

DR. SARA VIA, et al.	:	BEFORE THE
Appellants	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF	:	HEARING EXAMINER
PLANNING AND ZONING	:	BA Case No. 821D
CE-22-126		
re:		
4411 Manor Hill Lane		
Appellee		

.....

**MOTION FOR PRELIMINARY DETERMINATION THAT THE DEPARTMENT OF
 PLANNING AND ZONING FAILED TO COMPLY WITH THE HEARING EXAMINER'S
 PREVIOUS DECISION AND ORDER**

DECISION AND ORDER

FINDINGS of FACT

In August of 2022, Dr. Sara Via along with other Manor Lane residents ("Appellants") submitted a Zoning Violation Complaint CE-22-126 which alleged that

Manor Hill Brewery and Manor Hill Farm, located at 4411 Manor Lane ("Subject Property"), are violating various conditions of permits granted by the Howard County Department of Planning and Zoning ("DPZ") for a Farm Brewery, Farm Stand, and Agritourism Enterprise. DPZ issued a letter stating that no violation was found. Appellants appealed DPZ's determination, and the Hearing Examiner held that DPZ failed to adequately investigate the Zoning Violation Complaint. The Hearing Examiner remanded the case to DPZ, ordering DPZ to more seriously investigate whether the activities on the Subject Property comply with the Farm Brewery, Farm Stand, and Agritourism Permits applicable to the Subject Property. It is undisputed that DPZ did not appeal the Hearing Examiner's decision. DPZ issued another letter stating that no violation was found.

Appellants again appealed DPZ's decision, and the Hearing Examiner again found that DPZ failed to adequately investigate Appellants' Zoning Violation Complaint. The Hearing Examiner's Decision and Order dated February 27, 2025 ("BA-806") contained legal conclusions and specific instructions to DPZ on remand. It is undisputed that DPZ did not appeal the BA-806 D&O.

On May 28, 2025, DPZ issued another response again finding no violation. Appellants again appealed DPZ's decision arguing that DPZ's response letter is inconsistent with several legal conclusions reached by the Hearing Examiner in BA-806 and fails to comply with the Hearing Examiner's specific instructions on remand. This appeal is the instant case at bar.

On August 5, 2025, Appellants filed its Motion for Preliminary Determination that the Department of Planning and Zoning Failed to Comply with the Hearing Examiner's Previous Decision and Order. On August 20, 2025, Appellee filed its Administrative Agency Response to Preliminary Motion. Appellee stated that the relief that Appellants 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." The Department of Planning and Zoning, 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).

Appellants 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 meet the applicable language imposed by the D & O. DPZ stated that they intend to offer testimony that would set forth and explain DPZ's investigation and show that DPZ

complied with its obligations. DPZ's decision that it would not issue a notice of violation even after further investigation, conducted pursuant to the Hearing Examiner's Order, cannot be evaluated without the opportunity to provide this testimony.

In contravention of their Motion to limit the scope of the hearing, Appellants have sought to "reserve[d] the right to raise additional issues [beyond their petition filing]." In fairness, DPZ should therefore not be restricted from testifying, under oath, regarding how it fulfilled the Hearing Examiner's Order as to the matters Appellants have raised in their appeal.

On September 3, 2025, Appellants filed its Reply to DPZ's Response to Motion for Preliminary Motion Determination further refining its Motion to include the following specific issues:

1. Application of 50-person limit under HCZR Section 128.0.O.1.I.
2. Evaluation of Truck Traffic.
3. Determination of whether accessory structures on the Subject Property exceed the 2,200 square-foot maximum.

On September 9, 2025, oral argument was conducted on the Motion for Preliminary Determination that the Department of Planning and Zoning Failed to Comply with the Hearing Examiner's Previous Decision and Order Motion and the responses thereto. At the conclusion of the oral argument the Motion was taken under advisement.

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 Section 16.105, appeals to the Board of Appeals of decisions made pursuant to the Director of the Department 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, Section 2.210 provides that administrative appeals such as the instant appeal the burden of proof is on the Appellant to show that the action taken by the Administrative Agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law. Pursuant to 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.

CONCLUSIONS OF LAW

The crux of Appellants appeal is whether DPZ's May 28, 2025 review letter is in compliance with the mandates set out by the Hearing Examiner's Decision and Order in BA-806D. Both parties agree that this Decision and Order was not appealed and stands as the law in this case. It seems that both parties also agree that an evidentiary hearing is required, at least as to some of the issues. As testimony is needed to support a finding by substantial evidence that DPZ's actions, as evidenced by its May 28, 2025 letter, were erroneous, arbitrary and capricious, or contrary to law, it would be premature at this juncture to grant a dismissal of any of the issues until further evidence is adduced. Appellants Motion for Preliminary Determination that the Department of Planning and Zoning Failed to Comply with the Hearing Examiner's Previous Decision and Order is denied.

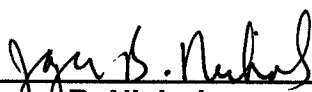
ORDER

Based upon the foregoing, it is this 14th day of October 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That Appellant's Motion for Preliminary Determination that the Department of Planning and Zoning Failed to Comply with the Hearing Examiner's Previous Decision and Order, be and is hereby **DENIED**, and the Evidentiary Hearing advertised for October 15, 2025 will proceed as scheduled.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols