

HOWARD COUNTY BOARD OF APPEALS

HOWARD COUNTY COUNCIL

2025 JAN 23 12:58

KINCADE, LLC : BEFORE THE HOWARD COUNTY

v. : BOARD OF APPEALS

HOWARD COUNTY PLANNING BOARD :

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IMH COLUMBIA, LLC : BA Case No. BA-800D

: (Consolidated with BA-802D)

v. :

HOWARD COUNTY :
PLANNING BOARD :

MEMORANDUM IN RESPONSE TO
HOWARD RESEARCH AND DEVELOPMENT COMPANY’S
OBJECTION TO IMH’S PREHEARING SUBMISSION
AND MOTION TO STRIKE

IMH Columbia, LLC (“IMH” or “Appellant”), by and through the undersigned counsel and pursuant to Howard County Code 2.210(e), hereby files this Memorandum in Response to Howard Research and Development Company’s Objection to IMH’s Prehearing Submission and Motion to Strike to assert the admissibility of Tabs 1-7, 10, and 14 of Appellant’s Prehearing Submission.¹ Most notably, the Howard County Board of Appeals must admit Tabs 3, 5-7, and 14 as evidence under Howard County Code §2.211(e) because they include Judicial Orders of the Circuit Court of Howard County (“Circuit Court”) and their associated exhibits in Case No. C-13-V22-000212. Moreover, pursuant to Howard County Code §2.210(b)(5), the Board must also

¹ HRD filed its Objection to IMH’s Prehearing Submission and Motion to Strike in BA-802D prior to the Consolidation Order issued by the Howard County Board of Appeals on January 21, 2025. Thus, pursuant to the Consolidation Order, IMH has updated the caption in this Response to reflect BA-800D, including all references herein.

admit Tabs 1, 2, 4, and 10 for good cause because they contextualize the Circuit Court’s rationale in the Judicial Orders. In support thereof, IMH states as follows:

I. The Board of Appeals Must Admit Tabs 5, 6, and 14 of Appellant’s Prehearing Submission as Evidence Because Tabs 5, 6, and 14 are Judicial Orders in Circuit Court Case No. C-13-V22-000212.

Pursuant to Howard County Code §2.211(e) and Planning Board Rule of Procedure §1.105.F, the Board of Appeals and the Planning Board are both subject to the jurisdiction of the Circuit Court of Howard County (“Circuit Court”), such that each body must adhere to the Judicial Orders of the Circuit Court.

In the instant appeal, Tabs 5, 6, and 14 are each Judicial Orders in Circuit Court Case No. C-13-V22-000212. Expressly, Tab 5 is the Circuit Court’s *Order As To Open Motions* dated September 13, 2023, finding that Howard Research and Development Company (“HRD” or “Appellee”) “must supply [to IMH] only surface and deck parking in certain designated parcels” as provided specified in the Parking Covenants. *See Tab 5*, Para. 3(c)(1); *see also Tab 7*. Similarly, Tab 6 is the Circuit Court’s *Order As To Open Motions* dated December 13, 2024, clarifying that “surface” and “deck” parking as used in Tab 5 mean “at grade” and “above ground” parking, respectively. *See Tab 6*, Para. 2. (finding that “the term ‘deck’ in section XI of the Parking Covenants did not refer to underground parking). Most notably, Tab 14 is the *Order and Declaratory Judgment* in Circuit Court Case No. C-13-V22-000212 dated May 16, 2024 (“Final Trial Order”), including the judgment exhibits that the Circuit Court referenced in adjudicating the matter.

Nevertheless, HRD erroneously applies Planning Board Rule 1.105.F, contending that “these items are not a part of the Record of the Planning Board’s proceedings and are not properly before the Board of Appeals.” *See HRD Objection to IMG Prehearing Submission*, Para. 2.

However, taken together with Howard County Code §2.211(e), it is irrelevant that Tabs 5, 6, and 14 were not a part of the record because: (1) they are each Judicial Orders in Circuit Court Case No. C-13-V22-000212, and (2) the Board of Appeal and the Planning Board are subject to the jurisdiction of the Circuit Court. Thus, the Board must overrule HRD's objection to Appellant's Tabs 5, 6, and 14, and admit them as evidence in Case No. BA-800D.

II. The Board of Appeals Must Admit Tabs 3 and 7 of Appellant's Prehearing Submission as Evidence Because Tabs 3 and 7 are Incorporated by Reference to the Final Trial Order as Judgment Exhibits A and B, Respectively.

As stated in Point I, above, both the Board of Appeals and the Planning Board are subject to the Circuit Court's jurisdiction such that each body must adhere to the Judicial Orders of Circuit Court Case No. C-13-V22-000212. In adjudicating that matter, the Circuit Court relied on IMH's Trial Exhibits 39 and 7, which, in the instant appeal, are exact duplicates of Tabs 3 and 7, respectively. Moreover, as part of the Final Trial Order, Judge Philip Caroom attached and incorporated Tab 3 by reference as "Judgment Exhibit A," and Tab 7 by reference as "Judgment Exhibit B." Consequently, because Tabs 3 and 7 are inseparable parts of the Final Trial Order, the Board must admit them as evidence in Case No. BA-800D.

As the named defendant in Circuit Court Case No. C-13-V22-000212, HRD is intimately familiar with both Tabs 3 and 7. Tab 3 is the Parking Analysis completed by Wells + Associates, Inc. for HRD – an accurate calculation of the "shared parking spaces presently required by the covenants for use [by IMH]." *See Final Trial Order*, Item 5(b). Tab 7 includes the Parking Covenants which govern all shared and replacement parking spaces between the Parties. *Id.* at 5(c)-(d).

By moving to strike and prohibit IMH from referring to these items at oral argument, HRD attempts to undermine the judicial process and effectively "hide the ball" from this administrative body. However, because the Final Trial Order incorporates Tabs 3 and 7 by reference, the Board

must deny HRD's Motion to Strike, and admit them as evidence in the instant appeal in accordance with the Circuit Court's jurisdiction.

III. The Board of Appeals Must Admit Tabs 1, 2, 4, and 10 of Appellant's Prehearing Submission for Good Cause Because They Explain the Circuit Court's Rationale in the Judicial Orders for Case No. C-13-V22-000212, and the Board is subject to the Court's jurisdiction.

Pursuant to Planning Board Rule 1.105.F and Howard County Code §2.210(b)(5), the Board "shall entertain oral arguments based upon the record," and may receive additional evidence for "good cause shown." The Supreme Court of Maryland has concluded that a demonstration of "good cause" turns on the circumstances of each individual case as it is a "relative and highly abstract term." *See State v. Toney*, 315 Md. 122, 132 (1989); *see also In re Robert G.*, 296 Md. 176, 179 (1983). To determine whether "good cause" exists to admit additional evidence in the instant appeal, the Board of Appeals must consider: (1) the text of the statute; (2) the context of the action; and (3) the procedures involved in the type of case presented. *See In re Robert G.*, 296 Md. at 179 (quoting *Black's Law Dictionary* 623 (5th ed. 1979)).

As a threshold matter, both the Planning Board Rules of Procedure and the Howard County Code are silent as to the meaning of good cause. Further, during oral arguments on the record, Howard County Code §2.210(b)(5)(ii) procedurally allows extrinsic evidence from the Appellant. Thus, turning to the context of the instant appeal, the Board must admit Tabs 1, 2, 4, and 10 because they explain the rationale behind the Judicial Orders of the Circuit Court, including their associated exhibits, and the Board is subject to the Court's jurisdiction.

First, Tab 1 is correspondence between Messrs. Greg Fitchitt and Gary Handel regarding the 234 spaces owed to IMH by HRD dated May 22, 2021. In this exchange, Mr. Handel states, and Mr. Fitchitt acknowledges, that IMH is entitled to 234 spaces "in the surface lots on [HRD's] Lakefront North parcels," noting that should HRD decide to "redevelop those surface lots, [HRD

is] obligated to replace those 234 spaces, with 75% of them within 500 feet, and all the spaces within 750 feet of the business entrances.” *See Tab 1*, at 1-2. Similarly, Tab 2 is correspondence between Messrs. Gabriel Chung and Michael Arad identifying the parking “shortfall” at 234 spaces and affirming the accuracy of the Parking Analysis prepared by Wells + Associates, Inc. on June 18, 2021. Next, Tab 4 illustrates the parking distances, as proposed by HRD, to satisfy the total shared parking spaces required for IMH and Kincade. Lastly, Tab 10 sets forth HRD’s plan to supply IMH with scattered, underground parking.

In the context of the instant appeal, Tabs 1, 2, 4 and 10 establish that Appellee was aware of the shared parking obligations owed to IMH as early as May 22, 2021, including the 234 space parking shortfall, and the specific conditions for replacement parking. In particular, Tabs 4 and 10 reveal HRD’s scheme to evade compliance with the replacement parking conditions and are critical to understanding the Circuit Court’s mandate that HRD provide aboveground “replacement parking ... within a single ‘area,’” to IMH. *See Final Trial Order*, Item 5(c) at 2. Therefore, because Tabs 1, 2, 4, and 10 explain the rationale behind the Judicial Orders of the Circuit Court and the Board is subject to the Court’s jurisdiction, there is good cause for admission. Thus, the Board must accept Appellant’s Tabs 1, 2, 4, and 10 as additional evidence in Case No. BA-80D.

CONCLUSION

For the foregoing reasons, Appellant seeks an overruling and denial of HRD’s Objection to IMH’s Prehearing Submission and Motion to Strike, resulting in the admission of all 14 of IMH’s FDP exhibits.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2025, a copy of the foregoing Memorandum was served via email and first-class mail, postage prepaid to all to parties to the matter or to their designated representative, and all persons known to have an interest in the case including but not limited to:

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I further certify that on December 31, 2024, copies of the exhibits referenced herein were provided to the above parties via email and overnight delivery.



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