

LUBNA KHAN	:	BEFORE THE
Appellant	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF	:	HEARING EXAMINER
PLANNING AND ZONING IN CE-22-018	:	BA Case No. 789-D
Appellee		

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DECISION AND ORDER

On September 7, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Lubna Khan (Appellant). Appellant is appealing the April 13, 2022, Formal Notice of Violation of the Department of Planning and Zoning (DPZ) in Case No. CE-22-018, in which DPZ found violations of the approved Site Development Plan, SDP-99-125, at 12345 Wake Forest Road, Clarksville, Maryland, in the B-2 (Business: General) Zoning District. The appeal is filed pursuant to §130.0.A.3 of the Howard County Zoning Regulations (HCZR).

The Appellant certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Lubna Khan, Appellant, appeared *pro se*. Mr. Christopher Childress also testified on behalf of Appellant. Steven Yeager, Esq., Senior

Assistant County Solicitor, Howard County Office of Law, represented Appellee, Department of Planning and Zoning. Christopher DeCarlo, Esq. represented the Property owners, Clarksville Ridge Professional Center, LLC. Mr. Jeff Williams, Bureau of Environmental Health, Howard County Health Department, testified in response to a subpoena regarding Health Department violations. Mr. Chad Edmonton and Ms. Tamara Frank testified on behalf of Appellee as to the various red-line changes to SDP-99-125 and regarding the investigation and Formal Notice of Violation arising from Appellant's complaint.

On September 12, 2022, a Decision and Order was issued in this matter, finally disposing of the Appeal on its merits. On September 21, 2022, Appellant filed its Motion to Alter or Amend or Revise (Suspend the Order) and Motion for Reconsideration, a Request for a Hearing, and attaching exhibits. Appellee, the Department of Planning and Zoning for Howard County, Maryland, filed its Opposition to Appellant's Motion for Reconsideration on September 30, 2022. Appellee Clarksville Ridge Professional Center, LLC also filed its Opposition to Appellant's Motion to Alter or Amend or Revise (Suspend the Order) and Motion for Reconsideration on September 30, 2022. Appellant filed her Opposition to Appellee's Opposition to Appellant's Motion for Reconsideration on October 3, 2022.

MOTION FOR RECONSIDERATION

On September 21, 2022, Appellant filed a Motion to Alter or Amend or Revise and for Reconsideration of the September 12, 2022, Decision and Order, alleging

violations of the Rules of the Circuit Court governing civil procedure, Maryland Code of Regulations Article 26, ADA Title II (Americans with Disabilities Act), the Maryland Land Use Article, and the Howard County Board of Appeals Hearing Examiner Rules of Procedure. Of these, only the Howard County Board of Appeals Hearing Examiner Rules of Procedure govern appeals from the actions of Howard County administrative agencies and requests for reconsideration. Maryland Reclamation Assocs. v. Hartford County, 382 Md. 348, 855 A.2d 351 (2004) See, Howard County Board of Appeals Hearing Examiner Rules of Procedure, Article XI-Reconsideration.

CONCLUSIONS OF LAW

Rules of Procedure Rule 11.5 establishes the standard for the hearing examiner's reconsideration of her decision. "The hearing examiner will revise the decision only upon a finding of mistake of fact or mistake of law." There is inherent authority in administrative bodies to reconsider their own quasi-judicial decisions which applies in the absence of a rule or statute providing for reconsideration. Where, as here, a rule or statute exists, it governs as to circumstances under which the body may grant reconsideration. Pursuant to the Rules of Procedure, Howard County Board of Appeals Hearing Examiner, Rule 11.5, reconsideration is limited to a legally recognized ground and the hearing examiner may not impermissibly reconsider and reverse the decision based on a "mere change of mind". Cinque v. Montgomery County Planning Bd., 173 Md. App. 349, 918 A.2d 1254 (2007)

Rule 10.2. Burden of Proof states: Unless otherwise provided by law, the burden of proof in a case heard by a hearing examiner is as follows... (c) In any other appeal of an administrative agency decision, the petitioner must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law. The Decision and Order stated that Appellant failed to meet her burden of proof; Appellant is legally in error arguing that the burden of proof in her appeal must be borne by the Department of Planning and Zoning. The additional alleged errors in failing to follow procedures which are not applicable to Howard County hearing examiner proceedings is neither a mistake of fact nor a mistake of law. Additionally, the failure to find that Appellant has met her burden of proof is unsubstantiated. Appellant fails to state a mistake of fact or mistake of law upon which the requested relief can be granted.

Appellant's current attempt to incorporate into her appeal the alleged absence of a seal and signature on Site Development Plan, SDP-99-125, and any revisions thereto, is violative of the Howard County Code, §16.015(a), limiting an appeal of a decision of the Department of Planning and Zoning to 30 days after the issuance of the decision. The revision at bar was approved in 2011 and the instant appeal was filed in 2022. Additionally, this alleged defect was cured on May 9, 2017 when the signature and professional seal of a licensed professional engineer (Fisher, Collins, and Carter) was affixed to the approved red-lined SDP.

Appellant appealed the Notice of Violation issued by Ms. Tamara Frank citing violations of landscape requirements and the failure to place the dumpsters at the

approved location. Despite Appellant's attempts to obfuscate the issues by attempting to raise additional issues on appeal and reconsideration, this appeal is limited to Ms. Frank's Notice of Violation for the property at 12345 Wake Forest Road, Clarksville, Maryland. Ms. Frank's decision to issue the Notice of Violation, and the violations contained therein, is a discretionary action to be reviewed under the arbitrary and capricious standard. Maryland Small MS4 Coalition v. Maryland Dep't of Env't, 479 Md. 1, 276 A.3d 573, 590 (2022). Ms. Frank testified under oath that the Violation Notice was issued after her review of the County records indicated the red-line SDP was approved with the relocated dumpster location.

Appellant fails to cite any mistake of law or fact which would allow the reconsideration of the September 12, 2022 Decision and Order. Appellant also fails to provide any case law or other legal citations to support her request; Appellant fails to provide a legal basis upon which her requested relief can be granted.

Rule 11.4 Hearing At the discretion of the hearing examiner, a hearing may be held on the request for reconsideration. The hearing examiner will not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing. Appellant fails to provide evidence that the March 28, 2011, letter from the Department of Planning and Zoning which Appellant has appended to her Motion as Exhibit 3 could not have been presented at the evidentiary hearing. Appellant additionally fails to provide any evidence that the new arguments being raised in her Motion could not have been raised at the evidentiary hearing. Your Hearing Examiner is

denying Appellants request for a hearing on her Motion; Appellant voluntarily left the evidentiary hearing midway through the proceedings, effectively abandoning her appeal and negating any argument that there is any evidence that could not reasonably been presented at the evidentiary hearing.

Rule 11.7 Time for Appeal provides that the filing of a request for reconsideration does not suspend the time for filing an appeal to the Board of Appeals unless the hearing examiner has suspended the decision. The September 12, 2022 Decision and Order is not suspended and the appeal period from the Decision and Order remains in effect.

ORDER

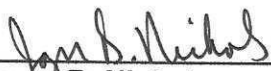
Based upon the foregoing, it is this 5th day of October 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Appellant's Motion to Alter or Amend or Revise (Suspend the Order) and Motion for Reconsideration, Request for a Hearing, and Exhibits Attached, the September 12, 2022 Decision and Order denying Appellant's appeal of the Notice of Violation issued by the Howard County Department of Planning and Zoning in Case No. CE-22-018 on April 13, 2022, for violations of landscaping requirements and the location of the dumpsters, in accordance with the approved Site Development Plan, SDP-99-125, at 12345 Wake Forest Road , Clarksville, Maryland, be and hereby is **DENIED**; and it is further **ORDERED**,

That Appellant's Request for a hearing on her Motions, be and hereby is **DENIED**; and it is further **ORDERED**,

That the Decision and Order in this Petition dated September 12, 2022 is **NOT** suspended and continues in full force and effect.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Joyce B. Nichols