

IN THE MATTER OF	:	BEFORE THE
KERGER POND LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 21-025C

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DECISION AND ORDER

On December 6, 2021, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Petition of Kerger Pond LLC (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in a R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.1 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. William Erskine, Esq. represented the Petitioner. Samar Alomer and Mickey Cornelius testified in support of the Petition. James Raggio, Esq. represented the Opposition, Dunteachin Estates Homeowners Association, Inc. (HOA). Paul Bunting, Eric Bruner, and Michael DiFilippo appeared in opposition to the Petition.

On December 8, 2021, a Decision and Order was issued in this matter, finally disposing of the Petition on its merits. On December 16, 2021 Petitioner, by its attorney, filed a Request for Reconsideration and Request to Suspend Decision and Time for Appeal for Sixty (60) Days. Dunteachin Estates counsel, Mr. James Raggio, Esq. was contacted and he indicated that he was not going to file a written response to the motion for Reconsideration.

MOTION FOR RECONSIDERATION and REQUEST TO SUSPEND DECISION

On December 16, 2021, Petitioner's attorney, William Erskine, Esq., filed a Motion for Reconsideration of the December 8, 2021 Decision and Order stating (1) that Petitioner is in the process of amending its Conditional Use Plan in consideration of the Decision and the Conditions of Approval of the Order of December 8, 2021, (2) that Petitioner would like to meet with the Department of Planning and Zoning and Mr Raggio, Esq. and obtain review of the proposed revised Conditional Use Plan, (3) that Mr. Raggio, Esq. has confirmed his willingness to meet with Petitioner to review the revised Conditional Use Plan, and (4) Petitioner believes these meetings and review can be concluded within 60 days. Petitioner requests that the Request for Reconsideration be granted and that the Decision and Order issued on December 8, 2021, and the time for filing an appeal, be both suspended for a period of sixty (60) days.

CONCLUSIONS OF LAW

Rules of Procedure Rule 11.1 authorizes any party, here the Petitioner, to request that the hearing examiner reconsider the decision in a case. Rule 11.2 requires that a request for reconsideration must be in writing and submitted within 15 days after the issuance of the decision; the Decision and Order was issued December 8, 2021 and the Request was submitted in writing on December 16, 2021. The request must state the reason for the request (time to revise the Conditional Use Plan in accordance with the Decision and Order), and a request to suspend the decision. Rule 11.4 provides that a hearing on the request may be held at the discretion of the hearing examiner and that the hearing examiner will not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing.

Rules of Procedure Rule 11.5 establishes the standard for the hearing examiners reconsideration of her decision. "The hearing examiner will revise the decision only upon a finding

of mistake of fact or mistake of law.” There is inherent authority in administrative bodies to reconsider their own quasi-judicial decisions which applies in the absence of a rule or statute providing for reconsideration. Where, as here, a rule or statute exists, it governs as to circumstances under which the body may grant reconsideration. Pursuant to the Rules of Procedure, Howard County Board of Appeals Hearing Examiner Rule 11.5, reconsideration is limited to a legally recognized ground and the hearing examiner may not impermissibly reconsider and reverse the decision based on a “mere change of mind”. Cinque v. Montgomery County Planning Bd., 173 Md. App. 349, 918 A.2d 1254 (2007)

Rule 11.7 provides that the filing of a request for reconsideration does not suspend the time for filing an appeal to the Board of Appeals unless the hearing examiner has suspended the decision. Petitioners Requested relief is that the Decision and Order issued December 8, 2021 be suspended and that the time for filing an appeal extended. The time in which an appeal must be taken is jurisdictional, is established by Rule 12.1 to be 30 days of the issuance of the hearing examiners decision, and is not waivable by the hearing examiner. However, the hearing examiner is authorized to suspend her decision, which has the effect of staying the appeal period until a new decision and order is issued.

ORDER

Based upon the foregoing, it is this 3rd day of January, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

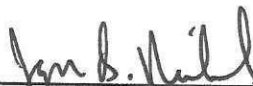
That the Petitioners Motion For Reconsideration and Request to Suspend Decision and Time for Appeal for Sixty (60) Days of the December 8, 2021 Decision and Order (BA 21-025C) conditionally granting the Petition of Kerger Pond, LLC for an Age-Restricted Adult Housing Conditional Use in an R-20 (Residential: Single) Zoning District, Tax Map 31, Grid 21, Parcel 497, also identified as 5263 Kerger Road, Ellicott City, be and hereby is **APPROVED**, and it is further **ORDERED**,

That the Decision and Order in this Petition, dated December 8, 2021, be and hereby is suspended, and it is further **ORDERED**,

That an evidentiary hearing on Petitioners Request for Reconsideration shall be held at 10 am on February 22, 2022.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols