



**Planning Board**  
**Declaratory Ruling Petition**

**Petitioner's Name:** British American Building LLC, Nova Oil. LLC  
**Address:** 9577 Berger Rd, Columbia, MD 21046 and 7100 Minstrel Way, Columbia, MD 21045  
**Phone:** 410 952 6856 (W) 410 381 2700 (H) N/A **Email Address:** beengland@comcast.net

**Owner's Name:** Same as above  
**Address:** [Redacted]  
**Phone:** [Redacted] (W) [Redacted] (H) [Redacted] **Email Address:** [Redacted]

**Counsel:** N/A  
**Counsel's Address:** [Redacted]  
**Counsel's Phone:** [Redacted] **Email Address:** [Redacted]

**Property Address:** N/A  
**Election District:** [Redacted] **Tax Map#** [Redacted] **Block#** [Redacted] **Parcel#** [Redacted] **Lot#** [Redacted] **Acreage** [Redacted]

**Petitioner's Interest in Subject Property**  
*(e.g. owner/joint owner/contract purchaser)*

Petitioner's are fee owners of property in the NT Zoning District. Petition pertains to situations that apply to redevelopment of all employment center properties in the NT Zoning District (See Supplement)

**Summary of Request (Required):**

The following questions should be answered in narrative form. If additional space is needed, please add a supplement to this Petition.

Pursuant to County Code Title 2, Subtitle 1, Article IV, Section 2.123:

- Please identify and cite the rule(s) or statute(s) that the Planning Board administers or enforces.  
 See Supplement [Redacted]
- Please describe your situation and what facts or circumstances support a determination that the rule(s) or statute(s) applies or does not apply to you or your situation. Please explain your response.  
 See Supplement [Redacted]

**Signatures**



**September 21, 2020**

From: British American Building, LLC  
Brian England, Managing Member  
9577 Berger Rd.  
Columbia, MD 21046  
410-381-0202

Nova Oil, LLC  
Raj Gupta, Managing Member  
7100 Minstrel Way  
Columbia, MD 21045

To: Ms. Erica Roberts  
Chair  
Howard County Maryland Planning Board  
c/o Ms. Amy Gowan, Executive Secretary  
agowan@howardcountymd.gov  
3430 Courthouse Drive  
Ellicott City, MD 21043

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure on the applicability of a rule or statute administered by the Board as provided in Section 2.123 of the Administrative Procedures Act Howard County Code Supplement**

Dear Ms. Roberts:

The undersigned are submitting this Declaratory Ruling Petition to the Planning Board is being made under 1.105.A. of the Planning Board Rules of Procedures regarding adopted Planning Board Policies under 1.109 of the Rules of Procedure, The Howard County Zoning Regulations; the Zoning and Subdivision Regulations concerning changes in use, adjustments, under 125.0.G.4, and absence of regulations covering redevelopment in the New Town zone. This Petition is being submitted along with the check for the fee of \$585.00 that was dropped off at the metal lock box at the George Howard Building in accordance with the DPZ's covid business processes on September 18, 2020.

This petition is made pursuant to several Planning Board Decisions and Orders changing land use erroneously applying the Planning Board's limited authority to consider Site Development Plans under 1.106.A.3, including but not limited to SDP 74-122, and SDP 17-041. It is also made pursuant to several rulings by the Hearing Examiner not admitting evidence in appeals because the appellant failed to seek a declaratory ruling in the Decision and Order for BA 692.

Our standing to petition for this Declaratory Ruling is codified in Section 2.123 of the Administrative Procedures Act of Howard County that provides: "*a person may petition an Agency for*

September 21, 2020

British American Building LLC, Brian England

Nova Oil, LLC, Raj Gupta

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

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*a declaratory ruling as to whether a rule or statute administered or enforced by the Agency applies to the person or situation.* “ I am a person, and this is a situation.

Furthermore, 2.123 mandates: “*Within 30 calendar days following receipt of the petition, the Agency shall issue a decision on the petition. The declaratory ruling, if issued after argument and stated to be binding, shall be binding on the Agency and on the petitioner unless altered or set aside by a court. A declaratory ruling is subject to review in the same manner as review of contested cases.*

Also, this is to protect all Howard County Citizen’s due process rights. I would like to note that Howard County has defaulted to the most restrictive criteria in the State of Maryland for citizens to have standing to appeal planning decisions. By denying citizens their local appeal rights they are denying access to the Courts, effectively stripping citizens of their rights.

The County has procrastinated for nearly a decade to address the New Town zoning issues. We have engaged on this issue for a long time. The basic problem is the Zoning Regulations have no provisions for redevelopment outside of Downtown Columbia and the Villages. The 2012 General Plan called for an amendment to the NT regulation, but no action was taken.

When you read this petition always keep in mind Section 101 O, Rules of Construction:

***All uses are prohibited unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts as provided by these regulations.***

And remember:

***The Supreme Court has said that a legislative body “does not alter the fundamental details of a regulatory scheme in vague or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”***

Clearly, the Elephant hunters are on the prowl in Howard County, so I am compelled to file this petition. These concerns boil down to objections that these are illegal rezonings of land in the New Town district.

*Illegal Use: Any use, whether of a structure or of a tract of land, in which a violation of any provision of these Zoning Regulations has been committed or exists, or any use which is not specifically permitted by these regulations.*

These illegal uses have proliferated especially in the Commercial and Industrial Parks diminishing real property values and worsening traffic woes along the already congested Snowden River Parkway and Route 108 corridors. As I will outline ahead, these developments do not comport with the Howard County Zoning Regulations (“HCZR’s”), The Administrative Procedures Act of Howard County, the Columbia Preliminary Development (the “PDP”); The Comprehensive Sketch Plans (the “CSP”) hearing requirements; **1979 Howard County Final Development Plan Phase Criteria for Uses that Are Special Exceptions.** as well as the adopted **Master FDP Criteria** Both adopted policies of the Planning Board.

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

As a property owners covered by Final Development Plan Nos. 118A iii part 2, 146 A iii, and FDP 55, in protection of our rights to due process and for the reasons set forth below I respectfully request the Howard County Planning Board to make a Declaratory Ruling pursuant to 1.105.A.5 of the Planning Board Rules of Procedure.

**Specifically, we are seeking a declaratory ruling on the following five issues:**

1.) Section 125 D 6 of the Zoning Regulations requires an amendment to the Final Development Plan (“FDP”) when changing a use.  
**Is a change in use shown on a Site Development Plan but not permitted under the FDP an illegal use?**

2.) Is a use that is a conditional use, such as Fast Food restaurant with a drive-through or gasoline station subject to the *1979 Howard County Final Development Plan Phase Criteria for Uses that Are Special Exceptions?*

3.) Section 125.0. G.1<sup>1</sup> Site Development Plans, provides limited conditional authority for the Planning Board to consider Site Development Plans: “If the Planning Board reserved for itself the authority to approve a Site Development Plan. and shall be considered at a public meeting.

Under the Administrative Procedures Act,” *Contested case*” means a proceeding in which the legal rights, duties or privileges of a person are required by law or constitutional right to be determined only after an opportunity for a hearing.

**Does a review of a Site Development Plan by the Board constitute a “Contested case” under the Administrative Procedures Act?**

4.) Adjustments under Section 125.G.4.

**Are the provisions for the Planning Board to hear adjustments under 125.0.G.4 missing from the Rules of Procedure?**

5.) 16.200(a) *Zoning Authority* “...The Howard County Council, acting as a legislative body, reserves unto itself the authority to grant variances from the strict application of the zoning regulations regarding governmental uses of land. This

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<sup>1</sup> The Planning Board rules of procedure erroneously reference Section 125.E.1.

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

authority shall be exercised by passage of a resolution after a public hearing and a finding that the action is in the public interest.”

**Does the County Council’s authority under the Zoning Enabling Act, 16.200(a) apply to adjustments under 125.0.G.4?**

**Supporting Explanation for the 5 Questions.**

**1. Section 125 D6 of the Zoning Regulations require an Amendment to Final Development Plan. Is a change in use shown on a Site Development Plan but not permitted under the FDP an illegal use?**

**County's Technical Staff Report Position:**

On SDP 17-041 The County makes the representation in the staff report that Final Development Plan (“FDP”) 55 lists car wash as a permitted use and gas stations as a permitted ancillary use; and the convenience store is permitted as an ancillary use to the gas station; and the FDP permits all uses permitted in the M-1 Zoning District.

On SDP 74-122, the TSR does not address the land use.

**Permitted Land Uses Under the Zoning Regulations and Final Development Plan Criteria Policy:**

- A) There are no “by right” land uses in the NT zone.
- B) FDP 55 does **NOT** allow gas stations as a permitted use; it is permitted **ONLY** as an ancillary and compatible use to the permitted industrial use. The Maryland Department of the Environment database shows that 18 properties have had gasoline as an ancillary use since the Guilford Industrial Park was opened in the 1970s including the Columbia Association maintenance facility on Gerwig Lane.
- C) Convenience stores are **NOT** a permitted use in the M-1 zoning district, it is allowed as a part of a retail center. Moreover, the M-1 zone clearly states that notwithstanding the limited circumstances that allow accessory retail, retail is not permitted in the M-1 Industrial zone.
- D) Car wash facilities are a “by right” use in the M-1 zone, but as previously stated there are no by-right uses in the NT zone.
- E) A Restaurant with a Drive-through is not a permitted use on FDP 118-a ii
- F) Proper Process Required to Re-zone property to allow a gas station, convenience store and car wash is to Petition Zoning Board to Amend PDP and amend CSP and FDP.

From Section 125(D) 6 of the Zoning Regulations: *“Upon approval of the Final Development Plan or Final Development Plan Amendment (or upon the approval of each phase thereof if submitted on a separate segment basis) the same shall be recorded among the Land Records of Howard County and the provisions thereof as to land use shall bind the **property** covered with **the full force and effect of***

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

*specific Zoning Regulations. After such recordation, no new structure shall be built, no new additions to existing structures made, and no change in primary use effected different from that permitted in the Final Development Plan or Final Development Plan Amendment except by an amendment to the Final Development Plan.*" (my bold for emphasis)

Primary use is defined in Section 103 of the regulations as follows:

*Principal Use or Structure: The main use of a lot or the structure used for the main function of a lot, as opposed to an accessory use or structure. Structures which are attached to the principal structure, either directly or by a breezeway not to exceed 15 feet in length, shall be considered part of the principal structure.*

If a car wash is the new primary use being proposed. The primary use of this lot has and is industrial. Notwithstanding the erroneous representation on the TSR, it beyond any reasonable doubt that the proposed gas station on the SDP changes the primary use. (see TSR evaluation of Criteria 7 of the FDP).

When the FDP is recorded it attaches to the individual properties and you cannot change the use from its underlying industrial use without an amendment to the FDP. The proposed gas station and convenience store are not industrial uses. SDP 17-41 changes the underlying use and creates a completely new structure; hence this clearly requires an amendment to the FDP. Additionally, it should be noted that Section 101 O of the Zoning Regulations state that "All uses are prohibited unless specifically enumerated as a use permitted as a matter of right or as an accessory use in the various districts provided by these regulations. As I stated earlier, there is no "by right" use in the NT zone.

**Conclusion:**

This change in use requires an amendment to Zoning Regulations by the legislative body, an amendment to the General Plan before an amendment to the FDP can considered to change the permitted uses. The County's position is reductio ad absurdum that reduced to its absurd conclusion implies that gas stations are permitted on literally hundreds of lots in the EGU and throughout the NT zone without any zoning controls. **It is indisputable that this SDP changes the primary use and** Section 125.D.6 does not permit a change in primary use on a particular property without an amendment to the FDP. Mr. Paul Johnson attempted to refute this argument citing a case regarding the PGCC zone that provides for Final Development Plans. The problem with this argument is that it is based on a false premise. Unlike NT, PGCC is not a floating zone, it is a Euclidean zone. This is affirmed in ZB 808 November 20, 1985 <sup>2</sup>

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<sup>2</sup> Mr. Paul Johnson wrote this rebuttal in an email to Valdis Lazdins on January 17, 2019

"As to Mr. Alleva's main legal contention- that FDP amendments amount to a rezoning, which only the County Council can do under Sec. 202(g) of the Howard County Charter, that argument has been rejected in an Unreported opinion of the Court of Special Appeals (Kendall v. Howard County, No. 234, September Term, CSA). In that case the same argument was made

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

**2. Is a use that is a conditional use, such as Fast Food restaurant with a drive-through or a gasoline station subject to the 1979 Howard County Final Development Plan Phase Criteria for Uses that Are Special Exceptions?**

FDP 118 A iii part 2 covers this property paragraph 7C-3 classifies this property as EMPLOYMENT CENTER LAND USE – COMMERCIAL and permits all uses permitted in commercial districts or commercial land use zones are permitted including, but not limited to, all of the following:, and this lists: Restaurants and beverage establishments, including those serving beer, wine and liquor. B-1, M-1, and M-2 permits drive restaurants throughs as a conditional use. The relatively new zones on Route, CE, CAC, TOD, and the new Route 40 Zone, TNC that either prohibit or restrict drive throughs. **LET THAT SINK IN, THE ZONING CONTROLS IN COLUMBIA ARE LESS THAN ROUTE 1.**

Thus, to construct a gas station on Final Development Plan 55 or a Restaurant with Drive-Through on FDP 118 in accord with Planning Board policies and zoning regulations, the petitioner must obtain approval of these uses and new structures through the Final Development Plan amendment process.<sup>3</sup>

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with respect to the PGCC District- that amendments to the CSP/FDP in the PGCC District could only be made by the Council. The PGCC District process was modeled on the NT District. Approved FDPs are recorded. The Court held that it disagreed with this argument because a the PGCC plan in that case “is not an “amendment, restatement or revision” to the general plan, zoning regulation or zoning maps. Rather, the plan ‘is the first step in a process to develop land in a previously zoned area, the PGCC District.’” The Appellants in that case, as Mr. Alleva here argues, argued that the recordation provision for FDPs which provide that the recorded FDP “shall bind the lands covered by the FDP with the full force and effect of specific zoning regulations” made the amended FDP a zoning regulation amendment. The Court rejected that argument “because nothing in the regulation states that once an FDP is approved, it can only be amended by legislative act.” The Court further held that the recordation provision that entitled an FDP to ‘full force and effect of specific zoning regulations’ “indicates that. [the PGCC Regulation] intends for an approved FDP that is recorded in the land use records to be legally enforceable, not set in stone and only amendable by a legislative act.”

Johnson concluded: As an Unreported decision the Kendall case cannot be cited as precedent in another case, but it can be relied on as persuasive guidance in related matters. Let me know if you would like me to send you a scan of this decision.

As I explained PGCC is a Euclidean zone not a floating zone, so this analysis and conclusion are false.

<sup>3</sup> In 1979 Howard Research and Development Corporation et al filed an appeal with the Special Appeals Court of Maryland. In the dicta, the court noted “although they (the proposed gas stations) precipitated the instant case, they are not directly involved here. The protestants' appeals raised various original and appellate jurisdictional questions involving the administration of the NT District which cast obstacles in the path of the commencement of construction of the gas station. Accordingly, appellant BP filed the present declaratory action.” The Court ruled the ruling references the 1979 Final Development Plan Phase Criteria for Uses that Are Special Exceptions Policy but the court case never opined about the policy. It should be noted the 1979 Policy has never been legally challenged.

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During the development of Columbia (1967-2007) problems arose with uses like this that are conditional in other zones, so the Planning Board adopted a policy in 1979 to provide the same protections afforded in other zones. This policy (attached), and other policies as well as the Comprehensive Sketch Plans were destroyed by Director Marsha McLaughlin in 2011 to prevent damaged property owner from using them in their defense. Bottom line, a restaurant with a drive through is not a permitted use on this lot and this constitutes spot zoning.

**3. Does a review of a Site Development Plan by the Board constitute a "Contested case" under the Administrative Procedures Act?**

It was argued in the revisory request<sup>4</sup> that one of the deficiencies was the lack of specificity in the Decision and Order. It was also argued, if the Planning Board decides to deny this revisory request, they need to issue a formal denial, their decision shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon record, together with the appropriate rule, order, sanction, relief, or denial thereof. In arriving at its decision and order, the vote of each member, together with his reasons therefor, shall be taken and recorded as part of the record of proceedings. A copy of the agency's decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party.

Perhaps this a question for your Counsel, Does the Act apply? What is a contested case? Are these "contested cases" under the Act? Are only cases that require a PB quasi-judicial hearing contested cases? If so, why? Does an SDP that involves a change in land use in the NT become a "contested case?" I thought all this was settled in the 1990 Hickory Ridge Village case when Rosemary Mortimer<sup>5</sup> challenged a convenience store use there, but apparently not.

The act's definition of a contested case is helpful here: (b) *Contested case means a proceeding in which the legal rights, duties or privileges of a person are required by law or constitutional right to be determined only after an opportunity for a hearing.*

We certainly have property rights at stake here. we purchased industrially and retail zoned properties to operate our respective businesses and now adjoining properties are being illegally rezoned to retail that will obstruct access to our properties and flood traffic into the Industrial Park in contravention to the clear reading of the Zoning Regulations that strictly limit retail on industrially zoned land.

**4. Adjustments under Section 125.G.4. Are the provisions for the Planning Board to hear adjustments under 125.0.G.4 missing from the Rules of Procedure.**

In SDP 74-122, DPZ endeavored to grant adjustments (variances) this developer did not formally petition for and that they have no authority to give under State law or the Zoning Regulations. The

<sup>4</sup> Revisory Request Date March 22, 2019

<sup>5</sup> PB 164 Amendment FDP 136 August 21, 1984

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

Petitioner's Counsel and DPZ was relegated to the excuse, "that's the way we've always done it" because it is abundantly obvious this a required under the HCZR's.

In fact, there are two examples of adjustment petitions: September 5, 2019, the Chandler family in Hickory Ridge petitioned and were granted a setback adjustment for a deck. February 5, 2015, the Reid family wanted to build a treehouse on their lot on Wandering Way. DPZ recommended denial. Apparently, they could not brook even a four-foot encroachment on the rear yard setback that backs up to an overgrown open space area that is a drainage easement. Happily, for the Reid family the Planning Board gave the Treehouse a thumbs up. Documentation of these petitions is attached to the email hereto.

It is hard to stomach the fact that DPZ is holding Columbia residents to the letter of the law for minor setback adjustments, while illegally granting huge parking and setback adjustments based on a bogus parking study that adversely impact hundreds of properties and will irreparably destroy the character of an entire community. Not to mention the obvious elephant in the room that this is probably an equal protection violation. DPZ required a far more detailed justifications from the Reid and Chandler families than they did from this commercial property owner.

**5. Does the authority in the Zoning Enabling Act, 16.200(a) apply to adjustments under 125.0.G.4?**

**Logically it does.** Under Section 125(D) 6 of the Zoning Regulations: *"Upon approval of the Final Development Plan or Final Development Plan Amendment (or upon the approval of each phase thereof if submitted on a separate segment basis) the same shall be recorded among the Land Records of Howard County and the provisions thereof as to land use shall bind the **property** covered with **the full force and effect of specific Zoning Regulations**"*

- A. It is evident, the provisions in an FDP are a zoning regulation.
- B. The Howard County Council, acting as a legislative body, reserves unto itself the authority to grant variances from the strict application of the **zoning regulations** regarding governmental uses of land.

**Logical Conclusion: Adjustments under 125.0.G.4 can only be granted by the County Council.**

**Summation**

This Declaratory Ruling request is intended to redress the Planning Board's violations of citizen's right to due process and the misuse of Site Development Petitions to illegally rezone property in the NT zone. To remedy equal protection violations under the law in failing to require a petition for an adjustment from a commercial property owner when they require it from residents. Additionally, the uses proposed, a restaurant with a drive through, is not permitted under FDP 118 and a convenience store on FDP 55, and under the HCZR's.

September 21, 2020

**British American Building LLC, Brian England**

**Nova Oil, LLC, Raj Gupta**

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

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Since there are no provisions in the Howard County Code, or the Zoning Regulations for the Planning Board to consider a SDP for a proposal of an illegal use as in these cases, I believe the Planning Board needs to send the Property owners notice of their illegal actions and vacate the illegal approvals. The Planning Board really got themselves wrapped around the axle on these cases with multiple civil rights violations, unpermitted uses, and illegal variance grants. Perhaps, the Board can refer these questions to the Maryland Attorney General's office for guidance.

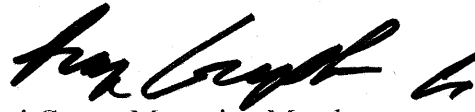
I believe resolution of these questions will go long way in restoring public confidence in the Planning Board. The Director has worked hard with the Board to ensure you adhere to the legislated criteria. Then these cases came along with no authority or criteria and you were cast adrift once again.

Under 1.105.A.5, within 30 calendar days following receipt of this petition, the Agency shall issue a decision on the petition. The declaratory ruling, if issued after argument and stated to be binding, shall be binding on the Agency and on the petitioner unless altered or set aside by a court

Sincerely,



Brian England, Managing Member  
British American Building LLC



Raj Gupta, Managing Member  
NOVA Oil LLC

**[Certificate of Service to Follow]**

**Certificate of Service (email) to parties of SDP 74-122 or their designated legal representative or spokesperson under rule 1.103.E.2 this 18<sup>th</sup> day of September 2020**

Michael Golibersuch: [michealgolibersuch@gmail.com](mailto:michealgolibersuch@gmail.com)

Tom Meachum, Petitioner's Counsel: [tmm@carneykelehan.com](mailto:tmm@carneykelehan.com)

Joel Hurewitz: [joelhurwitz@gmail.com](mailto:joelhurwitz@gmail.com)

Alan Schneider: [ajs33@aol.com](mailto:ajs33@aol.com)

Kristen Russell: [Kristen.russell@columbiaassociation.org](mailto:Kristen.russell@columbiaassociation.org)

Julia Sauer: [jsauer@howardcountymd.gov](mailto:jsauer@howardcountymd.gov)

Gary Kuc, County Solicitor

David Moore, Deputy County Solicitor

September 21, 2020

**British American Building LLC, Brian England**

**Nova Oil, LLC, Raj Gupta**

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure Supplement**

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**Certificate of Service (email) to known parties of SDP 96-018 or their designated legal representative or spokesperson under rule 1.103.E.2 this 18th day of September 2020 and others.**

The Honorable Deb Jung, Chairperson, Howard County Council  
The Honorable Elizabeth Walsh Vice Chairperson, Howard County Council  
The Honorable David Yungman, Howard County Council  
The Honorable Opel Jones, Howard County Council  
The Honorable Christian Rigby, Howard County Council  
Dr. Michael Martirano, Superintendent, Howard County Public School System  
Mr. Mark Blom, General Counsel, Howard County Public School System  
Ms. Amy Gowan, in her capacity both as DPZ Dir. and Exec. Sec, of the Planning Board  
Ms. Mary Kendall, Deputy Director, DPZ  
Mr. Derrick Jones, DPZ  
Ms. Kristin Russell: [Kristin.russell@columbiaassociation.org](mailto:Kristin.russell@columbiaassociation.org)  
Mr. Gary Kuc, County Solicitor  
Mr. David Moore, Deputy County Solicitor

**Certificate of Service (email) to known parties of SDP 17-041 or their designated legal representative or spokesperson under rule 1.103.E.2 this 18th day of September 2020 and others.**

Mr. Thomas Coale, Esq.  
Mr. James Parsons, Esq.  
Mr. Jervis Dorton  
Mr. James Mazzullo, Associates Plumbing  
Mr. Jeff Waterfield, Metropolitan Rolling Door.  
Ms. Donna Dupres, DPZ  
Gary Kuc, County Solicitor  
David Moore, Deputy County Solicitor

Other Copies: Andy Stack and the Columbia Association Board of Directors; Owen Brown Community Association Board of Directors, and Christopher J. Alleva

September 21, 2020

**British American Building LLC, Brian England**

**Nova Oil, LLC, Raj Gupta**

**Declaratory Ruling Petition under 1.105.A.5 Planning Board Rules of Procedure  
Supplement**

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September 18, 2020

Check for \$585.00

Check No. \_\_\_\_\_

From Nova Oil LLC

For Planning Declaratory Ruling Petition Fee

*East Guilford Industrial Center Owners  
c/o British American Building LLC  
9577 Berger Rd.  
Columbia, MD 21046  
410 381- 2700*

March 22, 2019

**HAND DELIVERED March 22, 2017**

Mr. Phil Engelke  
Howard County Maryland Planning Board  
c/o Mr. Valdis Lazdins, Executive Secretary  
3430 Court House Drive  
Ellicott City, MD 21043

**Subject: Revisory Action Requested SDP 17-41 Royal Farms 186 under section G.1.a of the Planning Board Rules of Procedure and section G.1.c, Case of Fraud, Mistake or Irregularity**

Dear Mr. Engleke:

The undersigned, principals of owners of property in the East Guilford Industrial Center located on FDP 55 EGU, and parties to this SDP 17-41 case, are requesting a reconsideration for reasons set forth below. Please be advised that we have not received a copy of the Decision and Order as required by the Administrative Procedures Act. We obtained it on our own volition.

This Decision and Order dated March 7, 2019, as rendered is in violation of Howard County Code §16.900(j)(2)(i), whereby it states that in its "decision making process, the planning board shall make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the county." Decisions and Orders by the Planning Board are governed by The Howard County Administrative Procedure Act, § 2.119 that in turn sets forth the requirements for agency Decisions and Orders:

- (a) *Voting Requirements.* The same members of the Agency who were present at the hearing shall make the decision on the case...
- (b) *Content.* Decisions of an Agency, except rulings on preliminary matters or on motions or objections, shall be in writing, based on evidence of record. The decisions shall contain findings of facts, conclusions of law, and an appropriate written order or consent decree.
- (d) *Basis of Decisions.* The decisions of the Agency shall be based upon and supported by a preponderance of the evidence of record, except as otherwise provided by law or procedural rule.
- (e) *Notification of Decision.* The decisions of the Agency shall be issued and sent simultaneously to the parties of record.

In other words, every decision and order rendered by an agency, including the Planning Board, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact as well as the reasons or basis therefor presented on the record, together with the appropriate rule, order, sanction, relief or denial thereof. In arriving at its decision and order, the vote of each member,

March 22, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

together with his reasons therefor, shall be taken and recorded as part of the record of proceedings. A copy of the agency's decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or to his attorney of record. A form letter with illegibly scrawled suggestions falls far short of satisfying these requirements.

The conduct of the meeting was deficient because the Planning Board failed to discharge their responsibilities under §16.900(j)(2)(i) by not considering the testimony of opposition parties to the case, or at best gave it cursory consideration, including competent on point testimony by professional engineers, attorneys, and architects as well as adjoining and confronting property owners including the undersigned. As to the sufficiency the Board accorded the testimony, we'll never know as it was not memorialized in a proper decision and order.

In addition to violating section 16.900(j)(2)(i) of the Howard County Code the Planning Board defied the persuasive authority that bears directly on this case under the Hearing Examiner's Decision and Order on BA 753 and 754 wherein the opponents appealed the "approvable letter" rendered by the Department of Planning and Zoning in this case for the express purpose of preserving their rights to raise objections that SDP 17-41 violates numerous County ordinances and the Zoning Regulations. In that D&O, the Hearing Examiner held that the proper forum to raise these issues was before the Planning Board. We were denied that opportunity. I would add, that Two Farms and the Department of Planning and Zoning were represented by counsel in this case and declined to appeal this decision.

Last, we understand that Two Farms failed to provide electronic notice to the Village Boards as required under section 125.G.1 of the Zoning Regulations. As a current and former Village Board members, you and your colleagues can appreciate how failing to provide these notices would deny them the opportunity to be heard. Formal notice is the trigger to initiate Board consideration and action.

We know the Planning Board members take their awesome responsibilities seriously. It is regrettable that the Executive Secretary and Office of Law misadvised the Board in the conduct of this case and the proper documentation in the Decision and Order of these proceedings. Nevertheless, failing to consider these issues was a mistake and irregularity, and as I've shown, the Decision and Order does not comply with the requirements. In conclusion, we respectfully request the Planning Board to reconsider their Decision and Order, re-advertise it, properly notice the Village Boards, and rehear the case in accordance with the law and thereupon issue a Decision and Order in accordance with the Howard County Administrative Procedures Act.

Sincerely,



Brian England, British American Building LLC

[OTHER SIGNATURES FOLLOW]

March 22, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash



Robert Bell, 9620 Gerwig Lane LLC



James Mazullo  
Efficient Properties LLC

CC: The Columbia Association Board of Directors, c/o Milton Matthews, President  
James Parsons, Esq. Lynott, Lynott & Parsons, P.A.  
Owen Brown Community Association  
Wilde Lake Community Association

[CERTIFICATES OF MAILING FOLLOW]

March 22, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

CERTIFICATES OF MAILING

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March 2019, a copy of the foregoing revisory request was mailed, postage prepaid, to Counsel of the petitioner, Two Farms, Inc.

Sang Oh, Esq.  
The Law Offices Talkin and Oh  
5100 Dorsey Hall Dr.  
Ellicott City, MD 21043

*Counsel for Two Farms Inc.*

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March 2019, a copy of revisory request was mailed, postage prepaid, to:

David Moore, Esq.  
Howard County Office of Law  
3450 Courthouse Drive  
Ellicott City, Maryland 21043

*Counsel for Howard County Department of Planning and Zoning and Counsel for Howard County Planning Board*

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March 2019, a copy of the foregoing revisory request was mailed, postage prepaid, to:

William Erskine, Esq.  
Offit Kurman, Attorney at Law  
8171 Maple Lawn Blvd.  
Fulton, Maryland 20759

*Counsel for Columbia Association, Inc.*

I HEREBY CERTIFY that on this 21<sup>st</sup> day of March 2019, a copy of the foregoing revisory request was sent electronically or mailed postage prepaid, in accordance with section G.1.a of the Planning Board Rules of Procedure to the parties listed. This is a good faith effort to comply as the sign in sheet from the March 7<sup>th</sup> Meeting was evidently destroyed.

[CERTIFICATE SIGNATURE FOLLOWS]

March 22, 2019

Revisory Decision and Order Request: SDP 17-41 Royal Farms 186 and Snowden Car Wash

Other known parties to the case:

Richard Boulton

Jervis Dorton

Stuart Kohn

Mary Kay Sigaty

Joan Lancos

Chip Doetch, President Apple Ford



Brian England

*Any person interested in responding to this motion must file a written response with the Planning Board within ten days of the date that this request was filed*