

DAVID MARC, et al	:	BEFORE THE
Appellants	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF	:	HEARING EXAMINER
PLANNING AND ZONING	:	BA Case No. 826D
IN SDP-24-024		
Appellee		

.....

.....

DECISION AND ORDER

On June 16, 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 David Marc, et al (Appellants). Appellants are appealing the Department of Planning and Zoning's August 14, 2025, letter approving Maryland International Schools' request for essential or necessary stream bank, stream buffer, steep slope and 100-year floodplain disturbances for SDP-24-024, in accordance with §16.116(d). The Subject Property is located at 6135 Old Washington Road, Elkridge, Ellicott City, Maryland. The appeal is filed pursuant to §130.0.B.4 of the Howard County Zoning Regulations (HCZR).

The Appellants certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Ms. Alex Votaw, Esq appeared on behalf of Appellants David Marc, et al. Mr. Christopher DeCarlo, Esq. appeared on behalf of the Property Owner Maryland International School (School). No one appeared on behalf of the Appellee Department of Planning and Zoning. The factual record developed in the Hearing Examiners hearings in BA-823D and BA-825D are incorporated into the record in the instant appeal.

Appellants presented the following Exhibits:

1. Location map of Appellants and School property
2. July 14, 2025 letter to DPZ requesting a necessary disturbance in accordance with §16.116(c)(i) with attached Environmental Disturbance Exhibit
3. August 14, 2025 approval of Necessary Environmental Disturbance Request
4. Appellants annotated section of the SDP showing the proposed Environmental Disturbance
5. Appellants annotated section of the SDP showing the proposed Environmental Disturbance with revised figures

BACKGROUND

The approximately 8.96 acre property is located on the south side of Old Washington Road, southeast of Rt 1 (Washington Blvd), northwest of MD 295 (Baltimore

Washington Parkway) east of Md 100 and west of I-895 and I-195. The Subject Property lies in Council District 1, and is located at Tax Map 38, Grid 9, Parcel/Lots 820 and 830, on 8.96 acres of land, in the R-12 (Residential: Single) zoning district, also identified as 6135 Old Washington Road, Elkridge, Maryland.

A Conditional Use for a School on the subject property was approved June 23, 2023. On July 14, 2025, the School applied for essential or necessary stream bank, stream buffer, steep slope and 100-year floodplain disturbances for SDP-24-024, in accordance with §16.116(c). The development proposes one outfall extending 20 LF into a 100' priority retention area and 75' stream buffer as requested by comments from the Howard County Soil Conservation District to prevent erosion. By letter dated August 14, 2025 DPZ notified the School "As of the date of this letter, this Department, after consultation with the Department of Public Works and the Office of Community Sustainability, approved your request to allow the distances as essential or necessary disturbance in accordance with Section 16.116(c) of the Subdivision and Land Development Regulations. Our decision was made based on the following:

- The detailed justification provided by you in a letter dated July 14, 2025. Based on your justification, there is one (1) location of disturbance into the 75' stream buffer that are necessary or essential as shown on the provided exhibit.
- The disturbance is the minimum necessary to construct the infrastructure and will employ best management practices for work conducted in the environmental areas. Those disturbed areas shall be returned as closely as possible to its original natural state after disturbance.

- The Development Engineering Division has reviewed the request and agrees that the disturbance is justified.

It is from this approval of the Necessary Disturbance request that the instant appeal is noted.

As a basis for the instant appeal, Appellant argues that DPZ failed to adequately articulate its evaluation of all of the required criteria under §16.116(c) including the requirement that the proposed disturbance is necessary for “reasonable development of the property” and that “there is no other reasonable alternative.” HCZR §16.116(c)(1). HCZR Section 16.116(c)(2) clarifies that reasonable development does not guarantee maximum possible development and that “achieving the maximum possible density is not sufficient justification alone to allow disturbance.”.

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 (1975); 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 Maryland International Schools' request for essential or necessary stream bank, stream buffer, steep slope and 100-year floodplain disturbances for SDP-24-024, in accordance with §16.116(d).

HCZR §16.116 (c) states:

(c) Necessary Disturbance:

- (1) Grading, removal of vegetative cover and trees, and paving are not permitted in wetlands, streams, wetland buffers, stream buffers or steep slopes unless the Department of Planning and Zoning, in consultation with the Department of Public Works and Office of Community Sustainability, determines based on a detailed justification provided by the developer that:**
 - (i) It is necessary for construction of public or private roads, driveways, utilities, trails, pathways, or stormwater management facilities which are essential for reasonable development of the property;**
 - (ii) The design minimizes disturbance;**
 - (iii) There is no other reasonable alternative; and**

- (iv) The cost of an alternative improvement shall not be a factor in deciding whether the criteria in subject subsection (i) above can be met
- (2) Reasonable development, for the purpose of this subsection, does not guarantee maximum possible development under the zoning regulations for density receiving subdivisions in the RC and RR zoning districts. In any zoning district, achieving the maximum possible density is not sufficient justification alone to allow disturbance.
- (3) If permitted, the grading, removal of vegetative cover and trees, or construction shall only be to the extent required to accommodate the necessary improvements. In these cases, the Department of Planning and Zoning shall require the least damaging designs, 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.
- (4) An applicant shall request permission from the Department of Planning and Zoning for a necessary disturbance exception in writing for the grading, removal of vegetative cover and trees, or paving as described in subsection (c) of this section.

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

(d) Waivers.

(1) The Director of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability and the Director of the Department of Public Works may grant waivers which allow for alternative compliance to this Section if the applicant can demonstrate in sufficient detail through evidence that the project meets the criteria set forth in section 16.104 and the following additional criteria:

- (i) Any area of disturbance is returned to its natural condition to the greatest extent possible;
- (ii) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat; and

- (iii) Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects.

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 approved the Schools request for a waiver with respect to Section 16.116(c) of the Subdivision and Land Development Regulations. The Schools request was initiated at the request of the Howard Soil Conservation District and the Development Engineering Division, DPZ, both of which requested that the outfall be extended into the stream to prevent future erosion. In accordance with the Howard Soil Conservation District and the Development Engineering Division requests that the School modify SDP-24-024 to propose one outfall extending 20 LF into a 100' priority retention area and 75' stream buffer as requested to prevent erosion.

DPZ determined that strict enforcement of Section 16.116 would not result in practical difficulty or unreasonable hardship. "As of the date of this letter, this Department, after consultation with the Department of Public Works and the Office of Community Sustainability, approved your request to allow the distances as essential or necessary disturbance in accordance with Section 16.116(c) of the Subdivision and Land Development Regulations. Our decision was made based on the following:

- The detailed justification provided by you in a letter dated July 14, 2025. Based on your justification, there is one (1) location of disturbance into the 75' stream buffer that are necessary or essential as shown on the provided exhibit.
- The disturbance is the minimum necessary to construct the infrastructure and will employ best management practices for work conducted in the environmental areas. Those disturbed areas shall be returned as closely as possible to its original natural state

DPZ held that approval of the above described essential or necessary disturbance is subject to the following conditions and mitigation methods:

1. The improvements shall only disturb the environmental areas as stated in the request and delineated on the necessary disturbance exhibit. Any disturbances to environmentally regulated features beyond what have been approved are not permitted unless the developer submits a formal request to DPZ for such disturbances in accordance with Section 16.116(c) or an alternative compliance request.
2. The developer is required to obtain all necessary approvals and authorizations by the Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (USACE) for activities in regulated areas prior to issuance of a grading permit. MDE permit numbers shall be referenced on all related development plans and grading permits. (The record states that MDE has already approved the plan. A copy of this approval was not provided.)

The following factors support this determination:

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

Mr. Vogels testimony and supporting documents, including the Environmental Disturbance Exhibit, which were reviewed by DPZ, the Department of Public Works, and the Office of Community Sustainability, show that strict conformance with §16.116 will actually deprive adjacent and downstream landowners of rights commonly enjoyed by others as a failure to extend the storm drain outfall through the 100' priority retention area and 75' stream buffer. Prevention of erosion is to the benefit of the public. There is no evidence to the contrary.

2. Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict

adherence to the regulations.

The proposed waiver is actually at the behest of government officials to help protect the public. The waiver request is not seeking to allow the landowner to be exempted from the enforcement of the regulations. Simply that the DZP 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 proposed extension into the stream will prevent erosion on both the subject property and adjacent and downstream landowners. There is no evidence to the contrary.

3. The variance will not confer on the applicant a special privilege that would be denied to other applicants;

The waiver request is in the interest of public policy and to prevent erosion and will not confer on the School any special privileges that would be denied to other applicants. The government requested the change to protect the public, the School did not request the change so that it may somehow benefit from the minimization of the potential erosion. Approval of the waiver will not confer on the School a special privilege. There is no evidence to the contrary.

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

The modification of the outfall location proposed by the government will not be detrimental to the public health, safety, or welfare as it will positively protect the subject and adjacent properties from the harm of erosion.

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

possible.

Mr. Vogels testimony along with the documents, including the Environmental Disturbance Exhibit, demonstrate that the minimal temporary disturbance will be restored to natural conditions.

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

The is no evidence that the waiver will have any adverse impacts on water quality and fish, wildlife, and vegetative habitat.

7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects

The extension of the storm drain outfall through the 100' priority retention area and the 75' stream buffer is a necessary disturbance to protect from erosion.

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. Appellants have failed to meet its burden of proof of showing by substantial evidence that the approval of the waiver for the storm drain outfall extension was clearly erroneous, arbitrary and capricious, or contrary to law.

At the onset of the hearing, the School argued a Motion to Dismiss for want of necessary parties, being the Department of Public Works and the Office of Community Sustainability. Appellants argued against the Motion. As the HCZR states that a waiver under §16.116 is issued solely by DPZ, albeit after consultation with the Department of Public Works and the Office of Community Sustainability, the appeal is based on the approval by DPZ and therefore the Motion is denied.

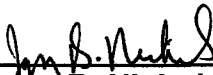
ORDER

Based upon the foregoing, it is this 22nd day of June, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That Appellant's appeal of the August 14, 2025 letter from DPZ approving Maryland International Schools' request for essential or necessary stream bank, stream buffer, steep slope and 100-year floodplain disturbances for SDP-24-024, in accordance with §16.116(d), for the Property located in Council District 1, at Tax Map 38, Grid 9, Parcel/Lots 820 and 830, on 8.96 acres of land in the R-12 (Residential: Single) zoning district, also identified as 6135 Old Washington Road, Elkridge, Maryland, be and is hereby **DENIED**, and it is further **ORDERED** that the Motion to Dismiss for lack of necessary parties 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.