

IN THE MATTER OF	:	BEFORE THE
Joshua Chartier et al.	:	HOWARD COUNTY
Petitioners	:	BOARD OF APPEALS
v.	:	HEARING EXAMINER
Howard County Department	:	BA Case No. 816D
of Planning and Zoning		

.....

.....

DECISION AND ORDER

BA-816D, an administrative appeal from the actions of the Howard County Department of Planning and Zoning, pertains to property located in Council District 1, Tax Map 25, Grid 1, Parcel/Lot 13, also identified as 3538 Church Road, Ellicott City, Maryland. The property is in the R-ED (Residential-Environmental Development) Zoning District.

FINDINGS OF FACT

1. On April 25, 2025, Petitioners filed an appeal of Grading Permit G25000022 and SDP-25-011 citing failure of appropriate notice.
2. On May 27, 2025 the Circuit Court for Howard County entered an Order granting a Motion to Stay Proceedings and staying judicial review in this matter for 90 days from the date of this Order. Case No. C-13-CV-25-000375.

3. On June 2, 2025, Mr. William E. Erskine, Esq. entered his appearance on behalf of interested parties Mill Creek, LLC and SDC Mill Creek, LLC. (Respondents)
4. On August 12, 2025, Respondents filed a Preliminary Motion to Dismiss Pursuant to Section 7.5 of the Board of Appeals Rules of Procedure.
5. The Preliminary Motion states:

STATEMENT OF THE CASE

This appeal relates to a Grading Permit authorizing the grading of roads and recorded lots within a subdivision located on Church Road in Ellicott City. The property comprising this subdivision is known locally as "The Lacey Property," having been formerly owned by the Lacey family, long time county residents. The Lacey family's efforts to subdivide their property began with a community meeting held on April 30, 2013. The approval of the Lacey family subdivision has been delayed by the serial filing of numerous appeals of administrative decisions, and by an ever changing regulatory environment intended to thwart the subdivision and development of the Lacey family property. More than twelve years after the initial community meeting, construction on the property has recently commenced only to be met by two additional late filed administrative appeals and another Petition for Judicial Review filed in Circuit Court. These appellate actions include the instant appeal and a separate administrative appeal BA-817D, as well as a circuit court action, Case No. C-13-CV-25-000375.

BACKGROUND

The Petitioners filed the above captioned Administrative Appeal Petition (the "Petition") on April 25, 2025. On April 28, 2025, the Petitioners filed a supplement to their Petition (the "2 Petition Supplement"). In their initial Petition, the Petitioners aver that on March 27, 2025 "DPZ erred by approving grading permit. DPZ also erred when it made changes to the SDP without notice." In their Petition Supplement filed on April 28, 2025, the Petitioners identified Grading Permit G25000022 (the "Grading Permit") and Site Development Plan SDP-25-011 (the "SDP") as the subjects of their appeal. Neither the initial Petition nor the Petition Supplement specified any particular error in the decision, ruling or action alleged to have been taken

by the Department of Planning and Zoning ("DPZ") on March 27, 2025. Rather, the Petitioners simply raised bald allegations of error.

ARGUMENT

This appeal must be dismissed on the following grounds:

- 1) the appeal with respect to the Grading Permit is moot;
- 2) the appeal with respect to the Grading Permit is untimely;
- 3) the appeal with respect to the SDP has not been properly perfected;
- 4) the appeal with respect to the SDP is untimely;
- 5) the Grading Permit and the SDP were approved in accordance with all applicable laws and regulations.

Below is a timeline of the relevant decisions, rulings, and actions taken by DPZ in relation to the "approval" of the Grading Permit and SDP. Also provided below are dates of decisions, rulings, and actions taken by DPZ in relation to the approval of the initial subdivision plan (F-21-015) and resubdivision plan (F-25-022) for the Lacey Property. Copies of these documents taken from the DPZ administrative record are attached as Exhibit A. Each document within the Exhibit A has been Bates stamped to facilitate identification. Exhibit A may be viewed and downloaded from your internet browser by visiting <https://tinyurl.com/BA-816D-EX-A>.

April 20, 2023 Technically Complete ("TC") Letter F-21-015 – Lacey Property (Lacey Property Lots 1 thru 13 and Open Space Lots 14 thru 17) Final Road Construction, Grading and Stormwater Management Plans. (Bates 002)

September 13, 2023 F-21-015 Final Plan Approval Letter. (Bates 010)

September 13, 2023 Signature Approval of F-21-015. (Bates 011)

July 15, 2024 F-21-015 Recorded in Land Records (Plat Nos. 26657 – 26659) (Bates 048)

September 18, 2024 SDP-25-011 Application Filed – Lacey Property - Lots 2, 18 thru 29

October 16, 2024 F-21-015 Lacey Property - Redline #1 Approval. (Bates 051) November 20, 2024 F-25-022 Originals Only Authorization Letter (Bates 052)

February 11, 2025 SDP-25-011 Technically Complete Letter. (Bates 055)

February 21, 2025 Residential Grading Permit – G25000022 – Filed (Ref. Plan Number: F- 21-015 Subdivision Name: Lacey Property; Recorded Plat: 26657) (Bates 060)

March 6, 2025 Receipt for F-25-022 Originals Only Submission. (Bates 088)

March 11, 2025 Annete Merson (DPZ) "approved" Grading Permit G25000022. (Bates 089)

March 13, 2025 Deadline to appeal DPZ TC Letter for SDP-25-011 issued on February 11, 2025.

March 26, 2025 Bob Frances (DILP) "approved" Grading Permit. (Bates 089)

March 27, 2025 Grading Permit "published" by DILP. (Bates 089)

April 10, 2025 Deadline to appeal March 11, 2025 "Approval" of Grading Permit by DPZ.

April 10, 2025 F-25-022 Originals signed (Bates 090)

April 17, 2025 F-25-022 Originals recorded (Plat Nos. 26861-26865) (Bates 090)

April 25, 2025 BA-816D Administrative Appeal Filed (Initial).

April 28, 2025 Deadline to file appeal for DPZ rulings/actions taken on March 27, 2025.

April 28, 2025 BA-816D Appeal Supplement Filed.

May 12, 2025 BA-817D Administrative Appeal FILED

May 23, 2025 SDP-25-011 Signature Approval - Lacey Property Lots 2, 18-29. (Bates 103)

1) This Appeal (with respect to the Grading Permit) is Moot and must therefore be dismissed.

This Appeal is Moot and must therefore be dismissed. The DPZ administrative record, incorporated herein by reference, clearly establishes that DPZ did not make or take any decision, ruling or action with respect to the Grading Permit or the SDP on March 27, 2025. In light of the foregoing, there is simply no decision, ruling or action to be

reviewed by the Hearing Examiner. Because there is nothing to review, the Hearing Examiner cannot provide relief to the parties. This appeal is, in fact, a nullity and is therefore moot. As such, the Hearing Examiner must dismiss the appeal.

2) This Appeal (with respect to the Grading Permit) is Untimely and must therefore be dismissed.

Notwithstanding the mootness of this appeal, it was also untimely filed and for that additional reason it must be dismissed. Rules of Procedure §2.206 provides “An individual wishing to appeal an administrative decision of a county agency shall file an appeal on the petition provided by the Department of Planning and Zoning within thirty days of the date of that administrative decision, unless the law provides a different time period for appeal.”

Howard County Code, Sec. 16.105(a) provides: “Appeal to Board of Appeals. A person aggrieved by an order of the Department of Planning and Zoning may, within 30 days of the issuance of the order, appeal the decision to the Board of Appeals.” Additionally, Board of Appeals Rules of Procedure §2.202 prescribes the form and contents of Petitions to the Board of Appeals. This rule provides “(a) Form and Contents of Petitions. The Board of Appeals shall prescribe the form and contents of petitions. A Petitioner shall obtain the petition from the Department of Planning and Zoning. The Petitioner shall ensure the accuracy and completeness of the information required in the petition. The petition shall be filed with the clerk of the Board, as defined under 2.201(c). The Department of Planning and Zoning may require corrections to the petition or additional information before the hearing on the petition is scheduled.”

In accordance with §2.202 the Board of Appeals has prescribed the form and contents of petitions to be utilized by persons wishing to appeal a departmental decision. The prescribed petition form is entitled “Administrative Appeal Petition to the Howard County Hearing Authority” The first paragraph of the prescribed Appeal Petition form clearly states “A person who wishes to appeal a departmental decision must use this petition form. It is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person. The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of issuance of the departmental ruling or action.”

The DPZ administrative record makes clear that the last decision or action made or undertaken by DPZ with respect to the Grading Permit occurred on March 11, 2025 when Annete Merson, on behalf of DPZ, "Approved" the Grading Permit as indicated on the Accela Citizen Access (ACA) website. Assuming *arguendo* that DPZ's approval of the Grading Permit on March 11, 2025 was an appealable final decision or action (as opposed to a non-appealable perfunctory or ministerial action) the 30 day deadline to appeal this decision was April 10, 2025. The instant appeal was not properly filed until April 28, 2025, well after the deadline. Because this appeal was not filed in a timely manner in accordance with Rules of Procedure §2.202 and §2.206, the Hearing Examiner does not have jurisdiction to hear this appeal as it relates to the approval of the Grading Permit. Accordingly, the appeal of DPZ's "approval" of the Grading Permit must be dismissed. As suggested above, DPZ's approval of the Grading Permit on March 11, 2025 was not an appealable final decision or action. Rather, it was a non-appealable perfunctory approval or ministerial action because it fully complied with the approved Grading Plan and all applicable ordinances and regulations. See, *Evans v. Burrus*, 401 Md. 586, 605, 933 A.2d 872, 883 (2007); *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 558, 120 A.3d 677, 718 (2015); *Siena Corp. v. Mayor & City Council of Rockville*, 873 F.3d 456, 463 (4th Cir. 2017).

DPZ's final decision and agency approval of the Grading Plan occurred on April 20, 2023. The approval of the Grading Plan by DPZ is the "operative event" giving rise to the right of an appeal. The operative event is triggered by the issuance of a Technically Complete letter approving the Final Plan designated as F-21- 015. The subsequent "approval" of the Grading Permit by DPZ is merely a perfunctory approval and ministerial action. As such, it is not an operative event for appeal purposes. For a thorough discussion of this concept, please see *In re Liang*, No. BA-22-017C, Howard Cnty. Bd. of Appeals Hearing Exam'r (Jan. 15, 2025); and the cases cited therein.

3) This Appeal, as it relates to DPZ's approval of the SDP, has not been properly perfected; and therefore, it must be dismissed.

Turning now to the Petitioner's second contention alleging that on an unspecified date, DPZ erred in approving unspecified changes to the SDP without community notice. The Petitioners have failed to provide any details whatsoever describing the date of DPZ's alleged action or

the changes allegedly made to the SDP without notice. Finally, assuming arguendo that DPZ did at some unspecified time approve the SDP with unspecified "changes," the Petitioners have not alleged any requirement under law obligating DPZ to provide notice to the community prior to approving the SDP with changes. In light of these deficiencies, the Petitioners have not perfected their appeal of DPZ's approval of the SDP. Accordingly, it must therefore be dismissed because the Hearing Examiner lacks jurisdiction over the matter.

4) This Appeal (with respect to the SDP) is Untimely and must therefore be dismissed.

Notwithstanding the Petitioners' failure to properly perfect their appeal with respect to DPZ's approval of the SDP; the appeal was in any event filed untimely. For this additional reason, it must be dismissed. As previously stated, Howard County Code, Sec. 16.105(a) provides: "Appeal to Board of Appeals. A person aggrieved by an order of the Department of Planning and Zoning may, within 30 days of the issuance of the order, appeal the decision to the Board of Appeals." Additionally, Rules of Procedure §2.206 provides "An individual wishing to appeal an administrative decision of a county agency shall file an appeal on the petition provided by the Department of Planning and Zoning within thirty days of the date of that administrative decision, unless the law provides a different time period for appeal." In addition, the Board of Appeals, in accordance with Rules of Procedure §2-202 has prescribed the form and contents of petitions to be utilized by persons wishing to appeal a departmental decision. The prescribed petition form is entitled "Administrative Appeal Petition to the Howard County Hearing Authority" The first paragraph of the prescribed Appeal Petition form clearly states "A person who wishes to appeal a departmental decision must use this petition form. It is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person. The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of issuance of the departmental ruling or action."

The DPZ administrative record makes clear that the final decision made by DPZ with respect to the approval of the SDP occurred on February 11, 2025 when DPZ issued its Technically Complete Letter. The administrative record also makes clear that DPZ's approval on February 11, 2025 was DPZ's first and only approval relating to the SDP. Despite

allegations to the contrary, DPZ has never approved changes to the SDP.

The Petitioners have not specified the date of the DPZ approval they were appealing. This deficiency is of course fatal to this appeal under the Rules of Procedure §2-202 and §2-206. Notwithstanding, even if this deficiency were excused DPZ's final approval of the SDP was made on February 11, 2025 and the deadline to file an appeal of this decision expired on March 13, 2025, well before the date of the filing of this appeal. Accordingly, the Petitioners' appeal of DPZ's decision to approve the SDP with unspecified changes must be dismissed as untimely.

5) The Grading Permit and the SDP were approved in accordance with all applicable laws and regulations.

In their Petition, the Petitioners have failed to identify a single aspect of either the Grading Permit or the SDP that is violative of applicable laws or regulations. To the contrary, careful examination of the Grading Permit; SDP; as well as consideration of all applicable laws and regulations confirm that the Grading Permit and SDP were, in fact, properly approved in accordance with the law. Consequently, this appeal is without merit and must be dismissed.

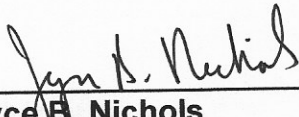
6. On August 28, 2025, Petitioners filed a Motion to Dismiss Appeal.

ORDER

Based upon the foregoing, it is this 29th day of August, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Petitioners Motion to Dismiss Administrative Appeal BA-816D, be and is hereby **GRANTED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Joyce E. Nichols