



DPZ office use only:
 BA Case No.: BA-804D
 Date Submitted: 2/2/24

**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.

1. **Name of Case** 6925 Linden LLC v. Howard County Dep't of Planning and Zoning
BA Case No. 804D
Date Decision and Order Mailed January 5, 2024

2. **Reason for Appeal** Opposition by neighboring homeowners to Hearing Examiner's ruling regarding legal weight of plats discussed in her Decision and Order

3. **Name of Appellant** Sean Carr and Edgar Courtemanch
 Trading as (if applicable) _____
Mailing address 6920 and 6932 Linden Avenue, Elkridge, MD 21075
Phone number(s) 443-739-7921 and 240-417-8797
Email csean500@gmail.com and courtemanch@comcast.net
Name of principal contact (if different) _____

4. **Counsel for Appellant** G. Macy Nelson and Grant Amadeus Giel
Mailing Address 600 Washington Avenue, Suite 202, Towson, MD 21204
Phone number(s) 410-296-8166
Email gmacynelson@gmacynelson.com and grant@gmacynelson.com
Secondary contact for counsel (if any) _____

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
- 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 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.

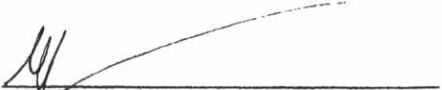
10. Signatures

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.

 1/30/2024 Sean Carr
Signature of Appellant Date Print Name of Appellant

 1/30/24 Edgar Courtemanch
Signature of Appellant Date Print 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

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6925 LINDEN LLC : BEFORE THE
Appellant : HOWARD COUNTY
v. : BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF : HEARING EXAMINER
PLANNING AND ZONING : BA Case No. 804D
SDP-23-005
Appellee

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DECISION AND ORDER

On January 3, 2024, 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 6925 Linden LLC (Appellant). Appellant is appealing the Department of Planning and Zoning’s August 10, 2023 letter denying SDP-23-005 (Elkridge Run, Lennox Park) at 6925 Linden Avenue, Elkridge, Maryland. The appeal is filed pursuant to §130.0.A.3 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. Your Examiner previously approved variances for the subject property, BA-21-020V. The issues raised in the instant Appeal were not raised in the prior variance request. Mr. Sang Oh, Esq. appeared on behalf of Appellant 6925 Linden LLC. Mr. Jamie Fraser, testified on behalf of Appellant. Mr. Edgar Courtemanch and Mr. Sean Carr appeared in Opposition.

Appellant presented the following Exhibits:

1. 1907, 1910 and 1916 Plats
 - 1a. 1907 Plat WWLC Book 83 Page 315
 - 1b. 1910 Lease Book 89 Page 287
 - 1c. 1916 Morin v. Green Book 102 Page 129
2. Deed History and nearby Lots
3. Proceedings of Morin v. Greene
4. Deed History of Linden Project Lots
5. Overlay 1907 Plat vs 1910 Lease
6. Levin & Gann letter
7. Oliver Lots Title Report
8. WP-16-137 Elm
9. WP-16-137 Exhibit
10. Boundary Survey

11. Lease from MDLANDREC
12. 19 Deeds from Other Areas of Lennox Park
13. Not Accepted
14. SDAT H&H Rock Lennox Park Lot List
15. Howard County Code Section 16.108(a)(44)
16. 1997 Adjoiner Transfer Deeds
17. BA-17-036V
18. BA-21-020V
19. BA-15-017V
20. ProjectDox comments
- 21a. Mary Kendell email
- 21b. Response to Mary Kendell email

BACKGROUND

The approximately 0.96-acre property is bounded by Linden Avenue to the northeast, Cedar Avenue to the northwest and Park Place to the southwest, also identified as 6925 Linden Avenue, Elkridge, Maryland (the Property). The subject Property lies in Council District 1, and the 1st Election District, and is identified as Tax Map 42, Grid 6,

Parcels 400 and 481, Lots 320-323 and Lots 349-358, in the R-12 (Residential: Single) Zoning District. The Property is unimproved. The neighborhood is also in the R-12 Zoning District, with lot widths of both 25- and 50-ft, and improved with single family detached and duplexes, or unimproved.

Appellant applied for SDP-23-005 for 14 lots, to construct duplex dwelling units. By letter dated August 10, 2023, the Department of Planning and Zoning (DPZ) denied the application. At issue is Comment 172 wherein DPZ finds the Morin Equity Plat controlling and therefore the subject property is limited to a maximum of 7 lots, not 14 lots as requested. Appellant noted the instant appeal on September 8, 2023.

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 Section 16.1215, 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 are *de novo*

and 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.

In a *de novo* (meaning as new) appeal, the role of the Hearing Examiner is akin to a trial court, and the appeal may be a contested case, in which the evidence is adduced, and the Hearing Examiner is the trier of fact awarded deference on appellate review as the Examiner saw the witnesses and the evidence firsthand. Appellants' burden of proof is to provide substantial evidence that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.

FINDINGS OF FACT

Lennox Park is an area of land located along the eastern boundary of Howard County and Anne Arundel County, a portion of which lying in each county. Plats depicting Lennox Park are dated 1907, a 1910 lease agreement which has a plat appended, and a 1916 Circuit Court for Howard County in Equity decision (*Morin v Greene*) has a plat

attached and referenced. At issue in the instant appeal is which of these three documents govern the development of lots in Lennox Park.

1907

The 1907 plat is for that portion of Lennox Park located wholly within Howard County. It includes residential lots of similar acreage and lot widths (25 ft). It is filed with the Land Records for Howard County in Book 83 Page 315. The surveyor certified the Plat on February 4, 1907.

1910

The 1910 plat is also for that portion of Lennox Park located wholly within Howard County. Unlike the 1907 Plat, the 1910 Plat includes residential lots of varying acreage and widths, a manmade lake, a hotel, and a “water works site” which seemed to envision some sort of recreation or entertainment. The lake, the hotel and the “water works site” were never developed as such and these areas were later subdivided into residential lots. The lot numbers differ from the 1907 lot numbers, at least in part as a result of some of the lots being larger than those in the 1907 Plat. The surveyor certified the Plat on March 24, 1900, but it was not recorded in the Howard County Land Records until a much later date in Book 89 Folio 287. This Plat was filed attached to, and referenced in, a land lease agreement.

1916

In 1916 Richard Morin, an infant, brought suit in the Howard County Circuit Court in Equity against Leroy Greene. Filed with this Complaint was a colored Plat of Lennox Park encompassing both acreage in Howard County and Anne Arundel County. This Plat was filed with County Commissioner on July 5, 1916. On July 24, 1916 the Court ordered the sale of Lennox Park, situated both within Howard County and within Anne Arundel County, to The Lennox Realty Company with the exclusion of certain lots that had previously been conveyed. This Plat does not include the "water works site" nor the manmade lake but it does contain lots in both counties some of which are outlined in red and the purpose of this appended Plat seems to be to show those lots which had previously been conveyed and were therefore not a part of the Court of Equity sale. This Order was filed in Book 102 Folio 129.

APPLICATION

ProjectDox states that the intake of the application for SDP-23-005 was 10/6/22.

(Ref #1) ProjectDox contains 180 comments regarding this application. On 6/11/23 DPZ sent an email stating that it believed it to be "industry standard to use the newest/most current legal description of the plat. The 1910 plat is the most recent.". On 8/10/23 Ref #172 states

Review of additional information confirmed the Deed History. The subject Lots consistently reference the Plat of Lennox Park recorded among the Equity Records in Richard W. Morin, Infant, et al. vs. Leroy O. Green (the "Equity Plat"). The Equity

Plat and the plat recorded at Liber 89 Folio 289 show lots that are proposed for development with this SDP as 7 lots. Following retrieval of the Morin Equity Plat, DPZ in consultation with the Office of Law reaffirms the decision to recognize the Morin Plat, which is consistent with the Plat dated 1910 and recorded in Maryland Land Records Liber 89 Folio 289, as the plat that controls the subject lots. Please review the current layout to show the 7 lots according to the Morin Plat and as shown on the Plat dated 1910 and recorded in Maryland Land Records Liber 89 Folio 289. Revised plans may expect more comments. DPZ will be sending additional information to the team and is happy to discuss as needed.

This comment was the basis for the instant appeal of DPZ's letter of August 10, 2023 requiring the reduction of lots from 14 lots to 7 lots for SDP-23-005. DPZ's position pivoted from 6/11/23, when, relying on Plats.net, the 1910 plat was determined to be the controlling plat, to 8/10/23, when DPZ determined that the 1916 plat filed in an equity resolution is the controlling plat.

LENNOX PARK DEVELOPMENT HISTORY

The development history of Lennox Park is extremely varied. It is undisputed that some of the exiting residential development is constructed on 50 ft width lots with single family detached dwellings. It is undisputed that the hotel, manmade lake, and water works site were never developed as such. It is also undisputed that some of the existing residential development is constructed on 25 ft width lots with duplex single family attached dwellings.

Appellants parent company H&H Rock testified that they have constructed approximately 130 homes in Lennox Park in accordance with the 1907 Plat. Voluminous documents including deeds and title searches support the use of the 1907 Plat in the development of Lennox Park utilizing the 25 ft width lots. Appellant also cites 3 previous variance requests approved by the Hearing Examiner in Lennox Park. It is noted that the issue of the controlling Plat, or lot width, was not raised in any of these applications, which involved lots of 25 ft widths. Indeed, DPZ was apparently not aware of the 1916 Morin Equity plat until July, 2023 and therefore it was not previously used as the basis for the approvals for the extensive development that has occurred in Lennox Park.

Opposition is seeking a determination as to which Plat is the controlling Plat going forward for the entirety of Lennox Park as a result of the confusion engendered by DPZ's position in SDP-23-005. Your Examiners jurisdiction is limited to the 0.96 acre at issue in the instant appeal but it is hoped that the Decision in this appeal will bring clarity to future development in Lennox Park.

CONCLUSIONS OF LAW

The instant administrative appeal is from SDP-23-005, denying a development plan for 14 25 ft width residential building lots. This is the first application in which DPZ has taken the position that the 1916 Morin Equity Plat is the controlling Plat. The Morin Equity Plat was included in the Equity distribution as a colorized descriptive plan to identify those lots not included in the equity sale to The Lennox Realty Company. It is noted that the

Morin Equity Plat includes land both in Howard County and in Anne Arundel County which would be prohibited for any other use other than a descriptive illustration. The Court Order did not grant a resubdivision of Lennox Park. Having not used the 1916 Plat previously, which was not designed or recorded to be other than a descriptive illustration, in the over 100 years of development in Lennox Park, DPZ is estopped from now asserting its validity as the controlling Plat.

The 1910 Plat, filed as an attachment to a land lease agreement in Book 89 Folio 287, was prepared by the surveyor in 1900 but was not recorded until 1910. Even then, the plat was not individually recorded as a Plat but used as a descriptor for the area of the land lease. There is no evidence of intent to use the attachment to the land lease to resubdivide the property.

The 1907 Plat, prepared by a surveyor in 1907 and filed commensurate with that date in Book 83 Folio 315, is an individual recordation which stands alone evidencing an intent to record a subdivision for Lennox Park. It is noted that both the 1907 Plat and the 1910 plat attached to the lease agreement are both limited to land area within Howard County and do not include land within Anne Arundel County. The 1907 Plat is the only Plat of subdivision recorded for Lennox Park; the plats attached to the 1910 lease agreement and the 1916 Morin Equity distribution are for illustrative purposes only, to support the legal actions in which they are filed. Neither the recorded 1910 lease agreement nor the 1916 Morin Equity decision evidence an intent within the four corners of these documents to create a resubdivision of Lennox Park. Appellant has met its

ORDER

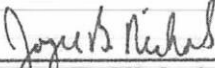
Based upon the foregoing, it is this 5th day of January, 2024, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That Appellants appeal of the August 10, 2023 denial of SDP-23-005 by the Department of Planning and Zoning , at 6925 Linden Avenue, Elkridge, Maryland, in the R-12 (Residential: Single) Zoning District, Council District 1, Election District 1, Map 43, Grid 6, Parcels 400 and 481, Lots 320-323 and Lots 349-358, be and is hereby **GRANTED**, and it is further **ORDERED**, that,

The Department of Planning and Zonings letter of August 10,2023 denying SDP-23-005 with 14 lots is hereby reversed and remanded to the Department of Planning and Zoning for the approval of SDP-23-005 with 14 lots in accordance with the 1907 Plat.

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.