

IN THE MATTER OF	*	BEFORE THE HOWARD COUNTY
Dr. Sarah Via, et al	*	BOARD OF APPEALS
	*	HEARING EXAMINER
Appellants	*	
Re: 4411 Manor Lane	*	CASE NO. BA-821D
* * * * *		

ADMINISTRATIVE AGENCY RESPONSE TO PRELIMINARY MOTION

Petitioners, Sarah Via, et al., have moved for a preliminary ruling limiting the scope of their own appeal, which arises from the memorandum dated May 28, 2025, from Lynda Eisenberg, AICP, Director, Department of Planning and Zoning to the Howard County Board of Appeals Hearing Examiner (“the Hearing Examiner”), regarding case BA 806-D. The underlying case, BA 806-D, arose from Petitioners’ challenge of the written notice issued to them, as complainants, about the closing of a zoning violation case, pursuant to the Howard County Zoning Regulations (“HCZR”), section 102.0.B.

The relief that Petitioners request is for “the September 9, 2025 hearing date [to] be limited to legal argument about whether DPZ’s decision complied with the BA-806 D&O.” Motion for Preliminary Determination that the Department of Planning and Zoning Failed to Comply with the Hearing Examiner’s Previous Decision and Order, at 1. The Department of Planning and Zoning (“DPZ”), the administrative agency, is not opposed to limiting the scope of the appeal to the May 28, 2025 memorandum, which is the sole administrative action as to which the appeal is timely. However, evidence, including testimony, is necessary for a complete understanding of the scope and details of the DPZ follow-up investigation and, therefore, whether the Hearing Examiner’s order has been fulfilled.

In any appeal to the Hearing Examiner of an administrative agency decision other than one contesting the *issuance* of a notice of violation, “the petitioner must show by substantial evidence that the action taken by the administrative agency was clearly erroneous, arbitrary and capricious, or contrary to law.” Rules of Procedure of the Board of Appeals Hearing Examiner, 10.2.(c). Petitioners may choose, without needing any ruling by the Hearing Examiner limiting the scope

of the hearing, to restrict the evidence that they offer in support of their case. They may not, however, satisfy their burden of proof without producing substantial evidence.

DPZ itself is entitled to offer evidence in support of its actions, to show that they met the applicable legal standard. DPZ intends to offer testimony that would set forth and explain DPZ's investigation and show that DPZ complied with its obligations. While the May 28 memorandum is thorough and detailed, DPZ's decision that it would not issue a notice of violation even after further investigation, conducted consistently with the Hearing Examiner's Order, cannot be fairly evaluated without this testimony.

It is noteworthy that, contrary to their own motion to limit the scope of the hearing, Petitioners have sought to contradictorily "reserve[d] the right to raise additional issues [beyond their petition filing]." Administrative Appeal Petition to the Howard County Hearing Examiner, Attachment A, at 5 (page 50 overall in the Appeal Petition filing). Aside from whether such a reservation is permissible, it belies the idea that DPZ should be restricted from explaining how it fulfilled the Hearing Examiner's Order as to the matters that Petitioners have stated their appeal.

The preliminary motion should be denied to the extent that it seeks to preclude DPZ from offering evidence in support of its defense or to excuse Petitioners from having to meet their burden to show by substantial evidence that the applicable legal standards were not met by DPZ.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2025, a copy of the foregoing Administrative Agency Response to Preliminary Motion was provided to all persons known to have an interest in the case, including but not limited to the Petitioner, the property owner, or any person entitled to written notification under §2.203 of the Board's Rules by electronic mail and/or U.S. first class mail, postage pre-paid to:

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