



DPZ office use only:

BA Case No.: BA-810-D

Date Submitted: 4/25/24

**PETITION OF APPEAL OF
HEARING EXAMINER DECISION
TO THE HOWARD COUNTY BOARD OF APPEALS**

A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.¹ The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

1. **Name of Case** In the Matter of the Appeal of Dr. Sara Via, et al
BA Case No. BA 806-D
Date Decision and Order Mailed 3/28/2024

2. **Reason for Appeal** See Continuation Sheet attached.

3. **Name of Appellant** Randy Marriner
Trading as (if applicable) _____
Mailing address 4411 Manor Lane, Ellicott City, MD 21142
Phone number(s) _____
Email randy@manor-hill.com
Name of principal contact (if different) _____

4. **Counsel for Appellant** Eric W. Gunderson, Esq.
Mailing Address 11000 Broken Land Prkwy, Suite 600, Columbia, MD 21044
Phone number(s) 410-995-5800
Email egunderson@darslaw.com
Secondary contact for counsel (if any) _____

¹ As a brief explanation of this concept; "Generally speaking, ... a person 'aggrieved' ... is one whose personal or property rights are adversely affected by the decision ... The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally." The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.

5. Declaration of Interest

The Appellant is the original petitioner

The Appellant was a party to the original case

The Appellant was a non-party witness in the original case

6. Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

I elect to proceed on the original petition

I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. Copies: The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10 complete sets** must be submitted.

8. Public Notice Requirements

a. **Posting:** If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an Affidavit of Posting as required by Section 2.203(c).

If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.

b. **Advertising:** The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. **Responsibility for Compliance:** In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.


9. On The Record Appeals

The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an "on the record" appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a memorandum addressing the points of law upon which the appeal is based.

10. Signatures

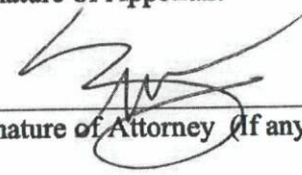
By signing below, the Appellant hereby affirms that:

- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

 04/25/24 E. Randolph (Randy) Marriner

Signature of Appellant Date Print Name of Appellant

Signature of Appellant Date Print Name of Appellant



Signature of Attorney (if any)

Make checks payable to "Director of Finance."

For DPZ use only: Filing Fee is \$250.00 plus \$25.00 per poster if required.	
Hearing fee:	\$ _____
Poster fee:	\$ _____
TOTAL:	\$ _____
Receipt No.	_____

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

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PETITION OF APPEAL OF
HEARING EXAMINER DECISION
TO THE HOWARD COUNTY BOARD OF APPEALS

BA Case No. 806-D

Continuation Sheet

2. Reason for Appeal

Appellant Randy Marriner is a non-party witness in the above-referenced appeal that is currently pending. Appellant was served with a Subpoena to appear at the hearing to testify and produce documents. Appellant filed a Motion to Quash the Subpoena (see Non-Party Randy Marriner's Motion to Quash Subpoena, attached). Petitioner Dr. Sara Via filed an opposition to the Motion (see Dr. Via Response to Motion, attached). No oral argument was heard on the Motion.

On March 28, 2024, the Hearing Examiner issued an Order denying the Motion to Quash Subpoena. (See Order, attached). Pursuant to Section 12.1 of the Rules of Procedure of the Board of Appeals Hearing Examiner, Appellant submits this appeal of the Hearing Examiner's decision denying his Motion to Quash Subpoena as a person aggrieved by a decision of the Hearing Examiner.

Appellants submits that this should be heard as an appeal on the record pursuant to Section 2.210(b) of the Rules of Procedure of the Board of Appeals, and that the agency record consists of the attached. There is no record transcript to be submitted.

IN THE MATTER OF THE APPEAL : BEFORE THE
of : HOWARD COUNTY
Dr. Sara Via, et al. : BOARD OF APPEALS
Appellants : HEARING EXAMINER
: Case No. BA 806-D

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ORDER

Having considered the Motion to Quash Subpoena filed by Randy Marriner on March 5, 2024, and having considered the opposition to the Motion to Quash filed by Sara Via on March 15, 2024, and having found the following:

1. A Subpoena directed to Randy Marriner was issued by the Howard County Hearing Examiner (“Subpoena”) and served on Marriner on a timely basis under the Howard County Hearing Examiner Rules;
2. The Subpoena states that Mr. Marriner is compelled to appear before the “Board of Appeals Hearing Examiner in the above captioned matter on Wednesday, March 6, 2024, at 5:30 PM, George Howard Building, 3430 Courthouse Drive, Ellicott City, Maryland, and for any dates continuing thereafter;”
3. The requests for testimony and the requests for production of documents included in the Subpoena are reasonable and not unduly burdensome;
4. The hearing to be held by the Hearing Examiner is not a judicial review of an agency record, but is an administrative *de novo* hearing, is not limited to the “agency record,” and may include facts outside of DPZ’s “record;”
5. The requests for testimony and the requests for production of documents included in the Subpoena are reasonably related and relevant to the subject of the appeal; and
6. Mr. Marriner’s failure and inability to appear at the March 6, 2024, hearing is moot, as the hearing has been continued to June 26, 2024.

Accordingly, it is this 28th day of March 2024, by the Howard County HEARING EXAMINER, ORDERED:

- A. The Motion to Quash filed by Randy Marriner on or about March 5, 2024, shall be and hereby is DENIED;
- B. Mr. Marriner remains subject to the Subpoena and shall appear at the continued hearing on June 26, 2024, at 5:30 PM, George Howard Building, 3430 Courthouse Drive, Ellicott City, Maryland, and for any dates continuing thereafter to testify and produce documents as directed in the Subpoena.

HOWARD COUNTY HEARING EXAMINER

**Katherine
L. Taylor**

Digitally signed
by Katherine L.
Taylor

Katherine L. Taylor

Mailed: _____

IN THE MATTER OF THE APPEAL

of

Dr. Sara Via, et al.,

Appellants

BEFORE THE

HOWARD COUNTY

BOARD OF APPEALS

HEARING EXAMINER

Case No. BA 806-D

**NON-PARTY RANDY MARRINER'S
MOTION TO QUASH SUBPOENA**

Randy Marriner, a non-party, through undersigned counsel, moves to quash the Subpoena issued in the above-referenced appeal. In support thereof, Mr. Marriner states:

BACKGROUND

Appellants are appealing a decision by the Department of Planning and Zoning (DPZ) not to issue a notice of violation to Manor Hill Brewery in response to the Appellants' zoning complaint alleging zoning violations. This is the second time DPZ has found no zoning violations at Manor Hill Brewery in response to the Appellants' zoning complaints. Following this Hearing Examiner's Decision and Order in Case No. BA 794-D, dated May 1, 2023, DPZ reopened its investigation of the alleged zoning violations occurring at Manor Hill Brewery and, after conducting a thorough investigation, determined that there was insufficient evidence of a zoning violation. Appellants are now appealing that decision. Appellants are again asserting that DPZ did not conduct a proper investigation and, thus, its decision is not based on substantial evidence and was arbitrary and capricious. (See Appeal Petition, dated December 19, 2023).

Appellants requested and were issued a Subpoena directing Randy Marriner, a non-party, to appear at the hearing in this appeal to testify to certain matters and to produce various documents

and information. (See Subpoena, attached hereto as **Exhibit A**). In particular, Appellants purportedly intend to elicit testimony from Mr. Marriner concerning: “the farming operation at Manor Hill; the assertion that farming is the primary use of the property; the agricultural nature of the events held under the agrotourism permit; whether there are still plans to renovate an existing barn as an event space and to build a new agritourism center in what is currently used as a paster.” (See Subpoena, **Exhibit A**). The Subpoena also requests that Mr. Marriner produce documents, including: “documents supporting the statement in Mr. Marriner’s letter of 9/25/23 to DPZ asserting that farming is the primary activity at Manor Hill; copies of any permits granted for additional revision & new buildings at manor Hill; and a full list of activities by date, both public and private, held under the agritourism permit at Manor Hill during 2022 and 2023.” (See Subpoena, **Exhibit A**). In sum, Appellants are asking Mr. Marriner to appear and testify to facts and evidence *outside* of the agency record that are *irrelevant* to this appeal and review of DPZ’s decision, and for this reason the Subpoena requiring his appearance should be quashed.

A review of DPZ’s decision is limited to DPZ’s administrative record, *i.e.* those facts and evidence that Appellants submitted to DPZ and DPZ gathered in the course of its investigation and which DPZ relied upon in rendering its findings and conclusions. The review is limited to a determination of whether there is substantial evidence in the agency record as it existed to support DPZ’s findings and conclusions. Thus, facts and evidence outside of that agency record are completely irrelevant to this Hearing Examiner’s review of DPZ’s decision. Therefore, both the testimony and documents sought to be elicited from Mr. Marriner are completely irrelevant to this appeal and to this Hearing Examiner’s review of DPZ’s decision. For this reason, the Subpoena should be quashed.

Moreover, Appellants are clearly attempting to use these proceedings and the hearing on this appeal as their own investigation of their own zoning complaints. This should not be permitted. DPZ, not the Appellants, are the ones granted the authority to conduct investigations of alleged zoning violations. DPZ conducted an investigation of Appellants' zoning complaint, and Mr. Marriner fully cooperated with DPZ in the course of its investigation. Appellants should not be permitted to use this hearing as a means of conducting their own investigation. While Mr. Marriner has fully cooperated and, if necessary, will continue to cooperate with DPZ in connection with its investigation, Mr. Marriner objects to the Appellants' attempt to use this appeal of DPZ's decision as a means of conducting their own investigation. That is not the purpose of this hearing. Again, the purpose of this hearing is to review DPZ's decision based on the facts and evidence that existed in DPZ's administrative record.

Therefore, for all of these reasons, the Subpoena requiring Mr. Marriner to appear and testify to facts and evidence outside of the agency record that are irrelevant to this appeal and review of DPZ's decision should be quashed.

ARGUMENT

A. Standard of Review

The Hearing Examiner is free to exclude and refuse to hear any evidence that is irrelevant.

See Hearing Examiner Rule of Procedure 9.2.

B. A Review of DPZ's Decision Is Limited to the Facts and Evidence In The Agency Record.

A review of DPZ's decision is limited to DPZ's administrative record, *i.e.* those facts and evidence that Appellants submitted to DPZ and that DPZ gathered in the course of its investigation and relied upon in rendering its findings and conclusions. The review is limited to a determination

of whether there is substantial evidence *in DPZ's record* to support DPZ's findings and conclusions.

In the Decision and Order in Case No. BA 794-D, dated May 1, 2023, this Hearing Examiner explained the standards of review of an agency's decision as follows:

The question whether the DPZ decision that there are "no violations" is subject to the "clearly erroneous, arbitrary and capricious, or contrary to law" standard. Hearing Examiner Rule of Procedure 10.2(c) states that the burden of proof in an appeal from an administrative agency decision is that the Appellant must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

The general law regarding a review of an administrative agency decision is that "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Oltman v. Maryland Bd. of Physicians*, 162 Md. App. 457, 494 (2005) (citations and quotations omitted). "A court's role in reviewing an adjudicatory decision of an administrative agency is to determine whether there is substantial evidence **in the agency record** as a whole to support the agency's factual findings and conclusions and whether the agency's decision is based upon an erroneous conclusion of law." *Singley v. Cnty. Comm'rs of Frederick Cnty.*, 178 Md. App. 658, 674-75, 943 A.2d 636, 646 (2008). An agency's ruling on a factual matter should be affirmed "if the issue is fairly debatable and the ruling "is supported by substantial evidence, such that a reasonable mind might accept as adequate to support a conclusion, even if there is substantial evidence to the contrary." *Id.*

While factual findings of an agency are afforded great deference, "[s]tatutory construction is an issue of law. *Del Marr v. Montgomery County*, 397 Md. 308, 315, 916 A.2d 1002 (2007). Thus, the deference owed to the administrative agency is lessened because when interpreting the legal meaning of part of a county or local zoning code, the role is to "attempt to ascertain the intention of the drafters from the plain meaning of the words of the ordinance and we apply the canons of statutory construction when necessary to elucidate the meaning of the language." *Id.* at 675.

As the Appellate Court of Maryland stated in *Garceau*, 234 Md. App. 324 (2017), in applying the substantial evidence test, “[w]e defer to the agency’s (i) assessment of witness credibility, (ii) resolution of conflicting evidence, and (iii) inferences drawn from the evidence.” *Richardson, supra*, sl. op. at 4 (citing *Schwartz v. Md. Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)). Where an administrative agency, however, “draws impermissible inferences or unreasonable inferences and conclusions ... we owe the agency’s decision no deference.” *Garceau*, 234 Md. App. at 349-50 (quoting *Bereano v. State Ethics Comm.*, 403 Md. 716, 756 (2008)). The Maryland Supreme Court stated, our role is “limited to determining if there is substantial evidence **in the record** as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Richardson v. Maryland Dep’t of Health*, 247 Md. App. 563, 569, 239 A.3d 695, 698–99 (2020), citing, *Milliman, Inc. v. Md. State Ret. and Pension Sys.*, 421 Md. 130, 151, 25 A.3d 988, 1001 (2011).

See Decision and Order, Case No. BA 794-D, dated May 1, 2023 (emphasis added).

Expounding upon the notion that a review of an agency’s decision is limited to the facts and evidence that already existed in the agency record and that an appeal of the decision does not allow for the presentation of new facts or evidence at a hearing on the appeal, the Appellate Court of Maryland explained:

The reviewing court’s “role is limited to determining if there is substantial evidence in the administrative record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” [*Montgomery County v. Stevens*, 337 Md. 471, 481-82 (1995)] (internal quotations omitted). The reviewing court “ordinarily does not render a new judicial decision grounded on the testimony or evidence introduced for the first time before the court.” *Id.* (internal quotation omitted). In other words:

The presentation of new evidence to the circuit court is inconsistent with the narrow scope of judicial review of agency decisions. Were new evidence to be allowed before the circuit court and the court permitted to take that evidence into consideration when rendering its decision, the circuit court would no longer be focusing its attention upon

the proper considerations. Rather, a party would, in most cases, be presenting this new evidence to detract from that evidence upon which the agency based its decision, and, therefore, the court would not be focusing upon whether the record itself contains substantial evidence to support the agency's decision.

Erb v. Md. Dep't of the Env't, 110 Md. App. 246, 267, 676 A.2d 1017 (1996). Accordingly, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142, 93 S. Ct. 1241, 36 L. Ed. 2d 106 (1973).

See *Venter v. Bd. of Educ.*, 185 Md. App. 648, 684-685 (2009) (emphasis added).

Accordingly, the case law is clear that a review of an agency's decision is limited to the facts and evidence already in existence in the agency's own record, and that allowing the presentation of new evidence in the proceedings of an appeal of that decision runs contrary to the narrow scope of review of agency decisions. Thus, because a review of DPZ's decision in this case is limited to the facts and evidence already contained in DPZ's record, this Hearing Examiner should exclude and refuse to allow the presentation of new testimony and documents at the hearing on the appeal since it would be completely irrelevant to this Hearing Examiner's review of DPZ's decision.

C. The Subpoena Should Be Quashed Because Both the Testimony and Documents Sought to Be Elicited From Mr. Marriner Are Completely Irrelevant to This Appeal and This Hearing Examiner's Review of DPZ's Decision.

Here, Appellants have requested and were issued a Subpoena directing Mr. Marriner, a non-party, to appear at the hearing in this appeal to testify to certain matters and to produce various documents and information presumably concerning the alleged zoning violations. As such, Appellants are attempting to do exactly what the Court in *Venter* held was not permitted – they are attempting to present new evidence in an appeal of an agency's decision. The case law is clear

that the presentation of such evidence is inconsistent with this Hearing Examiner's review of DPZ's decision which is limited to a review of the facts and evidence already in existence in the agency's record. Accordingly, any facts or documents to be elicited from Mr. Marriner are irrelevant to this appeal and this Hearing Examiner's role of reviewing DPZ's decision.

Therefore, because the testimony and documents sought to be elicited from Mr. Marriner are completely irrelevant to this Hearing Examiner's review of DPZ's decision and that the presentation of any new evidence at the hearing is inconsistent with this Hearing Examiner's narrow review of DPZ's decision, the Subpoena directing Mr. Marriner to appear at the hearing should be quashed.

CONCLUSION

In light of the foregoing points and authorities, Mr. Marriner respectfully requests that the Subpoena directing him to appear at the May 6, 2024 Hearing in the above-referenced appeal be QUASHED.¹

RESPECTFULLY SUBMITTED,

/s/ Eric W. Gunderson

Eric W. Gunderson
Davis, Agnor, Rapaport & Skalny, LLC
11000 Broken Land Parkway, Suite 600
Columbia, Maryland 21044
410-995-5800 / 410-309-6161 Fax
egunderson@darslaw.com
Attorney for Non-Party Randy Marriner

¹ Notwithstanding the fact that the Subpoena should be quashed as established above, Mr. Marriner advises that he is not available to appear to testify at the March 6 Hearing. Mr. Marriner was served with the Subpoena just one (1) week prior to the Hearing, and he will be traveling out of town and is unavailable to attend.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2024, a copy of the foregoing document and any attachments were sent via electronic and first-class mail to:

Dr. Sara Via
4811 Manor Lane
Ellicott City, MD 21042
svia@umd.edu

JJ Hartner
Howard County Department of
Planning and Zoning
Division of Public Service and
Zoning Administration
3430 Court House Drive
Ellicott City, MD 21043
jehartner@howardcountymd.gov

/s/ Eric W. Gunderson

Eric W. Gunderson

March 15, 2024

To: Howard Co. Hearing Examiner, Ms. Katherine L. Taylor

From: Dr. Sara Via, 4811 Manor Lane, Ellicott City, MD 21042,
svia@umd.edu

Sara Via

Re: Randy Marriner subpoena, BA 806-D

I write to convey the wishes of the Manor Lane residents (Appellants, BA 806-D) concerning Randy Marriner's attempt to quash the subpoena that he received from us. We want him to appear because his testimony is undeniably relevant to our case.

Although DPZ has twice claimed there are no zoning violations at Manor Hill, their investigations have been perfunctory at best. Thus, the need to investigate has fallen to us. Through our evaluation of Mr. Marriner's statements, the various DPZ permit applications and evaluations and the Manor Hill website, we have identified evidence of multiple zoning violations. This evidence has been described in our initial Zoning Violation Complaint and the two appeals.

Because DPZ has been unwilling to adequately investigate our allegations or address our questions, we need to address our questions to Mr. Marriner himself.

Although the motion to quash the subpoena argues that Mr. Marriner's appearance, testimony and documentation are irrelevant to the appeal, that is contrary to the facts. DPZ has relied upon Mr. Marriner's statements as the primary basis of their evaluations of possible zoning violations. Because DPZ has twice accepted his statements of compliance at face value without further investigation, Mr. Marriner's appearance to provide testimony and documentation is absolutely relevant to our appeal.

Furthermore, the decisions that Mr. Marriner has made about operations at Manor Hill Farm are the cause of the zoning violations that we allege. These violations have diminished the ability of the other residents of Manor Lane to enjoy our individual properties and have ruined the peaceful rural nature of our neighborhood.

Manor Lane is a narrow, historic, dead-end road. For decades, traffic was restricted to trips made by the residents of 23 homes, their visitors, and vehicles providing the basic services expected in a residential neighborhood. Residents and visitors from other neighborhoods often walked, pushed strollers, rode bicycles and rode their horses on the Lane without fear of disturbance or injury from passing vehicles. Our neighborhood was peaceful and serene.

