

## HOWARD COUNTY BOARD OF APPEALS

AIDAN AND SARA MORRELL, ET AL.,

Petitioners,

vs.

HOWARD COUNTY DEPARTMENT OF  
PLANNING AND ZONING,

Respondent.

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W.R. GRACE & CO.-CONN

Interested Party.

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BEFORE THE

HOWARD COUNTY BOARD OF APPEALS

BA Case No. BA-813D

### **MOTION TO NARROW THE SCOPE OF APPEAL AND EXCLUDE IRRELEVANT EVIDENCE**

Interested Party W.R. Grace & Co.-Conn (“Grace”) owns the real property located at 7500 Grace Drive, Columbia, MD 21044 (the “Property”) which is subject to the dispute between Petitioners and Respondent Howard County Department of Planning and Zoning (“DPZ”). In light of the Hearing Examiner’s Decision and Order dated June 30, 2025 (“HE Order”)<sup>1</sup>, Grace submits this motion to clarify the scope of the Board of Appeals’ authority and to exclude evidence that is irrelevant to the present appeal. Specifically, Grace seeks confirmation that the Board lacks jurisdiction to consider issues related to potential future uses of the Property and requests the exclusion of all evidence that does not pertain to the condition of the Property as of September 2024.

Through this motion, Grace endeavors to ensure that the proceedings remain focused on the legally appropriate scope of review and that the Board considers only evidence relevant to its authority under the applicable zoning regulations.

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<sup>1</sup> Although the hearing before the Board of Appeals is a *de novo* hearing and the HE Order has been rendered null and moot upon the filing of this appeal, the conduct and substance of the previous hearing prompts the need for the present Motion. Grace will refer to the HE Order only insofar as it demonstrates the importance of clarifying the scope of appeal and the Board’s authority related thereto.

## **Procedural History**

The origin of the dispute is Petitioners' Request to Conduct Zoning Inspection and Acknowledgment of Disclosure Laws dated August 6, 2024, alleging a zoning violation at the Property (the "August 2024 Complaint"). In response, DPZ inspected the Property on September 9, 2024. DPZ then issued a letter dated September 13, 2024 (the "2024 DPZ Letter") in which it determined that, as of the date of its inspection, there was no zoning violation at the Property. Petitioners appealed the 2024 DPZ Letter to the Hearing Examiner, seeking a finding that the Property is operating in violation of the Zoning Regulations. The Hearing Examiner opined that the 2024 DPZ Letter did not sufficiently discuss DPZ's investigation and reason for finding no violation. The Hearing Examiner remanded the case and ordered that DPZ conduct a "thorough investigation into the nonconforming status of the *proposed use*" and make appropriate findings of fact and conclusions of law. HE Order at p. 29 (emphasis added).

## **Legal Standard**

### **I. Board's Authority Regarding Issues of Future Use of Property**

DPZ issued the 2024 DPZ Letter pursuant to its authority to respond to "an alleged violation" of the Zoning Regulations, namely, the August 2024 Complaint. Zoning Regulations § 102.0(B). A "violation" is defined as "[a]ny structure erected, constructed, altered, enlarged, converted, moved or used contrary to any of the provisions" of the Zoning Regulations as well as "any use of any land or any structure which is conducted, operated or maintained" contrary to the any of the provisions of the Zoning Regulations. Zoning Regulations § 102.0(A) (emphasis added). On its face, a "violation" comprises only conditions that are already in effect, not any future condition. Critically, DPZ enforcement authority is limited to addressing "violations." See Section 102.0(B) of the Zoning Regulations: "Upon becoming aware of any violation of [the Zoning Regulations], the Department of Planning and Zoning may institute an injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove such erection, construction, alteration, enlargement, conversion or use in violation of any of the provisions of [the Zoning Regulations]."

The Hearing Examiner and Howard County Board of Appeals (the “Board”), in their capacity as the Hearing Authority under the Zoning Regulations, have only the powers enumerated in Section 130.0(B) of the Zoning Regulations. In the present appeal, the Board exercises its power “[t]o hear and decide appeals where it is alleged the Department of Planning and Zoning has erred in the interpretation or application of any provisions of the Zoning Regulations.” Zoning Regulations § 130.0(B)(4). The scope of review is a binary determination – was there a zoning violation on the site as of September 13, 2024, or was DPZ correct in its determination that no such violation existed?

## **II. Standard for Excluding Evidence**

In a proceeding before the Board, the Board “may exclude immaterial or unduly repetitious testimony and other evidence” that would not “be admissible under the rules of evidence in judicial proceedings in the State of Maryland. Howard County Board of Appeals Rules and Procedures (“RAP”) § 2.207(b). Courts in Maryland utilize the Federal Rules of Evidence (“FRE”) or the Maryland Rules of Evidence (“MRE”) to determine whether certain evidence is admissible in court.

Under MRE 5-402, “[e]vidence that is not relevant is not admissible.” *See also* FRE 402 (“Irrelevant evidence is not admissible.”) Under MRE 5-401, “relevant evidence” is defined to mean evidence having “any tendency to make a fact more or less probable than it would be without the evidence.” Even then, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” MRE 5-403.

The Board is authorized to hear only such matters as set forth in the Express Powers Act, Article 25A, § 5(U) of the Annotated Code of Maryland, recodified under Local Government Article § 10-305, and as defined by implementing legislation enacted by the Howard County Council. HCC §§ 501(b) & (f). The Express Powers Act authorizes boards of appeal to hear and decide only such matters (either originally or on review of the action of an

administrative officer or agency) under any law, ordinance, or regulation of the County Council that concern:

the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order.

Md. Local Government Code Ann. § 10-305.

For the reasons discussed herein and because allowing Petitioners to present evidence or argument related to the *proposed* use of the Property would only serve to confuse the issues for the Board to consider, Grace respectfully requests that the Board exclude all irrelevant evidence.

### **Argument**

#### **I. The Only Matter Before the Board is DPZ’s September 2024 Investigation of the Zoning Complaint and the Sufficiency of the 2024 DPZ Letter – Both of Which Pertain to Then-Existing Activities and Not Future Proposed Activities.**

The Board hears appeals from decisions of the Hearing Examiner *de novo*. Howard County Code § 16.304(a). Accordingly, the Board is reviewing *only* the 2024 DPZ Letter and DPZ’s associated investigation of the alleged zoning violation at the Property. DPZ very clearly addressed the condition of the Property as of September 2024: “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.” 2024 DPZ Letter (emphasis added). This is unsurprising and wholly consistent with Howard County law. DPZ is only authorized to enter private property to investigate alleged “violations” of the Zoning Regulations. As discussed *supra*, a violation of the Zoning Regulations only includes past or present activities at the site, evidenced by the past and present tense verbs used in Section 102.0(A) of the Zoning Regulations. (“Any structure erected, constructed, altered, [etc].”) “Violation” has a clear statutory definition that simply does not encompass potential future activities.

Indeed, Petitioners recognize this fact and took pains in the August 2024 Complaint to tie their complaints to existing activities. The August 2024 Complaint alleges the following (emphasis added):

- “[Grace] ***is conducting*** scientific research and development which is not a permitted use in the [Zoning Regulations]”
- “[Grace] ***is engaged*** in a use prohibited in the [Zoning Regulations]”
- “They ***are currently conducting*** a pilot scale scientific chemical research [*sic*] . . . which ***is using*** the facility for a prohibited use and that ***is incompatible*** with the adjacent Neighborhoods”
- “[Grace] ***is illegally performing*** Engineering and Scientific Research”

While Petitioners attempted in the August 2024 Complaint to bootstrap Grace’s application for a future research use, merely applying for or contemplating a future use cannot be construed as a current zoning violation under the Zoning Regulations. The only question properly before the Board is whether DPZ appropriately responded and addressed whether a zoning violation existed at the Property in September 2024.

## **II. The Board Must Exclude All Evidence Related to Proposed Uses of the Property.**

As of the date of the 2024 DPZ Letter, the proposed pilot research plant that was the focus of Petitioners’ case before the Hearing Examiner had not begun construction or operation. Zoning complaints are limited to evaluating existing uses of property, not speculative or future activities. Any evidence or argument related to the proposed use of the Property is irrelevant and outside the scope of this appeal and should therefore be excluded.

### *a. The Proposed Pilot Research Plant is Irrelevant to the Question of Whether DPZ Conducted a Legally Sufficient Investigation of Petitioners’ Zoning Complaint.*

In both the hearing and their closing memorandum, Petitioners repeatedly emphasized the proposed pilot research plant that is not yet operational or even constructed. The proposed pilot research plant is irrelevant to the question of whether the Property was in compliance with the

Zoning Regulations at the time of DPZ’s September 2024 investigation. That was not the stated focus of the Complaint and was not the focus of DPZ’s letter or investigation. Nor could it have been under the Zoning Regulations.

Grace has operated a research and development facility on the Property for decades, predating the construction of the Petitioners’ homes.<sup>2</sup> Issues and evidence related to future emissions from the Property are outside the scope of the Board’s authority and ultimately irrelevant to the question of whether DPZ conducted a legally sufficient investigation, which is the only issue before the Board in this appeal. Based on that sole allegation of error, it would be wholly inappropriate, and inconsistent with Maryland law, the Howard County Zoning Regulations, and the Board’s Rules of Procedure, to evaluate that alleged error based on a question that was not, and could not have been, before DPZ when it conducted its inspection of the property.

*b. Even if Marginally Relevant, Evidence or Argument Related to the Proposed Pilot Research Plant Would Confuse the Issues Before the Board.*

Whether and to what extent the Property may generate emissions in the future is outside the scope of the Board’s jurisdiction. Therefore, allowing evidence or argument related to the proposed future pilot research plant would divert attention from the sole issue properly before the Board: whether DPZ conducted a legally sufficient investigation of the alleged zoning violation as of September 2024. As the Board’s authority is limited to hear matters under any law, ordinance, or regulation of the County Council that concern the “issuance, renewal, denial, [etc] . . . of any license, permit, approval, [etc.], it does not extend to reviewing or interpreting permits issued by the Maryland Department of the Environment (MDE). As such, the proposed future pilot research plant – not to mention MDE’s environmental review and finding that such a plant would have no negative impact on the community or environment – is not within the Board’s purview and is irrelevant to this proceeding. Allowing Petitioners to present evidence about a permit the Board does not have the authority to review will only serve to confuse the factual and

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<sup>2</sup> Excerpts from Howard County’s Historic Zoning and Aerial Maps are attached hereto as **Exhibit 1**.

legal issues. It risks conflating environmental permitting with zoning enforcement and undermines the clarity of the Board's role in adjudicating this appeal.

### **Conclusion**

Grace respectfully requests that the Board Chair rule as a preliminary matter that all evidence related to prospective uses of the property will be excluded as irrelevant. Grace further requests that the Board narrow the scope of this proceeding to whether DPZ conducted a legally sufficient investigation of the alleged zoning violation in September 2024.

Date: July \_\_, 2025

/s/ Thomas G. Coale

Thomas G. Coale  
54 State Circle  
Annapolis, MD 21401  
(443) 630-0507

*Attorney for Interested Party W.R. Grace & Co.-  
Conn*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of July, 2025, a copy of the foregoing Memorandum was served electronically to:

Grant Amadeus Giel  
Law Office of G. Macy Nelson, LLC  
600 Washington Avenue, Suite 202  
Towson, Maryland 21204  
*Counsel for Appellants*

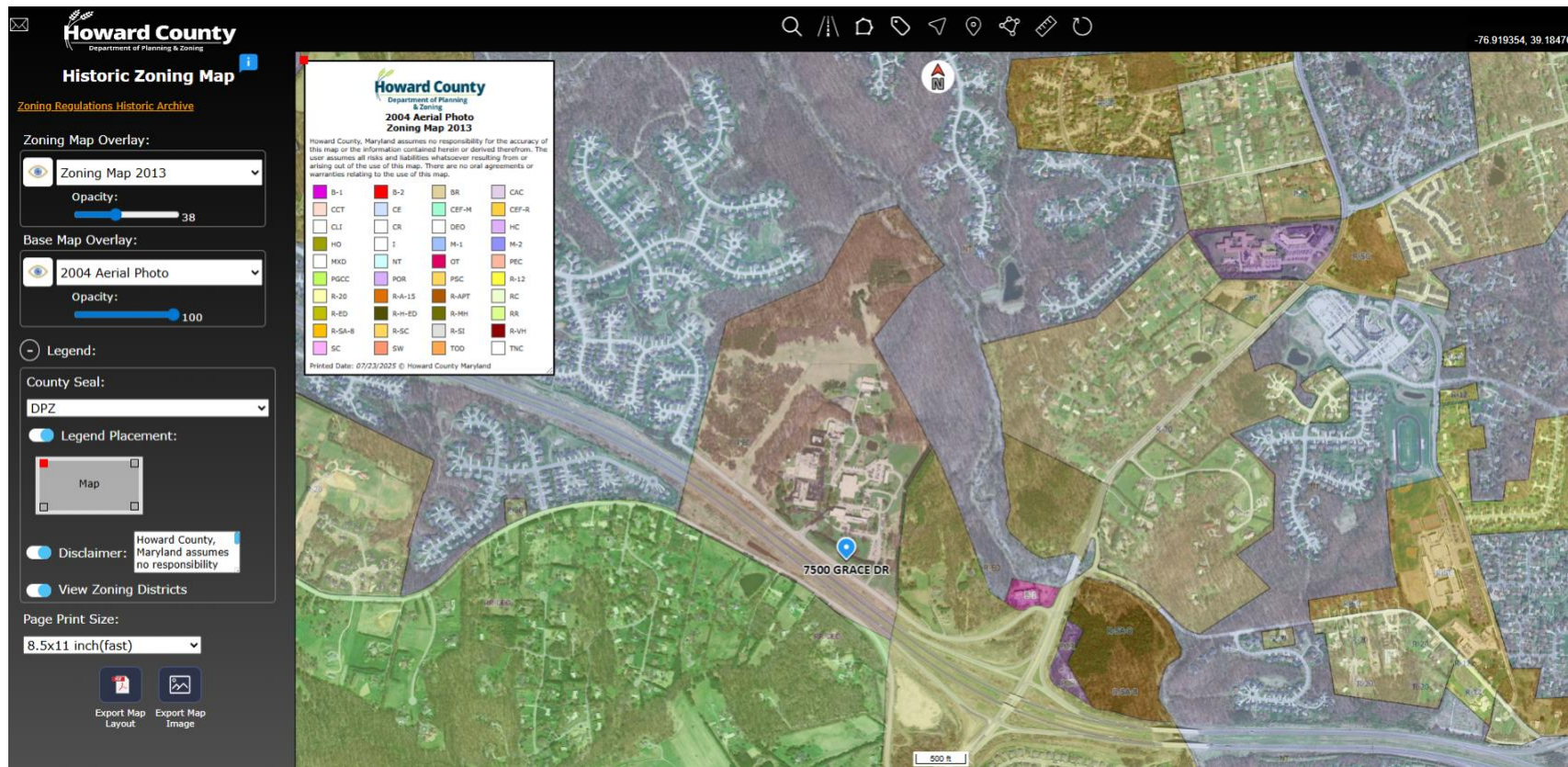
David Moore  
Howard County Office of Law  
3430 Court House Dr  
Ellicott City, MD 21043  
*Counsel for the Howard County Department of Planning and Zoning*

I FURTHER CERTIFY, pursuant to Howard County Board of Appeals Rules and Procedures § 2.207(e), that I provided a copy of this Motion to all persons known to have an interest in the case, including but not limited to the Petitioner, the property owner, the administrative agency, and any person entitled to written notification under rule 2.203(e) and (f) with the following statement:

ANY PERSON INTERESTED IN RESPONDING TO THIS MOTION SHALL  
FILE A WRITTEN RESPONSE WITH THE BOARD WITHIN FIFTEEN  
DAYS OF THE DATE THIS MOTION WAS FILED.

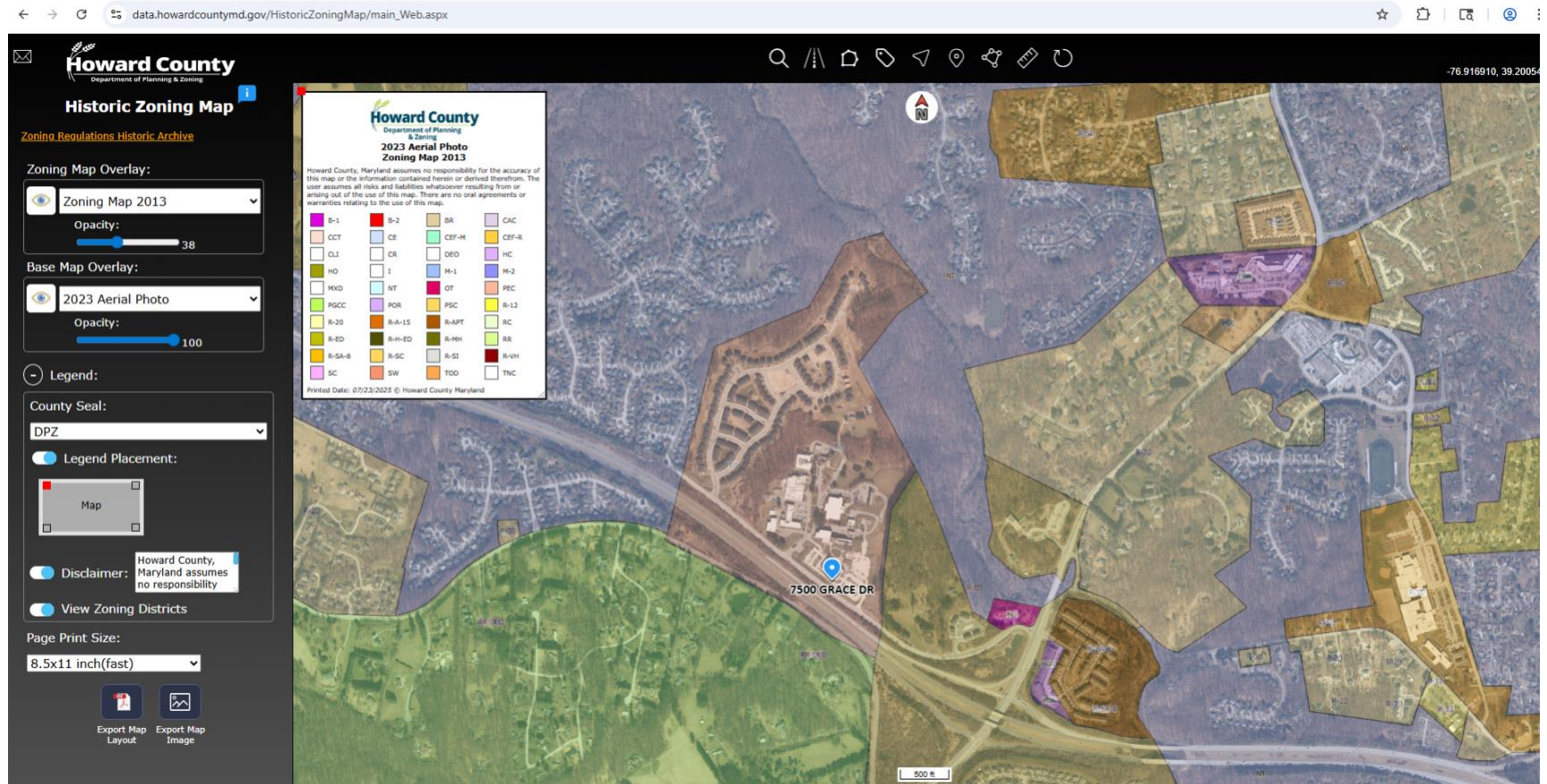
/s/ Thomas G. Coale

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