

IN THE MATTER OF * BEFORE THE
Dr. Sara Via, et al. * HOWARD COUNTY
* BOARD OF APPEALS
* BA Case No. 810-D
*

DECISION AND ORDER

The Howard County Board of Appeals convened on June 27, 2024, to hear the administrative appeal petition filed by Randy Marriner. Specifically, Mr. Marriner is appealing the March 28, 2024, Hearing Examiner Order denying his Motion to Quash Subpoena in BA Case No. 806-D.

Eric W. Gunderson, Esquire, represented Randy Marriner in this appeal and Dr. Sara Via appeared in opposition to Mr. Marriner’s appeal petition.

Randy Marriner certified to compliance with the notice and posting requirements of the Howard County Code. All Board members viewed the subject property as required by the Howard County Zoning Regulations.

This case is a *de novo* appeal of the Howard County Hearing Examiner May 28, 2024, Order denying a Motion to Quash filed by Randy Marriner in BA 806-D. The hearing was conducted in accordance with Section 2.210(a) of the Board’s Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition of Appeals in BA 810-D and BA 806-D were incorporated into the record by reference.

FINDS OF FACT

1. Randy Marriner is a non-party witness in BA Case No. 806-D captioned “In the Matter of the Appeal of Dr. Sara Via, et al.” Dr. Sara Via, et al appealed the Department of Planning and Zoning’s (“DPZ’s”) November 20, 2023, Decision not to issue notices of violation in response to a zoning complaint that a business conducted on the site called Manor Hill Brewery violated the Howard County Zoning Regulations and two use permits issued pursuant to the Howard County Zoning Regulations.

2. In BA 806-D Randy Marriner was served with a Subpoena to appear at the hearing to testify and produce documents.

3. Randy Marriner filed a Motion to Quash the Subpoena and Dr. Sara Via filed an opposition to the Motion in BA 806-D.

4. On March 28, 2024, the Howard County Board of Appeals Hearing Examiner issued an Order denying the Motion to Quash Subpoena in BA 806-D. Pursuant to Section 12.1 of the Rules of Procedure of the Board of Appeals Hearing Examiner, Randy Marriner appealed the Hearing Examiner’s decision denying his Motion to Quash Subpoena as a person aggrieved by a decision of the Hearing Examiner to the Howard County Board of Appeals in BA Case No. 810-D.

5. Eric W. Gunderson, Esquire appeared on behalf of Randy Marriner before the Board of Appeals in BA 810-D and argued his Motion captioned “Non-Party Randy Marriner’s Motion to Quash Subpoena”. Dr. Sara Via filed an opposition to the Motion in BA 810-D and provided argument and testimony in opposition to the Motion.

6. Attorney Gunderson contends that the Appellants in BA 806-D are asking Mr. Marriner to appear and testify to facts and evidence outside of the agency’s 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. Attorney Gunderson argues that 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 during its investigation which DPZ relied upon in rendering its findings and conclusions. The review Mr. Gunderson contends 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.

Additionally, Attorney Gunderson argues that Dr. Sara Via and the other appellants are clearly attempting to use these proceedings and the hearing on this appeal as their own investigation of their own zoning complaints and this should not be permitted. Attorney Gunderson contends that DPZ, not the Appellants in BA 806-D are the ones granted the authority to conduct investigations of alleged zoning violations. Attorney Gunderson says that Mr. Marriner objects to the Appellants in BA 806-D attempt to use this appeal of DPZ's decision as a means of conducting their own investigation.

7. Dr. Sara Via testified in opposition to the Motion to Quash Subpoena and stated that the Department of Planning and Zonings investigation of whether Manor Hill Brewery was violating any zoning regulations was a "sham" and that the need to investigate has fallen to her and the other appellants in BA 806-D. Dr. Via argued that Randy Marriner should have the courage to face his neighbors and answer their questions about the activities at Manor Hill and justify his contention that farming is the primary use of the property when evidence suggests that it is not.


CONCLUSIONS OF LAW

Upon consideration of the Motion to Quash Subpoena and Opposition thereto, this Board concludes that the a Subpoena requiring Randy Marriner to appear and testify to facts and evidence outside of the Department of Planning and Zoning administrative record are irrelevant to the Hearing Examiner's review of DPZ's decision in BA 806-D and that DPZ, not the Appellants in BA 806-D are the entity granted the authority to conduct investigations of alleged zoning violations, it is this 13 day of September 2024, by the Howard County Board of Appeals, hereby

ORDERED, that the Motion to Quash Subpoena in BA806-D is **GRANTED**.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS



Kel Berg, Secretary



Gene Ryan, Chairperson

APPROVED AS TO FORM:
HOWARD COUNTY OFFICE OF LAW

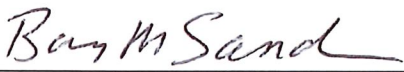


Felita Phillips, Vice Chairperson

Gary W. Kuc
County Solicitor



Jean Xu



Barry M. Sanders
Senior Assistant County Solicitor

Dissent
Lynn Foehrkolb



Robbyn Harris