as a legal, potentially buildable parcel. Any confirmation regarding its buildable status cannot be given until the County has reviewed and approved a Site Development Plan". The decision made by the Division of Public Service and Zoning Administration was strictly an evaluation of the deeds creating the parcel not an evaluation of the environmental features on the parcel or the potential for a dwelling on this parcel.

On December 12, 1993, Regulations were adopted which prohibit the grading on 25 percent or greater steep slopes. Appellant purchased the property on December 8, 2003 (based on SDAT) records). The plan provided by Appellant identified 78 percent of the parcel as containing steep slopes and a 75-foot stream buffer on the western portion of the property. In addition, given the significant floodings in this area of the County, laws were adopted requiring applicants to provide at least 10 percent more than the required flood controls within this watershed. Laws were in effect for approximately 10 years prior to Appellant's purchase of the property. These laws prohibited disturbance to 25 percent or greater steep slopes. Appellant was requested to reduce the size of the proposed dwelling. The dwelling was reduced by 8 feet. However, Appellant proposes to disturb 54 percent of the site.

Given that the site contains 78 percent steep slopes and a 75-foot stream buffer, the proposal did not provide a reasonable protection of these environmental features. In addition, laws were in place protecting these environmental features, prior

to Appellant purchasing this parcel. Denial of this request does not deprive Appellant of property rights, given the environmental encumbrances of steep slopes and stream buffer on this parcel which limits the development potential.

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.

Appellant stated the proposed alternative compliance request is not seeking to allow the landowner to be exempted from the enforcement of the regulations. Simply that the County considers all the factors associated with the site conditions, the project goals and the mitigation proposal and agrees that these factors balance to meet or exceed the intended goals of the regulations. The grading of the property will result in the impact of the steep slopes. However, due to their location on-site, it will impact the reasonable use of the property.

Appellant further stated that the strict enforcement of the regulations would preclude the landowner from developing the property in a manner that is in keeping with, and complementary to the current zoning and adjacent land uses. Per the Alternative Compliance process, all landowners with unique site conditions and substantial site constraints created by current regulations, are eligible to receive consideration for an alternative compliance to the regulations to allow for reasonable and complementary use of their property.

The justification cites the property owner would be deprived of the rights to develop the site. The property owner purchased the property on December 8, 2003.

Laws restricting grading of steep slopes became effective on March 12, 1993 (Third Edition of the Subdivision and Land Development Regulations) approximately 10 years prior to the purchase of this parcel. The property owner elected to purchase a property containing environmental features (78 percent of the site containing steep slopes and a 75-foot stream buffer) rendering this a self-created hardship.

3. The Alternative Compliance will not confer to the applicant a special privilege that would be denied to other applicants.

Appellant stated granting this alternative compliance will not confer on the applicant any special privileges that would be denied to other applicants. This alternative compliance pertains only to a minimal disturbance to steep slopes. Steep slopes existed on all surrounding properties prior to their development.

Appellant was given the opportunity to reduce the size of the dwelling. However, the structure was only reduced by 8 feet with disturbance to 54 percent of the parcel. In addition, given that steep slopes encumber 78 percent of the site, an 8-foot reduction was not a significant reduction. In addition, Appellant purchased the parcel when regulations were in place prohibiting grading of steep slopes. Approval of the request would confer on Appellant a special privilege.

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

Appellant stated the approval of this alternative compliance is not detrimental to the public health, safety, or welfare, or injurious to other properties. Appellant argued that the disturbance is minimal and will only impact a portion of the resource.

All disturbances will be adequately stabilized. Although the disturbed area is under 5,000 square feet, stormwater management will be provided as mitigation for the disturbance.

Given the recent flood events and the large percentage of steep slopes located on the site, disturbance to steep slopes may create a public safety concern for the homes within the immediate vicinity, especially properties downhill from this parcel. Testimony was provided at the Historic Preservation meeting indicating during the flooding event; a landslide occurred causing great concern for the neighbors below this property.

In 2018, DPW stabilized a portion of the adjacent land with riprap due to a slope failure. This failure occurred on an existing wooded area with similar slopes as the proposed developing area. Prior to the failure, no construction took place to contribute to this failure. With the proposed development, a portion of the disturbed area will be stabilized with a geo-web product based on the results of a slope stability analysis. The area between the riprap area and the geo-web has similar slopes and soil type and could also fail with adjacent disturbance. Additionally, the cistern's outfall is directed to the bottom of the geo-web matting. This discharge has the potential to hydraulically load the area just below the geo-web and create a localized failure.

5. Disturbance is returned to its natural condition to the greatest extent possible.

Appellant stated the minimal temporary disturbance will be restored to natural

conditions. Portions of the steep slopes that will reflect hardscape/roof or pavement in proposed conditions will no longer be susceptible to erosion. The remainder will be stabilized rigorously.

Given that 78 percent of the site is steep slopes, there is concern that disturbance to the steep slopes will impact homes within the vicinity of the site even though Appellant has indicated that rigorous stabilization measures will be provided.

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

Appellant stated there is no evidence that this proposal will have any adverse impacts to water quality and fish, wildlife, and vegetive habitat. Additionally, despite exemption from stormwater management due to disturbance under 5,000 square feet, stormwater management is being provided for this site, which will mitigate the proposed impervious.

Appellant has proposed disturbance to 54 percent of the site which contains steep slopes over 78 percent of the parcel. Appellant has not demonstrated that the proposed mitigation will not adversely impact the off-site stream.

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

Appellant stated a retaining wall is proposed to minimize area disturbed and provide portions of the site with flatter areas that are less susceptible to erosion. The minimum amount of disturbance is proposed, to a point where all construction will need to operate from the paved area above the site. Green space portions of the LOD will be well planted or otherwise adequately vegetated, including planting of trees along the rear lot line, as well as rigorously stabilized.

The slope consists of erodible soils and major failures have occurred along the same slope on the adjacent parcel during recent flood events. There is concern that once the parcel is disturbed no amount of stabilization will prevent a similar failure which occurred on this same slope on the adjacent property.

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. Appellant has failed to meet its burden of proof of showing by substantial evidence that the denial of reconsideration was clearly erroneous, arbitrary and capricious, or contrary to law. Ownership of the Property post steep slopes legislation but one of the many concerns addressed during the denial. The Penkusky property is factually far removed from the subject Property and is therefore not precedential. Mr. Manikandan's opinions are based on such a small pool of cases that he has been involved in that they are not persuasive. Appellants Soil analysis also raised additional concerns regarding the development of the subject Property.

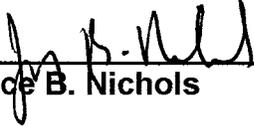
ORDER

Based upon the foregoing, it is this 19th day of March, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Appellant's appeal of the November 21, 2025 letter from DPZ denying reconsideration of the September 17, 2025 letter denying alternative compliance from HCZR §16.116(b)(1), for the Property identified as 8500 Hill Street, Ellicott City, Maryland, in the R-VH (Residential: Village Housing)) Zoning District, Council District 1, Tax Map 25A, Grid 14, Parce/Lot 319, be and is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. 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.