

**CITY OF GAHANNA  
BOARD OF ZONING AND BUILDING APPEALS**

The Academy Ridge Community Association,  
Inc., et al.,

Appellants,

vs.

Gahanna Planning Commission,

Appellee.

Case No.      BZD    0003-2017  
                     FDP    0001-2017

**THE ACADEMY RIDGE COMMUNITY ASSOCIATION'S RESPONSE TO NOTICE  
OF INTERVENTION AND BRIEF OF ARGUMENTS SUBMITTED BY GALLAS  
ZADEH DEVELOPMENT, LLC**

The Academy Ridge Community Association (the "Association") hereby submits its response to the Notice of Intervention and Brief of Arguments (the "Brief") submitted by Gallas Zadeh Development ("GZD") to the City of Gahanna Board of Zoning and Building Appeals (the "BZA") on July 18, 2017. While the Brief does make some preliminary procedural requests, identified below, to which the Association does not object, the motion to dismiss contained within the Brief is based on irrelevant and outdated code and case law citations that have no bearing on the instant appeal. Further, the limited substantive arguments submitted by GZD in support of the Planning Commission's May 10, 2017, approval of FDP 0001-2017 (the "Approval") miscast the issues raised by the Association and otherwise fails to address the failure of the Planning Commission to properly exercise its discretion in determining the qualitative effects of FDP 0001-2017 on the surrounding residential neighborhood.

The arguments and issues raised by GZD are more fully addressed below in the order in which they were presented in the Brief.

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**I. NO OBJECTION ON REQUEST FOR INTERVENTION.**

GZD requests it be added to the appeal as an interested party pursuant to GCC 147.03(c) and that it be allowed to present arguments in favor of the Approval at the upcoming hearing on the appeal scheduled for July 27, 2017 (the “Hearing”). The Association has no objection to GZD being added to the appeal as an interested party and being heard at the Hearing.

**II. NO OBJECTION ON REQUEST FOR RECUSAL OF MR. TIMOTHY PACK**

GZD correctly notes that Mr. Timothy Pack is an acting member of the BZA and is included, both individually and as a member of the Association, as an Appellant in this appeal. Pursuant to BZA Rule of Procedure 6.14, Mr. Pack is aware of a conflict of interest in this matter and will formally recuse himself at the Hearing as required by rule. Further, Mr. Pack has in no way discussed the merits of this matter with any other member of the BZA.

**III. GZD’S MOTION TO DISMISS IS BASELESS**

The Association’s appeal of the Approval is procedurally proper, and GZD’s arguments requesting that the BZA dismiss the appeal on procedural grounds is based on irrelevant code sections, outdated case law, and a failure to properly research the question at hand. Further, GZD’s strenuous efforts to keep the BZA from reviewing the merits of the appeal mirror its efforts to prevent pertinent information from being disclosed to the Planning Commission prior to the Approval. These efforts to minimize a thorough and transparent review of FDP-001-2017 should not be allowed to succeed once again. GZD’s request that the BZA dismiss the appeal at the outset of the Hearing should, therefore, be rejected out of hand.

GZD’s motion to dismiss raises three equally baseless arguments: (1) the Association lacks Standing; (2) the appeal was deficient because it originally failed to name the Planning

Commission as the appellee; and (3) the BZA acted improperly in accepting an amended appeal. These arguments will be discussed in turn.

**A. THE ASSOCIATION DOES HAVE STANDING**

GZD's arguments related to standing are based on inapplicable code references and outdated case law. GZD argues that this appeal is governed by Ohio Revised Code Chapter 2506, and pursuant to case law interpreting R.C. 2506, the Association lacks legal standing to appeal the Approval. The Association, however, does not rely on R.C. 2506 to support the appeal, and thus, this entire argument is irrelevant.

The appeal was not made pursuant to R.C. 2506. R.C. 2506 serves to ensure a citizen always has some legal recourse to appeal an unfavorable decision and allows an appeal to be made to a court of common pleas. This provision serves to supplement other legal options available, however, and is not the exclusive legal foundation on which a party may bring an Appeal. The supplemental nature of R.C. 2506 is clearly established in R.C. 2506(B), which states "The appeal provided in this section is in addition to any other remedy or appeal provided by law." (Emphasis added.) Thus, R.C. 2506 offers only one method of appeal.

The City of Gahanna has provided its citizens with an alternative method to appeal via GCC 147, which provision is completely independent of R.C. 2506. The instant appeal is brought pursuant to GCC 147 and is governed by the requirements set forth in the Gahanna City Code. As the appeal was not brought pursuant to R.C. 2506, GZD's arguments related to this provision are irrelevant.

In addition to interpreting a code provision that is inapplicable to this appeal, the case law cited by the Brief is outdated. The Brief cites two primary cases to support its request to have the appeal dismissed: (1) *Northern Woods Civic Association v. City of Columbus Graphics*

*Commission*, which was decided in 1986, and (2) *Noe Bixby Road Neighbors v. Columbus City Council*, which was decided in 2002. GZD cites these two cases in support the conclusion that “a property owners’ association does not have standing to file an administrative appeal under Chapter 2506.” (Brief at pg. 3.) Particularly, GZD quotes the *Northern Woods* decision, stating “There is no provision by statute, or otherwise whereby another may file the appeal in a representative capacity on behalf of the person who is affected.” (Id.) At the time these cases were decided (and in the event this appeal was even being brought pursuant to R.C. 2506), GZD’s arguments regarding the Association’s standing may have had some validity; however, on September 9, 2010, the State of Ohio enacted R.C. 5312(D). R.C. 5312(D) grants a homeowners association, such as the Association, the explicit right to appeal an administrative decision in a representative capacity for its members, stating an Association may:

Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the association, the board of directors, or the property, or that involves two or more owners and relates to matters affecting the property.

R.C. 5312(D), therefore, provides explicit statutory standing to the Association in this matter and overrules any previous or conflicting case law.

The Brief also argues that the Association has failed to cite a particularized harm necessary to establish standing pursuant to R.C. 2506. Again, this statute is inapplicable in the instant matter, and this argument should be wholly disregarded. GCC 147.03 lists the requirements for an appeal to the BZA and does not require a particularized statement of harm. In any event, the minutes of the various public hearings are replete with complaints from the Association, via its president and individual members, regarding the negative effects this development will have if allowed to proceed, and the Association has included numerous letters

demonstrating harm with the appeal. To the extent it is necessary to establish a particularized harm, therefore, the Association has thoroughly done so.

**B. THE APPEAL IS NOT PROCEDURALLY DEFICIENT**

GZD's argument that the appeal, as originally filed, was deficient because it was brought by the Association and did not name the Planning Commission as the Appellee misinterprets GCC 147.03(b). The Association originally filed its appeal of the Approval on June 9, 2017. The original appeal listed the Association and "Contiguous and Non-Contiguous Property Owners" as Appellants and GZD as the Appellee. The Association then filed an amended appeal on June 22, 2017, listing the Planning Commission as an Appellee and specifying several individual property owners as appellants, in addition to the Association. Based on the original appeal, GZD argues that "the appeal was filed with the wrong party as appellee" and "the appeal should be dismissed for the additional<sup>1</sup> reason that the appellee was not properly or timely identified...." A close reading of GCC 147.03(b), however, demonstrates that the Planning Commission was automatically deemed an appellee in this matter and it was not necessary for it to explicitly named as a party in any document filed by the Association.

The inclusion of the Planning Commission in the appeal was automatic pursuant to GCC 147.03(b). Gahanna City Code 147.03(b) states, "The City official, employee or body whose decision is under appeal is deemed the appellee and is a party to the appeal." The language of this section and inclusion of the word "deemed" indicate that this section is self-executing, and the Association could not have excluded the Planning Commission from the appeal had they even wished to. Further, GCC 147.03(a), which lists the requirements for filing an appeal, does not require any certain party to be named. Indeed, there is no reason to include a requirement to

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<sup>1</sup> GZD also argues the original appeal was deficient because it was made by the Association and that the Association did not have standing pursuant to R.C. 2506. The failures of this argument have been discussed above and are equally applicable to this argument; for the sake of brevity, they will not be repeated.

name the Planning Commission, or a similar body, because GCC 147.03(b) makes its inclusion in an appeal automatic. Thus, while the Association did file an amended appeal to clarify certain matters, the Planning Commission, pursuant to statute, has been a party from the date of the original appeal.

**C. GAHANNA CITY CODE IMPLICITLY ALLOWS AMENDMENTS**

In the hopes of avoiding a forthright review of FDP-001-2017, GZD attempts to argue that the original appeal was procedurally defective and that it is improper for the BZA to consider the amended appeal due to it being filed more than thirty days after the Approval; thus, GZD requests that the BZA ignore the amended appeal and throw-out the original appeal on alleged “technical” issues. (Brief at pg. 5.) As has been demonstrated herein, the various “technical” issues GZD raises in regard to the original appeal are baseless and if the amended appeal were disregarded, the original appeal is valid and proper. Regardless, the GCC implicitly provides for an amendment process, as do other judicial bodies, and it is proper for the BZA to review and consider the amended appeal.

Amendments are implicitly recognized in GCC 147.03(d). Pursuant to GCC 147.03(d), the Clerk of Courts is instructed to “review the appellants filings to ensure this section [GCC 147.03] is complied with, and shall advise the appellant.” (Emphasis added.) There would be no purpose for the Clerk to “advise the appellant” if this section did not contemplate additional submissions or amendments coming from the appellant based on the Clerk’s findings. Indeed, had the Code wished to bar all appeals which the Clerk found lacking in some way, it would have explicitly required the same.

Further, the Civil Rules governing Ohio Courts typically allow for amendments, and those amendments relate back to the time of the original filing. Ohio Rule of Civil Procedure 15 governs the amendment of pleadings in Ohio courts, and Civ.R. 15(c) provides that:

Whenever the claim or defense asserted in the amended pleadings arouse out of the conduct, transaction, or occurrence set forth in the original pleading, the amendment relates back to the date of the original pleading. (Emphasis added.)

GZD's argument that an amended appeal is not allowed is not supported by any legal basis and ignores both the generally permissive language in the GCC and governing law related to amendments. Thus, the amended appeal is proper and should be considered by the BZA.

#### **IV. RESPONSE TO GZD'S ARGUMENTS IN SUPPORT OF APPROVAL**

In the Brief, GZD makes multiple arguments in support of the Approval. The Association will respond to these arguments and more at the Hearing. The Association, however, feels it is necessary to respond to two particular arguments raised in the Brief regarding the traffic study, namely, that (1) the Association simply did not review the available traffic study and (2) that the Planning Commission's Approval was "Conditional." The Association responds to these two argument on the basis that these arguments misconstrue the facts and show a glaring impropriety with the Approval.

GZD states that it filed a Traffic Study with the City and that "it appears that no appellant ever took the step of asking to review it." GZD knows full-well that the Association did indeed review the Traffic Study submitted in support of FDP-001-2017—as the Association, via its president and multiple other members, appeared at all public hearings regarding the Approval and raised substantive issues with the Traffic Study. It likewise knows that the Associations issue with the Traffic Study is not the fact that it was unavailable, but rather that it is based on a

completely different development concept than ultimately presented in FDP-001-2017. By making this argument, GZD attempts to cast the Association as ignorant parties that simply do not know how the review and approval process works, and with sleight-of-hand, distract from the fact that the Traffic Study submitted is not a Traffic Study of the actual proposed development as is required.

Further, GZD jumps from the frying pan and into the fire when it attempts to deflate concern regarding the outdated Traffic Study by pointing out that the Approval was “conditional.” GCC 1108.05(a) governs the Planning Commission’s allowable actions in regard to Final Development Plans. According to GCC 1108.05(a), the Planning Commission may approve, approve with modification, or disapprove a Final Development Plan.<sup>2</sup> If the Planning Commission’s approval of FDP-001-2017 was “conditional,” as argued by GZD, then the Approval was outside the scope of Planning Commission’s defined power and should be reversed.

## **V. CONCLUSION**

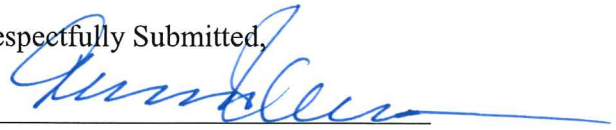
GZD has vigorously attempted to keep the City of Gahanna and its citizens from reviewing FDP-001-2017 in a full and frank manner. Pursuant to R.C. 5312(D)(2), the Association has standing to bring the appeal, and both the original appeal and amended appeal are procedurally proper and timely. The arguments that GZD presents in the Brief, as have been demonstrated herein, represent further, meritless efforts to prevent such a review from occurring and should be firmly rejected. Likewise, the Approval was improper, and the Association stands ready to demonstrate this fact at the Hearing.

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<sup>2</sup> An approval with modification is distinctly different than a conditional approval. A modification represents a distinct and defined change to the submitted final development plan.



Respectfully Submitted,



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