

IN THE MATTER OF
KINCADE LLC
Appellant

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BEFORE THE
HOWARD COUNTY
BOARD OF APPEALS
BA Case No. 795D

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KINCADE’S RESPONSE TO HRD’S MOTION TO DISMISS

Kincade, LLC, by and through its undersigned counsel responds to the Motion to Dismiss that was filed on December 13, 2023 by Town Center East Parking Lot Business Trust, Town Center East Business Trust and Sterrett Building Holdings, LLC (collectively “HRD”).

Citing the *United Parcel Service, Inc. v. People’s Counsel*, 336 Md. 569 (1994) and its progeny, HRD argues that Kincade LLC’s appeal of the Department of Planning and Zoning’s (“DPZ”) February 3, 2023 letter (“DPZ Letter”) should be dismissed because the DPZ Letter is not a final administrative decision that can be appealed. HRD is, perhaps, not aware that it is arguing conflicting positions. HRD’s Motion to Dismiss is belied by HRD’s own arguments throughout this case that the Planning Board is limited in its review of SDP-22-042 to the criteria expressly set forth in the Howard County Zoning Regulations.¹ If HRD is correct, then necessarily the DPZ Letter is an operative event because it is the document that reflects the decision of the Subdivision and Review Committee (“SRC”) and

¹ This limitation on the Planning Board’s review advanced by HRD has been supported by the Planning Board’s legal counsel and DPZ staff.

DPZ as to their review of all other matters under SDP-22-042 other than those matters reserved for the Planning Board's review. The DPZ Letter provides notice that the SRC and DPZ have completed their review of SDP-22-042 and that the SRC and DPZ are of the opinion that SDP-22-042 may be approved by the Planning Board. Because an appeal of the Planning Board's decision on SDP-22-042 will be limited to their criteria, how can Kincade or any other appellant appeal the SRC and DPZ's determinations as to SDP-22-042? Kincade is certainly entitled to appeal SRC and DPZ decisions as to SDP-22-042.

HRD and the Planning Board adopted the position that matters other than the criteria as set forth in the Zoning Regulations are beyond the scope of the Planning Board's decision on SDP-22-042. The appeal of the Planning Board's approval of SDP-22-042 are BA Case Nos. 799 and 802, which are currently pending before the Hearing Examiner. The appeal in BA Case Nos. 799 and 802 will be limited to the Planning Board's determination. The DPZ Letter is the only vehicle that enables Kincade to challenge the determinations on SDP-22-042 that are beyond the purview of the Planning Board. Kincade's appeal of the DPZ Letter enables Kincade to challenge the evaluations and decisions made by the SRC and DPZ that SDP-22-042 complies with all applicable regulations other than the criteria reserved for the Planning Board.

DPZ's examination, and ultimate approval of SDP-22-042 includes the review and determination of satisfaction of many important technical requirements including, but limited to, stormwater management, landscaping, and forest

conservation (to the extent applicable), sufficiency of off-street parking, traffic management, parking covenants and maintenance agreements (collectively, “Technical Requirements”). These, and many other critical technical requirements are in addition to the criteria set forth in the Howard County Zoning Regulations (“Regulations”) for the Planning Board’s review of SDP-22-042. If an appeal of the DPZ Letter is not permitted, the Technical Requirements will be rendered unappealable. HRD’s position that the DPZ Letter is not an operative event is at odds with its position that the Planning Board only makes certain but not all determinations. HRD’s assertion that the DPZ Letter cannot be appealed begs the question: how can Kincade or any other appellant challenge the SRC or DPZ’s decision on those other Technical Requirements? The answer is plainly evident. The DPZ Letter is the only operative event that can be appealed to provide Kincade with its right to challenge DPZ’s determinations. There is no other manner of appeal. HRD’s Motion to Dismiss must be denied.

Respectfully submitted,

/s/ Sanford Talkin

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2023, a copy of the foregoing Response to Motion to Dismiss was sent by electronic mail to:

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