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February 7, 2022

The Honorable Liz Walsh
Howard County Council
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043
ewalsh@howardcountymd.gov
Via E-mail

Re: Amendment 3 to Council Bill 7-2022

Dear Councilwoman Walsh:

Please accept this correspondence on behalf of Mangione Family Enterprises of Turf Valley. The purpose of this correspondence is to identify a number of significant legal concerns regarding Amendment 3 to Council Bill 7-2022.

First, there is an inherent contradiction between Amendment 3 and Section 100.E.3 of the Howard County Zoning Regulations (the "Zoning Regulations"). Section 100.E.3, governs the manner in which changes to the Zoning Regulations will apply to current and future development proposals. This provision states that changes to the Zoning Regulations shall only apply to "pending and future" actions by administrative agencies and specifies that "development projects of over 300 units which have processed Site Development Plans on at least 50% of the overall site shall not be considered pending." (emphasis added). The contradiction arises because Amendment 3 is itself a "change to the Zoning Regulations" occurring after the triggering event that removes the pending status of the remaining units left to be developed in the Turf Valley development project.

The Turf Valley development project, as approved under the 4th Amended Comprehensive Sketch Plan, consists of roughly 1,618 units and more than 50% of the site development plans for the overall development project have been processed. Therefore, any subsequent site development plans for the Turf Valley development

project are not considering “pending” in accordance with Section 100.E.3 of the Zoning Regulations. This means that any future changes to the Zoning Regulations, including Amendment 3 to Council Bill 7-2022, are not applicable to the Turf Valley development project. Accordingly, there is significant concern that as a matter of law Amendment 3 will not produce the intended result of making the new MIHU requirement applicable to the remaining residential units in Turf Valley.

Second, even if Amendment 3 survived this inherent contradiction within the Zoning Regulations, the lack of a limiting principle raises both practical and legal issues with its application. First, the developer has relied on the vesting provision in 100.E.3 in planning, designing, budgeting, and constructing the cohesive Turf Valley development. This reliance has resulted in private contractual relationships including covenants for certain building materials and architectural designs. It is unclear how these private contractual relationships, which again were made in reliance on section 100.E.3, will be affected by Amendment 3 to Council Bill 7-2022. More problematic, if CB 7-2022 were passed with Amendment 3, any redline revision to a site development plan in the PGCC Zoning District would necessitate compliance with the newly enacted 15% MIHU requirement. It is unclear how the Department of Planning and Zoning would interpret such a provision, but a literal application would require displacement of current residents so the required MIHU units could be provided on-site. This may seem like an absurd result but demonstrates why vesting provisions exist and the danger in seeking to change Section 100.E.3 without amending the regulation itself.

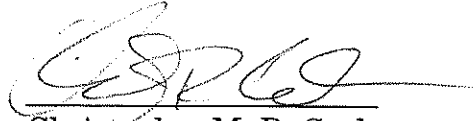
Finally, CB 7-2022’s passage with Amendment 3 would likely qualify as an illegal special law prohibited under the Maryland Declaration of Rights. As was recently demonstrated by the invalidation of Council Bill 9-2020 by the Maryland Court of Special Appeals in *Howard County v. Russell McClain, et al.*, No. 1166, Sept 2020 Term (Md. Court. Spec. App. January 21, 2022), legislation that targets and has the practical effect of applying to a single entity is illegal. Council Bill 7-2022 with Amendment 3 clearly targets and has the practical effect of only applying to the Turf Valley development project. This is demonstrated by the fact that (1) the Turf Valley development project is the only development project in the PGCC Zoning District; (2) the social media posts and comments from the sponsor of CB 7-2022 show a clear intent to target the Turf Valley development project and the developer with this legislation; and (3) with Amendment 3, the Turf Valley development project would be the only development project in the entire County now or in the future that is exempted from the vesting provision contained in Section 100.E.3 of the Zoning Regulations after already achieving vesting status. So while it may be the Council’s intent to target a specific development for changes; that intent subjects the legislation to invalidation by the courts.

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As we stated in our public testimony and during the work session, we are not absolutely opposed to an MIHU requirement in Turf Valley. As identified here, however, the current bill coupled with Amendment 3 has significant practical and legal issues that will likely prevent the desired result of the legislation from coming to fruition. In lieu of addressing these legal issues in a court of law, we welcome the opportunity to work with you and the Council to come to a mutually agreeable resolution of these concerns ensuring the passed bill actually leads to the construction of MIHUS in Turf Valley. We request that you table this legislation to allow further opportunities to discuss the best ways to implement a legally sufficient MIHU requirement at this late stage of the Turf Valley development project.

Very truly yours,

TALKIN & OH, LLP

A handwritten signature in black ink, appearing to read 'C. DeCarlo', written over a horizontal line.

Christopher M. DeCarlo

cc: The Honorable Opel Jones
The Honorable David Yungmann
The Honorable Christiana Rigby
The Honorable Deb Jung

From: [Christopher DeCarlo](#)
To: [Walsh, Elizabeth](#); [Royalty, Wendy](#); [CouncilMail](#)
Cc: [Yungmann, David](#); [Rigby, Christiana](#); [Jones, Opel](#); [Jung, Deb](#)
Subject: RE: Amendment 3 to Council Bill 7 -2022
Date: Monday, February 7, 2022 12:12:28 PM
Attachments: [Ltr re CB 7-2022. 2.07.22pdf.pdf](#)

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

Good afternoon,

Please find attached a letter on behalf of Mangione Family Enterprises of Turf Valley regarding Amendment 3 to Council Bill 7 -2022.

Sincerely,

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