CB 9 - 2020

Sayers, Margery

From: Jung, Deb
Sent: Wednesday, March 18, 2020 3:51 PM
To: Sayers, Margery
Subject: FW: CB9-2020 Support for Amendment 4

From: Pete&Dot <petedotdc@verizon.net>
Sent: Thursday, March 12, 2020 11:56 AM
To: Jung, Deb <djung@howardcountymd.gov>; Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>
Subject: CB9-2020 Support for Amendment 4

I support Amendment 4 completely, and Amendment 1 (with the amendment to the amendment) with reservations. I do not support Amendments 2 and 3.

First, both Amendment 4 and Amendment 1 with the Amendment to the Amendment protect landowners' rights with in Howard County. This will allow for due notice to the landowner by requiring a landowner's signature before the proposed zoning use is changed on his property. The Department of Planning and Zoning must know unequivocally that the proposed change on a landowner's property has been approved by the landowner especially when he/she is not the Petitioner.

In reading through the Technical Staff Report submitted by DPZ on ZRA 188, DPZ states that they rely on the application form signed by the owner (or owner's authorization) as valid authority to process a Petition.

> *DPZ reviews tax records to check ownership but otherwise relies on the application form signed by the owner or owner's authorization as valid authority to process a Petition. Any dispute in the right to submit a Petition must be adjudicated through court proceedings between the involved parties, which does not include the County. This approach is currently applied in all circumstances when there is a dispute between property owners. Therefore, DPZ recommends codifying and clarifying the current practice of obtaining written authorization of the owner or agent and the presumed validity of that authorization.*

Moreover, they state that any dispute between the parties must be adjudicated in a court and not in the county and that this is the current process. DPZ goes on to recommend the changes that Amendment 4 and Amendment 1 to Amendment 1 specify which will "***codify and clarify the current practice of obtaining written authorization of the owner or agent and the presumed validity of that authorization***." Unfortunately, the only way that DPZ can presume validity in a dispute is if it has already been adjudicated in court. Both amendment 4 and Amendment 1 with the Amendment to the Amendment support DPZ's recommendation.

Amendment 1 without the Amendment to the amendment leaves open the issue of signatures and easement rights. Since DPZ asks for the codifying and clarifying of written authorization, I believe that Amendment 1 to amendment 1 is a necessary part of this amendment.

Amendment 1 also gives me some concern about day cares as an accessory use. While I completely understand the need for more day care within Howard County, I don't believe that you should so quickly give up regulatory control. Yes,

on the surface, it appears that if you have a school, it makes sense that you should allow them a day care. But what if the daycare is not on the same land as the school? Could a school open a daycare in another part of the county or on an adjacent lot? Does that piece of land automatically become a conditional use? If it's a new parcel of land or lot, shouldn't DPZ be required to make sure it meets the conditions of approval (at least for a school if not for the daycare that it is)? It seems that the day care as an accessory use should have an amendment requiring it to be on the same parcel as the primary structure.

Therefore, because I have concerns about the day cares as an accessory use, and I support DPZ's request to codify and clarify the obtaining of written authorization of an owner, I support Amendment 4 over Amendment 1.

Thanks,

Dottie DeCesare

Ellicott City, MD

Sayers, Margery

From: Gick, Ginnie
Sent: Wednesday, March 18, 2020 3:51 PM
To: Sayers, Margery
Subject: FW: No Support for CB9-2020 and Amendment 2

From: Pete&Dot <petedotdc@verizon.net>
Sent: Thursday, March 12, 2020 1:47 PM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>
Subject: No Support for CB9-2020 and Amendment 2

I do not support Amendment 2 put forth by David Yungmann to require the Hearing Authority to determine whether a proposed use is consistent with an easement.

First, in Maryland, the interpretation of plats, deeds, easements and covenants has been held to be a question of law. White v. Pines Cmty. Improvement Ass'n, Inc., 403 Md. 13, 31, 939 A.2d 165, 175 (2008). **A question of law must be answered by applying relevant legal principles and must be decided by the courts.**

The current Hearing Examiner position required a Juris Doctor degree and a member in good standing of the Bar of the Maryland Court of Appeals, and as such the new Hearing Examiner could presumably interpret easements by applying relevant legal principles. However, in order to do so, it would require a not inconsiderable amount of **the Hearing Examiner's time to do the research and analysis of case law and precedents necessary to give due diligence to the easement at hand.** This would then **increase the amount of hourly fees** charged by the Hearing Examiner, thus increasing the cost to Howard County.

It also puts a huge quasi-judicial burden on the Hearing Examiner herself. This is a description of the job as posted for the Hearing Examiner, "Total authorized fees and expenses shall not exceed the amount budgeted and authorized for this purpose in each fiscal year. Time is of the essence in the issuance of written decisions and orders and a deduction equal to 10% of the compensation outlined above shall be made for each week or part thereof that submission of a decision and order exceeds the deadlines outlined". **Yet, this change in the zoning laws greatly changes the amount of time that the Hearing Authority will have to spend on a case involving an easement.** In the fiscal report for Amendment 2, the county auditor states, "the amendment could increase the volume of Conditional Use applications that may be processed by the Hearing Authority". So now there are more conditional uses with easements that need to be interpreted, which will require more time by the Hearing Examiner to give each it's due diligence. Yet, if she doesn't meet the time requirements for issuing decisions and orders, she will lose 10% or more of her fees. More than that, she is required to stay within the amount budgeted for the year. All of which makes one wonder if it will be easy to fill the post in the future.

The Howard County Board of Appeals has no requirement that members must be lawyers. Indeed, of the 5 Board of Appeals members, only 1 is a lawyer. The others range from a Doctorate in Mathematics, an Engineering Manager, a Business person and a Paramedic/Real Estate agent. How will they apply relevant legal principles? **How can Howard**

County require the interpretation of an easement, which Maryland holds to be a question of law, to people who have no background in legal principles? Even if the Hearing Examiner finds the easement to be legal, the petition starts over De Novo. To have a fair quasi judicial trial for both the petitioner and the opposition, each member of the Board of Appeals will have to interpret the easement for themselves. In all due respect for the members of the Board of Appeals, I don't know how they will do this fairly.

In the working session for CB9-2020 at 3:11:27 in the video, Sang Oh points out that that the easement is for a conditional use on someone else's property. He states that it is very rare and not a common situation. Yet, just a quick search turns up these properties: GCS, Miller Trust, Ridgley Run Community Center, and many shared driveways across Howard County.

At 3:12 in the working session Sang Oh states, "You have an easement to do a conditional use on that property not an easement for water or sewer....It is an easement to allow the use you are applying for under a conditional use". Nowhere in the easement between GCS and the 22 easement landowners does it use the words "conditional use".

Then at 3:15 in the working session and only after Liz Walsh calls him on it does Sang Oh admit that the easement does not specifically state that the easement is for conditional use. Sam Pulver at 3:41 states that he does not believe that the easement gives the school the right to use it for conditional use.

How is the Board of Appeals to interpret this easement since two lawyers have differing opinions on it themselves and the easement itself does not specifically state that it is an easement for a conditional use?

For all of the reason outlined above, I do not support CB9-2020 and Amendment 2. I repeat, in Maryland, the interpretation of plats, deeds, easements and covenants has been held to be a question of law. White v. Pines Cmty. Improvement Ass'n, Inc., 403 Md. 13, 31, 939 A.2d 165, 175 (2008). A question of law must be answered by applying relevant legal principles and must be decided by the courts.

Thanks,

Dottie DeCesare

Sayers, Margery

From: Jones, Diane
Sent: Wednesday, March 18, 2020 8:48 AM
To: Jung, Deb; Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Yungmann, David
Cc: Meyers, Jeff; Sayers, Margery
Subject: FW: Council work session on CB9-2020

Hi All, I apologize but I don't recall if I sent you this. Please see the email from Prof. McClain, President Glenelg Manor Estates Community Ass'n.

Diane

From: Russell McClain <rmcclainva@gmail.com>
Sent: Friday, February 21, 2020 7:07 AM
To: Jones, Diane <dijones@howardcountymd.gov>
Subject: Re: Council work session on CB9-2020

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Ms. Jones:

Thank you for reaching out to me about Monday's work session on Council Bill 9-2020. Unfortunately, I cannot participate in the work session because of an unavoidable, all-day work conflict out of state. I would have loved to have been a part of the conversation and am disappointed that I cannot be there. Please know that we will have some of our community members present at the session, and our HOA Board also is sending an attorney to represent our interests at the meeting.

If it helps and is not inappropriate for councilmembers to do so, any (or all) of them may feel free to reach out to me by e-mail or on my cell phone at (240) 477-2900. I am not available on Monday, but I am generally available before and after.

In addition—again, assuming this is appropriate—here are a few thoughts relating to my testimony on Tuesday. I did not submit written remarks, so if you think the Council might find the following to be helpful, please feel free to forward it and/or to make it part of the public record:

1. Proper Scope of the Council's Review of the Amendment. If the council is considering an amendment to zoning ordinances, it seems to me that it should be considering whether the change is good for the County. From Tuesday's hearing, it seems that most of the argument was about whether this amendment is good for Glenelg Country School (GCS) or bad for Glenelg Manor Estates (GME). In my view, that is not an appropriate basis for making your determination, especially if it is the exclusive basis for making that determination. In my own view, the discussion about whether this amendment is appropriate and good for the County really should not turn at all on GCS, the GME community, pipestems, whether GCS is a "bad actor" or the GME residents "obstructionists," or the more than a little complicated relationships among these interested constituents. (A few of my points below build on this foundational observation.)

2. Councilmembers Interpreting a Contract. Much of Tuesday's discussion focused on GCS's assertion that (mostly former) GME pipestem owners sold all of their rights to the pipestems to GCS years ago. That is a legal

conclusion that should be outside of the scope of this proceeding. Contract interpretation is, rightly, within the province of bodies that can hear and rule on evidence in particular cases. Having Council pass this CB9-2020 on the basis of the Council's view of the ***meaning*** of the GME-GCS easement agreement does several things: (i) it concludes, as a matter of law, that the GME-GCS easement agreement means whatever GCS says it means; (ii) it concludes, as a matter of law, that any other covered easement agreements mean whatever any easement holder (and petitioner for a zoning variance) says it means; and (iii) abolishes completely the power of the granter of an easement to raise the meaning of the agreement before a hearing officer by creating an irrebuttable presumption in the hearing that the meaning of an easement agreement is what the petitioner says it means. All of this exceeds the scope of what the council should be deciding. And, to react to the argument of GCS's attorney, it seems more than a little contradictory that GCS would seek to have the Council rule on the validity of this particular easement agreement (and, by necessary implication, all other covered agreements) while asking the Council to remove the power of a zoning hearing officer to hear any evidence regarding an agreement's meaning at all.

3. Spot Zoning. It seems relatively clear that this amendment is designed exclusively to address a single situation—the relationship between GCS and the GME pipestem owners. Although I am not in any way an expert in this kind of rule-making, this appears to be unlawful spot zoning, i.e., changing the ordinance for the benefit of a single landowner—in this case, GCS. It is not at all surprising that the summary title of CB9-2020 referenced a day care at a school, because, of course this proposed amendment, which Mr. Oh (attorney for GCS) admitted, was drafted by him and for GCS.

4. Absence of Information Regarding County Impact. There was zero evidence put into Tuesday's record about any impact that this rule will have on any part of the rest of Howard County. Not a single person not associated with GCS testified in favor of this bill. (I do not know the developers in this area well, but I think one developer may have testified against this bill, as did at least one other interested party who is not a GME resident.) Regarding impact, there are only two options here. On the one hand, there is a County impact of changing this rule, but the Council has no idea what that impact will be. That reflects a flawed decision-making process, in my view. I do not believe that these problems can be addressed by tailoring the rule to avoid potential impact elsewhere. The more that the Council does that, the more this becomes a pure instance of spot zoning. On the other hand, there is no impact anywhere else in the County, in which case this also is a pure instance of spot zoning.

5. Relationship Between Glenelg Country School and Glenelg Manor Estates. I do not think this paragraph should be relevant to the decision before the Council, but in light of the fact that it was raised so much on Tuesday, it is probably worth exploring a bit the relationship between GME and GCS. There obviously is more than a little acrimony between the school and some of the GME residents. But I do not believe that the relationship is irreparable. And the hard feeling, at least on our side, is not total. (For reference, I was the person who testified that he was not angry. I have zero bitter feelings towards GCS.) I think that reasonable minds in our neighborhood recognize GCS's desire to grow, and no reasonable person would argue that GCS should be prevented from ever improving its facilities and campus. On the other hand, that does not mean that GME owners simply should concede that everything GCS wishes to do is appropriate. We are not obstructionists, but we do have an interest in the character of our neighborhood, of which GCS is a part. As President, I think I can speak on behalf of the GME Community Association to say that we would like to find a way both to enable GCS to grow and to protect our own community interests. I believe this is possible, and I hope that we can have productive conversations about this.

As I said earlier, I am happy to speak with any Councilmember about these or related issues.

In an abundance of caution, and because I am a law professor and teach professional ethics, I want to make clear that I am not licensed to practice in Maryland, I am not professing to make any kind of legal argument, and I cannot advise or practice law in Maryland. Please do not regard anything I have said above as constituting a legal opinion or advice. I am speaking as a Howard County homeowner/resident and as the president of my HOA.

Best regards,

Russell McClain

President, Glenelg Manor Estates Community Association

On Wed, Feb 19, 2020 at 5:02 PM Jones, Diane <dijones@howardcountymd.gov> wrote:

> Good afternoon,
>
> The County Council is having a work session on Monday, February 24th. Council Bill 9-2020 which proposes an amendment to the Howard County Zoning Ordinance is on the agenda for discussion at the work session. Members of the Council have requested your participation in the work session, if you are available. CB 9-2020 will be taken up at 1:00 p.m.
>
> Please let me know if you are available to participate. Thank you for your consideration.
>
> *Diane Schwartz Jones*
>
> *County Council Administrator*
>
> *Howard County Council*
>
> *3430 Court House Drive*
>
> *Ellicott City, Maryland 21043*
>
> *(410)313-3111*