DPZ office use only:

BA Case No.: BA-824D

Date Submitted: 7/15/2025

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** Aidan & Sarah Morrell

   BA Case No. BA 813 D

   Date Decision and Order Mailed June 30, 2025

2. **Reason for Appeal** The Hearing Examiner's Decision & Order was arbitrary & capricious, clearly erroneous, and contrary to law. Other arguments will be presented at the hearing.

3. **Name of Appellant** W.R. Grace & Co.-Conn

   Trading as (if applicable) WR Grace

   Mailing address 7500 Grace Drive, Columbia, MD 21044

   Phone number(s) 410-531-4000

   Email

   Name of principal contact (if different)

4. **Counsel for Appellant** Tom Coale

   Mailing Address 54 State Circle, Annapolis, MD 21401

   Phone number(s) 443-630-0507

   Email tom@perryjacobson.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

[X] The Appellant was a party to 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 a 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.

Signed by: Apple Chapman F31B362FE84B4F9...

Signature of Appellant — Date: 7/2/2025 — Apple Chapman, Assistant General Counsel, Regulatory and EH&S, W.R. Grace & Co. (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 $2,050.00 plus $50.00 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

ADRIAN AND SARA MORRELL, et al.	:	BEFORE THE
Appellants	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF	:	HEARING EXAMINER
PLANNING AND ZONING	:	BA Case No. 813D
CE-24-107		
Appellee		

.....
.....

DECISION AND ORDER

On March 18, and April 29, 2025, 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 Aidan and Sara Morrell, et al. (Appellants). Appellants are appealing the Department of Planning and Zoning's September 13, 2024 email finding that there were no violations of the Howard County Zoning Regulations or the Subdivision and Land Use Regulations found for the property located at 7500 Grace Drive, Columbia, Maryland. The appeal is filed pursuant to §130.0.B.4 of the Howard County Zoning Regulations (HCZR).

The Appellants 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. Mr. Grant Giel, Esq. appeared on behalf of Appellants Mr. Aidan Morrell, Ms. Sara Morrell, Mr. Golash Adadey, Ms. Nana Adadey, Mr. Hari Srinivasan, Mr. Mustafa Khaliqi, Mr. Anwer Hasan, Ms. Aisha Hasan, Mr. Rasa Ramadas, Dr. Padma Swamy, Ms. Shamieka Preston, Mr. Raja Syed, Mr. Nusrat Siddique, Ms. Arundati Khuvel, Ms. Monica Tolentino, Ms. AmiCietta Clarke, Mr. Zain Qazi, and Mr. Senthil Achari (collectively, "Appellants") Mr. Adian Morrell, Ms. Sara Morrell, Ms. Jane Williams, Dr. Shannon Jones, Dr. Pama Swamy, Mr. Dave Arndt (chemical engineer), Mr. Raja Ramavas, Mr. Micheal Ruddock, Mr. Neil Tilva, and Ms. Sara Dwyer testified on behalf of Appellants. Mr. Thomas Coale, Esq. appeared on behalf of an interested party in opposition W.R. Grace & Co.-Conn ("Grace"). Mr. Manu Rego (Grace), and Mr. Robert Vogel (civil engineer), testified on behalf of Grace. No one appeared on behalf of the Department of Planning and Zoning ("DPZ") although Ms. Lynda Eisenberg, Director, Department of Planning and Zoning, testified as a fact witness called by Grace.

Appellants presented the following Exhibits:

1. Special Exception BA-168 (11/8/1983)
2. Special Exception BA-83-50E
3. Special Exception BA-83-54E
4. Special Exception BA-84E&V
5. Special Exception ZB-179

6. DPZ Zoning Approval Letter

7. Building 30 History Letter from Grace

8. DPZ Close Out Letter

9. DPZ Letter Requesting Reconsideration

10. Commercial Alteration Permit

11. W.R. Grace Building 30 Permits

12. EPA Air Permit Docket

12.1. EPA Air Permit Application

13. OSWI Applicability Determination Response

14. Petition ZB-1104M (4/1/14)

15. Technical Staff Report (2014)

16. GF Columbia, LLC Petition ZB-1104M

17. Petition to Rezone CEF ZB-1104M (1/21/15)

18. Simpson Oaks-Cedar Oaks ZB-1104M

19. Petitioner GF Columbia ZB-1104M

20. W.R. Grace Interpretation by EPA

21. Dave Arndt CV

22. Jane Willams CV

23. Void

24. BA-806 Decision and Order

25. Identified but not admitted

26. Shannon Jones CV

27. Dr. Padma Swamy CV

28. Written Swamy Statement

BACKGROUND

Grace operates a multi-building facility at 7500 Grace Drive, Columbia, MD 21044 ("Subject Property"), which is approximately 54.80 acres in size, Tax Map 35, Parcel/Lot 145A, Councilmanic District 4. On August 6, 2024, Appellants, who are all members of the adjacent Cedar Creek community, filed Complaint No. CE 24-107 ("Complaint") with the Howard County Department of Planning and Zoning ("DPZ"). This Complaint alleged that Grace was planning to implement and operate a Pilot Plant for pyrolysis in Building 30 of its facility under the pretense of it being part of a continuing nonconforming use of research and development ("R&D"). The Complaint further alleged that the proposed Pilot Plant for pyrolysis was not a continuing nonconforming use of R&D and that the proposed use was contrary to nonconforming use provisions and the previously granted Conditional Use that created the facility in 1955 (amended as it was over a period of decades). DPZ dismissed the Complaint on

September 13, 2024, stating in relevant part that, "There were no violations of the Howard County Zoning Regulations or Subdivision and Land Development Regulations found for this property. Since there are no violations, the case is closed." *See* Ex. 8. Appellants then requested—and DPZ granted—a meeting to discuss the DPZ findings, which was attended by Director Lynda Eisenberg and Mr. Geoff Goins of DPZ (as of the date of the first evidentiary hearing on this appeal Mr. Goins was no longer an employee of DPZ) and Appellant Mr. Morrell along with four neighboring residents opposed to the project.

In that meeting, Appellants sought clarity on what investigation, if any, had been conducted into the new 12' x 32' x 24' Pilot Plant at the Subject Property. Mr. Goins described only a brief visual walkthrough. He noted no enlargement of the building's physical footprint and admitted he could not identify which portion of the building constituted the Pilot Plant. He stated that several labs on-site "appeared to be performing forms of R&D" but offered no further distinction or analysis.

Mr. Morrell stated that the Complaint did not rest on a claim of structural enlargement but rather on a change in use—and more specifically, an extension and intensification of the nonconforming use. Mr. Morrell asked what review had been conducted to determine whether the incineration of plastics via pyrolysis marked a material change in the type of activity historically conducted on-site.

DPZ acknowledged they had not analyzed the specific use at all. Their review, they explained, was limited to three basic questions: (i) whether the use had been continuous since becoming nonconforming; (ii) whether it was confined to the same

physical footprint; and (iii) whether it fell within the broad definition of "Research and Development" under the HCZR.

Regarding (i), DPZ stated that it relied entirely on a single-page letter from Grace claiming continuous catalytic research since 2013. *See* Ex. 7. On (ii), Mr. Goins confirmed the building's footprint had not changed, though he was taken aback when shown building permits reflecting substantial interior modifications and newly installed equipment. As to (iii), DPZ stated flatly that it lacked authority to intervene so long as the current use—no matter how different in substance—still qualified as "R&D" under the Zoning Code.

Appellants expressed concerns with this later interpretation as it abdicates responsibility to review new uses and allows functionally any type of use into an R&D facility if the facility at large is R&D, without regard to the nonconformity prohibition against extension of use. When these concerns were raised, DPZ declined to reevaluate its position. However, DPZ acknowledged that the Hearing Examiner is better suited to clarify how such use changes should be treated going forward and to provide guidelines in the event DPZ was in fact incorrect in its interpretation. Appellants subsequently submitted a formal request for reconsideration, but that request was denied.

STANDARD OF REVIEW

The right to appeal an administrative decision is wholly statutory. *Howard County v.JJM, Inc.*, 301 Md. 256, 261, 482 A.2d 908, 910 (1984) (citing *Maryland Bd. V. Armacost*, 286 Md. 353, 354-55, 407 A.2d 1148, 1150 (1979); *Criminal Injuries Comp. Bd. V. Gould,* 273 Md. 486, 500, 331 A.2d 55, 64 (19751); *Urbana Civic Ass'n v. Urbana Mobile Vill., Inc.*, 260 Md. 458, 461, 272 A.2d 628, 630 (1971).

Pursuant to Howard County Code § 16.1215, appeals to the Board of Appeals of decisions made pursuant to the Director of Planning and Zoning's administrative decision-making authority shall be heard in accordance with the Board of Appeal's Rules of Procedures. Subtitle 2.- Rules of Procedure of the Board of Appeals, § 2.210 provides that administrative appeals such as the instant appeal are *de novo* and the burden of proof is on the appellant to show that the action taken by the Administrative Agency (here DPZ) was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. Per Howard County Code § 16.302(a) (jurisdiction of Hearing Examiner), when a matter is authorized to be heard and decided by the Board of Appeals, the matter will first be heard and decided by a Hearing Examiner. Hearing Examiner Rule of Procedure 10.2(c) assigns the burden of proof in an appeal from an administrative agency decision of showing by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.

In a *de novo* (meaning as new) appeal, the role of the Hearing Examiner is akin to a trial court, and the appeal may be a contested case, in which the evidence is adduced,

and the Hearing Examiner is the trier of fact awarded deference on appellate review as the Examiner saw the witnesses and the evidence firsthand. Appellants' burden of proof is to provide substantial evidence that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.

As a threshold issue, Maryland law requires administrative agencies to articulate the facts found, the law applied, and the relationship between the two when the agency makes a final decision. *Forman v. MVA*, 332 Md. 201, 221 (1993).

The Hearing Examiner may vacate and remand DPZ's decision if provided evidence demonstrates that DPZ's decision was clearly erroneous, arbitrary and capricious, or contrary to law. Hearing Examiner Rules of Procedure §§ 10.2(c), 10.5.

As the Maryland Supreme Court explained,

> [The] "arbitrary and capricious" standard is, perhaps intentionally, less than well-defined with respect to judicial review of discretionary actions. In his Maryland Administrative Law treatise, Professor Arnold Rochvarg examines, in the context of the APA, the "arbitrary or capricious" standard, concluding that it . . . is best understood as a reasonableness standard. *If the agency has acted unreasonably or without a rational basis, it has acted in an arbitrary or capricious manner* . . . . [Unlike a court's "substantial evidence" review of an agency's factual determinations, u]nder arbitrary or capricious review, the court's reasonableness review goes beyond factual findings and goes beyond a review of the agency record. Under arbitrary or capricious reasonableness review, the court will consider any argument that the agency acted unreasonably regardless of whether it appears within the agency record.

Harvey v. Marshall, 389 Md. 243, 297 (2005).

"An agency decision, for example, may be deemed 'arbitrary or capricious' if it is contrary to or inconsistent with an enabling statute's language or policy goals" or

"if it is irrationally inconsistent with previous agency decisions." *Harvey*, 389 Md. at 303.

Moreover, when an agency "draws impermissible inferences or unreasonable inferences and conclusions . . . or where an administrative agency's decision is based on an error of law, [the Hearing Examiner] owe[s] the agency's decision no deference." *Maryland Real Estate Commission v. Garceau*, 234 Md. App. 324, 349–50 (2017) (quoting *Bereano v. State Ethics Comm.*, 403 Md. 716, 756 (2008)). Similarly, while an agency's factual findings may be afforded deference, "[s]tatutory construction is an issue of law" and an agency's legal interpretation is not afforded deference. *Single v. Cnty. Comm'rs of Frederick Cnty.*, 178 Md. App. 658, 675 (2008).

QUESTIONS PRESENTED

1. **Whether DPZ erred legally in permitting a use previously prohibited by the conditional use petition that created the WR Grace facility.**
2. **Whether DPZ erred legally by not adequately investigating whether the proposed use at the WR Grace facility would be different in use or intensity or otherwise contrary to nonconforming use standards.**
3. **Whether DPZ's classification of the pilot plant as an R&D facility was legally in error.**
4. **Whether DPZ erred legally in not finding adverse impacts to neighboring properties in its investigation.**

APPLICABLE LAW

SECTION 129.0: - Nonconforming Uses

A. General

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of these Regulations or as a result of any subsequent amendment thereto. A structure that is conforming in use but which does not conform to the height, setback, land coverage, parking, loading space or other bulk requirements of these Regulations, shall not be considered to be nonconforming within the meaning of these Regulations. No existing use shall be deemed nonconforming solely because of the existence of nonconforming accessory signs. The casual, temporary or illegal use of land is insufficient to establish the existence of a nonconforming use.

For the purposes of these Regulations, "enlargement" shall mean the increase in size of any structure containing a nonconforming use, the construction of an additional structure on the same lot, or an increase in the land area occupied by a nonconforming use. "Extension" shall mean any change in the types of activities taking place in connection with the nonconforming use.

B. Restrictions on Nonconforming Uses

The nonconforming use of land or structures may be continued, subject to the following:

c. No structure which contains a nonconforming use shall be structurally altered unless such alterations are required by law; provided however, that such maintenance and repair work as is required to keep a nonconforming structure in sound condition shall be permitted.

4. If any nonconforming use of land or structure, or any portion thereof, either ceases for any reason for a period of more than two years, or is changed to a conforming use, then any future use of such land or structures shall be in

conformity with the standards specified by these Regulations for the zoning district in which such land or structure is located.

E. Extension, Enlargement or Alteration of Nonconforming Uses

1. The Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of outdoor use areas or of a structure containing a nonconforming use, with or without conditions, provided:

a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;

b. That an enlargement may not exceed 100% of the gross floor area of structures or 100% of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;

c. That the boundaries of a nonconforming use may be enlarged only to provide additional parking area;

d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;

e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.

SECTION 103.0: - Definitions

Terms used in these Zoning Regulations shall have the definition provided in any standard dictionary, unless specifically defined below or in any other provision of these Zoning Regulations:

Research and Development Laboratory: A structure or group of structures used primarily for applied and developmental research, where product testing is an integral part of the operation and goods or products may be manufactured as necessary for testing, evaluation and test marketing.

Sec. 16.205H. - Map amendment approval

(c) Effect on Conditional Uses

(iv) If, at the time of the rezoning, the approved use is permitted in the new zone without approval of a conditional use, the conditional use shall terminate, and all provisions of the new zone shall apply to further use and development of the property.

Sec. 16.801. - The Department of Planning and Zoning

c) *Duties and Responsibilities.* The Department of Planning and Zoning shall comprehensively plan for the growth and development of the County, including but not limited to the functions set forth in this subsection.

7) *Other zoning changes.* The Department of Planning and Zoning shall receive all petitions related to zoning matters, such as conditional uses, variances, and nonconforming uses. The Department shall accept and review these applications and petitions and shall transmit them to the Hearing Examiner for the Board of Appeals. For all petitions related to variances in nonresidential districts, conditional uses, and extension, enlargement, or alteration of nonconforming uses, the Department shall prepare findings and analysis in a technical staff report and shall submit the petitions, findings and analysis to the Hearing Examiner for the Board of Appeals. The technical staff report shall be made available to the Hearing Examiner and the general public at least two weeks prior to any required public meeting or hearing. If the Hearing Examiner approves a petition subject to an amendment or modification of the petition and the approval is appealed to the Board of Appeals, the Department will prepare and submit to the Board its findings and analysis concerning the amendment or modification in a technical staff report. The technical staff report shall be made available to the Board of Appeals and the general public at least two weeks prior to any required public meeting or hearing.

Sec. 16.1602. - Notice of violation.

(a) *Duty to Investigate and Right of Entry.* The Director shall investigate an alleged violation to determine whether a violation exists or has occurred.

(d) *Contents of Notice of Violation.* A notice of violation:

(1) Shall be in writing;

(2) Shall contain the name and address of the alleged violator;

(3) Shall contain the time when the violation occurred and the place;

(4) Shall include certification by the inspector, attesting to the best of the inspector's knowledge, that a violation exists or has occurred;

(5) Shall describe with particularity the nature of the violation, including a reference to the Code or County provision allegedly violated, and the manner of abatement;

(6) Shall include a reasonable time to abate the violation or prevent future violations;

(7) May include an order to stop work and abate any violations; and

(8) Shall include a statement that failing to comply with the notice may result in one or all of the following:

(i) Civil penalties; and

(ii) A lien on the property for civil penalties and costs of compliance if the County corrects the violation.

QUESTION I.

The essence of Question 1 as presented by Appellants is the legal status of the proposed Pilot Program for pyrolysis in Building 30----is it a permitted use, a use permitted by Special Exception/Conditional Use pursuant to its Special Exception/Conditional Use approval in 1955 (subject to conditions), a nonconforming use, or simply a prohibited use.

The Subject Property was in the Rural Zoning District in 1955 when a Special Exception (Conditional Use) was conditionally approved for a Research Lab. The Property was placed in the PEC (Planned Employment Center) Zoning District in 1986, wherein Research and Development was a permitted use. Howard County Code of Regulations, §16-205H, states that upon the rezoning of property which has

an approved Conditional Use, as here, the Conditional Use terminates. There is no language to support a conclusion that the terminated Conditional Use is handled as if it were a springing reverter clause. In 2013 Research and Development was legislatively removed as a permitted use in the PEC Zoning District. Thus, whatever the use is that is currently proposed to be developed in Building 30, as it is no longer the subject of an approved Conditional Use, it must either be nonconforming or a prohibited use. Section 129 of the Howard County Zoning Ordinance places the burden on Grace to provide evidence that its Pilot Project for pyrolysis is legally a nonconforming use.

QUESTION II

Question II attacks the legal sufficiency of DPZ's determination that no zoning violation exists and raises the insufficiency of the investigation into whether the Pilot Program for pyrolysis is a legal nonconforming use in Building 30.

An administrative tribunal's final decisions must articulate, "at minimum . . . the facts found, the law applied, and the relationship between the two." *Forman v. MVA*, 332 Md. 201, 220–21 (1993). "Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail, LLC v. Cnty.Council of Talbot Cnty.*, 352 Md. 530, 553 (1999). There is a "fundamental right of a party to be apprised of the facts relied upon by [an administrative] agency." *Baker v. Bd. of Trustees*,269 Md. 740, 747 (1973)."Where the agency's factual findings are inadequate . . . [the courts] will [not] scour the record in search of evidence to support the agency's conclusion." *Elbert v. Charles Cnty. Plan. Comm'n*, 259 Md. App. 499, 509

(2023) (quoting *Relay Improvement Assoc. v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714 (1995)). "[I]n judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Bethlehem Steel*, 298 Md. at 679. The basis of the agency's findings must instead appear within the four corners of its written decision. *See Mortimer v. Howard Rsch. and Dev. Corp.*, 83 Md. App. 432, 446 (1990) (wherein the Court explains that "express findings" must be made, or else the only "clumsy alternative" is for the Court to "do much that is assigned to the board" and act as an independent factfinder).

> "Administrative decisions, however, must not be arbitrary, capricious, or unreasonable – there must be substantial evidence from which the board could have reasonably found as it did. In that regard, [a] reviewing court may not uphold the agency order *unless it is sustainable on the agency's findings and for the reasons stated by the agency*." *Elbert*, 259 Md. App. at 508–09 (internal quotations omitted) (emphasis in original).

The issue raised is the question of procedural sufficiency. Although your Hearing Examiner has jurisdiction to determine that DPZ *could* have made a legally justifiable determination as to the current use being contested, the fact that this inquiry was reduced to a two-sentence dismissal is enough by itself to remand for more appropriate findings. DPZ cited no rules or regulations or facts, nor provided any explanation for why it found as it did. A reviewing body can not determine from the four corners of the document presented as a final decision the legal basis for the conclusion of "no violation".

Board of County Commissioners for Prince George's County v. Ziegler, 244 Md. 224 (1966) is also informative in this regard. As explained in *Ziegler*, an agency cannot, in the absence of actual physical evidence to support a determination, rely on its experience alone to grant or refuse zoning changes or exceptions. *See id.* at 229. Particularly, the absence of evidence with regard to potential health and safety impacts of nearby residents is cause to remand if an agency is expected to consider such impacts in any given zoning analysis. Section 129.0.E.1.e of the HCZR provides such requirement in this case, establishing that if there is an extension, enlargement, or structural alteration to a nonconforming property, it can only be permitted if it does not have an adverse effect on vicinal properties. Howard County Code §16.801(c)(7) describes the duty owed by DPZ to thoroughly investigate and articulate clear factually supportable findings regarding the enlargement or expansion of nonconforming uses.

Elbert stands for the proposition that the failure to articulate a final decision is a baseline requirement of *common law*, and that even in the absence of a statute requiring a specific type of finding, an agency must still promulgate a document that would be reviewable by an appellate observer. Indeed, the chief defense of appellees in *Elbert* was precisely that they were not obliged to put forth any specific findings of fact because the Charles County Ordinance did not require them to do so, and the Appellate Court rejected that rationale. The same principle applies here. Without a minimally articulated document, a reviewer cannot feasibly intuit the actual decision-making process or determine what law an agency relied upon in issuing its decision, which frustrates both the review process and the rights of interested parties to know what and why an agency

decided in a given controversy.

Section 16.1602(a) of the Howard County Code, requires the Director (or DPZ on behalf of the Director) to "investigate an alleged violation to determine whether a violation exists or has occurred." This is an affirmative duty, and investigation carries with it expected responsibilities. As recently stated by the Hearing Examiner in BA-806, investigation is defined as "carry out a systematic or formal inquiry to discover and examine the facts of (an incident, allegation, etc.) so as to establish the truth." *See* Ex. 24 at 39. This duty is mandatory, and involves more than a cursory saunter through the alleged violative property. While BA-806 is not directly applicable to this case insofar as it concerns different provisions of the HCZR for a different use and was a decision after an initial remand, its core principle remains: DPZ needs to actually do its job and conduct a thorough review. It was expected to look past a property owner's "self-serving response that the Property is in compliance." *See* Ex. 24 at 44. It was expected to "contact[] Appellants or other residents along" the property line and request documentary evidence. *See id.* at 45. It was expected to review prior documentary evidence and determine whether a violation was in the *process* of occurring, not merely if it had finalized the occurrence. *See id.* at 45–46. Likewise, DPZ was expected to determine and compare the nature and character of both the prior and proposed uses. Instead, when confronted with complexity in the form of a novel, industrial-scale operation masquerading as familiar "Research and Development," DPZ defaulted to semantic comfort rather than substantive inquiry—and in doing so, invited every future nonconforming use to do the same.

Section 16.1602(d)(5) of the Howard County Code requires, as a result of the investigation, if a violation is found, the violation notice **Shall describe with particularity the nature of the violation, including a reference to the Code or County provision allegedly violated, and the manner of abatement.** Implicit herein is that an investigation that finds no violation, shall support that finding with particularity, including the legal references that support the finding of no violation and with what laws the use is in compliance. A conclusion that there "are no violations" without the supportive facts articulated or the laws reviewed is a violation of §16.1602 of the Howard County Code.

According to the Director's testimony, the full extent of DPZ's review consisted of a single inspector—who had since left the Department and whose actions were described in a hearsay capacity—visiting the Subject Property in a nonspecific manner and performing only a cursory walkthrough of the site, and accompanied by an unidentified liaison from MDE—neither of whose investigations and opinions were reduced to writing and are not part of the DPZ investigative file.

Again, no notes were produced. No observations were documented. The inspector's impressions were relayed secondhand, and any input from MDE—assuming any was offered—was not recorded. No neighbors were contacted. No paper trail was created or presented by either the Director or by Grace during the hearings. No record exists showing that DPZ weighed anything beyond conclusory assurances of Grace. By all accounts, it appeared that DPZ had made up its mind a year before reviewing the zoning complaint, see Ex. 6, and the entire exercise

resembled a bureaucratic formality, not an actual investigation.

Moreover, as both Mr. Morrell's testimony and his formal Request for Reconsideration made clear, DPZ did not even purport to examine whether the specific *nature and character* of Grace's proposed activity differed from its prior operations. *See* Ex. 9. Its analysis began and ended with the assertion that both fell under the same general label: "Research and Development." This approach does not satisfy the requirement for reasoned decision-making—it substitutes a label for an analysis. It confuses classification with scrutiny. And it betrays a fundamental misunderstanding of the Zoning Code, which requires comparison of the *actual use*, not its superficial label.

QUESTION III

Appellants assert that DPZ's implied determination that the Pilot Program for pyrolysis is a nonconforming R&D use is legally in error. Grace argues that nonconforming uses only contrained by physical increases in building footprints. Section 129.B.1, *et seq.*, establishes that nonconforming uses cannot be *extended*, nor can they occupy extra area *within* a building, and indeed no structure containing a nonconforming use can even be structurally altered. The introduction of new equipment, changes to overhead doors, concrete floors, and modification of roof steel are all independently and cumulatively changes to a nonconforming use.

While DPZ's determination cannot be bolstered after the fact with editorial testimony because the document must speak for itself, Director Eisenberg's comments during the evidentiary hearing are instructive, even though she had no

firsthand knowledge of the "investigation". She stated under examination that Geoff Goins inspected the Subject Property, with no particular information as to the duration of his visit, no identification of the MDE liaison that was purported to be in attendance with him, no communications from that liaison, and no review of building permits. DPZ conducted no field studies nor spoke with any neighbors during the visit, nor did they provide any evidentiary documents supporting a finding of no adverse impact on neighboring properties. The notes taken by Mr. Goins were also not contained within DPZ's file. Director Eisenberg stated that this appeal was her first case involving possible need for expert review since she took up her position in the County government, and yet despite the self-evident complexity of the review on hand, neither she, nor Mr. Goins, nor any other member of DPZ made any attempt to ensure an actual paper trail of their decision making process or endeavor to review imminent changes to the Subject Property as described in the commercial alteration permit and the MDE permit application. *See* Exs. 10, 11 & 12.1. This process is woefully insufficient. Such a determination about the alleged extension of a complex nonconformity cannot be made without proper analysis under the HCZR or specific findings regarding DPZ's determinations about extension, enlargement, structural alteration, impacts, and definitional analyses of zoning uses. It was clear by Director Eisenberg's testimony that this case was of a substantially different nature than a typical nonconformity review if it prompted the invitation of an (unnamed) MDE liaison for the first time in her tenure as Director, and this case therefore required substantial review to ensure compliance with the HCZR.

To the extent that DPZ may want to rely on the issuance of an MDE permit to claim the project poses no health risks, that reliance is misplaced. MDE's review establishes only a baseline threshold of regulatory compliance—it is not a certification of actual safety, nor is it binding on the County's zoning determinations. The HCZR requires that any extension of a nonconforming use must not cause an adverse effect on vicinal properties, and a thorough analysis of that question should be undertaken rather than outsourced. And yet DPZ's own statements confirm it never engaged with that question, either in writing or in practice. As the Court held in *Ziegler*, an agency cannot rely on general experience or the judgment of other bodies to substitute for its own required analysis: "There must be evidence of record to support its conclusions." 244 Md. at 229.

DPZ erred in its failure to properly review the zoning Complaint and issue a detailed determination in regard to the Complaint. Of additional concern is DPZ's rationale—repeated during the hearings by Director Eisenberg—that any type of use that is arguably tangential to R&D is itself R&D.

"Maryland case law permits continuing a non-conforming use, but does not permit the transmogrification of an approved non-conforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used. *Nat'l Institutes of Health Fed. Credit Union v. Hawk*, 47 Md. App. 189, 200 (1980). Regardless of the broad definitional parameters of "research and development" in the HCZR, it cannot be assumed without meaningful inquiry that any given proposed use has to be within the R&D definitional terms merely by existing within an R&D facility. Nor should it be

assumed that a use superficially similar in kind is the same as another previously existing use.

For the same reason that a nonconforming tennis court could not be converted into a swimming pool simply because they're both "athletic facilities," previously existing research uses cannot be extended into a use primarily focused on breaking down and "recycling" plastics via oxidation. The use in question may well be defined as R&D versus one of the other listed uses in the HCZR— such as an incinerator use, or a solid waste processing facility—but not without proper thorough review when there is *prima facie* evidence that it is a previously nonexistent use in a purportedly nonconforming facility.

DPZ elected not to review that evidence during its survey of the Subject Property. It instead relied solely on a letter from Grace, see Ex. 9, and focused on whether Building 30's literal footprint had increased in lieu of making any determination as to what use the Pilot Plant would be classified. Relying solely on Grace's determination of what the Pilot Program for pyrolysis should be classified as is a total abrogation of DPZ's responsibilities and is akin to having the fox guard the hen house. If DPZ's acceptance of Grace's self-classification is now to be the new standard of review, any activity that fits within the County's broad definition of R&D—no matter how novel or hazardous—would automatically be permissible under a legacy nonconforming use. That would mean a facility that once researched new flavoring agents or agricultural bacteria could pivot overnight to testing high-temperature chemical breakdown of plastics, or even explosives or toxic gas, all without scrutiny or oversight, so long as they claimed it was for "research and development." The implications of such a rule extend far beyond this case. If left

uncorrected, it would effectively strip the County of its ability to limit the scope or intensity of nonconforming uses, thus undermining the policy of gradual phase-out that nonconforming use law was designed to facilitate. While the Zoning Code uses general classifications for organizational purposes, it does not endorse a one-size-fits-all approach when determining compliance. It is not enough that a new use falls under the same general banner; what matters is the specific nature of the activities involved, how they operate, and the impacts they introduce.

This principle is clearly established in Maryland case law, as demonstrated in *McKemy v. Baltimore County*, 39 Md. App. 257 (1978). The categorical reasoning adopted by DPZ—that any new activity that could colorably be described as fitting within the parent use cannot therefore be an extension or transmogrification of that use—was soundly rejected in *McKemy*. The Baltimore County zoning board in *McKemy* attempted to treat all forms of parking as the same use, regardless of whether they involved restaurant patrons, fuel trucks, or commercial freight. The Court of Special Appeals rejected that logic, warning that such a lowest-common-denominator approach was "simply not so." It held that zoning authorities must distinguish between materially different types of activity, even if they fall within the same general classification, stating, "[z]oning regulations have rejected the notion that all parking lots are the same, and have instead drawn careful distinctions between types of parking uses. To do otherwise would blur obvious and important distinctions. All parking lots are not the same, and one type of parking use does not necessarily beget or permit another." *Id.* at 268–69.

The Court reasoned further that in assessing whether a use has changed, zoning authorities must consider:

> (1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
>
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
>
> (3) does the current use have a substantially different effect upon the neighborhood;
>
> (4) is the current use a "drastic enlargement or extension" of the original non-conforming use.

Id. at 269–70. *See*, §129 (E) These are the inquiries that DPZ refused to undertake in this case. They declined to consider whether incinerating plastics in a flameless thermal oxidizer was materially different in kind or impact from Grace's prior research. They did not investigate whether this Pilot Plant would introduce new emissions, operate at a different scale or intensity, or affect the neighborhood in a new way. And they did not examine whether the proposed use reflects a different purpose than the types of R&D that were previously conducted on the site, instead accepting at face value Graces assertions without question or independent investigation. Each of these factors was ignored, to the detriment of Appellants.

The consequence of DPZ's misinterpretation, or misreliance, is not just an error in this case—it invites abuse across all nonconforming uses in the County, and especially catch-all use categories like R&D. If every new activity can be shielded from scrutiny so long as it falls under a broad use label like "R&D," then the entire purpose of nonconforming use doctrine—gradual elimination of inappropriate uses—is defeated.

Under this logic, any holder of a nonconforming use for R&D, regardless of whether they've historically researched bacteria, perfume, or potato chips, could pivot to research on sarin gas or high-explosive munitions, and the County would claim it has no authority to intervene.

Testimony adduced from Appellants' witness Mr. Dave Arndt also established that the type of activity occurring with the Pilot Plant is intended to be scaled up, and is, at a baseline, industrial in nature. The purpose of the Pilot Plant is specifically to seek novel methods of recycling difficult materials, in a manner that has not occurred before at the Subject Property and therefore needs new machinery to be retrofitted into it for Grace's vision to come to fruition. Grace argues it is proposing to initially operate on a very small scale and has no plan in place **currently** to affirmatively scale up the size or intensity of the use, but therein lies the slippery slope by which it can add a new use under the guise of R&D. After all, intensification *by itself* is permitted for a nonconforming use. "The intensification of a non-conforming use, in short, is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used." *Trip Assocs., Inc. v. Mayor & City Council of Balt.*, 392 Md. 563, 583 (2006).

Thus, if this facility were to be deemed in its current scale as a non-extending R&D nonconformity with the facilities currently being installed, a subsequent drastic increase in intensity would not be grounds for it to be subsequently challenged, as it could be argued that the Pilot Plant was determined to be R&D years prior.

It is clear, and was clear almost 70 years ago, that Pilot Plants are fundamentally different in nature and intent than other Research and Development. Even in 1955 the

original Conditional Use prohibited the installation of Pilot Plants, at a time when there were no adjacent residential properties and the Grace facility was generally isolated. Acknowledgement of this historical distinction on the Subject Property is intrinsic planning acknowledgment of a longstanding separation between Pilot Plants and other uses commonly viewed as being part of R&D.

Grace has obtained a building permit to alter its facility for the Pilot Plant. Grace has not proffered a condition that the Pilot Plant will never be enlarged, extended, intensified or expanded. DPZ admitted that it made no attempt to review the building permit and apparently signed off on the development in part because it didn't see Grace doing anything *yet* with a Pilot Plant that it self-evidently was planning to implement for at least a year *and* previously requested DPZ to write to MDE in defense of the same implementation, and for which Grace was actively seeking state permits. *See* Exs. 6, 7 & 12.1.

Grace has installed additional equipment and is retrofitting Building 30 to accommodate the proposed Pilot Plant for pyrolysis. Grace has stated that it will be operating a Pilot Plant for pyrolysis and provided details of the scope of its Pilot Plant. The fact that the proposed use was not operational as of the DPZ site visit in September of 2024 in no way controls the analysis of whether what Grace *plans* to do is an illegal extension/transmogrification of a previous R&D use. For DPZ to argue otherwise is to admit that they are ostriches putting their heads in the sand to ignore that which is occurring all around them.

QUESTION IV

The final question raised by Appellants is whether Grace provided sufficient evidence on the issue of harm to the neighborhood. This question will not be addressed as it is premature in light of the legal errors committed by DPZ.

CONCLUSIONS OF LAW

The instant appeal is from a September 13, 2024, letter from DPZ written in response to Complaint No. CE 24-107 alleging zoning violations on the Subject Property. The totality of the decision states

> "In response to your request regarding the above-mentioned property a representative of the Zoning Division inspected the property on September 9, 2024. There are no violations of the Howard County Zoning Regulations or Subdivision and Land Development Regulations found for this property. Since there are no violations, the case is closed."

At issue is the use status of a proposed Pilot Program for pyrolysis. The initial analysis supports a legal conclusion that, upon termination of the Special Exception approved in 1955 subject to Conditions, by the adoption of the PEC Zoning District, and the subsequent removal of R&D as a permitted use in the PEC Zoning District in 2013, any R&D use of the Subject Property is either nonconforming or prohibited.

The filing of the Complaint triggered the responsibility of DPZ to thoroughly investigate the complaint and issue a decision articulating findings of fact and conclusions of law. The burden of proof is on Grace to prove that their proposed Pilot Program for pyrolysis is a legally nonconforming use of the R&D development. The final

responsibility in the instant appeal rests on Appellants to prove by substantial evidence that the action taken by DPZ was clearly erroneous, arbitrary and capricious, or contrary to law.

A review of DPZ's decision is based on the four corners of the document. The two-sentence decision did not state the facts or law supporting the finding of 'no violation'. In addition to failing to provide the required findings of fact and conclusions of law, DPZ totally failed to provide any meaningful investigation into the Complaint and failed to provide written documentation of the brief visit paid to the Subject Property. DPZ simply relied on Graces self-serving statement that the Pilot Program for pyrolysis was a nonconforming R&D. DPZ did no investigation into whether the proposed use was, or was not, nonconforming.

The September 13, 2024 letter from DPZ, combined with the testimony of Director Eisenberg, demonstrate that the failure to conduct a meaningful review and provide a written decision wherein in findings of fact and applicable laws are clearly articulated, are all indicative that the decision is clearly erroneous, arbitrary and capricious, and contrary to law and Appellants have clearly met their burden of proof.

ORDER

Based upon the foregoing, it is this 30th day of June, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Appellants appeal of the September 13, 2024 DPZ determination that there are no violations of the Howard County Zoning Regulations and the Subdivision and Land Development Regulations, at 7500 Grace Drive, Columbia, Maryland, be and is hereby **GRANTED**, and it is further **ORDERED,** that,

The Department of Planning and Zoning's letter of September 13, 2024 finding no zoning violations arising from the development and use of a Pilot Plant for pyrolysis on the Subject Property, be and is hereby **REVERSED;** and it is further **ORDERED**, that,

Zoning Complaint CE 24-107 is **REMANDED to** DPZ for a thorough investigation into the nonconforming status of the proposed use and the issuance of a decision in accordance with law, containing findings of fact and citing dispositive law. No permits

shall be issued for changes to, or uses in, Building 30 until a final decision is issued in this appeal.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.