

<b>BRITISH AMERICAN BUILDING, LLC et al.</b>	:	BEFORE THE
Appellants	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
<b>HOWARD COUNTY PLANNING BOARD</b>	:	HEARING EXAMINER
Appellee	:	BA Case No. 766-D

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**DECISION AND ORDER**

On October 16, 2020, 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 British American Building, LLC, et al. (Appellants). Appellants are appealing the Howard County Planning Board's letter of decision of March 7, 2019 approving SDP-17-041 (Site Development Plan) for Royal Farms 186 and Canton Car Wash (Two Farms, Inc.) for the construction of a gasoline service station, car wash, convenience store, and carry out restaurant.

On November 4, 2020, a Decision and Order was entered in this appeal which fully adjudicated the issues raised and (1) dismissed the appeal thereby upholding the Howard County Planning Board's approval of SDP-17-041, (2) granted the Motion to Dismiss for Lack of Standing in part as to British American Building, LLC, and (3) denied the Motion to Dismiss for Lack of Standing as to Efficient Properties, LLC and 9620 Gerwig Lane, LLC.

On November 19, 2020, Appellants, by counsel Ann Grillo, filed a Motion for Reconsideration from the November 4, 2020 Decision and Order in accordance with

Howard County Board of Appeals Hearing Examiner Rules of Procedure Rule 11.2. This Motion does not challenge the dismissal of British American Building, LLC as an Appellant for lack of standing nor does the Motion for Reconsideration state which Appellants are submitting the Motion. For the sake of clarity, your Examiner is considering the Motion to have been filed on behalf of Efficient Properties, LLC and 9620 Gerwig Lane, LLC only, as British American Building, LLC has been dismissed as an Appellant from the instant appeal. This Motion for Reconsideration was timely filed.

On November 30, 2020 Appellee Two Farms, Inc. timely filed their Answer to Appellants' Motion for Reconsideration in accordance with Rule 11.3. Appellants requested a hearing on the Motion for Reconsideration and a suspension of the November 4, 2020 Decision and Order. A hearing on a Motion for Reconsideration is solely at the discretion of the Hearing Examiner. Rule 11.4. There has been no showing by Appellants that any new or additional evidence exists which could not have been presented at the October 16, 2020 hearing and the request for a hearing on the Motion for Reconsideration and suspension of the November 4, 2020 Decision and Order is denied.

### **Standard of Review**

Rule 11.5 provides that the Hearing Examiner may only revise a decision upon a finding of mistake of fact or mistake of law. Additionally, the Hearing Examiner may not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing. Rule 11.4. There is inherent authority in zoning bodies to reconsider their own quasi-judicial decisions which applies in the absence of a rule or

statute providing for reconsideration. Where a rule or statute exists, it governs as to the circumstances under which the body may grant reconsideration. Where, as in the instant case, the body may grant reconsideration based only on a legally recognized ground, the body 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) The burden of proof rests with the Appellants to prove mistake of fact or mistake of law sufficient to overcome the standard of impermissible change of mind.

### **Motion for Reconsideration**

Appellants present the following “reasons” for their Motion:

1. Hearing Examiner found that all parties agreed that substantial evidence supported the Planning Board Decision.

In their appeal of the Planning Board’s approval, Appellants failed to argue or provide evidence that the Planning Board’s approval was not supported by substantial evidence despite having opportunity to do so. Instead, Appellants via their Motion for Reconsideration, have attempted to remedy this omission by including additional exhibits (Exhibits A-D) and the Planning Board video link to the original Planning Board hearing. Appellants fail to allege why this evidence could not have been presented at the Hearing Examiner appeal hearing on October 16, 2020 as these exhibits and the Planning Board hearing all predated the appeal hearing. This is simply an attempt to get another bite at the apple, failure of a party to pursue its appeal does not constitute a mistake of fact, nor do Appellants provide legal citations to support a finding of mistake of law.



2. Hearing Examiner ruled that the appellants position that consideration of this Site Development Plan by the Planning Board violated Section 16.900 of the Howard County Code was not preserved.

Appellants fail to provide evidence of a mistake of fact or mistake of law sufficient to overcome the impermissible change of mind standard.

3. Hearing Examiner ruled it lacked jurisdiction to consider arguments raised regarding the failure of the Planning Board to hold a hearing under Section 131 for the Motor Vehicle Fueling Facility.

Appellants again fail to cite any mistake of fact or mistake of law to support this "reason".

4. Hearing Examiner did not consider the plain language of Section 125.A.11 of the Howard County Zoning Regulations (the "HCZR") mandating that new Motor Vehicle Fueling Facilities are subject to Section 131 in the NT zoning districts.

Appellants again fail to cite any mistake of fact or mistake of law to support this "reason".

5. Hearing Examiner ruled there was no jurisdiction to consider arguments raised regarding the failure of the Planning Board to apply the 1979 Planning Board Policy regarding the requirements for (sic) that USES that are Conditional in other Zoning Districts are subject to Section 131 (the "1979 Policy")

Appellants fail to provide the mistake of law that occurred to support this "reason".

6. Hearing Examiner ruled there was no jurisdiction to consider arguments raised regarding the failure of the Planning Board to apply the Master FDP Criteria

Appellants fail to provide the alleged mistake of law.

7. The Hearing Examiner should have considered more than the FDP in determining permitted use and appropriate approval process

Appellants fail to cite any mistake of fact or mistake of law to support this "reason".

Merely wishing that a ruling would have gone in their favor is neither a mistake of fact nor mistake of law sufficient to support a reconsideration.

**Conclusions of Law**

Appellants have failed to assert any mistake of fact or mistake of law sufficient to overcome the impermissible change of mind rule. Indeed, Appellants have failed to provide any legal support for the Motion for Reconsideration. The Motion is a thinly veiled attempt to provide evidence that was available at the time of the appeal hearing, and which Appellants failed to provide, to bolster their appeal. Appellants allege legal defects in the Decision and Order but fail to provide any legal citations which would support a different ruling on the basis of mistake of law. As a result of Appellants complete failure to provide evidence of a mistake of fact or mistake of law as required by Rule 11.5 the Motion for Reconsideration is denied.

**ORDER**


Based upon the foregoing, it is this 3rd day of December 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Appellants Motion for Reconsideration of the November 4, 2020 Decision and Order of the Hearing Examiner denying Appellants appeal of the Planning Board's approval of SDP-17-041 for a gasoline station, car wash, convenience store with carryout, and associated site improvements at the southeast intersection of Snowden River Parkway and Minstrel Way, 9585 Snowden River Parkway, in the EGU Subdivision, Section 2, Area 2, Lot 22, be and is hereby **DENIED** in its entirety; and that the Hearing Examiners Decision and Order dated November 4, 2020 is **NOT** suspended and remains in full force and effect, and it is further, **ORDERED:**

That Exhibits A-D and the video link to the Planning Board hearing appended to the Motion for Reconsideration are hereby stricken from the record in this appeal.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**

  
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**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.