

In Re: * BEFORE THE
HRVC Ltd. Partnership, c/o Kimco Realty Corp * HOWARD COUNTY
* ZONING BOARD
* Case No: ZB 1119M

**PROTESTANT LISA DEAN'S CLOSING
STATEMENT**

I'm Lisa Dean, a Protestant to HRVC Ltd. Partnership, c/o Kimco Realty Corp's (the "**Petitioner**" or "**Kimco**") Petition for Approval of an Amended Preliminary Development Plan for a Major Village Center Redevelopment ("**Petition**") of the Hickory Ridge Village Center (the "**HR Village Center**") pursuant to Howard County Zoning Regulations ("**HCZR**") Sec.125.0.J.

I hereby submit this Closing Statement in protest and opposition to Kimco's Petition.

I. Background

Kimco is before the Howard County Zoning Board (the "**Zoning Board**") asking for approval to amend the existing Preliminary Development Plan ("**PDP**") for the Hickory Ridge Village Center ("**Village Center**").

In its Petition ("**Petition**"), Kimco seeks the Zoning Board's approval to amend the PDP and allow Kimco's plan to complete a Major Village Center Renovation of the Village Center (the "**Kimco Plan**"). The Kimco Plan will:

- Impose an urban-style high-rise apartment building and dense multi-family residential use, for the first time, on the traditionally suburban, village-like community of low-density, detached, single-family homes currently surrounding the Village Center.
- Introduce urban, flat-topped, urban-style high-rise will consist of a 4-story apartment building, 45 to 55 feet tall, featuring 230 multi-family residential units offering 1-, 2-, and 3-bedroom apartments, plus a 6 -story garage.
- Demolish the existing one-story 29,912 square feet of retail space in the existing building of conveniently connected stores lining the aery covered central promenade called the Avenue.
- Dismantle the Avenue, including its accessible and highly visible public open spaces providing opportunities for seated neighborly interaction, gatherings at the Village Center’s signature fountain and stage performances for the community
- Build only an additional 8,145 square feet of retail (yielding only 7.9% more retail square footage than before redevelopment.
- Inconveniently scatter the importunately low retail square footage in seven separate locations dispersed throughout the perimeter and interior of the redevelopment Village Center as follows:

New Retail Building A.1	4,404 SF
New Retail Building A.2	4,414 SF
New Bank pad site D	3,229 SF
Addition to Giant Food	530 SF
Retail Addition C to Giant Building	3,944 SF
New Retail Building B	11,559 SF
First floor apartment retail	10,365 SF

- Construct 254,636 square feet of new residential use in the high-rise apartment building, plus an additional 6-story parking garage
- Increase retail use by merely 7.9%, from 97,321 square feet of retail currently, to only 105,100 square feet of retail after redevelopment.
- Result in a mix of use having 254,636 square feet of residential use (71%), compared to only 105,100 square feet (29%) of retail

use—that means residential use will be at almost 150% more (that 1.5 times-- one and one-half times more) than retail use.

- The amount of residential use will exceed the amount of retail use by more than the total amount of retail space combined (105,100 square feet of total retail space following development). That is, there will be 149,563 square feet MORE of residential use than all retail space that will exist on the entire parcel.
- The proposed redevelopment will make residential use the primary use at the Village Center and residential use will vastly overwhelm all other uses in size, bulk, volume, square footage, activity, and purpose

With Kimco's high-rise apartment building bringing 254,636 square feet of the first ever residential use space to the Village Center, the Village Center will be composed of 71% residential use and 29% retail space. The result will be that residential use at the Village Center will be 249% of retail use. Kimco's proposed excessive and overpowering amount of residential use in its urban four-plus story high-rise apartment building will visually, physically, statistically, emotionally, and psychologically overshadow, overtake, overpower, and overwhelm the 105,100 square feet of total retail use resulting after redevelopment.

Because the residential use so clearly overwhelms the retail use under any of the following definitions from standard dictionaries, Kimco has failed to meet the criterion of proving the redeveloped Village Center will meet the definition a NT Village Center, which permits residential uses "to the extent appropriate to support and enhance, **but not overwhelm**, other uses in the village."

II. History of Kimco Redevelopment Case

Kimco Expresses Interest in Redeveloping HRVC

In September 2015, Kimco representative Greg Reed first attended a meeting of the Board of Directors ("**Village Board**") of the Hickory Ridge Village Association ("**HRVA**") to express interest in redeveloping the Village Center. Three months later, in December 2015, Kimco sent official notice of intent to develop the HRVC to the Village Board.

VCCP; VCCP Update; Kimco's Notice of Intent to Redevelop.

The Hickory Ridge Village Center Community Plan ("**VCCP**") was developed in 2010 pursuant to Howard County Council Bill 29-2009, which requested that each village in Columbia develop its own vision for the future of their village center. The Village Board approved the VCCP in 2011 and submitted it to Howard County in January 2012.

The VCCP is a tool to ensure that community members and stakeholders have adequate input in the future development of their own communities. Additionally, under Council Bill 29-2009, VCCPs were also meant to help guide the Howard County Zoning Board in evaluating whether potential redevelopments recognized and incorporated community stakeholder input to redevelopment, as expressed in each communities' VCCP.

In developing its VCCP, the Village Board undertook a 16-month public process which elicited extensive input from residents, merchants, and landowners; and

appointed a subcommittee of resident volunteers which met over 25 times to study the existing Village Center and to envision its potential redevelopment.

With potential redevelopment on the horizon following receipt of Kimco's notice of intent to redevelop sent in December 2015, the Village Board reconvened the original group of resident-authors of the VCCP in order to evaluate if the plan required updating.

In March 2016, the Village Board passed an addendum to the VCCP, stating the original 2011 had well stood the test of time, and recommending only minor changes and updates. As revised, the current VCCP provides, in relevant part that buildings may not exceed three-stories or 36 feet in height; that new development should incorporate existing architectural themes including painted brick and pitched roofs, and that "residential uses only to be permitted as a secondary use to the retail. "

DPZ Requests Community Response Statement

By letter dated October 6, 2017, Geoffrey Goins, Chief, Division of Public Services and Zoning Administration, Howard County Department of Planning and Zoning, sent a letter to the Village Board asking for its comments to Kimco's redevelopment proposal. More specifically, and pursuant to HCZR Sec. 125.0.J.3., Mr. Goins asked the Village Board to:

- (1) Provide its responses to the HCZR Section 125.0.J.4.a. (8) criteria;*
- (2) Address its comments in terms of any other specific approval criteria the Village Board recommends be considered by the Zoning Board in its decision on the Major Village Center Redevelopment; and*

(3) Provide a response regarding:

(a) The boundary of the Village Center proposed by the petitioner;

(b) Planning and Design Concepts, including but not limited to how it fits into the surrounding area;

(c) Whether the petition is in harmony with a Village Center Community Plan, if one exists;

(d) Minima, maxima, precise values, and/or specific requirements concerning, but not limited to, Village Center Amenity Areas, building heights, bulk requirements, parking, density, and/or permitted uses; and

(e) Whether the Village Board has architectural review as designated in the village covenants.

Community Response Statement STRONGLY Opposed to Kimco Plan

On November 22, 2017, the Village Board timely submitted its Community Response Statement, along with transmittal letter and accompanying exhibits (collectively, the "**CRS**") to Howard County Department of Planning and Zoning ("**DPZ**").

On December 15, 2017, DPZ issued its Technical Staff Report ("**TSR**"), which included the CRS as an attachment, thus making the CRS a part of the public record pursuant to HCZR Sec. 125.0.J.3.c., which provides:

"If the Community Response Statement is submitted to the Department of Planning and Zoning within 45 days after the date of the notice, the Community Response Statement shall be considered by the Department as the Technical Staff Report is being prepared. A submitted Community Response Statement becomes part of the public record for the Major Village Center

Redevelopment case and will be forwarded to the Planning Board prior to its initial meeting on the Zoning Board case.”

In the CRS, the Village Board stated it was acting on behalf of the Village Board and the 13,000 residents of the Village of Hickory Ridge. The CSR details the numerous ways Kimco’s Plan failed to meet HCZR criteria and astonishingly, failed to even address the VCCP, as required.

Expressing **strong opposition to-- and recommending denial of-- Kimco’s Plan**, the CRS stated:

*“The Hickory Ridge Village Board, as a reflection of our village resident views, **recommends denial of the Village Center Redevelopment Plan as proposed.** While there are elements of the redevelopment plan that are in concert with the Howard County Zoning Regulations and the Village Center Community Plan, **we find that the overall proposal is not in harmony in several significant ways.** Specifically:*

*MASS AND DENSITY: The addition of a 254,636 SF, four-story, high-density apartment building consisting of 230 individual housing units **will overwhelm retail usage and become the primary purpose of the Village Center.***

*BUILDING HEIGHT: The proposed apartment building exceeds the height limit of the Village Center Community Plan by up to 19 feet (36 feet vs. 55 feet). **It severely limits the visibility of the Retail Core from Cedar Lane.** In addition, the building limits access to and visibility of the proposed CA community park on the adjacent parcel.*

*SURROUNDING COMMUNITY: The high-density nature of the proposed apartment building **is not compatible with the surrounding community** of low-density single-family homes.*

*ARCHITECTURAL DESIGN: The urban-style architecture proposed for both the residential apartment building and retail structures **conflicts with the suburban stylings of the existing buildings and surrounding community.***

*COMMUNITY INTERACTION: The layout and configuration of the proposed Village Green is separated from much of the merchant frontage. This community gathering space is exposed to both an internal traffic-bearing road and a parking lot, **limiting the opportunity for safe, pedestrian-friendly community interaction.**”(Emphasis added.) (CRS packet page 1, November 20, 2017 letter to Mr. Goins, contained in TSR).*

CRS Addendum; Village Board Offers Five Conditions Precedent to Support of Kimco Plan

After meeting in closed door, non-public meetings with Kimco, on March 1, 2019, the Village Board agreed upon and submitted an Addendum to Community Response Statement (“**Addendum**”). The HCZRs do not provide for submitting any addendum to a community response statement. In fact, HCZRs provide that only community response statements submitted within forty-five (45) days of request by DPZ at the beginning of the petition process will be considered by DPZ.

Nevertheless, the Village Board submitted the Addendum, reiterating the Village Board’s previous strongly held opposition to the size, square footage, height, and overwhelming nature of Kimco’s proposal for a high-rise apartment building (see Addendum pages 1-2), but going on to say that it would willing to support the Kimco Plan **ONLY IF** the following five (5) necessary requirements (“**Five Necessary Requirements**”) were ALL met:

- 1. The number of apartment units is reduced so as not to overwhelm the other uses at the Center;*
- 2. The height of the apartment building is reduced to comply with the 36-foot height limit specified in our Village Center Community Plan;*

3. *The proposed parking meets existing Howard County Parking Regulations set for commercial and residential uses;*
4. *The eleven points listed below which were previously negotiated between Kimco and the Village Board are included in the approval; and.*
5. *The county ensures the accuracy of the traffic study conducted by Kimco and works with Kimco to implement pedestrian safety measures and traffic calming at the Freetown Road and Quarterstaff Road intersection.*

Also in the Addendum, the Village Board noted their serious concerns over traffic associated with over 499 new residential units already approved and in the pipeline for Hickory Ridge:

- 184 single-family and town homes on Grace Drive (Cedar Creek)
- 170-unit Brightview Senior Living project on Martin Road
- 48 apartments on Grace Drive (Robinson Overlook)
- 55 senior apartments and town homes on Cedar Lane across from the Village Center (Scot's Glen II)
- 24 town homes on Harriet Tubman Lane (Joseph's Courtyard),
- 12 town homes on Owen Brown Road (Hidden Ridge)
- 6 single-family homes on Freetown Road (Atholton Overlook)

In addition to the foregoing, 76 units at Patuxent Commons at the corner of Cedar Lane and Freetown Road directly across the street from the Kimco Plan's high-rise apartment building are allowed as of right, bringing pending new residential units in Hickory Ridge to 575. If Kimco is approved for 230 units, Hickory

Ridge will be inundated with 805 units in our small village, with over 5,000 additional new residential units coming online this year just a mile down the road in Downtown Columbia.

Zoning Board Hearings

This case first came before the Zoning Board July 24, 2019. There have been 16 public hearings since then. During these public hearings the Board received a large amount of testimony and evidence. Unfortunately, only Petitioner and supporters of Petitioner were given the opportunity to submit their cases and testify in public, where their demeanor, body language and veracity could be observed by the Zoning Board. Due to the ongoing Covid-19 pandemic, and over repeated and vocal objections by those disadvantaged, opponents of Kimco's Plan were deprived of the opportunity to testify in public. This is a fundamental issue of fairness, due process, and common sense. Depriving all opponents the opportunity to testify in person in public, while allowing Kimco and its supporters to testify in person is unconscionable.

During the 16 Zoning Board hearings thus far, opponents have consistently raised troubling issues related to remotely testifying and the resulting deprivation of due process and fairness. Witnesses and Counsel have repeatedly reported impediments compromising remote participation. These impediments have included unavailability of equipment, internet failure, poor signal qualities, echoing so that testimony and questions cannot be heard, inability to see exhibits on the screen, being provided incorrect WebEx links, and more. Opponents and opponents'

counsel have been seriously disadvantaged by being denied the opportunity to testify, just like all of Kimco's supporters were given opportunity.

III. Standards; Undefined Terms; Interpretation of Overwhelm, Primary, Compatible and Incompatible

A. Objective vs Subjective Evaluation. In Petitioner's Closing Memorandum, Petitioner argues that Zoning Board members must evaluate all applicable criteria objectively. That is true—Zoning Board members should objectively evaluate whether Kimco meets each criterion for Petition approval.

Objective evaluations are free of biased judgments, personal opinions, or individual circumstances. Objective evaluations are often based on numbers, science, and demonstrable facts.

Subjective evaluations, on the other hand, are influenced by emotions, personal experiences, opinions, biases, or prejudices.

B. Objective vs Subjective Criteria. In the case at hand, Zoning Board members must evaluate both objective criteria and subjective criteria.

Objective Criteria. The central characteristic of an objective criterion is that it can be independently quantified and verified—the criterion is observable and measurable. With objective criteria, different people measuring the same criteria will reach the same results because the criteria are clearly defined or quantifiable in nature.

For example, in the case at hand, the VCCP states that no buildings over

3-stories or 36 feet should be allowed at the Village Center. That is an objective criterion capable of objective evaluation. Zoning Board members may objectively (free from bias or opinion) look at Kimco's proposed 4-story, 44- to 55-foot-tall high-rise apartment building (measurable, verifiable criteria) and can objectively discern, without emotion or bias, that Kimco's proposed apartment building violates the VCCP with regard to both building height and number of stories

Subjective Criteria. Subjective criteria require judgment in their application. Subjective criteria often are not be measurable, reducible to numbers, or verifiable. Evaluation of subjective criteria by different people often yields different results. For example, consider evaluating the criterion of "leadership" in a potential employee. Leadership is a subjective criterion and is often difficult, if not impossible, to reduce to a set of numbers or quantifiable measures. Two independent hiring officials may, therefore, easily have differing objective opinions on whether a candidate "has good (subjective) leadership skills."

C. Objectively Evaluating Objective and Subjective Criteria. Objective evaluations of objective criteria are often easy and capable of measurement in numbers, discernment by looking at facts, or determination by identifiable traits. See the prior reference to objectively evaluating whether Kimco's Plan violates the objective 3-story, 36 feet maximum height VCCP requirement.

Objective evaluation of subjective criteria, can be a little confusing. It involves making an unbiased, unemotional evaluation (objective evaluation) of some criterion that is not necessarily reducible to numbers or facts. In fact, some subjective criteria involve emotions and feelings.

Consider the above example of the two hiring officials evaluating a candidate's leadership skills. Leadership is a subjective criterion. Hiring officials might evaluate leadership skills with reference to subjective criteria such as how a candidate handles emotions in times of stress, or how a candidate treats others when facing crises, or how a candidate inspires others to persevere. These criteria are subjective--they are not reducible to numbers or measurements, and these criteria often involve traits related to emotion or temperament—also unscientific criteria difficult to reduce to numbers or measurements.

D. Undefined Terms: Overwhelm, Compatible, Incompatible, Enhance, Support, Secondary, Accessory)

In the case at hand, Zoning Board members must make objective evaluations of subjective criteria like whether the retail use is "**overwhelming**;" whether the high-rise apartment is "**compatible**" with the surrounding neighborhood; whether the residential use is "**primary**," or "**enhancing**" in nature; and whether the imposition of a 44- to 55- foot tall, 230-unit apartment building impacts the "**character and purpose**" of a village center.

Each of these evaluations requires an objective (unbiased) consideration of a subjective (not easily quantifiable with measurable facts or figures) criterion.

Evaluation of these criteria is made more difficult because none of the above criterion is defined in HCZR. Instead, HCZR Section 103 provides that undefined terms in the HCZR "*shall have the definition provided in any standard dictionary.*"

This raises the thorny question of which standard dictionary to use to define these terms because there are dozens of "standard dictionaries" available to use, including: *The American Heritage Dictionary of the English Language*, *Macmillan Dictionary*, *Merriam-Webster*, *New Oxford English Dictionary*, *Random House Dictionary of the English Language*, *Concise Oxford English Dictionary*, *American College Dictionary*, and *The American Heritage Dictionary of the English Language*, amongst others.

Moreover, most standard dictionaries offer multiple definitions of a particular word. So, across different standard dictionaries, there are multiple definitions of the same word. If there are multiple definitions in a standard dictionary or multiple definitions that differ across several standard dictionaries, HCZR does not mandate any particular definition from any specific dictionary.

In this regard, Kimco's counsel states in Petitioner's Closing Memorandum that:

*"The Merriam Webster Dictionary defines '**compatible**' as capable of existing together in harmony. This is the definition that must be used by this Board. Any other definition is not in accordance with the HCZR and is arbitrary and capricious."*

Petitioner's counsel is wrong. HCZR do not require use of the Merriam Webster Dictionary. Nor do they require use of that particular definition from amongst the

several definitions of "compatible" offered by Merriam Webster.

Petitioner's counsel's threat you will be deemed to be acting in an arbitrary and capricious manner should you dare not use the definitions he mandates is unhelpful and misleading.

Indeed, other standard dictionaries offer the following different definitions of "**compatible**" that are just as reasonable to rely upon:

- consistent with another
- consistent with, congruent with
- congruous; suitable
- congenial combination with another or others
- capable of orderly, efficient integration

Similarly, while Petitioner's own expert chose to define "**overwhelm**" as synonymous with obliterate, Zoning Board members may instead refer to any standard dictionary to discern other definition of overwhelm. Alternate definitions for your consideration include:

- very great in amount (Oxford English Dictionary)
- to present with an excessive amount (Websters New World College Dictionary)
- to overpower in thought or feeling (Merriam-Webster Collegiate Dictionary)
- to overcome completely in mind or feeling (McMillan College Dictionary)
- to overcome by superior force or numbers (Merriam-Webster)
- be too strong for; overpower (Cambridge English Dictionary)
- to be too much to deal with (McMillan Dictionary)

For example, when considering whether the residential use overwhelms the retail use at the Village Center, using the standard *Oxford English Dictionary*, you would be reasonable to apply the definition of overwhelm as “**very great in amount**” and could reasonably objectively evaluate the very great amount square footage of residential use at 254,363 square feet overwhelms the much less 105,000 square feet of retail use. Indeed, at nearly **one and a half times the amount of retail use**, the amount of proposed residential use will overwhelm the retail use under any of the following definitions:

- very great in amount (Oxford English Dictionary)
- to present with an excessive amount (Websters New World College Dictionary)
- to overpower in thought or feeling (Merriam-Webster Collegiate Dictionary)
- to overcome completely in mind or feeling (McMillan College Dictionary)
- to overcome by superior force or numbers (Merriam-Webster)
- be too strong for; overpower (Cambridge English Dictionary)
- to be too much to deal with (McMillan Dictionary)
- by superior force of numbers

Rather than merely “**supporting and enhancing**” the other permitted uses at the Village Center, the proposed amount of residential use is so disparate and large that it will, in fact, overcome, be too strong for, be too much to deal with, present an excessive amount, and will overtake and overwhelm the retail and all other uses combined in violation of HCZR Section 103.

IV. Criteria for Major Village Center Redevelopment

In order to grant Kimco's Petition, the Zoning Board must determine that Petitioner proved its Kimco Plan meets all the criteria for a Major Village Center Redevelopment set forth in the HCZR. Kimco must prove that:

- (1) The Petition complies with Sec. 125.0.B.3 of the HCZR;
- (2) The redeveloped Village Center will meet the of New Town Village Center;
- (3) Petitioner commented on whether the proposed redevelopment is in harmony with the Village Center Community Plan ("**VCCP**"); and.
- (4) Petitioner has satisfied the following ten (10) criteria for Major Village Center Redevelopments, as set forth in HCZR Sec. 125.0.J.4.a.(8):

(a) The Village Center Redevelopment will foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District;

(b) The amount of commercial business floor area contained in the Village Center Redevelopment is appropriate to provide retail and commercial service to the village as a location for convenient, diverse commercial business uses which serve the local neighborhoods of the village n surrounding local community;

(c) The Village Center Redevelopment will foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication;

(d) The location and the relative proportions of the permitted uses for commercial businesses, dwellings, and open space uses, and the project design will enhance the existing development surrounding the Village Center Redevelopment;

(e) The Village Center Redevelopment provides accessible useable landscaped areas such as courtyards, plazas or squares;

- (f) The Village Center Redevelopment is compliant with all applicable environmental policies and requirements, and provides new environmental improvements to the redevelopment area through the use of methods such as, but not limited to, green building standards, water conservation, natural drainage systems, the planting of native vegetation, the removal of existing invasive plants, the improvement of stormwater deficiencies, and following low impact development practices;*
- (g) The Village Center Redevelopment fosters pedestrian and bicycle access;*
- (h) Public transit opportunities are appropriately incorporated into the Village Center Redevelopment;*
- (i) The Village Center Redevelopment is compatible with the surrounding community; and*
- (j) The Village Center will continue to meet the definition of a New Town Village Center.*

V. Kimco Fails to Meet Criteria for Major Village Center Redevelopment

A. Kimco’s Plan fails to meet the criteria in Section 125.J.4.a (8)(a) regarding orderly growth, purpose and character of village Center.

Kimco’s Plan fails to foster orderly growth and promote the purposes of the Village Center in accordance with the planned character of the NT District for the following reasons:

- 1. A large apartment building with an associated 6-story parking garage in and otherwise low-density residential does not foster orderly growth.**

Typically, a village center in Columbia is centrally located within the

village neighborhoods and surrounded by high density housing, moving out from a central commercial area into areas of lower density. The Hickory Ridge Village Center is unique in its location because it is sited on the edge of the village, adjacent to single-family, low-density housing.

The proposed addition of a 254,636 SF four-story, 230-unit apartment building with an accompanying six-level garage in an area of otherwise low-density single-family development is jarring and incompatible with the character or height of nearby existing development and, therefore, does not foster orderly growth within the area.

2. The proposed amount of residential use does not foster orderly growth because it will overwhelm other uses in violation of HCZR Section 103.

In the event a multi-family apartment building is a permitted use in the Village Center under the HCZR, by virtue of a zoning change or otherwise, the imposition of Petitioner's proposed four-story apartment building with accompanying six-level garage is nevertheless contrary to the orderly growth requirement in HCZR Section 103 (definition of Village Center, New Town), which provides that:

“[R]esidential use in a village center is only permitted to the extent appropriate to support and enhance, ***but not overwhelm***, other uses in the village center. ”

In this regard, Section 103 does not establish residential use, or residential use of any particular density, as a permitted use of right in a NT District Village Center. Instead, Section 103 merely defines what uses the

character of a NT District Village Center calls for-- if those uses are otherwise permitted by the HCZR. Thus, Section 103 establishes a limit on the amount of residential use, if such use is otherwise permitted.

Applied to the Village Center, if an apartment building were otherwise a permitted use in the Village Center, the proposed amount of residential use nevertheless exceeds the limits established in Section 103 because the amount, scale, frequency, intensity, and purpose of the residential use so greatly exceed and overwhelm all other uses at the Village Center combined. The proposed residential square footage is 254,636, as compared to retail square footage of 105,100, clearly demonstrates, objectively, by the numbers, that residential use is too excessive, and under any of the following definitions, is overwhelming:

- very great in amount (Oxford English Dictionary)
- to present with an excessive amount (Websters New World College Dictionary)
- to overpower in thought or feeling (Merriam-Webster Collegiate Dictionary)
- to overcome completely in mind or feeling (McMillan College Dictionary)
- to overcome by superior force or numbers (Merriam-Webster)
- be too strong for; overpower (Cambridge English Dictionary)
- to be too much to deal with (McMillan Dictionary)
- by superior force of numbers

B. Kimco's Plan fails to meet criteria in Section 125.J.4.a(8)(c) regarding fostering the purpose of the Village Center as the focal point for community interaction.

The proposed redevelopment of the Village Center does not sufficiently foster the purpose of a village center as a community focal point providing good opportunities for community interaction and communication.

In its current configuration, the Village Center consists of two rows of commercial store fronts facing The Avenue, creating an intimate setting of pedestrian walkways with trees and benches. It is a safe and pedestrian friendly gathering space for shoppers and residents. As part of any redevelopment, it is important to retain or replace the safe, welcoming gathering space that exists within the Village Center so that the center continues to provide opportunities for social interaction. The configuration of the community space in Kimco's Plan does not have the same merchant frontage as the existing space. The store locations are fragmented and not conveniently adjacent to the gathering space. One side of the new space abuts a traffic-bearing street while the other side abuts a new parking lot. This fragmentation creates a sense of isolation for many of the stores located away from the gathering space. The layout of the shops and restaurants creates multiple separate areas for walking and seating. Spreading out the outside seating takes away from the sense of community that having the spaces near each other would provide.

C. Kimco's Plan fails to meet criteria in Section 125.J.4.a(8)(c) regarding fostering the purpose of the Village Center as the focal point for community interaction.

Kimco's Plan does not foster the purpose of a Village Center as a community focal point providing good opportunities for community interaction and communication.

In its current configuration, the Village Center consists of two rows of commercial store fronts facing The Avenue, creating an intimate setting of pedestrian walkways with trees and benches. It is a safe and pedestrian friendly gathering space for shoppers and residents. As part of any redevelopment, it is important to retain or replace the safe, welcoming gathering space that exists within the Village Center so that the center continues to provide opportunities for social interaction. The configuration of the community space in the Kimco Plan does not have the same merchant frontage as the existing space. The store locations are fragmented and not conveniently adjacent to the gathering space. One side of the new space abuts a traffic-bearing street while the other side abuts a new parking lot. This fragmentation creates a sense of isolation for many of the stores located away from the gathering space. The layout of the shops and restaurants creates multiple separate areas for walking and seating. Spreading out the outside seating takes away from the sense of community that having the spaces near each other would provide.

D. Kimco's Plan fails to meet criteria in Section 125.J.4.a(8)(d) regarding enhancing existing development

The project design, location, and relative proportions of the permitted uses for commercial businesses, residential dwellings, and open space uses fail to enhance the existing development surrounding the Village Center.

1. Project Design

a. Parking layout near CA Parcel

CA allocated funding for the construction of a community park on the adjacent CA parcel several years ago. The lack of convenient, shared parking near the CA Parcel will hinder community use of the proposed park and, therefore, Kimco's Plan does not enhance existing and future development.

b. Retail Layout

The proposed reconfiguration of existing retail space does not meet the community-focused character and purpose of a NT District Village Center, and fails to enhance that community-focused character and purpose in the following ways:

- Currently, shoppers conveniently park at one of the generous surface lots located at either end of The Avenue and stroll down the length of the airy promenade, shopping at conveniently-adjointing stores and stopping to interact with friends and neighbors at benches, seating areas, around the

signature fountain, and in the courtyard/stage area where performances and community activities are held. Petitioner proposes demolishing the existing one-story retail building containing approximately 29,912 SF of retail space, dismantling The Avenue concept, and establishing new retail sites scattered about seven (7) disconnected locations in the Village Center, including a pad site, a feature which is specifically discouraged in our VCCP. This demolition does not enhance existing improvements.

- The existing configuration of convenient, connected shops would be replaced with disjointed, stand-alone buildings, scattered at seven separate and disconnected locations dispersed throughout the Village Center. Views and connections between shopping areas will be interrupted by traffic-bearing internal roads, parking areas, and other retail buildings, and will not enhance existing development. This fails to enhance existing development.
- Currently, The Avenue invites shoppers down a centrally-located village promenade. Under the proposed redevelopment, visitors will be forced to cross traffic-bearing internal roads, uncovered walkways, and surface parking lots

to make their way between disconnected shopping areas. This will not enhance existing development.

c. Public Gathering Space Layout

The proposed reconfiguration of community gathering space does not promote the character or purpose of a NT District Village Center. Petitioner proposes reconfiguring the existing public gathering space with an urban landscape. As reconfigured, the public space would consist of a rectangular outdoor greenspace, adjacent to just three of the seven proposed retail sites, plus various walkways abutting and between the retail sites scattered within the Village Center boundaries.

The approximate 40,500 SF rectangular greenspace would be bordered on one end by an internal traffic-bearing road (bearing the mass of the four-story 230-unit apartment building on the far side of that road); on the other end by a parking lot.

The traffic-bearing internal road, parking area, and massed landscaping would visually separate the Village Green within the Village Center, creating physical and psychological barriers from all but the immediately adjacent stores, effectively disconnecting the Village Green from shoppers and merchants who are not directly on the Village Green. This disconnect between retail, shoppers, and

the Village Green creates a sense of isolation within the Village Center and establishes an impersonal and urban character does not promote the community-focused purpose and character of a NT District Village Center and therefore, the Kimco Plan fails to meet this criterion.

Dispersed walkways and seating areas mean that merchants, shoppers, and neighbors are similarly dispersed and may miss important opportunities for socializing and meaningful community interaction. By not optimizing opportunities for residents to socialize and interact, the redeveloped Village Center under Kimco's Plan will fail to serve its purpose as a community gathering space, and focal point for communication and interaction, thereby failing to promote the purpose and character of a NT District Village Center, and failing to meet this criterion.

d. Internal Road Layout

Vehicular traffic entering Street B from Freetown Road lacks sufficient accessibility to the main parking area. The only options to get from the Village Center's primary entrance on Freetown Road to the main parking lot is to (1) immediately turn left at the high-volume entrance onto Street A, which may be clogged with high volume parking and turning activity, or (2) to loop around the back of the

Giant through the merchant service and delivery area.

Vehicular traffic on Street B lacks turn-around options, requiring vehicles to loop around the back of the Giant through the service and delivery area to return if they miss their turn or cannot immediately locate parking. This is inconvenient to both shoppers and merchants. At the February 2017 meeting, the DAP urged better design to address these issues, suggesting alternative paving materials and providing signage from Street A to Street B to signal drivers to avoid circling behind the Giant store.

Additionally, Kimco's Plan fails to adequately address truck access and path of travel for deliveries to retailers and restaurants, thus failing to enhance existing development.

Finally, Kimco's Plan fails to address concerns about adequate access for fire and rescue vehicles to the apartment building from Street B, where the travel lanes are narrow and there is parking on both sides of the street. This fails to enhance the existing development which is well-planned for this purpose.

Because of all the foregoing reasons, the Kimco Plan with regard to road design fails to enhance existing development.

e. Ingress/Egress Layout

Ingress and egress at both Freetown Road and Quarterstaff Road

will be severely compromised and slowed because residential traffic from the proposed apartment building must exit the site through the shopping center. Accordingly, the Kimco Plan fails to enhance existing development, as it actually makes it more difficult to exit and leave the Village Center than before.

2. Location

a. The proposed apartment location is incompatible with adjacent NT neighborhood of exclusively single-family homes.

The addition of high-density multi-family use in the form of the proposed four-story 254,636 SF, 230-unit apartment building is not compatible with the character or height of the surrounding properties containing single-family detached homes, and fails to sufficiently enhance that existing development.

b. The proposed apartment location at the intersection blocks the view of retail merchants.

The location of the proposed apartment building is at the intersection of Cedar Lane and Freetown Road. The four-story, up to 55-foot-tall apartment building will block views of Village Center shops from Cedar Lane, the main access/feeder road to the Village Center. The ability to see the commercial area of the Village Center from Cedar Lane was a key element of the VCCP. Accordingly, the Kimco Plan does not

enhance existing development.

c. The proposed apartment location blocks visual and pedestrian access to the CA Parcel.

The apartment building blocks easy visual and pedestrian access to the undeveloped three-acre Columbia Association buildable parcel at the Village Center. Columbia Association has funded initial design of a community park on this parcel. The design and configuration of the Redevelopment Plan cuts off public access to what is planned to be a community amenity. The Kimco Plan, therefore, does not enhance existing development.

d. The proposed apartment location is incompatible with the existing single-story shopping center.

As noted elsewhere, the addition of the proposed four-story 254,636 SF, 230-unit apartment, 44- to 55-feet tall building is not compatible with the character or height of the existing one-story Village Center, and therefore does not enhance the existing development

3. Proportion of Apartment Building

a. Relative to Adjacent Neighborhood of Single-family Homes

The Hickory Ridge Village Center is immediately surrounded by adjacent single-family residential properties. The addition of the

proposed four-story, 44- to 55-feet tall, 254,636 SF, 230-unit apartment building is not compatible with, proportionate to, or in keeping with the scale of the neighboring homes in Hickory Ridge. The overwhelming size and bulk transforms the suburban neighborhood look and feel into an urban, higher density character that does not enhance the existing area.

b. Relative to Existing Single-Story Village Center

The amount of proposed residential use is incompatible with existing development because it threatens to overwhelm, rather than enhance, other uses in the existing and proposed development; the proposed apartment building is incompatible and overwhelming in scope, size, bulk, square footage, proportion, and purpose to all other uses in the Village Center combined; it changes the existing character of the area from suburban to high-density urban, and fails to sufficiently enhance the existing Village Center without threatening to destroy its purpose and character as a NT Village Center. Specifically:

1. Existing Use

- The predominate and primary use (by square footage), activity, and purpose at the Village Center is currently retail, with 97,321 SF.

- There is *no* existing residential use at the Village Center.
Sunrise Assisted Living is a commercial use. Residential use as proposed by the Petitioner would not be a permitted use.

2. Retail Use

- The amount of existing retail use at the Village Center is 97,321 SF.
- The proposed amount of additional retail is 7,779 SF.
- The total proposed retail use post-completion is 105,100 SF.
- The proposed change in retail is 7.9% increase.
- Retail comprises 100% use at the existing Village Center.
- Retail will comprise 29% use after redevelopment.

3. Residential Use

- The amount of existing residential use at the Village Center is 0 SF.
- The proposed amount of new residential use is 254,636 SF.
- Residential will comprise 71% of all use after redevelopment.

4. Mix of Uses Post-Development

- The proposed mix of use post-development is 254,636 SF residential/105,100 SF retail.

- The proposed percentage of use post-development is 71% residential to 29% retail.
- The proposed amount of residential use will be almost one and one-half times more than the proposed retail use.
- Even including public space (which is not a “use”), the square footage of proposed residential use (254,636 SF) exceeds the combined amounts of proposed retail use and public space (145,600 SF) by 109,036 SF.
- The proposed redevelopment would make residential use primary and vastly overwhelm the remaining uses in size, bulk, volume, square footage, activity, and purpose, and therefore fails to meet required criteria.

E. Kimco’s Plan fails to meet criteria in Section 125.J.4.a(8)(e) regarding accessible, useable landscape features and failure to foster community interaction in the following ways:

1. Village Green

The proposed traffic-bearing internal road, parking area, and massed landscaping bordering the Village Green separate the Village Green from non-adjacent portions of the Village Center, creating a physical barrier from all but the immediately adjacent stores. The lack of a direct connection between the Village Green and distantly located retail strips/pad site creates a feeling of separation, limits community

interaction and communication and fails to meet Section 125.J.4.a(8)(e) requirements.

3. Public walkways and seating areas

With shops scattered in different locations, Petitioner proposes public walkways and crosswalks to navigate between retail locations. Seating areas within the boundaries of walkways are also dispersed throughout the Village Center. Dispersed walkways and seating areas mean merchants, shoppers, and neighbors are similarly dispersed and may miss important opportunities for socializing and meaningful community interaction. By not optimizing opportunities for residents to socialize and interact, the Village Center fails to serve the purpose as a community gathering space, focal point, and place for communication and interaction, thereby failing to promote the purpose and character of a NT District Village Center.

F. Kimco's Plan fails to meet criteria in Section 125.J.4.a(8)(i) regarding compatibility with surrounding community

The Hickory Ridge Village Center is located adjacent to the Clemens Crossing neighborhood. Consisting of exclusively single-family homes, Clemens Crossing has a distinctly suburban character and feel. The proposed addition of a high-rise apartments to this neighborhood is not in keeping with its intended character or feel, would transform the neighborhood from a suburban character to an urban, high-density

character, and therefore fails to meet the criteria of Section 125.J.a.(8)(i).

Currently, residential use is only permitted in the Village Center under the VCCP as a secondary use to the retail. In the proposed Plan, residential is the primary use by number of square feet, by bulk height, by visual preeminence where the residential apartment building blocks visual sight lines from Cedar Lane to the retail use. Therefore, the Kimco Plan does not meet the criteria in Section 125.J.4.a(8)(i) regarding compatibility with surrounding community.

The VCCP limits buildings to 36 feet in height and 3-stories. The up-to-55-foot, four-story, 230-unit apartment building exceeds the height limit and is incompatible with the surrounding community, the immediately adjacent neighborhood of single-family homes, and the single-story Village Center, and thus fails to meet the criteria of Section 125.J.4.a(8)(i) regarding compatibility with surrounding community.

The proposed massive size of the four-story 254,636 SF, 230-unit apartment building is incompatible with the surrounding community, the immediately adjacent neighborhood of single-family homes, the single-story Village Center, and the size and scope of other uses in the Village Center.

**J. Kimco's Plan fails to meet the criteria in Section 125.J.4.a(8)(j):
Definition of New Town Village Center**

HCZR NT Village Center regulations allow residential use "to the extent appropriate to support and enhance, *but not overwhelm*, other uses in the

village.” Under the proposed Redevelopment Plan, the 254,636 SF apartment building overwhelms the 105,100 SF retail component and becomes the predominant use of the center.

An apartment building as proposed might be appropriate in a village like Wilde Lake where multi-family housing already exists immediately adjacent to the Village Center. However, because there is no high-density housing in or around the Hickory Ridge Village Center, and because the surrounding NT neighborhood of Clemens Crossing is entirely single-family homes, the introduction of a dense concentration of 230 apartments to the area is not in keeping with the original planned community and overwhelms the center and the neighborhood. Therefore, the Kimco Plan, with its overly large high-rise large apartment building that overwhelms other uses, blocks views of retail from the primary access road, and changes the character of the existing neighborhood does not conform to the definition of a village center in the NT zone.

VI. Zoning Board Action in This Case

Kimco’s Petition can only be approved only if the Zoning Board finds that Kimco has proven its Petition complies with all previously-stated requirements for Major Center Redevelopment contained in the HCZR.

Zoning Board Action: Approval with Establishment of Specific Criteria

If the Zoning Board finds Kimco met all requirements and approves the Petition, the Decision and Order of the Zoning Board shall, among other things:

“Establish minima, maxima, precise values and specific requirements concerning, but not limited to, Village Center Amenity Areas, building heights, bulk requirements, parking, density and permitted uses.”
(Emphasis added.)

This means if the Zoning Board approves Kimco’s Plan, then the Zoning Board must also establish the precise values and specific requirements, including minima and maxima, to set building heights, bulk requirements, parking, density, and permitted uses.

Because the Zoning Board has the power to establish these requirements, the Zoning Board may conditionally approve the Petition, establishing building height limits, bulk requirements, parking density or size of permitted uses *different* than those requested in the Petition.

In the case at hand, while Kimco petitioned for a 4-story apartment 44- to 55-foot tall building, the Zoning Board, in establishing minima/maxima, building height, density, etc., could conditionally approve the Petition, and require Petitioner to revise the Kimco Plan and limit the apartment building to no more than 3-stories tall and not more and 36 feet in height, as required of the Village Board in the CSR Addendum, and as provided in the VCCP.

Similarly, the Zoning Board might conditionally approve residential use at the Village Center, conditioning approval on Kimco’s agreement to reduce the number of apartments and the amount of square feet of residential use so that retail use

remains, as it is currently and as it is meant to be, the clear, primary, and predominate use in the Village Center.

The Zoning Board's ability to approve a petition, conditionally approve a petition, and establish minima/maxima, building heights, parking rations, etc. different from those requested by Petitioner, and make other changes to Kimco's Plan means that the Zoning Board can set thresholds of building and use at lesser that might reflect the (a) the interests of residents, stakeholders, community members, businesses, and Kimco; (b) the community expectations set forth in the VCCP; and (c) community response expressed in the CRS and the Addendum, which Addendum expressly identifies the Five Necessary Requirements which are conditions precedent to earning the Village Board's support of Kimco's Plan. While ignoring all Five Necessary Requirements, Kimco nevertheless blithely stated it enjoyed primary support and

The Addendum makes clear that fulfillment of ALL of the Five Necessary Requirements are the requirements of Village Board support of Kimco's Plan. Indeed, the Village made clear it was only willing to support Kimco's Plan **ONLY IF ALL** of the Five Necessary Requirements were met.

Petitioner failed to earn the Village Board's support for the Kimco Plan because Petitioner failed to fulfill ALL of the above-described Five Necessary Requirements the Village Board set as a condition precedent to earning its support. Specifically, Kimco failed to garner Village Board Support because the Kimco Plan:

- (1) Failed to reduce the height of the apartment building to no more than 36 feet in height, as specified in the VCCP:
- (2) Failed to reduce the number of apartments so that residential use does not overwhelm the retail use at the Village Center; and
- (3) Failed to request the Zoning Board incorporate the eleven (11) negotiated points in its approval, if approved.

While Kimco failed to meet all the Five Necessary Requirements to obtaining Village Board support of its plan, Kimco nevertheless outrageously and falsely tells this Zoning Board that the Village Board is “generally supportive” and “is primarily supportive of the Petition.”

Petitioner’s claim that the Village Board generally and primarily supports Kimco’s plan is FALSE and MISLEADING.

To be clear, Kimco failed to meet all the Five Requirement that the Village Board stated were necessary to earning Village Board support. Because Kimco failed to meet ALL of the Five Necessary Requirements (notably including the two potentially most-impactful requirements: requiring reductions in building height and reduction in number of apartments), Kimco did not earn the Village Board’s support. Kimco is in no way entitled to claim the Village Board is “generally” and “primarily” supportive of its Petition, when it took no steps to fulfill the Five Necessary Requirements related to reduction in building height and reductions in number of apartment units.

Zoning Board Disapproval, Modifications, and Amendments.

If the Zoning Board disapproves of the Petition, then in its Decision and Order, the Zoning Board may approve the Petition, subject to:

“any amendments or modifications to the proposed boundaries of the Village Center, the proposed design guidelines and the proposed concept plan and may establish any other criteria which it deems to be appropriate. (Emphasis added.)

That means the Zoning Board, rather than reject a petition, may make amendments and modifications of criteria such as building height, number of stories, and number of apartments and approve the petition, subject to the amendments and modifications articulated by the Zoning Board.

VII.

SUMMARY

Finally, I respectfully urge the Zoning Board to reject Kimco’s Plan for not meeting HCZR criteria for a Major Redevelopment NT Village Center. The Zoning Board, in its discretion, by reject the Petition, may make amendments and changes, and review the VCCP, the CRS, and the Addendum to CRS, especially the 5 Necessary Requirements to the Village Board’s support of the Kimco Plan. Kimco has NOT met those 5 Necessary Requirements, nor sufficiently addressed the VCCP, nor met many of the applicable criteria under HCZR Sec 125. Therefore, Kimco, as a matter of law, is not entitled to approval of its redevelopment plan.

I respectfully request you reject Kimco's Petition, send it back to revise the plan and work with the community that has put so much time and energy into planning our future. Kimco should not be permitted to roll over required criteria and promised commitments and be rewarded with approval.

Additionally, I wish to note Kimco's counsel's repeated statements in his Closing Memorandum that testimony from opponents should be ignored and disregarded by the Zoning Board, that only Kimco's counsel's proposed definitions of undefined words used in the HCZR are acceptable and that they "must" be used as a matter of law, and that generally, any input from residents, the Village Board or any party other than Kimco and its supporters must be dismissed and ignored. He basically has asked you to ignore anything said or produced by anyone who is not supportive of Kimco's Plan. That's not how this works—that's not how any of this works.

Finally, Petitioner's Counsel states the Village board is "generally supportive" and "primarily supportive of Kimco's Plan. That is false. The Village Board made clear in its CRS Addendum that it was willing to support Kimco's Plan ONLY IF ALL FIVE NECESSARY REQUIREMENTS were met. NONE of those requirements have been met. And yet he claims support.



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