



DPZ office use only:
 BA Case No.: BA-799D + BA-801
 Date Submitted: 4/2/24

**PETITION OF APPEAL OF
 HEARING EXAMINER DECISION
 TO THE HOWARD COUNTY BOARD OF APPEALS**

A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.¹ The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

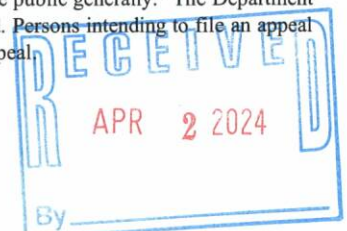
In the Matter of Kincade, LLC and IMH Columbia, LLC, Appellants vs.
 1. **Name of Case** Howard County Planning Board
 BA Case No. 799D / 801D (consolidated)
 Date Decision and Order Mailed March 13, 2024

2. **Reason for Appeal** See attached Supplemental Statement

Name of Appellant Town Center East Parking Lot Business Trust, Town Center East Business Trust, and Sterrett Building Holdings, LLC
 Trading as (if applicable) (affiliates of) The Howard Research And Development Corporation
 Mailing address 10960 Grantchester Way, Suite 110, Columbia, Maryland 21044
 Phone number(s) 410-964-4871
 Email Chris.Iavarone@howardhughes.com
 Name of principal contact (if different) Chris Iavarone, Esq.

4. **Counsel for Appellant** Todd D. Brown, Esq.
 Mailing Address Shulman Rogers, P.A., 12505 Park Potomac Ave, 6th Fl., Potomac, MD 20854
 Phone number(s) 301-230- 6579
 Email TBrown@shulmanrogers.com
 Secondary contact for counsel (if any) Kyle Kirby, Esq., 301-945- 9256, Shulman Rogers, P.A.
kkirby@shulmanrogers.com

¹ As a brief explanation of this concept; "Generally speaking, ... a person 'aggrieved' ... is one whose personal or property rights are adversely affected by the decision The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally." The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.



5. Declaration of Interest

The Appellant is the original petitioner (Appellant is the property owner and applicant in Site Development Plan SDP-22-042 approved unanimously by the Howard County Planning Board)

The Appellant was a party to the original case

6. Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

I elect to proceed on the original petition

I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. Copies: The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10** complete sets must be submitted.

8. Public Notice Requirements

a. Posting: If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an a Affidavit of Posting as required by Section 2.203(c).

If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.

b. Advertising: The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. Responsibility for Compliance: In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.


9. On The Record Appeals

The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an “on the record” appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a memorandum addressing the points of law upon which the appeal is based.


10. Signatures

By signing below, the Appellant hereby affirms that:


- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.




Signature of Appellant 4/2/24
Date Town Center East Parking Lot Business Trust
Printed Name of Appellant



Signature of Appellant 4/2/24
Date Town Center East Business Trust
Printed Name of Appellant



Signature of Appellant 4/2/24
Date Sterrett Building Holdings, LLC
Printed Name of Appellant



Signature of Attorney (If any)

Make checks payable to “Director of Finance.”

For DPZ use only: Filing Fee is \$250.00 plus \$25.00 per poster if required.

Hearing fee: \$ _____

Poster fee: \$ _____

TOTAL: \$ _____

Receipt No. _____

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

46305461.v1

SUPPLEMENTAL STATEMENT OF TOWN CENTER EAST PARKING LOT BUSINESS TRUST, TOWN CENTER EAST BUSINESS TRUST, AND STERRETT BUILDING HOLDINGS, LLC (APPELLANT)

RE: APPEAL OF BA 799D/801D (CONSOLIDATED) DECISION AND ORDER OF THE HOWARD COUNTY HEARING EXAMINER

APPELLANT IS THE PROPERTY OWNER AND APPLICANT FOR SDP-22-042 WHICH WAS APPROVED UNANIMOUSLY BY THE HOWARD COUNTY PLANNING BOARD. REASONS FOR THIS APPEAL INCLUDE, BUT ARE NOT LIMITED TO:

1. Site Development Plan SDP-22-042, approved unanimously by the Howard County Planning Board, meets all requirements for its approval under the Howard County Zoning Regulations and conforms with all Final Development Plan FDP-DC-L-2A criteria. For reasons unknown, the Hearing Examiner erroneously referred to the SDP as an amendment to FDP-DC-L-2A.
2. Parking for SDP-22-042, found to satisfy all requirements by the Department of Planning and Zoning and the Planning Board, satisfies all requirements of the Zoning Regulations.
3. The Hearing Examiner erroneously and contrary to law interpreted and enforced private parking covenant provisions which are unrelated to and/or in conflict with the parking requirements and standards for SDP approval established by Zoning Regulations and erroneously admitted and relied on evidence related thereto. Such provisions are controlled by contract and real estate law, are independent of zoning, and have no proper place in this proceeding.
4. The Hearing Examiner erroneously and contrary to law relied upon and enforced Howard County Circuit Court Order(s) (C-13-CV-22-000212) interpreting private parking covenant provisions that are unrelated to and/or in conflict with the parking requirements and standards for SDP approval established by the Zoning Regulations. The Hearing Examiner also inexplicably rebuked the Planning Board for ignoring such Court Order(s). This was impossible since the Order(s) were issued after the Planning Board approved the SDP.¹ The Court's Order(s) offer an interpretation of private contract provisions which are independent of zoning and have no proper place in this proceeding. The Court's Order(s) therefore likewise have no proper place in this proceeding. Moreover, the Court stated its Order "remains subject to revision and is not subject to appeal." The Hearing Examiner's reliance on and enforcement of such Order was clearly erroneous and contrary to law.
5. The Planning Board's approval of SDP-22-042 was in accordance with all applicable requirements and was not clearly erroneous, arbitrary and capricious, or contrary to law.

¹ The Planning Board Decision is dated June 28, 2023. The Circuit Court's Orders are dated September 13, 2023 and December 13, 2023.

6. The Hearing Examiner's Decision and Order reversing the Planning Board's approval of SDP-22-042 was clearly erroneous, arbitrary and capricious, and contrary to law.
7. Even if the aforesaid private parking covenant provisions are determined to be relevant to this proceeding (*arguendo*, not admitted and contrary to settled law), the Hearing Examiner's conclusions as to such provisions are incorrect, arbitrary and capricious, and contrary to clear and unambiguous language in the covenants.
8. Even if the aforesaid private parking covenant provisions are determined to be relevant to this proceeding (*arguendo*, not admitted and contrary to settled law), the Hearing Examiner's conclusions about the Appellant's ability to meet applicable and enforceable requirements of such provisions, if any, are arbitrary and capricious and are not supported by the evidence.
9. Even if the Circuit Court's non-final, subject-to-revision Orders are determined to be relevant to this proceeding (*arguendo*, not admitted and contrary to settled law), the Hearing Examiner's conclusions about violations of such Orders are arbitrary and capricious and are not supported by the evidence.
10. The Hearing Examiner's conclusions that the Planning Board's approval of SDP-22-042 ignored the development rights of neighboring properties; failed to provide for the orderly growth of the community; failed to meet the reasonable needs of the community ; and failed to provide the most appropriate use of land and structures were clearly erroneous, arbitrary and capricious, and contrary to law. The SDP addresses with specificity the zoning rights of neighboring properties and satisfies all criteria for approval of an SDP. The so-called development rights referred to by the Hearing Examiner have nothing to do with zoning in Howard County, but instead are private contractual rights asserted by neighboring property owners which are contested by HRD and which have not been finally established. The Hearing Examiner's conclusions were based upon the enforcement of such private contractual rights and thus were clearly erroneous, arbitrary and capricious and contrary to law.

HRD reserves the right to raise additional issues at the hearing on this matter.

SUPPLEMENTAL STATEMENT OF TOWN CENTER EAST PARKING LOT BUSINESS TRUST, TOWN CENTER EAST BUSINESS TRUST, AND STERRETT BUILDING HOLDINGS, LLC (APPELLANT)

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