

the Zoning Board met to consider Petitioner's Motion to Retain Jurisdiction and Suspend Appellate Deadlines. After discussion, the Zoning Board orally granted Petitioner's motion.

4. Under the Section 2.405.D. of the Rules, "[u]nless the Board, by written order, grants a petition for reconsideration and suspends its Decision and Order within 30 days of its issuance, the reconsideration petition shall be deemed to be denied."

5. On August 9, 2022, Petitioner was informed by Zoning Board staff that a written order was imminently forthcoming. After not receiving any order, Petitioner's counsel followed up with Zoning Board staff on August 15, 2022 and received no response. To ensure Petitioner did not miss the August 17, 2022 appeal deadline, Petitioner filed a Petition for Judicial Review on August 16, 2022.

6. The Zoning Board issued its written decision suspending the D&O on August 17, 2022 (the "Written Order"), the final day of Petitioner's appeal period and one day after Petitioner had filed its judicial review in the Circuit Court for Howard County. In the Written Order, however, the Zoning Board purports to suspend the D&O retroactive to August 3, 2022. The Zoning Board also instructed Petitioner to file a brief setting forth its basis for reconsideration by September 7, 2022.

7. It is now unclear whether the Zoning Board retains jurisdiction in this case or whether an appeal to the Circuit Court has been effectively filed. The question is whether the Zoning Board is able to retroactively suspend its D&O to the date of its oral decision.

8. In the absence of an acknowledgement by all parties and the Zoning Board that it now lacks jurisdiction to hear this matter further or, alternatively, that the Zoning Board's D&O of retroactive suspension is valid and that future proceedings on this matter should continue before

the Zoning Board, Petitioner has no choice but to abandon its prior Motion to Suspend Deadlines and, instead, proceed to prosecute its appeal before the Circuit Court for Howard County.

9. Furthermore and compounding the confusion in this case, the responses provided to Petitioner in response to its PIA request has been inadequate.

10. On August 3, 2022, Michelle Herrod, Administrator to the County Council and, upon information and belief, designated custodian of the public records held by the Council, notified Petitioner's counsel via email that 627 records had been identified in response to Petitioner's second PIA request category and informed Petitioner that the records could be obtained via flash drive from the County Council's office. Ms. Herrod further indicated that responsive documents to Petitioner's first PIA request category would be provided "by the end of next week" presumably meaning August 12, 2022. Petitioner obtained the flash drive of the initial 627 records on August 4, 2022.

11. On August 17, 2022, Ms. Herrod, notified Petitioner's counsel via email that 4,031 records had been identified in response to Petitioner's first PIA request category and informed Petitioner that the records could be obtained via flash drive from the County Council's office. Petitioner obtained the flash drive on August 17, 2022.

12. Petitioner has not had an opportunity to fully review the 4,658 records provided. A thorough review such voluminous information is not logistically possible in twenty-one days. Based on Petitioner's initial review, it appears that many of the provided records are not responsive to the PIA Request and that not all requested information has been provided. In addition to email correspondence, Petitioner specifically requested text correspondence from each Councilmembers' government and private phone accounts. Zero phone records or text messages have been produced.

13. Upon information and belief, Petitioner contends the requested records pertain directly to whether Petitioner received a fair and unbiased hearing before the Zoning Board. Even based on Petitioner's limited review of the responsive documents thus far, Petitioner has identified *ex parte* email communications and other statements indicative of bias and prejudice. Petitioner, just like any other party, had a right to receive a fair and impartial hearing. We request that all materials responsive to the PIA request be included in the record of this case that is provided to the Circuit Court.

RESPECTFULLY SUBMITTED,



Sang W. Oh
Talkin & Oh, LLP
5100 Dorsey Hall Drive
Ellicott City, Maryland 21042
(410) 964-0300
soh@talkin-oh.com
*Counsel for HRVC Limited Partnership, c/o Kimco
Realty Group*

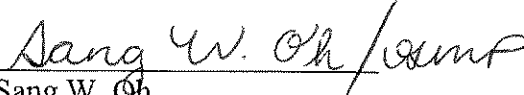
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 7th day of September 2022, a copy of the foregoing Motion was sent by electronic mail and first class mail, postage prepaid, to:

Alan M. Schwartz, Esq.
6421 Cardinal Lane
Columbia, MD 21044
Amsesq48@aol.com
Counsel for Opponents

G. Macy Nelson, Esq.
600 Washington Avenue, Suite 202
Towson, MD 21204
Gmacynelson@gmacynelson.com
Counsel for Hickory Ridge Community Assoc. Inc.

Joel Hurewitz
5681, C., Harpers Farm Road
Columbia, MD 21044
joelhurewitz@gmail.com


Sang W. Oh