

IN THE MATTER OF * BEFORE THE
Kincade LLC and IMH Columbia LLC, * BOARD OF APPEALS OF
Appellants * HOWARD COUNTY, MARYLAND
* CASES NO. BA-800; BA-802

* * * * *

ADMINISTRATIVE AGENCY REPLY MEMORANDUM

The Planning Board of Howard County, Maryland hereby replies to the memoranda of Appellants Kincade and IMH, pursuant to Howard County Code 2.210(b)(3), and for the reasons set forth herein, asks the Board of Appeals to uphold the Planning Board decision in this matter involving a Final Development Plan (FDP), because it is supported by substantial evidence and was not clearly erroneous, arbitrary, capricious, or contrary to law.

Appellants alleged error in the Planning Board’s application of Howard County Zoning Regulations (HCZR), sections 125.0.E.4.n (plan for amenities), .i (harmony with vicinal uses), and .a (with respect to building height). None of these allegations demonstrate reversible error.

1. Appellants’ averment that the Planning Board failed to assure an adequate plan for amenity spaces ignores the record evidence and mistakes the scope of a FDP.

The Planning Board incorporates by reference the factual findings and legal conclusions set forth in its Decision & Order as well as those record citations included in Appellee HRD’s reply memorandum in this appeal. Further, as demonstrated by the testimony of Jill Manion from the Department of Planning & Zoning (Transcript of April 11, 2023 hearing at 3-20), the FDP addresses the criteria, perhaps with less detail than Appellants assert is required, but sufficiently to provide the guidance that an FDP serves to supply to subsequent Site Development Plans which must conform to the FDP. The criticism of Appellants is not that the FDP is contrary to the regulatory requirements, but that they wish for SDP details at the FDP stage. This is not required under the applicable regulations.

2. The Planning Board accounted for existing and planned vicinal uses in its evaluation, as required.

The criteria for the Planning Board review require consideration of existing and planned, but not hypothetical, vicinal uses. Ms. Manion addressed this (April 11 Transcript at 17-18) and the Planning Board also incorporates by reference such other record evidence as referenced in its Decision & Order. The Appellant's memoranda rely upon their own opinions regarding compatibility, none of which the Planning Board was required to accept, and none of which conflict with the approved FDP.

3. Appellants' arguments as to building height are a criticism of a pre-existing FDP that is not before this Board of Appeals and which they did not contest.

Appellants concede that the building height with which they have an issue was approved in PB case 448. *See* Memorandum of Appellant Kincaid at 4. That Planning Board decision was not contested by anyone including Appellants and is not before this Board. This argument is moot.

4. Appellants' argument that private covenants among themselves and HRD were required to be addressed in some fashion other than as the Planning Board does not rely upon the HCZR criteria.

The Planning Board is not the judge of what obligations private covenants among these business entities require. Case law is clear that these covenants are neither the Planning Board's to apply nor restrict its authority. It may well be that HRD has obtained approval of a development plan that covenants force it to adapt. It may also be the case that the plan is entirely consistent with HRD's obligations to IMH and Kincaid. The Planning Board is instead charged with applying – and only applying the criteria in HCZR 125.0.E.4. Nowhere in these criteria is the Planning Board required or empowered to do what Appellants seek to force the Board to do.

Conclusion

For these reasons and as may be further addressed in hearing before this Board, the Appeal should be denied, and the Planning Board Decision & Order upheld as Appellants have failed to meet the burden of persuasion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2020, an electronic copy of the foregoing Administrative Agency Reply Memorandum was provided to:

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