

IN THE MATTER OF	:	BEFORE THE
JOSHUA CHARTIER,	:	HOWARD COUNTY
AMY GAO,	:	
ELIZABETH WALSH,	:	BOARD OF APPEALS
EDWARD FORTUNATO,	:	
SARAH LYNN WALSH,	:	HEARING EXAMINER
KELSEY LAATSCH, AND	:	
CHRISTOPHER LAATSCH	:	BA Case No. 817-D

Petitioners:

v.

Interested Parties: William Pippen, Mill Creek LLC, and SDC Mill Creek LLC

HOWARD COUNTY DEPARTMENT
OF PLANNING & ZONING

Respondent

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**PRELIMINARY MOTION TO DISMISS PURSUANT TO SECTION 7.5 OF THE
BOARD OF APPEALS HEARING EXAMINER RULES OF PROCEDURE**

William Pippen, Mill Creek LLC, and SDC Mill Creek LLC (“Interested Parties”), pursuant to §7.5 of the Board of Appeals Hearing Examiner Rules of Procedure (the “Rules of Procedure”), move to dismiss the above captioned administrative appeal on the grounds set forth herein.

STATEMENT OF THE CASE

This appeal relates to a revised subdivision plan for 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-816D, 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 May 12, 2025. In their Petition, the Petitioners identified Final Plan F-25-2022 (“F-25-022”) as the

subject of their appeal. The date of the ruling or action being appealed was April 17, 2025 or April 10, 2025. The Petitioners did not identify the particular agency or unit of government that made the ruling or action they intended to challenge. Rather, the Petition identified the Respondent as “Will Phippen (Permit applied for by Jenn M. Wellen).” The Petitioners did not specify any particular error in the decision, ruling or action allegedly made by Respondents or by the unnamed agency. Rather, the Petitioners raised bald allegations of error including, “Errors in platting related to tree protection, grading, density, and other regulatory actions.

ARGUMENT

This appeal must be dismissed on the following grounds: 1) the appeal is moot; 2) the appeal is untimely; 3) F-25-022 was approved in accordance with all applicable laws and regulations.

Below is a timeline of the relevant dates of decisions, rulings, and actions taken in relation to the “approval” of the F-25-022. Also provided below are relevant dates of decisions, rulings, and actions taken in relation to the approval of Final Plan F-21-015 (the initial subdivision plan for the Lacey Property). Copies of these documents taken from the 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-817D-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 ¹ (Bates 052)
February 11, 2025	SDP-25-011 Technically Complete Letter. ² (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)

¹ This “Originals Only Authorization” letter is DPZ’s approval of the revised F-21-015. It is the “operative event” triggering the 30 day right to appeal for F-25-022.

² This TC Letter was the “operative event” triggering the 30 day right to appeal for the SDP.

March 6, 2025	Receipt for F-25-022 Originals Only Submission. (Bates 088)
March 11, 2025	Annete Merson (DPZ) "approved" Grading Permit G25000022. ³ (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. ⁴ (Bates 089)
March 27, 2025	Grading Permit "published" by DILP. ⁵ (Bates 089)
April 10, 2025	Deadline to appeal March 11, 2025 "Approval" of Grading Permit by DPZ. ⁶
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). ⁷
April 28, 2025	Deadline to file appeal for DPZ rulings/actions taken on March 27, 2025. ⁸
April 28, 2025	BA-816D Appeal Supplement Filed. ⁹
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 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 any appealable decision or action with respect to F-25-022 on April 17, 2025 or April 10, 2025. On April 10, 2025, DPZ signed F-25-022. On April 17, 2025, DPZ staff recorded the plats in land records. It is well established under Board of Appeals precedence that DPZ's act of signing a plan is not an "operative event" giving rise to the right to an appeal. Neither is the act of recording the plats. The signing of the final plan by DPZ and the recordation of the plats are both ministerial

³ This "approval" was a perfunctory/ministerial act and not an operative event triggering the right to appeal. Regardless, DPZ's action on March 11, 2025 was not appealed.

⁴ This action by DILP was perfunctory/ministerial and was not an "operative event" triggering the right to appeal. Regardless, DILP's actions were not appealed.

⁵ Publication of Grading Permit by DILP was not appealed. Only DPZ's alleged approvals were appealed.

⁶ This assumes that DPZ's March 11, 2025 approval is appealable as an operative event. It is not, however.

⁷ The alleged date of DPZ's approval was March 27, 2025.

⁸ The thirtieth day was April 26, 2025; however, that day was a Saturday and DPZ offices were closed.

⁹ Specifies Grading Permit G25000022 & SDP-25-011 as subjects of appeal.

functions because they do not determine 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. Rather, the signing of F-25-022 and the subsequent recording of the plat were ministerial actions, a mandatory administrative execution of tasks imposed on DPZ by Howard County Code, § 144(q).

DPZ's signing of F-25-022 and the subsequent recording of the plat was a non-appealable perfunctory approval or ministerial action because both tasks fully complied with the approved final 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 F-25-022 occurred on November 20, 2024 when DPZ approved a revised F-21-015 by issuing an "Originals Only Authorization Letter." It should be noted that F-25-022 is an "O's only" resubdivision of F-21-015. It was made for the purposes of reducing tree clearing, reducing the limits of disturbance, adjusting internal lot lines, removing easements, and realigning a sewer line through the interior of the Property in lieu of the original planned alignment through the Church Road public street right-of-way.

It is the approval of the revised F-21-015 by DPZ that is the "operative event" for F-25-022 giving rise to the right of an appeal. 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. Note that when the plats for revised F-21-015 are submitted, they are assigned a new final plan number, in this case that plan number is F-25-022.

In light of the foregoing, it is clear that no appealable DPZ approval took place on April 10, 2025 or April 17, 2025. Therefore, there is no decision 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 Provides Inadequate Notice of the Issues being Challenged and must therefore be dismissed.

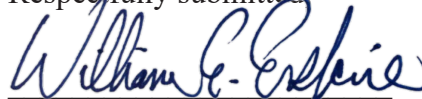
The information provided by the Petitioners in their Administrative Appeal Petition is vague and wholly lacking facts that would place the Interested Parties on notice of the issues being challenged on appeal. This lack of information in the Petition violates the Interested Parties Due Process rights under the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights. Further, the Petition does not comply with the applicable rules of procedure. Both the Hearing Examiner and Board of Appeals have adopted rules of procedure which have been adopted by the County Council by resolution. Hearing Examiner Rules of Procedure, §3.1 provides "Petitions must be filed with the clerk in the manner prescribed by §2.202(a) of the Board of Appeals Rules of Procedure. §2.202(a) also provides that the Board of Appeals shall prescribe the form and content of the petition, and required the petitioner to ensure the accuracy and completeness of the information required on the petition.

As previously stated, the Petitioners did not identify any particular agency or department that made the ruling or action they intended to challenge. Rather, the Petitioners mis-identified the Respondent as “Will Pippen (Permit applied for by Jenn M. Wellen).” In addition, the Petitioners did not state with any certainty the date the decision was made. Finally, the Petitioners did not describe any particular error in the decision, ruling or action allegedly made by the Respondents or by the unnamed agency. Contrary to the instructions on the official Petition for Administrative Appeal provided by DPZ, the Petitioners merely raised bald allegations of error including, “Errors in platting related to tree protection, grading, density, and other regulatory actions.” The Petitioners have failed to provide any details whatsoever describing the decisions or actions allegedly made in error. In light of these insufficiencies, the Petitioners have not provided legally sufficient notice of the issues they intend to challenge in their appeal. Accordingly, the appeal must be dismissed for failure to provide adequate notice of the issues being challenged on appeal.

3) F-25-022 was approved in accordance with all applicable laws and regulations.

In their Petition, the Petitioners have failed to articulate a single aspect of F-25-022 that is violative of any applicable law or regulation. Careful examination of F-25-022 as well as consideration of all applicable laws and regulations confirms that F-25-022 was, in fact, properly approved in accordance with all laws and regulations. Consequently, this appeal is without merit and must be dismissed.

Respectfully submitted



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Counsel for Respondents

NOTICE: Any person interested in responding to this motion must file a written response with the hearing examiner within fifteen days of the date that the motion was filed.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2025, a copy of the foregoing Preliminary Motion to Dismiss was mailed via first-class U.S. mail, postage prepaid and/or emailed to:

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A handwritten signature in blue ink that reads "William E. Erskine". The signature is fluid and cursive, with the first name "William" and last name "Erskine" clearly legible.

William E. Erskine, Esq.
Attorneys for Respondents