

December 13, 2023

**VIA FIRST CLASS MAIL
AND ELECTRONIC MAIL**

Howard County Board of Appeals
Attn: Kel Berg, Board Administrator
3430 Courthouse Drive
Ellicott City, Maryland 21043
kberg@howardcountymd.gov

Re: *In the Matter of Kincade LLC*
Case No. BA-795D

Dear Ms. Berg:

Enclosed, please find the following filed on behalf of HRD in above-referenced matter:

1. Motion to Dismiss.

Sincerely,

SHULMAN ROGERS, P.A.

By:



Todd D. Brown

Enclosure

cc: Howard County Planning Board (*via mail only*)
Howard County Planning & Zoning (*via email and regular mail*)
Sanford Talkin, Esq. (*via email and regular mail*)
Jessica Haire, Esq. (*via email and regular mail*)
Nicole L. Campbell, Esq. (*via email and regular mail*)
Barry Sanders, Esq. (*via email and regular mail*)
David Moore, Esq. (*via email and regular mail*)

HOWARD COUNTY BOARD OF APPEALS

IN THE MATTER OF	:	BEFORE THE HOWARD COUNTY
KINCADE LLC	:	BOARD OF APPEALS
	:	
Appellant/Petitioner	:	CASE NO. BA-795D

MOTION TO DISMISS

Town Center East Parking Lot Business Trust, Town Center East Business Trust and Sterrett Building Holdings, LLC (collectively “HRD”), by and through the undersigned counsel, hereby files this Motion to Dismiss pursuant to Board of Appeals Rules 2.202(d) and 2.207(e), and in support thereof states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

HRD is the applicant for consideration and approval of a Site Development Plan (SDP-22-042) (“Site Development Plan”) application by the Howard County Planning Board (“Planning Board”) for a mixed-use development in Downtown Columbia, the Lakefront Neighborhood. On February 8, 2022, HRD held a Pre-submission Community Meeting to present the proposed development plan in accordance with Section 16-128 of the Howard County Code. The appropriate documents related to notices, meeting minutes, and attendees’ contact information for the Pre-submission Community meeting were filed with the Howard County Department of Planning and Zoning (“Department of Planning and Zoning”). The Design Advisory Panel reviewed the architectural and site plans for the proposed development on February 9, 2022. A second Design Advisory Panel meeting was held May 25, 2022. The meeting summaries for the Design Advisory Panel meetings were filed with the Department of Planning and Zoning and the Planning Board.

On February 3, 2023, the Department of Planning and Zoning issued a letter (“DPZ Letter”) advising the interested parties that the Site Development Plan may proceed to the Planning Board for a hearing on the merits and final approval of the Site Development Plan application. A copy of the DPZ Letter is attached hereto as Exhibit A. On March 3, 2023, Appellant/Petitioner Kincade LLC (“Kincade”) filed an appeal of the DPZ Letter to the Howard County Board of Appeals Hearing Examiner (“Hearing Examiner”).

Upon receipt of Kincade’s appeal of the DPZ Letter, the Hearing Examiner scheduled a hearing for May 3, 2023. On April 26, 2023, Kincade sent a letter to the Hearing Examiner requesting that the May 3, 2023 hearing be cancelled and the case be placed on the “Inactive Docket”. On April 26, 2023, the same day Kincade requested the case be placed on the Inactive Docket, HRD filed a Motion to Dismiss Kincade’s appeal. Kincade did not file a response to HRD’s Motion.

On May 16, 2023, the Hearing Examiner issued a Decision and Order dismissing Kincade’s appeal of the DPZ Letter (“Decision and Order”). A copy of the Decision and Order is attached hereto as Exhibit B. In dismissing Kincade’s appeal, the Hearing Examiner determined, “[t]he DPZ Letter merely stated that [the Site Development Plan] had been reviewed by the Subdivision Review Committee and that the Site Development Plan ‘*may be*’ approved by the Planning Board”. (Decision and Order, pp 2-3). Thus, the Hearing Examiner concluded, “[b]ecause the DPZ Letter is not a final administrative action, the Hearing Examiner lacks jurisdiction to consider the DPZ Letter”. *Id.* On June 13, 2023, Kincade filed this appeal to the Howard County Board of Appeals (“Board of Appeals”).

HRD files the instant Motion to Dismiss on the basis that the DPZ Letter was not a final, appealable determination. As such, the Board of Appeals does not have jurisdiction to hear the appeal.

II. APPLICABLE LAW

Maryland Code, Local Government Article, Section 10-305 describes the express powers granted and conferred upon chartered counties in Maryland and states, in pertinent part, that a county may enact local laws to provide for the establishment of a county board of appeals. Section 10-305 further states that the county board of appeals may have original jurisdiction or jurisdiction to review the action of an administrative officer or unit of county government over matters arising under any law, ordinance, or regulation of the county council that concerns the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration or other form of permission or of any adjudicatory order. See also *Meadows of Greenspring Homeowners Association v. Foxleigh Enterprises, Inc.*, 133 Md. App. 510, 517 (1999).

Pursuant to this grant of authority, Sections 501 and 502 of the Howard County Charter created the Board of Appeals. Section 501 of the Howard County Charter states, in pertinent part, “(b) [t]he Board of Appeals may exercise the functions and powers relating to the hearing and deciding, either originally or on appeal or review, of such matters as are or may be set forth in [Local Government Article, Section 10-305] of the Annotated Code of Maryland, excluding those matters affecting the adopting of or change in the general plan, zoning map, rules, regulations or ordinances.”

Subject to the authority granted by the Local Government Article, the Board of Appeals has the power to “hear and decide appeals where it is alleged there is error in any order,

requirement, decision or determination made by any administrative official in the application, interpretation or enforcement of [Title 16, the Planning, Zoning and Subdivisions and Land Development Regulations] or of any regulations adopted pursuant to it.” (Section 16-301(b), Howard County Code).

The Board of Appeals shall dismiss a petition if it lacks jurisdiction to hear the petition. (Rule 2.202(d), Board of Appeals Rules). In the event the Board of Appeals does not dismiss the appeal for lack of jurisdiction, the petitioner must show that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law. (Section 210(a)(4), Howard County Code; Rule 2.210(a)(4), Board of Appeals Rules of Procedure).

In interpreting the delegation of authority in a charter county for site plan approval and what constitutes a final, appealable determination ripe for consideration by the Board of Appeals, Maryland Courts have held that where the Planning Board of a charter county exercises original jurisdiction over a local function related to planning, zoning or subdivision, the Planning Board is the *de novo* decision-maker regarding the merits of a site development plan. *County Council of Prince George’s County, MD v. FCW Justice, Inc.*, 238 Md. App. 641 at 670 (2018) citing *County Council of Prince George’s County v. Zimmer Development Company*, 444 Md. 490 (2015). The Planning Board issues a “final decision”, and the Planning Board is vested with exclusive original jurisdiction over the determination of site development plans, subject to appellate review of such decision by the Board of Appeals. *Id.*

Howard County is a charter county. For Downtown Revitalization subject to Section 125.0.G of the Zoning Regulations, the Planning Board has exclusive original jurisdiction over site development plan approval. (Section 125.0(G)(1), Howard County Zoning Regulations).

Because decision-making authority related to the Site Development Plan application is vested solely in the Planning Board, only the Planning Board's ruling on the approval or denial of the Site Development Plan constitutes a final appealable determination. The Department of Planning and Zoning is not vested with the power or authority to approve or deny the Site Development Plan or make a final, appealable determination related to the Site Development Plan application in a case such as this.¹

Generally, in order for a decision to be appealable, it must be a final administrative action that "leaves nothing further for the agency to do" and not merely a preliminary decision or a confirmation or reconsideration of a previous approval. *Laurel Racing Association, L.P. v. Anne Arundel County*, 233 Md. App. 311, at 323 (2017) citing *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59 (2003). An order is not final when it is contemplated that there is more for the agency to do. *Id.* The purpose of the finality requirement is to avoid piecemeal actions in appeals seeking fragmented advisory opinions with respect to partial agency decisions. *Dorsey* at 75, citing *Driggs Corp. v. Md. Aviation*, 348 Md. 389 (1998). Where the administrative action is not final, there is a very limited exception to the finality requirement whereupon parties need not await a final administrative decision if the interlocutory administrative decision has immediate legal consequences causing irreparable harm. *Laurel Racing Association, L.P.*, 233 Md. App. 311, at 323, citing *Dorsey*, 375 Md. 59.

There are three cases that are instructive as to the applicable law. In *Meadows*, a letter from the Director of the Department of Permits and Development Management, akin to the

¹ The Howard County Code generally defines what actions by the Department of Planning and Zoning related to a site development plan constitute a final action, appealable to the Board of Appeals. "Final action by the Department of Planning and Zoning on a subdivision or site development submittal shall be: (1) approval; (2) approval with required modification; or (3) denial." (Section 16-103(e), Howard County Code). Moreover, for Downtown Revitalization, a site development plan can only be approved by the Planning Board. (Sections 125.0.A.9.a and 125.0.G.1, Howard County Zoning Regulations).

Department of Planning and Zoning, stated development plans must be submitted to the County Review Group, akin to the Planning Board, for consideration and final approval. *Meadows*, 133 Md. App. 510 (1999). The developer sought to amend a previously approved development plan to construct an eight-story, 160,000 square foot building. *Id.* The Department of Permits and Development Management issued a letter advising that the new development plan was a material change to the previously approved development plan and directing the developer to submit a development plan for consideration and final approval by the County Review Group. *Id.* at 512. The developer attempted to appeal the letter from the Department of Permits and Development Management to the Board of Appeals. *Id.*

The Court determined the developer's appeal of the letter was improper, and the Board of Appeals did not have jurisdiction to consider the appeal because the letter was not a final determination. *Meadows*, 133 Md. App. 510, at 516. The Court held an appeal would only be appropriate under the jurisdiction of the Board of Appeals after the development plan was considered and then approved or denied by the County Review Group, not at the juncture at which developer was advised by letter to submit a development plan for review. *Id.*, at 514. The Court held the letter was not an "operative event" that determined whether the developer's plan would be granted a license or permit. *Id.* The letter merely informed the developer that the proposed development plan must be reviewed by the County Review Group. *Id.*, at 516.

The Court further held that the letter did not make any decision and was not an order. *Meadows*, at 518. The letter did not deny, issue or modify any license, permit or approval and merely informed the developer that in order to be approved, the new development plan must be submitted to the County Review Group for consideration and a final decision. *Id.* at 518. Accordingly, the appeal was not ripe for review.

In *Laurel Racing Association*, the Court interpreted a letter from the Department of Public Works stating the intention of the County to modify and recalculate the number of dwelling units subject to sketch plan submittal, review and approval. 233 Md. App. 311, at 323 (2017). The letter did not grant, deny, decide or approve anything and made clear the County's recalculation was contingent upon pending actions such as a final sketch plan submittal and approval. *Id.* The letter was issued prior to and contingent upon final sketch plan approval and findings, comments and recommendations of the County through the reviewing agency. *Id.* Because the letter was not an administrative action that left "nothing further for the agency to do", and did not fully resolve the approval or denial of the sketch plan, the letter was not an appealable decision in light of the pending final approval or denial of the final sketch plan application. *Id.*

The case of *United Parcel Service v. People's Counsel* addressed a similar issue as to whether a letter from an agency was an appealable determination. *Id.*, 336 Md. 569, at 583 (1994). The zoning commissioner approved an application for a building permit and the building engineer then issued the building permit. *Id.* Several months later, protestants submitted correspondence to the zoning commissioner asserting that the proposed use was not permitted and seeking revocation of the building permit. *Id.* The zoning commissioner responded with a letter explaining that a building permit was issued and the basis upon which the permit was issued. *Id.* The protestants attempted to appeal the zoning commissioner's response. *Id.*

The Court stated the zoning commissioner's response letter was not appealable to the Board of Appeals as it did not grant, deny, decide or order anything. *United Parcel Service*, 336 Md. 569, at 583. The building permit had already been issued so the response letter was not a

decision. *Id.* Moreover, the Court stated the zoning commissioner did not have the authority to grant the relief requested because after the building permit was issued, the authority to revoke, suspend, annul or modify the building permit – i.e., the authority to make the decision or take the requested action - was vested solely in the building engineer, not the zoning commissioner. *Id.*

III. ANALYSIS

The DPZ Letter was not a final, appealable decision, and the Board of Appeals does not have jurisdiction to consider this appeal. The pertinent part of the DPZ Letter states, “The Subdivision Review Committee has determined that **the SDP may be approved, subject to** the attached comments and plan markups and **approval by the Planning Board.**” (*emphasis supplied*). The DPZ Letter further states any approval is subject to public notices and a public meeting before the Planning Board.

The Hearing Examiner correctly determined,

...it is clear that a Site Development Plan for Downtown Revitalization must be approved by the Planning Board at a public meeting after which the Planning Board will issue a decision approving, approving with conditions, or denying the Site Development Plan. The DPZ Letter merely stated that [the Site Development Plan] had been reviewed by the Subdivision Review Committee and that the Site Development Plan ‘*may be*’ approved by the Planning Board. Thus, the DPZ Letter is not a final administrative action – the Planning Board decision will, in this case, be the final administrative action regarding [the Site Development Plan application]. Because the DPZ Letter is not a final administrative action, the Hearing Examiner lacks jurisdiction to consider the DPZ Letter. (Decision and Order, pp. 2-3).

The DPZ Letter makes clear the Department of Planning and Zoning did not make a final determination related to the Site Development Plan application. Section 16-103(e) of the Howard County Code clearly establishes that only an approval, approval with modifications or denial of a site development plan constitutes a final action. Even assuming *arguendo* that the Department of Planning and Zoning had the authority to take final action on the Site

Development Plan in this case, which it did not, the DPZ Letter did not approve, approve with modifications or deny the Site Development Plan. Rather, the DPZ Letter advised the interested parties that the Site Development Plan will proceed before the Planning Board for the Planning Board to make a final decision on the merits approving, approving with conditions or denying the Site Development Plan.

The case law makes clear that the DPZ Letter in this case was not an “operative event” that determined whether the HRD’s Site Development Plan will be granted a license or permit approval. *Meadows*, at 518. The DPZ Letter merely informed HRD that the proposed Site Development Plan must be reviewed by the Planning Board. *Id.*, at 516. An appeal is not appropriate at the juncture at which HRD was advised by the Department of Planning and Zoning to submit the Site Development Plan for review and determination by the Planning Board. *Id.*, at 514.

Additionally, the DPZ Letter did not resolve all the pertinent questions related to the Site Development Plan application such that the action of the Department of Planning and Zoning left “nothing further for the agency to do”. *Laurel Racing Association*, 233 Md. App. 311, at 323. The DPZ Letter made apparent the Site Development Plan was subject to further consideration and determination by the Planning Board as the sole body charged with evaluating and making a final decision on the application. *Id.* Thus, the DPZ Letter indicated there was still further action to be taken with regard to the Site Development Plan approval or denial and the DPZ Letter was not appealable. *Id.*

The Court in *United Parcel Service* also makes clear that the DPZ Letter was not an appealable decision as it did not grant, deny, decide or order anything. *United Parcel Service*, 336 Md. 569, at 583. Like the zoning commissioner in that case, the Department of Planning

and Zoning did not have the authority to grant the relief requested. The Department of Planning and Zoning does not have the authority to decide, approve, approve with conditions or deny a site development plan application for Downtown Revitalization, which authority is vested solely in the Planning Board. (Section 125.0(G)(1), Howard County Zoning Regulations). Because the Department of Planning and Zoning did not have such authority, the DPZ Letter could not have been an appealable approval, denial or decision. *Id.* The DPZ Letter simply stated the “SDP may be approved, subject to...approval by the Howard County Planning Board”. The DPZ Letter did not make any decision relative to, nor issue an approval or denial of, the Site Development Plan.

Not only was the DPZ Letter not a final, appealable decision, but an interlocutory appeal in this case is not permitted. There was no potential for immediate legal consequences causing irreparable harm to Kincade which would warrant an interlocutory appeal. *Laurel Racing Association*, 233 Md. App. 311, at 323. The Site Development Plan public meeting before the Planning Board occurred on June 1, 2023 and the Site Development Plan was approved with modifications after such meeting. There was no potential irreparable harm that Kincade experienced by waiting until the Planning Board made a final determination on the Site Development Plan application.

The Planning Board’s approval of the Site Development Plan is the final determination that is appealable, not the DPZ Letter, and that appeal is already pending in Case Number BA-799D. Pursuant to Board of Appeals Rule 2.202(d), the Board of Appeals does not have jurisdiction to hear this appeal as the DPZ Letter was not a final action. Thus, the appeal must be dismissed.

HRD respectfully notes that an advance ruling on this Motion prior to the date scheduled for a hearing on the merits, in the event this Motion is not granted, would be helpful to all parties in their preparation for such hearing.

The undersigned is an attorney admitted to practice law before the Supreme Court of Maryland with a business address of Shulman Rogers, 12505 Park Potomac Avenue, 6th Floor, Potomac, Maryland 20854 and telephone number 301.230.6579.

Respectfully submitted,

SHULMAN ROGERS, P.A.

By: 

Todd D. Brown

Kyle Kirby

12505 Park Potomac Avenue, 6th Floor
Potomac, Maryland 20854

TEL: (301) 230-6579

FAX: (301) 230-2891

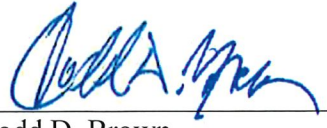
Email: tbrown@shulmanrogers.com

kkirby@shulmanrogers.com

Attorneys for HRD

CERTIFICATION

A copy of the foregoing Motion was provided to all persons known to have an interest in this case, including but not limited to the Appellant/Petitioner, the property owner and the Department of Planning and Zoning. Any person interested in responding to this motion must file a written response with the hearing examiner within fifteen days of the date that the motion was filed.


Todd D. Brown

HOWARD COUNTY BOARD OF APPEALS

IN THE MATTER OF	:	BEFORE THE HOWARD COUNTY
KINCADE LLC	:	BOARD OF APPEALS
	:	
Appellant/Petitioner	:	CASE NO. BA-795D

ORDER

UPON CONSIDERATION of HRD's Motion to Dismiss, and any response thereto, it is this
____ day of _____, 202____, by the Howard County Board of Appeals, HEREBY:

ORDERED, that HRD's Motion to Dismiss is GRANTED; and it is further

ORDERED, that Appellant/Petitioner Kincade LLC's appeal of the Howard County
Department of Planning and Zoning letter dated February 3, 2023 is DISMISSED.

By: _____
Howard County Board of Appeals

EXHIBIT A

DPZ Letter



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Cowan, Director

FAX 410-313-3467

February 3, 2023

Gabriel Chung
The Howard Hughes Corporation
10960 Grantchester Way, Suite 110
Columbia, MD 21044

RE: SDP-22-042, Lakefront North, Planning
Board Notice and 3rd submission comments

Dear Mr. Chung:

The Subdivision Review Committee has determined that the above referenced plan may be approved, subject to the attached comments and plan markups, and approval by the Howard County Planning Board. Please contact Lisa Kenney at (410) 313-4373 or at lkenney@howardcountymd.gov to schedule the Planning Board meeting date. This meeting is a **"hybrid"** meeting and you must be in person to present to the Planning Board. It is **required** that you and/or your consultant be present to answer any questions which the Board may ask about your plan and that a colored copy of the site plan, landscape plan and building architectural elevation plan be provided for presentation to the Board. Please be advised that for any SDP project requesting approval for a variance or an adjustment to bulk requirements, the applicant must be prepared to fully explain and justify their request before the Planning Board.

This meeting is a **"hybrid"** meeting and you must be in person to present to the Planning Board. **Outside laptops and flash drives will NO longer be permitted to be used for the presentation. The development team's final presentation must be emailed to Jill Manion (jmanion@howardcountymd.gov) and Lisa Kenney (lkenney@howardcountymd.gov) no later than the Monday prior to the meeting.**

Per Section 125.0.G of the Howard County Zoning Regulations, this property must be posted two weeks prior to the meeting date. Please contact Jill Manion (jmanion@howardcountymd.gov) to arrange to pick up the sign(s). Each sign is \$25.00. In addition, you are required to electronically notify all Columbia Village Boards, the Columbia Association, Howard County Council members and any pre-submission meeting attendees who provided e-mail addresses at the meeting. This must also be completed within two weeks prior to the meeting and proof must be provided that electronic notification was submitted to all required parties within the required time period. **Please copy the Division of Land Development reviewer at jmanion@howardcountymd.gov of the electronic notifications.**

The following materials are necessary for preparation of the DPZ staff report and power point presentation for the Planning Board. They must be emailed to Jill Manion, planner and Lisa Kenney (lkenney@howardcountymd.gov) 27 days prior to the meeting.

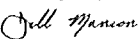
- a. A digital reduction of the overall SDP plan sheet at a size of 8½" x 14" or 11" x 17" to serve as an attachment at the end of the staff report and for the power point presentation. The plan attachments can be in a PDF format. **The Planning Board wants to be able to read the general notes and tabulation charts on the plan.**

- b. A digital reduction of the proposed plan exhibits that you will be presenting to the Planning Board such as a color illustration of the landscape plan and the architectural elevation plan from the builder to serve as an attachment at the end of the staff report and for the power point presentation.
- c. A digital reduction of the 'Site Overview Plan' for use as a vicinity map. The reduction needs to be at a size of approximately 5" x 6" and the streets and other information must be as readable as possible at that scale. The vicinity map needs to be in a JPEG format.
- d. Provide 5 paper sets of the SDP drawings for use by the Planning Board members at a sheet size of 24" x 36". The sets should only include the cover sheet, site plan sheets, grading plan, forest conservation plan, landscape plan and building profiles.

It is the responsibility of the applicant or applicant's agent to perform the required posting of the property. The cost of the poster is \$25.00 each. A 'Certification of Posting' will be provided with the poster(s) and is to be signed by the applicant or applicant's agent and delivered back to this Division after the poster(s) are in place. This Division will contact you when the poster/s are available for pick-up. The poster/s **must be erected on-site on or before TBD** and maintained at least fifteen (15) successive days immediately preceding the Planning Board public meeting and are to remain in place for a period of three (3) days after the meeting. Posters must be removed no later than fifteen (15) days after the meeting. The Department of Planning and Zoning will confirm the posting of the property and may inspect the property periodically.

If you have any questions, please contact Jill Manion at (410) 313-2350 or email at jmanion@howardcountymd.gov.

Sincerely,
DocuSigned by:

 for

Anthony Cataldo, AICP, Chief
Division of Land Development

AC/jam

Attachment:

cc: Research
Richard Talkin
Bill Sinclair
Linda Wengel
Judy Goldfarb
Ihnil Kim
Nicole Campbell
Lyn Locke, Town Center Community Association
Jessica Bellah, Columbia Association
Dan Sweeney, Gutschick Little and Weber
Todd Brown, Shulman and Rogers

EXHIBIT B

Decision and Order

IN THE MATTER OF : BEFORE THE

Kincade, LLC : HOWARD COUNTY

Appellant : HEARING EXAMINER

: Case No. BA 795-D

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DECISION AND ORDER

Katherine L. Taylor, serving as a Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, hereby grants, as set forth in detail below, the Motion to Dismiss filed on or about April 26, 2023, by Town Center East Parking Lot Business Trust, Town Center East Business Trust and Sterrett Building Holdings, LLC (collectively “HRD”), requesting the dismissal of the ADMINISTRATIVE APPEAL PETITION TO THE HOWARD COUNTY HEARING AUTHORITY (“Appeal”) filed by Kincade, LLC on March 3, 2023.

On March 3, 2023, the Appeal was filed appealing the February 3, 2023, Department of Planning and Zoning letter ("DPZ Letter") advising the interested parties that the Site Development Plan filed by HRD (SDP-22-042) may proceed to the Planning Board for final approval of the Site Development Plan application. After the Appeal was filed, the Board Administrator for the Hearing Examiner scheduled a hearing before the Hearing Examiner for May 3, 2023.

On or about April 26, 2023, Kincade, LLC, Appellant, sent a letter to the Board Administrator, accompanied by notice that a copy of the letter was mailed to adjoining property owners, requesting that the May 3, 2023, hearing be cancelled and that the case be placed on the “Inactive Docket.” Under Section 100.0.I of the Howard County Zoning Regulations, an “Inactive Petition” is a petition “which is placed on the ‘hearings unscheduled’ docket of the Hearing Authority or Zoning Board upon a request from the petitioner or the petitioner's representative, and

this petition remains on the ‘hearings unscheduled’ docket for a period of 180 cumulative days.” As a result of that request, the Appeal was placed on the hearings unscheduled docket.

On the same day Appellant submitted its letter requesting that the Appeal be placed on the hearings unscheduled docket, HRD filed its Motion to Dismiss. Appellant did not file a response to the Motion to Dismiss.

The Motion to Dismiss states that the Hearing Examiner lacks jurisdiction to hear the Appeal because the DPZ Letter is not a final, appealable action by an administrative agency. According to HRD, the DPZ Letter merely informed the parties that the Subdivision Review Committee had determined that SDP-22-042 “*may be approved . . . subject to . . . approval by the Howard County Planning Board.*”

Under Section 125.0.G.1 of the Howard County Zoning Regulations (“HCZR”), “for all Downtown Revitalization, . . . no permit shall be issued for any use until the Site Development Plan is approved by the Planning Board. The Site Development Plan shall be considered at a public meeting.” Under Section 125.0.H.3, “the Planning Board shall approve, approve with conditions, or deny a Site Development Plan that proposes Downtown Revitalization. . . .” Under Title 16, Subtitle 9 of the Howard County Code, Section 16-900(j)(2)(iii), a Planning Board decision in any matter over which the Planning Board has decision making authority may be appealed to the Board of Appeals.

Based on the above, it is clear that a Site Development Plan for Downtown Revitalization must be approved by the Planning Board at a public meeting after which the Planning Board will issue a decision approving, approving with conditions, or denying the Site Development Plan. The DPZ Letter merely stated that SDP-22-042 had been reviewed by the Subdivision Review

Committee and that the SDP “*may be*” approved by the Planning Board. Thus, the DPZ Letter is not a final administrative action – the Planning Board decision will, in this case, be the final administrative action regarding SDP-22-042. Because the DPZ Letter is not a final administrative action, the Hearing Examiner lacks jurisdiction to consider the DPZ Letter.

Under Rule 3.3 of the Board of Appeals Hearing Examiner Rules, the Hearing Examiner will dismiss a petition if the Hearing Examiner lacks jurisdiction to hear the matter.

Based on the above, it is this **16th day of May 2023**, by the Howard County Hearing Examiner:

ORDERED, that the Appellant’s administrative appeal petition shall be and hereby is **DISMISSED**, and

FURTHER ORDERED, that the petition shall be removed from the hearings unscheduled docket.¹

HOWARD COUNTY HEARING EXAMINER

Katherine
L. Taylor

Digitally signed by
Katherine L. Taylor
Date: 2023.05.15
17:36:11 -04'00'

Katherine L. Taylor

Date Mailed: _____

¹ The placement of the petition on the hearings unscheduled docket does not insulate it from dismissal for lack of jurisdiction. The unscheduled docket is not akin to, say, a stay of proceedings in a court proceeding in which a court declares that all process in the case is halted temporarily. It is merely a placeholder for a case awaiting the scheduling of a hearing in which the petitioner desires more time before the commencement of the hearing.