

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

VILLAGE OF FRIENDSHIP HEIGHTS, :
et al., :

Plaintiffs, :

v. :

Civil Action No.: 15-CV-26-002907

MONTGOMERY COUNTY PLANNING :
BOARD, et al., :

Defendants. :

PLAINTIFFS' OPPOSITION TO PLANNING BOARD
MOTION TO DISMISS

I. PRELIMINARY COMMENT

This pleading filed by plaintiffs is styled Plaintiffs' Opposition to Planning Board Motion to Dismiss. Plaintiffs attempted, without success, to file a consolidated opposition of three separate Motions, one filed by the Planning Board, one by the District Council and one by Friendship Commons Partners, LLC (FCP). The consolidated format was adopted because the defendants all make essentially the same arguments for why this Court should not reach the merits and decide the legal issue presented by plaintiffs for declaratory relief. Obligated by the Office of the Clerk to nonetheless file separate responses, plaintiffs are hereby complying with this directive. Nevertheless, to spare the Court from having to peruse repetitious filings, and because all three Motions effectively rise or fall together, all three Opposition pleadings are functionally identical beyond differences in this Preliminary Comment. Where there are any individual differences in the arguments underlying the three Motions to Dismiss, such differences are so identified and responded in all three Oppositions being filed, so that

examination of any one of the three Oppositions will suffice to serve as a response to all three Motions to Dismiss.

II. INTRODUCTION

Below in Part III plaintiffs explain why the various rationales defendants have advanced to deter this Court from addressing the legal issue for which declaratory relief is sought do not apply here. Those claims all come down to the same thing: the Court should not decide the legal issue plaintiffs have presented; Court involvement must await the completion of the Planning Board public hearing and decisional process on FCP's plans, currently scheduled to take place on July 30, 2026 where the issue presented here, if not properly addressed, will eventually be subject to judicial review in this Court. So why all the fuss? Why can't plaintiffs simply await their opportunity to challenge FCP's abandonment of the Binding Elements at the forthcoming Board hearing and proceed to judicial review of the resulting written Board opinion if dissatisfied with the outcome?

The answer lies in four interrelated considerations. First, plaintiffs are not asking for affirmative or negative injunctive relief as to any party and they are not asking the Court to weigh in on the substantive or legal merit of any plans before either authority. They are asking only for the Court's confirmation that proper and established procedures must be followed. Second, those procedures make clear that final decisions on amendment or dissolution of Binding Elements are exclusively within the jurisdiction of the District Council, whose decisions on such requests are subject to a separate public hearing requirement that necessarily must precede any Planning Board hearing on plans predicated on those requested changes. Third, in its opposition to having this Court rule on the question of legal procedure raised by plaintiffs, the Board has effectively confirmed that it will disregard this mandated process and not insist that

FCP follow it. The Board is thus in complete alignment with the staff's processing of FCP's plans to date, as has been documented by plaintiffs in their motion for summary judgment—sworn testimony presented without contradiction by the Board in this Court.¹ Fourth, FCP has confirmed that its plans now before the Board are grounded in its view that the Binding Elements have somehow been extinguished. FCP Motion to Dismiss at 2. Hence, as detailed part III. below, absent the requested declaratory relief, plaintiffs run the substantial and serious risk that the Board's public hearing will go forward with the Board making decisions on July 30th on plans that abandon the Binding Elements. Under these readily foreseeable circumstances, absent the requested declaratory relief, plaintiffs, due to the Board's aberrant handling of this case, will have been effectively deprived of their opportunity for a public hearing subject to District Council review and approval, on whether and to what extent the Binding Elements may be properly amended or dissolved before final action is taken on the plans before the Board.

III. NONE OF DEFENDANTS' ARGUMENTS FOR DISMISSAL OF THIS CASE WITHOUT REACHING AND DECIDING THE DECLARATORY JUDGMENT QUESTION OF LAW APPLY HERE

A. Procedural Context of Defendants' Motions to Dismiss

All three defendants have eschewed their opportunity to oppose plaintiffs' motion for summary judgment on the merits of the facts and the law, and have instead sought dismissal of the action based on a variety of rationales that they claim close the courthouse door to declaratory relief at this time. FCP further argues that summary judgment should be entered in its favor under Md. Rule 2-501(f), in that while FCP agrees with plaintiffs that there is no genuine dispute as to any material fact, it is FCP, not plaintiffs that is entitled to judgment as a

¹ See Affidavit of Francine Kerner Klein ¶ 25. The Klein Affidavit is an exhibit to Plaintiffs' Motion for Summary Judgment, incorporated by reference herein. The Klein Affidavit has not been disputed as to its factual accuracy by any defendant.

matter of law. FCP Opp. Mem. 5–8. In no instance has any defendant pointed to any factual error in the facts presented in sworn testimony in support of plaintiffs’ motion for summary judgment or challenged in any way the legal sufficiency of the Klein Affidavit, made on personal knowledge.

The defendants have all moved under Md. Rule 3-322(b) to dismiss for failure to state a claim upon which relief can be granted. In ruling on those motions, the Court “must read the complaint in the light most favorable to plaintiff, and accept as true the well-pleaded facts and the reasonable inferences drawn from such facts.” *Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 20, 301 A.3d 308, 319 (2023). In the motions, defendants identify no deficiencies in what has been pleaded in the Amended Complaint other than disagreement with the legal conclusions to be drawn from it. Hence, when coupled with defendants’ failure to identify even a single genuine issue of material fact in opposing plaintiffs’ summary judgment motion, the Court, in ruling on the motions to dismiss should consider all the facts plaintiffs have presented by motion or in the Amended Complaint as true and uncontested.

It is especially significant that the defendants’ motions to dismiss are directed at a complaint seeking declaratory relief under the Declaratory Judgment Act. First, the appellate courts of Maryland have regularly emphasized, referencing the text of the Act, that it is a “remedial statute designed to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations,” and “is to be liberally construed and administered.” *Falls Road Community Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 146, 85 A.3d 185, 203 (2014); *M-NCPPC v. Wash. Nat’l Arena*, 282 Md. 588, 595, 386 A.2d 1216, 1222 (1978) (There is a “strong legislative policy favoring the liberal use and interpretation of the Declaratory Judgments Act to effectuate its broad remedial objectives.”). Second, it has long been the

operating premise in appellate review of dismissal of cases brought under the Act that a motion to dismiss is “rarely appropriate.” *Broadwater v. State*, 303 Md. 461, 466, 494 A.2d 934, 936 (1985), (quoting *Shapiro v. Bd. of County Comm’rs*, 219 Md. 298, 302-03, 149 A.2d 396, 398-99 (1959)). The “rarely appropriate” admonition arises out of the fact that it is quite easy for the movant to confuse the dismissal issue—whether plaintiffs have established grounds for the Court to exercise its declaratory power—with the issue of the legal merit of the substantive ruling sought by the plaintiff when the Court’s declaratory power is exercised. Rather, in ruling on a motion to dismiss, “it is immaterial that the ultimate ruling [on the merits] may be unfavorable to the plaintiff.” *Id.*, 494 A.2d at 936, 149 A.2d at 398-99. As will be shown in the case of each specific frailty alleged by defendants, such confusion plainly exists in this case.

Finally, plaintiffs emphasize that the declaratory judgment sought is, quite appropriately, purely a statement of law, not a request for injunctive or other coercive relief directed to any party. The statement sought by plaintiffs will determine “the legal relations of the parties,” injunctive relief “may indeed become unnecessary, for each party will have an authoritative judicial decision of his legal position in the premises.” *Falls Road, supra*, 437 Md. at 149, 85 A.3d at 205. *See also Stevenson v. Lanham*, 127 Md. App. 597, 610, 736 A.2d 363, 371 (1999)(“The declaration of rights that constitutes the final judgment stands by itself and does not call for ‘executory process or coercive relief.’”). Indeed, plaintiffs’ expectation is that if the declaratory relief sought is awarded, the Board will need no follow-on order by this Court to simply recognize that it must halt progress on its review of FCP’s plans until finality has been achieved regarding the extent to which the Binding Elements may be reaffirmed, amended or abrogated by action of the District Council.

B. The Amended Complaint Presents No Exhaustion of Administrative Remedies, Finality or Mootness Deficiency

The motions to dismiss collectively seek dismissal of the Amended Complaint on claims that plaintiffs have failed to exhaust available administrative remedies, that there is no finality to the Planning Board decision on the FCP plans under consideration, and that this case may become moot, depending on what happens when the Board hears this case on July 30th. These claims would have some salience if plaintiffs were asking the Court to weigh in on the merits of the FCP plans submitted to the Board for review and approval. But defendants, putting the matter as charitably as possible, seem not to understand that that is not what this case is about. On the record on which the Court must decide the Motions to Dismiss, it is clear that the Board does not intend to interrupt its own adjudication process on those plans in response to plaintiffs' demand that the Board do so. What the outcome of that proceeding will be is obviously uncertain, but it is a practicable certainty that it cannot be concluded before the Board hearing on July 30th, given that any amendment to the Binding Elements will be a matter of intense interest and concern among the homeowners and residents represented by plaintiffs, who will insist on an OZAH hearing (under oath and subject to cross-examination) and a report from the Hearing Examiner to the District Council. That is why plaintiffs find it necessary to seek declaratory relief that it expects will lead to late, but hopefully not too late, Board recognition that it must halt further progress on plans that cannot be approved without the imprimatur of the District Council in relation to the existing Binding Elements on the property.

1. Exhaustion of Administrative Remedies

The Board accuses plaintiffs of "premature judicial intervention" into a process where "there has not even been an administrative decision." Board Motion at 7. But the facts are otherwise, which facts the Board, in its response has completely confirmed.

The Board invokes section 3-409(b) of the Act, which states that [i]f a statute provides a special form of remedy for a specific type of case, that remedy shall be followed in lieu of a proceeding under this subtitle.” The Board cites no “special form of remedy” for plaintiffs to invoke to demand that the Board halt progress on plans submitted to and accepted by the Board for review, other than to complain of error in conjunction with the public hearing on the application. Board Mem. at 7-8. But as the uncontested factual record reveals, plaintiffs sought remedial action from the Board through the Lead Reviewer on the application, and it has been rejected. There is no “special form of remedy” to take this matter to the Board or beyond until the Board hearing on the application, and even if it had been attempted, the Board filing in this case confirms that the Board would have done what it did here: tell plaintiffs to take up their concerns at the Board hearing.

Every case cited by the Board or other defendants invoking either 3-409(b) of the Act or the exhaustion of administrative remedies doctrine is distinguishable from the circumstances of this case, where declaratory relief is not sought to defeat administrative action by the Board, but rather to ensure that a second administrative action (controlled by the District Council) is commenced and concluded with a decision of what Binding Elements may change or be abrogated **before** plans, amended as necessary, are acted upon by the Board.

Employing a belt-and-suspenders approach to this issue, plaintiffs further note that while it is ordinarily the case that “a final administrative decision is a prerequisite for resorting to the courts,” *Board of Public Works v. K. Hovanian’s Four Seasons at Kent Island, LLC*, 443 A.2d 199, 221, 115 A.3d 634, 648 (2014), there is an exception allowing declaratory relief in the midst of an ongoing agency proceeding. When, as here, there is no avenue of appeal of a refusal to honor a request that the agency proceeding be halted for another agency to

conduct a hearing that has previously been understood to be a necessary prerequisite to orderly decision making by the agency, the denial of that request falls within the rubric of an “interlocutory decision” by the agency, which can trigger declaratory relief if that interlocutory decision “has immediate legal consequences causing irreparable harm.” *Id.*

Here, there are “immediate legal consequences and irreparable harm” arising from the indifference the Board has displayed to plaintiffs’ entreaties that FCP first get due and proper approval of any requested change in the status of the Binding Elements before passing on FCP’s plans. Absent declaratory relief, the hearing will go on as scheduled. Plaintiffs will have to undertake extensive preparation to deal with the numerous hypothetical cases any of which may or may not be the outcome of a later hearing by the District Council on the Binding Elements. They are quite likely to change, especially at the behest of FCP, which currently views the entirety of the Binding Elements as negated or invalid. Indeed, if there is any change, there will have to be a further hearing at the Board on the amended plans—necessitating a second occasion for the community to marshal its resources to vet and raise concerns about the revised plans.

Boyd’s Civic Ass’n v. Montgomery County Council, 309 Md. 683, 526 A.2d 598 (1987), is the leading case on proper application of the ripeness doctrine, one of the three factors in evaluating whether an action is justiciable. It is discussed in Part C.1. below, in response to defendants’ lack-of-ripeness claims. But *Boyd’s* is also instructive on the harm to citizen groups that interim agency decisions may cause if they are erroneously obliged to await further agency action. In reversing the lower courts’ finding that the citizens of Boyd’s, Maryland needed to await the completion of a rezoning to seek declaratory relief regarding a master plan change, the Supreme Court (then the Court of Appeals) discussed the citizens’ allegations of harm as follows:

[P]etitioners claimed that hearings—spanning some four days—on the application to amend the local zoning map would not have gone forward if the master plan had not been amended. . . . [P]etitioners alleged that [they were] forced to hire counsel and land consultants in order to participate in the local zoning map amendment proceedings. The prospect of a controversy therefore, lay well beyond the realm of matters “future, contingent and uncertain. . . . [T]his case presents a practical rather than a theoretical question.

Id., 309 Md. at 698, 526 A.2d at 605.

The reasoning of the *Boyd*s decision is equally applicable here. The “immediate legal consequences” of denial of declaratory relief will be that plaintiffs will be forced to present in the Board hearing next month, which should not take place but is certain to take place absent relief from this Court, all conceivable objections to FCP’s plans in order to preserve their right of appellate review on each, even as they will be devoting more unnecessary resources to ensuring that a proceeding is commenced for a final ruling from the District Council on the status of the Binding Elements. This is time and resources that cannot be recovered but are all but certain to be avoided if plaintiff prevails on the merits in its declaratory relief claim that the District Council horse must come before the Planning Board cart.

2. Finality

Just as there is no administrative remedy left for plaintiffs to exhaust in their effort to prevent the short-circuiting of the District Council’s proper role, there is no lack of finality to their efforts to achieve this end (which is also further confirmation that there is no lingering exhaustion of remedies problem blocking this declaratory judgment action). What distinguishes non-final from final agency orders is “when it is contemplated that there is more for the agency to do.” *Kim v. Comptroller of the Treasury*, 350 Md. 527, 534, 714 A.2d 176, 179 (1998). There is no contemplation of further Board action before its hearing on the FCP plans on July 30th. With respect to any earlier action, the Board has spoken, not only

through the silence with which plaintiffs were greeted in urging Board staff to get progress on evaluation of the FCP halted, but also through the definitive stance taken by the Board itself, through counsel, in response to the Amended Complaint. So while the Board review process is continuing, there is no prospect for further Board action on our protest to its continuance unless the Court denies the motions to dismiss and decides the cart-before-horse question presented for declaratory relief.

3. Mootness

Lastly, there is no legitimate question of mootness precluding declaratory relief, despite the Board's reference to the mootness doctrine. Board Mem. 9. The Board's claim is predicated on the notion that plaintiffs might prevail before the Board next month on the issue presented here, thus resulting in "this entire exercise rendered moot and confirmed to be the tremendous waste of time and judicial resources it certainly appears to be." *Id.* But what is really speculative about this case is Board counsel's reliance on the extraordinarily unlikely prospect that at the 11th hour, after plaintiffs have invested considerable resources in vetting and questioning FCP's plans, the Board will, absent Court intervention, suddenly reverse itself, recognize that it is proceeding contrary to established law and procedure, and halt the processing of FCP's plans until the District Council takes action on the Binding Elements.

The mootness doctrine, in any case, has no coherent relevance to this case. "A case is considered moot when **past** facts and occurrences have produced a situation in which, **without any future action**, any judgment or decree the court might enter would be without effect. *LaValle v. LaValle*, 432 Md. 343, 351, 69 A.3d 1, 6 (2013) (emphasis added).

The Board's claim is predicated on possible future action, not past action, and it is obvious that the declaratory relief sought would not be without effect if granted as requested.

C. The Amended Complaint Presents No Justiciability Deficiency

Defendants also seek dismissal on various claims that this action is not justiciable. Their claims are made in service to the principle that "the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Maryland State Admin. Bd. of Election Laws v. Talbot County*, 313 Md. 332, 339, 558 A.2s 724, 727 (1988). But efforts to convince the Court that it is faced with a non-justiciable controversy fare no better than defendants' other efforts to prevent the Court from addressing the legal question presented for declaratory judgment. There are three commonly recognized ways in which a case may fail the test of justiciability: ripeness; existence of an actual controversy between the parties; and standing. *Id.* These claimed failures simply do not exist, as detailed below.

1. Ripeness

Boyd's Civic Ass'n v. Montgomery County Council, 309 Md. 683, 526 A.2d 598 (1987), is the leading case on proper application of the ripeness doctrine. At the time of this case, Boyd's Civic Association was composed of residents residing near a 530-acre tract owned by Rockville Crushed Stone ("RCS") that RCS wanted to be used to operate a quarry. The Association went to Montgomery County Circuit Court to challenge that outcome, detailing that RCS failed in its initial attempt to get its property rezoned for that purpose because the master plan did not so provide, but later got the master plan amended to allow a quarry on that site. The Association sought a declaratory judgment that the master plan change was unlawful. The circuit court, affirmed by the Court of Special Appeals, found the declaratory

judgment request to be non-justiciable, in that the court was being asked to decide future rights in anticipation of an event that might never take place—the rezoning once denied to RCS that, in light of the master plan change, was being sought a second time, but was not yet completed. The appellate court further explained that “the 1995 Amendment to the master plan merely **authorizes** but does not **require** the District Council to rezone the property” so “ it did not bestow upon RCS any right to use the property in a way that would affect the rights of the appellants.” *Id.*, 309 Md. at 688, 526 A.2d at 600-601 (emphasis added).

The Court of Appeals rejected this analysis and found the controversy justiciable and ripe for declaratory relief. The Court first noted that ripeness for a declaratory judgment would be lacking if it were asked to “declare the rights of parties upon a state of facts which had not yet arisen, or upon a matter which is future, contingent and uncertain.” *Id.*, 309 Md. at 690, 526 A.2d at 602. The Court added that “the purpose of the ripeness doctrine is to ensure that adjudication will dispose of an actual controversy in a conclusive and binding manner.” *Id.*, 309 Md. at 691, 526 A.2d at 602. Then, on the key ripeness question--whether the facts are sufficiently developed for a conclusive adjudication or so contingent and uncertain as to decline the invitation--the Court quoted as follows from the 1941 treatise of E. Borchard on Declaratory Judgments:

The imminence and practical certainty of the act or event in issue, or the intent, capacity, and power to perform, create justiciability as clearly as the completed act or event, and is generally easily distinguishable from the remote, contingent, and uncertain events that may never happen and upon which it would be improper to pass as operative facts.

Id., 309 Md. at 693, 526 A.2d at 602. The Court then went on to conclude that the issue raised in the declaratory judgment complaint—that the master plan revision was unlawful—was ripe for adjudication, explaining as follows:

Designation of the area in question on the master plan for a Mineral Resource Recovery Zone is a necessary prerequisite to obtaining [a] rezoning. The petitioners are asserting that the master plan amendment procedures failed to comply with law. If proper procedures were not followed then there could be no valid plan and hence there could not be Mineral Resource Recovery zoning. So long as the master plan recommends Mineral Resource Recovery zoning for the property of RCS, petitioners face the threat of expensive and time consuming hearings on rezoning applications. The threat of such potential rezonings then hangs like a pall of smoke over properties “within sight and sound” of the land sought to be quarried. We believe and hold that a justiciable controversy exists as to whether the master plan amendment has been properly adopted.

Id., 309 Md. at 700, 526 A.2d at 607.

The *Boyd*s analysis is equally applicable here. There is nothing remote, contingent or uncertain at this point about the conclusion that if the Court shuts the door to declaratory relief, there will be no halt to the Board review process on FCP’s plans, or to the imminent public hearing (little more than a month away). And, with practical certainty, there will be no District Council hearing for a resolution of what Binding Elements must be followed before the Board conducts its public hearing on FCP’s plans. The unresolved question of what Binding Elements might emerge from the necessary District Council hearing process on their amendment or dissolution will “hang like a pall of smoke over all the properties plaintiffs represent that are within sight and sound of the subject property,” unless the Court promptly concludes, as plaintiffs request via declaratory judgment, that a District Council hearing on the Binding Elements must precede the Board hearing.

All of the defendants make arguments to the effect that this case is not ripe for adjudication, but all of them focus on the uncertainty of future Board action on FCP’s plans. This again misapprehends what this case is about. Plaintiffs’ focus is not on those plans, but on the absence of any District Council hearing and action on the Binding Elements, which FCP has not incorporated into those plans, doing so without advance approval from the Council to

disregard the Binding Elements it earlier imposed on the property. There is nothing uncertain or speculative about the Board's decision to do nothing to ensure that its plan review and hearing process is halted until after District Council action on the Binding Elements.

2. Existence of an Actual Controversy Between the Parties

Mindful of the conditions specified in the Declaratory Judgment Act that must be met for the grant of a declaratory judgment, including section 3-409(a) of the Act, the Amended Complaint ¶ 27 states as follows: "An actual controversy exists between the contending parties in this action; or antagonistic claims are present between the parties involved which indicate imminent or inevitable litigation." In short, plaintiffs have alleged the existence of an actual controversy, which ensures that the entry of a declaratory judgment will not be an advisory opinion, the issuance of which is "a long forbidden practice in this State." *Hatt v. Anderson*, 297 Md. 42, 46, 464 A.2d 1076, 1078 (1983). The "actual controversy" in this case (for purposes of § 3-409(a) of the Act) is whether or not it is necessary for District Council action on the Binding Elements in LMA G-760 to be addressed by the District Council before the Planning Board takes action on FCP plans that claim the Binding Elements have been abrogated or have become invalid. Both the Board and FCP, by their responses, have made clear that there is no such necessity, whereas plaintiffs assert the contrary. There is an actual controversy between the parties on a question of law, and a declaration resolving it "will serve to terminate the . . . controversy." § 309 (a) of the Act. Defendants' claims that plaintiffs are seeking a purely advisory opinion are just more misapprehension (at best) and focus not on the need for prioritized District Council action on the Binding Elements but rather on Board action on FCP's plans without that prior District Council resolution.

Plaintiffs further note that the foregoing analysis does not fully apply to the District Council, which has not stated or implied any view on the necessity of District Council action before Board action. In plaintiffs' view, the declaratory relief they seek is protective of, and in no way in derogation of, the exclusive authority of the District Council to specify the terms of any Binding Elements deemed necessary to approve a rezoning request. Therefore, in formulating their complaint for declaratory relief, plaintiffs considered the possibility of including the District Council as an involuntary plaintiff rather than defendant, to ensure that all parties required to be joined under Md. Rule 2-211(a) were joined in the case. Indeed, it is hardly implausible for plaintiffs to conclude that the District Council would have a strong interest in ensuring that the Court not issue a declaratory judgment stating that there was no problem with FCP's open disregard of the District Council's primary role in approving changes to Binding Elements when only last year the Board expressly confirmed the continued applicability of the Binding Elements to the GEICO property. Klein Aff. ¶¶ 19-24. In short, the District Council has been joined as a party, but not with a plaintiff-created claim that they have been harmed by any District Council action. Instead, plaintiffs see the District Council—even if it does not so itself—as an entity whose “ability to protect a claimed interest relating to the subject of the action,” Md. Rule 2-211(a)(2), may be “impaired or impeded” by the “disposition of the action.” *Id.* Rightly or wrongly, plaintiffs continue to believe that if issue is joined as requested on the legal question presented for declaratory relief, the District Council will recognize that its views must be aligned with plaintiffs, leaving intact the existence of an actual controversy between plaintiff and the other two contending parties in this action.

3. Standing

The third justiciability component is standing to sue. Of the three defendants, the one that has most directly challenged the standing of plaintiffs to maintain this action is FCP. FCP Mem. at 7-8. Its arguments are flawed, misdirected and contrary to controlling precedent. The Village is the duly constituted governmental authority for the maintenance and control of Village property, including its public streets. The Village's southern boundary along Willard Avenue is shared with the GEICO property. FCP's standing arguments inexplicably fail to mention that the Village's standing in land use matters regarding adjacent or confronting properties has been conclusively established in the Maryland appellate courts. *M-NCPPC v. Friendship Heights*, 57 Md. App. 69, 468 A.2d 1353, cert. denied, 300 Md. 89, 475 A.2d 1200 (1984), dealt with proposed development on land adjacent (on the north side) to the Village. In that case the Court rejected a claim that the Village lacked standing with the following succinct and definitive analysis:

The trial court found that Friendship Heights had standing to appeal from the action taken by M-NCPPC by reason of the expanded concept of the powers of the District and the Village Council articulated in *Smith v. Edwards*, 292 Md. 60, 437 A.2d 221 (1981). That case held that the Village Council had the implied power to engage in administrative and judicial proceedings to oppose intensification of development in Friendship Heights and The Hills.

CSA alleges that Friendship Heights lacks standing to appeal because the roadway under consideration is outside their boundaries, citing *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 230 A.2d 289 (1967). Under *Bryniarski*, two conditions precedent must be met before a person has standing to appeal to the Circuit Court from an administrative decision:

1. He must have been a party to the proceeding before the Board; and
2. He must be aggrieved by the decision of the Board.

Conceding that Friendship Heights is a "party," CSA reasons that it is not "aggrieved" where the property directly affected is not within its boundaries.

We note that Bryniarski dealt with the rights of private citizens to appeal from administrative decisions and not with the standing of duly elected officials to act on behalf of their constituents. Five years after the decision in that case, moreover, the Legislature added to the APA Section 256A which states:

For the purposes of this subtitle, the political subdivisions of this State and their agencies and instrumentalities have the status of an interested person, petitioner, or party, as the case may be, in all matters including appeals. (1972, Ch. 449)

Admittedly, the project involved is contiguous to Friendship Village. The southern boundary of the site coincides with the boundary between Somerset and Friendship Heights. Two Friendship Heights streets come to dead ends at or near the southern site boundary which also marks the edge of the Friendship Heights Central Business District. Whether Friendship Boulevard is a "ring road" as alleged by Friendship Heights, or a private right of way controlled by a card operated automatic gate, as envisioned by M-NCPPC, we believe that Friendship Heights has demonstrated the requisite interest to be considered as an aggrieved party and, therefore, has standing to appeal from a decision that may adversely impact upon the safety, health and orderly development of appellant's district. On the issue of standing to appeal, as to Friendship Heights, we concur in the decision of the trial court.

Id., 57 Md. App. at 77-78, 468 A.2d at 1356-57. In this case, we are dealing with adjacent property on the other side of the Village. There is no doubt that the Village has standing to address development on any property adjacent to the Village.² As for plaintiff Brookdale Citizens Association, Inc., given the Village's unquestionable standing, the courts will consider the case without passing on Brookdale's claim of non-property owner aggrievement, whether it

² As noted, the Village's standing is based on proximity of the Village boundaries to the property under review. But the Village is also a property owner in its own right in the Village, further confirming its unquestionable standing in this case. Its properties are within 1000 feet of the GEICO property, with some having sightlines to that property. Specifically, the properties are 4433 South Park Avenue (SDAT Acct. No 07-02440224); 4602 North Park Avenue (SDAT Acct. No 07-00493892); 4608 North Park Avenue (SDAT Acct. No 07-00494112); 4608 North Park Avenue (SDAT Acct. No 07-00494613); and 4623 North Park Avenue (SDAT Acct. No 07-00494590). Given the location of these properties, the Village is either *prima facie* or *almost prima facie* aggrieved for standing based on property ownership. *Ray v. Mayor and City Council of Baltimore*, 432 Md. 74, 91 59 A.3d 545, 555 (2013).

is open to question or not. *Wier v. Witney Land Co.*, 257 Md. 600, 661, 263 A.2d 833, 838 (1970).³

CONCLUSION

For the foregoing reasons, the motions to dismiss filed by the District Council, the Planning Board and FCP should be denied. Plaintiffs concur in the requests for hearing on the motions filed by defendants. Plaintiffs also reiterate the request (in their summary judgment motion) that their legal counsel be allowed to participate remotely in the hearing, regardless of whether the Court agrees to limit that request to their counsel or orders the entirety of the hearing to be remote.

³ Brookdale is no free rider on the Village's standing in any case. The Association is the duly constituted representative of those property owners adjacent to the southwest of the GEICO property, and has been duly authorized by its membership to be a plaintiff in this action. Its membership includes the single family properties immediately adjacent to the GEICO site along the entirety of GEICO's southwest property line. The Association is not itself an adjacent property owner, but it is a voluntary association of individual Brookdale property owners, and property ownership is not a prerequisite to aggrievement. *Chesapeake Bay Foundation v. Clickner*, 192 Md. App. 172, 189, 993 A.2d 1163, 1173 (2010). Rather, it is sufficient if the Association has "a specific interest that will be affected personally and specially in a way different from the public generally by the proposed development." *Id.*, 192 Md. App. at 189-90, 993 A.2d at 1174. However, the "interest sought to be protected [must be] arguably within the zone of interests to be protected or regulated by the statute in question." *Id.*, 192 Md. App. at 191, 993 A.2d at 1175. Plainly, the allegations in ¶ 2(b) of the Amended Complaint are more than sufficient to demonstrate the requisite special aggrievement of Brookdale residents. There is certainly aggrievement special to the Brookdale community in the community's loss of a greenway buffer of sufficient width, an acre of open space just north of Brookdale Park, and a playing field, which are the direct result of FPS's claim that the Binding Elements have been negated or invalidated. The land use regulations controlling the fate of established Binding Elements are exactly aligned with the Association's special interest in this case.

Respectfully submitted,

/S/ David W. Brown

David W. Brown (0206070001)
KNOPF & BROWN
2307 45th Avenue, SW
Seattle, Washington 98116
(301) 335-5646
dwb@comcast.net
Attorney for Plaintiffs

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