

Quattlebaum, Grooms & Tull

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June 10, 2024

Via Certified Mail, Return Receipt Requested & Electronic Mail

Mr. Bradley S. Jordan
Development Manager
City of Little Rock Department of Planning & Development
723 West Markham Street
Little Rock, Arkansas 72201-1334
E-Mail: bjordan@littlerock.gov

Re: Mindful Properties, LLC
5131 Cantrell Road, Little Rock, Arkansas 72207
Notice of Appeal

Dear Mr. Jordan:

We represent Mindful Properties, LLC (“Mindful Properties”), the owner of 5131 Cantrell Road, Little Rock, Arkansas 72207 (the “Property”). Mindful Properties requests an appeal to the City of Little Rock Board of Zoning Adjustment (the “BZA”) of the City of Little Rock Department of Planning & Development’s (the “Planning Department”) June 4, 2024, decisions (1) that Mindful Properties’ STR-2 application, submitted to the Planning Department on June 4, 2024, was not a substantial change in the original application which was denied at the City of Little Rock Board of Directors (the “City Board”) May 6, 2024, meeting, and (2) to deny Mindful Properties’ STR-2 application at the Planning Department level.

FACTS

In July 2023, Mindful Properties applied with the Planning Department to use the Property as a short-term rental. Mindful Properties fulfilled the preliminary requirements for the July 2023 application and paid the required fees. The City of Little Rock Planning Commission (the “Planning Commission”) approved the application at its December 14, 2023, meeting. The City Board denied the application at its May 6, 2024, meeting.¹

¹ The City Board initially denied the July 2023 application at its February 6, 2024, meeting, but the Board did not call Mindful Properties to speak at that meeting. Mindful Properties filed a Notice of Appeal and Complaint against the City of Little Rock in the Circuit Court of Pulaski County, Arkansas, seeking a reversal of that decision in the case styled, *Mindful Properties, LLC v. City of Little Rock, Ark.*, Case No. 60CV-24-2011. Mindful Properties dismissed its Notice of Appeal and Complaint in this action on May 14, 2024.

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On June 4, 2024, Mindful Properties submitted a second STR-2 application to the Planning Department. The June 2024 application was neither identical nor substantially similar to the July 2023 application that the City Board denied. The June 2024 application provided a materially different site plan, lower guest occupancy, and copies of Mindful Properties' guest rules, Property photographs, support letters, and guest reviews that Mindful Properties did not include with the July 2023 application:

	July 2023 Application	June 2024 Application
Site Plan	<p>Four (4) total parking spots</p> <ul style="list-style-type: none"> • One (1) parking spot in front driveway. • Three (3) parking spots in back yard. <p>Guest entrance through back door.</p>	<p>Three (3) total parking spots.</p> <ul style="list-style-type: none"> • One (1) parking spot in front area • Two (2) parking spots in front-side yards. <p>Guest entrance through front door.</p> <p>Landscaping to be installed in front yard.</p>
Guest Occupancy	Up to twelve (12) guests	Up to eight (8) guests
Guest Rules	Not provided.	Provided.
Parking Rules	Not provided.	Provided.
Guest-Required Parking Agreement	Not provided.	Provided.
House Rules	Not provided.	Provided.
Property photographs	Not provided.	Provided.
Support Letters	Not provided.	Provided.
Guest Reviews	Not provided.	Provided.

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The Planning Department denied the June 2024 application at the Planning Department level. Specifically, on June 4, 2024, Mindful Properties submitted the June 2024 application to Debra Stafford, a Planning Department employee, who accepted the June 2024 application and Mindful Properties' payment for the June 2024 application. Ms. Stafford also told Mindful Properties at this visit that the Property would not be subject to further Code Enforcement action because an amended STR-2 application had been filed with the Planning Department. Ms. Stafford called Mindful Properties shortly thereafter to state that the June 2024 application had been rejected at the Planning Department level and to request that Mindful Properties return to the Planning Department to accept a refund of its fee for the June 2024 application. Mindful Properties refused.

Later that day, Mindful Properties received the enclosed letter from the Planning Department. The letter notified Mindful Properties that the Planning Department had reviewed the June 2024 application and had "determined this application is identical or substantially identical to the previously submitted application which was denied by the Little Rock Board of Directors at their May 06, 2024, meeting. The proposal to change the zoning and use the property as a Short-Term Rental (STR-2) is not a substantial change in the original application which was denied. Therefore, your application for the STR-2 at 5131 Cantrell Road has been denied" under Section 36-83 of the City Code. The letter identified an appeal procedure to the BZA under Section 36-69(b)(1)(c) of the City Code. This appeal followed.

DISCUSSION

Under Section 36-83 of the City Code:

In determining whether to grant a requested amendment, the board of directors may consider, among other things, the recommendations from the planning commission and the designated department of the city having planning responsibility and authority and use the provisions of the comprehensive plan, master street plan, master parks plan, and community facilities plan, as well as any other appropriately approved document created to provide the required public facilities necessary to protect the public interest. The planning commission shall consider, but shall not be bound by, the lawful provisions of a valid bill of assurance for the subdivision within which the subject property is located when determining the appropriateness of the proposed special use. No identical or substantially identical application for the redistricting of a specific parcel or parcels of land which has been denied by the board of directors may be made for a period of one (1) year.

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The Planning Department erred in denying the June 2024 application at the Planning Department level for two reasons. First, the June 2024 application is neither identical nor substantially identical to the July 2023 application. As stated above, the June 2024 application provided a materially different site plan, lower guest occupancy, and copies of additional supporting documentation and materials that Mindful Properties did not include with the July 2023 application.

Second, the Planning Department was not authorized to deny an alleged identical or substantially identical application at the Planning Department level, because only the Planning Commission or the City Board may deny an application for those reasons. The City Code is clear that “the board of directors” has the final authority to approve or deny a STR-2 application after considering the “recommendations from the planning commission and the designated department of the city having responsibility and authority.” City of Little Rock, Ark., Rev. Code § 36-83. The City Code provides that “any petitioner for rezoning who is aggrieved by a denial recommendation of the planning commission may have his petition reviewed by the board of directors of the city provided he files a written request therefore with the city clerk within thirty (30) days after the negative vote of the commission.” City of Little Rock, Ark., Rev. Code § 36-85(a). Petitions must satisfy certain requirements before the City Board can consider them, but preapproval by the Planning Department that includes a review of whether an application is identical or substantially identical to a previously denied application was not one of them. City of Little Rock, Ark., Rev. Code § 36-85(b)-(c). Further, the Planning Commission’s Bylaws granted the Commission with the express authority to consider, and even to approve, an identical or substantially identical application to an application that was previously denied if the Planning Commission approved a motion to waive the Bylaws and consider the application by three-fourths vote (75%) of the members in attendance at the meeting. Bylaws of the Little Rock Planning Comm’n, at Art. V, § E(7)(c), (13). Under this framework, then, even if the Planning Department considered the June 2024 application to be identical or substantially identical to the July 2023 application (and it was not), only the Planning Commission had the authority to determine whether the application would be denied for that reason.

“The board of zoning adjustment is authorized, in accordance with the provisions of this chapter, to hear appeals from the decision of the administrative officers in respect to the enforcement and application of this chapter; and may affirm or reverse, in whole or in part, said decision of the administrative officer.” City of Little Rock, Ark., Rev. Code § 36-69(a). “The Board has the following powers: . . . To hear and decide appeals where it is alleged there is error in any order, requirement, decision, determination or interpretation made in the administration or enforcement of this chapter. In exercising the above-mentioned powers, the board may, in conformity with the provisions of the law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made.” City of Little Rock, Ark., Rev. Code § 36-69(b)(1)(c).

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Mindful Properties requests an immediate appeal to the BZA of the Planning Department's June 4, 2024, decisions (1) that Mindful Properties' STR-2 application, submitted to the Planning Department on June 4, 2024, was not a substantial change in the original application which was denied at the City Board's May 6, 2024, meeting, and (2) to deny Mindful Properties' STR-2 application at the Planning Department level.

If you have any questions or need anything further, please contact me.

Cordially yours,

QUATTLEBAUM, GROOMS & TULL PLLC



Thomas H. Wyatt

Enclosures

cc w/encls.: Thomas M. Carpenter, Esq. (*via* Electronic Mail)
Jamie Collins, P.E. (*via* Electronic Mail)
Shawn A.M. Overton, Esq. (*via* Electronic Mail)