

IN THE MATTER OF	:	BEFORE THE
	:	
<b>LUBNA KHAN</b>	:	<b>HOWARD COUNTY</b>
	:	
Appellant	:	<b>BOARD OF APPEALS</b>
	:	
v.	:	BA Case No. 789-D
	:	
<b>HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING</b>	:	
	:	
Appellee	:	
	:	
	:	

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The Howard County Board of Appeals (the “Board”) convened on December 5 and 19, 2023, January 11, 25 and March 5, 2024 to hear and deliberate the administrative appeal of Lubna Khan (“Appellant”). The Appellant is appealing the Howard County Department of Planning and Zoning’s (“DPZ” or “Respondent”) April 20, 2022 decision not to issue a notice of violation (“NOV”) requiring the owner of 12345 Wake Forest Road, Clarksville, Maryland (“12345 Wake Forest Road”) to enclose a dumpster located on the northeast corner of the property.

Board members Steven Hunt, Gene Ryan, Jean Xu and Lynn Foehrkolb were present at the first hearing on December 5, 2023. Board Member Felita Phillips was absent at the December 5, 2023, hearing. Board members Steven Hunt, Felita Phillips, Lynn Foehrkolb and Jean Xu were present at the December 19, 2023, hearing. Board member Gene Ryan was absent from the December 19, 2023, hearing. Board members Steven Hunt, Gene Ryan, Felita Phillips, Jean Xu and Lynn Foehrkolb were present for the January 11, 2024, hearing. Board members Steven Hunt, Felita Phillips, Jean Xu and Lynn Foehrkolb were present for the January 25, 2024, hearing. Board member Ryan

was absent from the January 25, 2024, hearing. Board members Steven Hunt, Gene Ryan, Felita Phillips and Lynn Foehrkolb were present at the March 5, 2024, hearing. Board member Jean Xu was absent from the March 5, 2024, hearing. Board member Steven Hunt presided over the hearings. Barry Sanders, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Appellant certified that notice of the hearings complied with the requirements of the Howard County Code. The Board members indicated that they had viewed the subject property as required by the Zoning Regulations.

This case is a *de novo* appeal and is being conducted in accordance with Section 2.210(a) of the Board's Rules of Procedure, which places the burden of proof upon the Appellant to show that the action taken by DPZ was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Howard County Subdivision and Land Development Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition, as submitted by the Appellant, were incorporated into the record by reference.

The Appellant appeared *pro se*. The Respondent, the Department of Planning and Zoning of Howard County, Maryland was represented by Stephen Yaeger, Senior Assistant County Solicitor. Clarksville Ridge Professional Center, LLC, an interested party, appeared at the hearings in opposition to the appeal and was represented by counsel, Sang Oh, Esquire. The property owner of the property subject to the appeal, Richard Talkin, Esquire, appeared in opposition to the appeal.

The Appellant, Lubna Khan, was the only witness in support of her Petition.

The following persons testified on behalf of DPZ: Chad Edmondson and Tamara Frank.

As a preliminary matter, the Board considered the Appellant's Motion to Strike in the Alternate Dismiss with Prejudice Clarksville Ridge Professional Center, LLC Entry of Appearance as an Interested Party and the opposition thereto by Sang Oh, Esquire on behalf of Clarksville Ridge Professional Center, LLC. After review of the Motion and oral arguments on the Motion, the Board denied Appellant's Motion.

The Appellant offered, and the Board accepted, the following documents into evidence:

Exhibit 1 – Advertisement Cost for Refund

Exhibit 2 – Clarksville Email from Christopher DeCarlo 9/2/2022

Exhibit 3 – Pictures of Vultures

Exhibit 4 – Pictures of Trash

Exhibit 5 – Pictures of Roof Damage

Exhibit 6 – Pictures in 2023 of Landscape, Trash and Vultures

Exhibit 7 – Pictures in 2022 of Dumpster Relocation Zoning to Sidewalk

Exhibit 8 – Pictures Northcrest Montessori

Exhibit 9 – BA 01-67V Non-residential Variance Petition

Exhibit 10 –SDP 99-125 Clarksville Glen North (11x17)

Exhibit 11 – Letter from Megan Reuwer to Lubna Khan

Exhibit 12 – 2 Documents

(A) Zoning Violation Letter 4/13/2022

(B) Formal Notice of Violation 4/13/2022

Exhibit 13 – DPZ Request 2/25/2022 and Health Department Complaint 10/19/2021

Exhibit 14 – SDP 99-125 Clarks Glen North (large format)

Exhibit 15 – Email from Stephen Yaeger to Lubna Khan 9/7/2022 (marked for identification but not admitted)

Exhibit 16 – Clarksville Red Line Record

Exhibit 17 – DPZ Speed Memo 3/28/2011

Exhibit 18 – Pictures of Dumpster on Loading Dock

Exhibit 19 – DPZ Code Enforcement Process

Exhibit 20 – Howard County DPZ Red Line Procedures

Exhibit 21 – Previous Exhibit 12a (marked for identification but not admitted)

Exhibit 22 – Pictures of Dumpster Relocated 5/17/2023

Exhibit 23 – DPZ Correspondence to Richard Talkin 6/14/2022

Exhibit 24 – DPZ Correspondence to Lubna Khan 6/14/2022

Exhibit 25 – Email from Stephen Yaeger to Lubna Khan (marked for identification but not admitted)

Exhibit 26 – Building Permit Search (marked for identification but not admitted)

Exhibit 27 – Building Permit Search (marked for identification but not admitted)

Exhibit 28 – Building Permit Search (marked for identification but not admitted)

Exhibit 29 – Building Permit Search (marked for identification but not admitted)

Exhibit 30 – Building Permit Search (marked for identification but not admitted)

Exhibit 31 – Building Permit Search (marked for identification but not admitted)

Exhibit 32 – Northcrest Montessori Letter from Health Department 4/4/2018

Exhibit 33 – Health Dept. PIA Record Letter 8/1/2022

Exhibit 34 – Health Dept. Email Communication with DPZ Regarding Dumpster 9/21/2021

Exhibit 35 – Email from Ryan Rappaport to Mehta Kavitha 10/23/2019 marked for identification but not admitted

Exhibit 36 – Dumpster Screening Regulations from elaws.us

Exhibit 37 – Health Department Email from Ryan Rappaport 9/8/2021

Exhibit 38 – Health Department 2019 Clarksville Violations

Exhibit 39 – Emails from Victoria Campitelli and Ryan Rappaport 4/2/2022 and Michael Cobb 4/4/2022 (marked for identification but not admitted)

Exhibit 40 – BA 789D Lubna Khan Decision and Order 9/12/2022

Exhibit 41 – Lubna Khan Residency Letter 7/4/2013

Exhibit 42 – BA 789D Decision and Order Reconsideration 10/5/2022

Exhibit 43 – BA 789D Clarksville Opposition to Appellant’s Motion for Reconsideration

Exhibit 44 – BA 789D Respondent Opposition Khan Motion for Reconsideration

Exhibit 45 – 2 Documents

(A) Email Exchange with Brian Shepter

(B) SDP 99-125 Clarks Glen North

Exhibit 46 – Photos

(A) Pictures of Dumpster, Grease Barrel and Trash 12/17/2023

(B) *Pictures of Dumpsters and Vultures (marked for identification but not admitted)*

(C) Pictures of Dumpster and Sidewalk 12/19/2023

Exhibit 47 – Development Engineering Division Check List for Site Development Plan Commercial Application

Exhibit 48 – Howard County Case Filed Report CE 22-18

Exhibit 49 – Missing/not presented

Exhibit 50 – BA 789D Administrative Appeal Petition 5/12/2022

Exhibit 51 – BA 789D Hearing Examiner Decision and Order 9/12/2022

Exhibit 52 – BA 789D Petition to Board of Appeals 10/11/2022

Exhibit 53 – Missing/not presented

Exhibit 54 – Route 1 Manual July 2009 (excerpt) (marked for identification but not admitted)

Exhibit 55 – Howard County Design Manual Volume I (2/19/2020) (1<sup>st</sup> few pages not applicable)

Exhibit 56 – Clarksville-River Hill Streetscape Improvement Project Letter 11/29/2022

Exhibit 57 – Revisions to Howard County Design Manual 2/22/2022 excerpt (marked for identification but not admitted)

Exhibit 58 – Howard County Design Manual Volume IV (2/22/2022)

Exhibit 59 – Howard County Landscape Manual (1/4/1993)

Exhibit 60 – Howard County Subdivision and Land Development Regulations

Exhibit 61 – Statutes Text 14-103

Exhibit 62 – not presented

Exhibit 63 – SDP for Gateway Commerce Center

Exhibit 64 – Maryland Code from justia.com (excerpt)

Exhibit 65 – Maryland Code Criminal Law 10-110 (excerpt) (marked for identification but not admitted)

Exhibit 66 – Previous Exhibits (ex. 17, ex. 63) and several SDP excerpts (Gateway Commerce Center, Village of Cedar Ridge and Clarks Glen North) (marked for identification but not admitted)

Exhibit 67 – Copies of Lubna Khan's Checks

Exhibit 68 – Combination of Documents - MD Division of State Documents (excerpts) and MD Code from justia.com (excerpts) (marked for identification but not admitted)

Exhibit 69 – Emails from Laura Boone and Anthony LaRose 4/18/2022

Exhibit 70 – Several emails from Brian Shepter, Lubna Khan and Annette Merson (marked for identification but not admitted)

The Respondent DPZ offered, and the Board accepted, the following documents into evidence:

Exhibit 1 – SDP 99-125 (large format)

Exhibit 2 – Redline History

Exhibit 3 – DPZ Speed Memo 3/28/2011

Exhibit 4 – DPZ Complaint from Lubna Khan

Exhibit 5 – Photos of Dumpster 3/17/2022

Exhibit 6 – DPZ Notice of Violation 4/13/2022

Exhibit 7 – DPZ Letter to Lubna Khan 4/13/2022

Exhibit 8 – Email from Brian Shepter to Lubna Khan 4/20/2022

Exhibit 9 – Photos of Dumpsters in Approved Location per SDP-99-125 (5/17/2022)

Exhibit 10 – City of Frostburg Zoning Ordinance from Elaws.com (excerpt)

### **Findings of Fact**

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. The approximately 1.954-acre property is located on the east side of Clarksville Pike (MD Route 108), north of its intersection with Guilford Road, and south of its intersection with Ten Oaks Road, also identified as 12345 Wake Forest Road, Clarksville, Maryland (the “Property”). The subject Property lies in the 5<sup>th</sup> Election District, and identified as Tax Map 34, Block 12, Parcel 426, Lot B-1. The Property has an approved Site Development Plan, SDP-99-125, which includes redline revisions. It is improved with 17,846 square feet of retail/commercial office and known as Clarks Glen North.

2. In 2000, DPZ initially approved a site development plan for 12345 Wake Forest Road. In the initially approved plan, the Property's dumpster was enclosed and located on the southwest corner of the Property. *See* Appellant's Exhibit 14.

3. In March of 2011, DPZ approved a red-line revision to the site development plan. The revision moved the dumpster to a concrete pad on the Property's northeast corner without an enclosure. The area where the dumpster had been located previously was converted to a play area for a daycare. *See* Respondent's Exhibits 1 & 2.

4. On February 25, 2022, the Appellant submitted a written complaint about 12345 Wake Forest Road to DPZ. In it, the Appellant stated that she was complaining that "[t]he dumpster is not enclosed and trash is left outside, rolls in the streets and my yard. The [sic] requires dumpsters to be enclosed. This has become a public nuisance as dumpster is not enclosed. It is attracting animals, vultures. The business states they cannot enclose dumpster per health dept." *See* Respondent's Exhibit 4.

5. In March of 2022, DPZ Inspector, Tamara Frank, opened an investigation into the Appellant's complaint. Ms. Frank reviewed the Property's site development plan and determined that the dumpster did not need to be enclosed.

6. On March 17, 2022, Ms. Frank inspected the Property and observed the dumpster at the southeast corner. Ms. Frank observed two violations that were not alleged by the Appellant in her complaint. First, she noticed that the dumpster was not in its approved location and landscaping had not been planted as required by the site development plan. On April 13, 2022, Ms. Frank issued an NOV to the Property owner requiring it to correct these violations. *See* Respondent's Exhibit 6.



7. In an email dated April 20, 2022, DPZ explained to the Appellant that it was not issuing an NOV requiring the dumpster to be enclosed because “[t]here is no dumpster enclosure required by the site development plan for 12345 Wake Forest Road, nor do the zoning or subdivision regulations require an enclosure around the dumpster.” *See* Respondent’s Exhibit 8).

8. On May 12, 2022, the Petitioner appealed DPZ’s decision to the Hearing Authority for Howard County, asserting that DPZ should have issued an NOV requiring the Property owner to move the dumpster “to the southwest side of building with an enclosure”. *See* Administrative Appeal Petition to the Howard County Hearing Authority.

9. Lubna Khan resides at 12339 Wake Forest Road and testified that the issue revolves around the relocation of the dumpster from the original southwest side of the structure to the sidewalk on the northeast side which abuts her property line. Ms. Khan stated that the location of the dumpster is affecting her quality-of-life and is a nuisance. Ms. Khan contends that the dumpster has been illegally placed and is not in the location it is supposed to be. Ms. Khan stated that the dumpster is not supposed to be on a sidewalk and that the dumpster must be enclosed. Ms. Khan testified that the SDP and any redline revisions thereto were never approved because an engineer did not sign and seal the SDP revisions.

10. Chad Edmondson testified that he is the Chief of DPZ’s Engineering Division. Mr. Edmondson explained the Site Development Plan Process and the Redline Revision Process in Howard County. Mr. Edmondson stated that the redline process is used for modifications or revisions to an originally approved Site Development Plan and

shown in red. Mr. Edmondson testified that DPZ approved the redline revision for the Property in 2011 authorizing the dumpster to be moved to its current location. Mr. Edmondson stated that he could not find a copy of the "Speed Memo" in DPZ's files which is issued by the Development Engineering Division when a redline revision is approved. Mr. Edmondson explained that he obtained a copy of the "Speed Memo" after the Appellant appealed DPZ's decision to the Hearing Examiner by contacting the engineering firm who made the revision. Mr. Edmondson testified that DPZ still considers the redline revision as approved even in the absence of an engineer not signing and sealing the redlined revision.

11. Tamara Frank, a regulations inspector with DPZ, testified that she received a complaint (CE-18) from Lubna Khan on February 25, 2022, that the dumpster on the Property was not enclosed. Ms. Frank testified that, upon receipt of the Petitioner's complaint, she reviewed the Property's site development plan to determine if it required an enclosure around the dumpster. Ms. Frank testified that the 2011 revision to the site development plan showed the dumpster in its current location without an enclosure and that site development plans are kept in DPZ's custody. Ms. Frank commented that the Howard County Zoning Regulations and the Howard County Code do not require enclosure of dumpsters. Ms. Frank stated that an owner can access a plan and make changes if DPZ has approved the owner's application for a redline revision. Ms. Frank testified that the existence of the revision on the site development plan meant that it had been approved. Ms. Frank stated that she confirmed her assessment by accessing an internal database DPZ uses to track site development plan revisions and that database showed that DPZ approved the 2011 revision showing the dumpster in its current location

without an enclosure. *See* Respondent's Exhibit 2. Based on this evidence, Ms. Frank decided not to prosecute the owner of 12345 Wake Forest Road for having an unenclosed dumpster.

### **Discussion**

The Appellant has appealed DPZ's April 20, 2022, decision not to issue an NOV. As a result, the issue before this Board is whether DPZ's April 20, 2022, decision was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law when it decided not to prosecute the owner of 12345 Wake Forest Road for lack of enclosure around its dumpster. The Appellant contends that DPZ erroneously decided not to require the Property owner to enclose the dumpster and move it back to its original location at the southwest corner of the Property. While DPZ did decide not to issue an NOV requiring the dumpster to be enclosed, it never decided whether to require the Property owner to move the dumpster to the southwest corner of the Property because that issue was not raised in the Appellant's complaint. *See* Respondent's Exhibit 4.

Secondly, Appellant's attempt to incorporate into her appeal before this Board the alleged absence of a seal and signature on Site Development Plan SDP-99-125, and any revision thereto, is misplaced and untimely. This is not an appeal of the approval of the SDP or any revisions thereto. The time for any appeal of the approved SDP or any revision thereto has long passed. Section 16.105(a) of the Howard County Code of Ordinances limits an appeal of a decision of the Department of Planning and Zoning to 30 days after the issuance of the decision. DPZ approved the revision in question in 2011 and the instant appeal was filed in 2022. As such, the Appellant's argument that DPZ erred in approving the 2011 revision for allegedly lacking a seal or signature of an

authorized registered professional is time barred. Regardless, an examination of sheet 2 of the SDP contains a signature of a licensed certified professional engineer from Fisher, Collins and Carter, Inc. bearing a date of May 9, 2017, curing any alleged lack of a seal or signature in 2011. *See* Respondent Exhibit 1.

Lastly, this Board concludes that DPZ's decision to not issue the Notice of Violation is a discretionary decision 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 that the county records available to her indicated that the redline revision had been approved with the relocated dumpster location. The Board concludes DPZ's decision to not issue a Notice of Violation was not arbitrary or capricious.

#### **Conclusions of Law**

Based upon the foregoing Findings of Fact, the Board concludes as follows:

1. The burden of proof in this appeal is on the Appellant to show that the challenged action was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. Howard County Code, Section 2.210(a)(4)(ii),

2. The Board concludes that no error of law was committed by DPZ's April 20, 2022 decision not to issue a Notice of Violation ("NOV") requiring the owner of 12345 Wake Forest Road to enclose a dumpster located on the northeast corner of the property.

3. The Appellant has failed to meet her burden of proof of showing by a preponderance of evidence that the action taken by DPZ on April 20, 2022, to not issue a Notice of Violation ("NOV") requiring the owner of 12345 Wake Forest Road to enclose

a dumpster located on the northeast corner of the property was clearly erroneous, illegal, and/or arbitrary and capricious.

**ORDER**

Based upon the foregoing, it is this 3<sup>rd</sup> day of May, 2024, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Appeal of Lubna Khan in BA Case No. 789-D is hereby **DENIED.**

**ATTEST:**

**HOWARD COUNTY BOARD OF APPEALS**

Kel Berg  
Kel Berg, Secretary

Gene Ryan  
\*Gene Ryan, Chairperson

Felita Phillips  
Felita Phillips (May 2, 2024 17:13 EDT)  
\*\*Felita Phillips, Vice-Chairperson

PREPARED BY:

Did Not Vote  
Jean Xu

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc  
County Solicitor

Lynn Foehrkolb  
Lynn Foehrkolb (May 3, 2024 14:30 EDT)  
Lynn Foehrkolb

Barry M. Sanders  
Barry M. Sanders  
Senior Assistant County Solicitor

Term Expired  
\*\*\*Steven Hunt

\* I hereby certify that I reviewed all of the evidence submitted and listened to a recording of the December 19, 2023 and January 25, 2024 hearings for which I was not present.

Gene Ryan  
Gene Ryan