

not participate in this case. Chairperson Ryan presided over the hearings. Tsega Girma Kyere, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Affidavit of Posting and Certificates of Advertising were provided as required by the Howard County Code. The Board members indicated they had viewed the Property as required by the Zoning Regulations.

The controversy at issue came about when on August 8, 2024, thirty-one individuals (the “Complainants”²), including the Morrells, submitted to DPZ a Request to Conduct Zoning Inspection and Acknowledgement of Disclosure Laws (the “Complaint”), which DPZ docketed as CE 24-107. Pursuant to that Complaint, on September 9, 2024, DPZ performed an inspection of the Property. Four days later, on September 13, 2024, DPZ issued a response stating that the inspection did not reveal any zoning violations, and accordingly, DPZ closed the matter.

This case began when the Morrells appealed DPZ’s decision to the Howard County Hearing Authority, initially, the Howard County Board of Appeals Hearing Examiner. HCZR §§ 102.0.B, 130.0.B.4; Howard County Code (“HCC”) § 16.302. The Hearing Examiner reversed DPZ’s decision not to issue an NOV, and remanded the Complaint to DPZ for further investigation. W.R. Grace then appealed to the Board pursuant to Section 16.304(a) of the Howard County Code and, thereafter, the Board heard this appeal *de novo* in accordance with Section 2.210(a) of the Board’s Rules of Procedure.³

² Not all thirty-one individuals would go on to appeal DPZ’s decision. Accordingly, the Board distinguishes between those who filed the Complaint—the Complainants, and those who appealed DPZ’s decision—the Morrells.

³ At the hearing on August 21, 2025, undersigned counsel stated that the “hearing is being conducted in accordance with Section 2.209 of the Howard County Code,” and referenced the burden of proof provisions included therein. As shall be explained below, this was error. The applicable burden of proof in this case is found in Howard County Code Section 2.210.

The Howard County Charter, the Howard County Code, the Howard County Code of Zoning Regulations, the General Plan for Howard County, the General Plan of Highways, and the Petition of Appeal, along with all materials submitted with it, were incorporated into the record by reference.

Grant Amadeus Giel, Esquire, represented the Morrells⁴. The following individuals testified before the Board on behalf of the Morrells: David Arndt, Padma Swamy, MD, MPH, Shannon Jones, PhD, Rene Maldonado, Shameika Preston, Lisa Krauss, Christopher Alleva, Alan Schnieder, and Aiden Morrell.

David Moore, Senior Assistant County Solicitor, represented DPZ. Lynda Eisenberg, DPZ Director, testified on DPZ's behalf.

Tom Coale, Esquire, represented W.R. Grace, which did not present any witnesses.

All witnesses provided sworn testimony.

Except as otherwise noted, the Morrells offered and the Board accepted the following documents into evidence:

Exhibit 0 – BA 813D Administrative Appeal Petition (October 11, 2024)

Exhibit 1 – Special Exception Letters from Division of Land Development (various dates)

Exhibit 2 – Decision & Order for BA 83-50E (February 9, 1984)

Exhibit 3 – Decision & Order for BA 83-54E (May 21, 1984)

Exhibit 4 – Decision & Order for BA 84-49V&E (May 5, 1985)

Exhibit 5 – Decision & Order for ZB814M (July 25, 1986)

⁴ Before the Board, the “Morrells” consist of the following individuals: Aidan Morrell, Sara Morrell, Nana Adadey, Leonard Boyd, Hari Srinivasan, Mustafa Khaliqi, Anwer Hasan, Rasa Ramadas, Golash Adadey, Padma Swamy, Shamioka Preston, Raja Syed, Nusrat Siddique, Arundati Khuvel, Monica Tolentino, Senthil Achari, and AmiCietta Clarke. Aisha Hasan and Zain Qazi withdrew their participation while this case was still pending before the Board.

Exhibit 6 – DPZ letter to W.R. Grace (September 21, 2023) and Permitted Use Confirmation Application

Exhibit 7 – Letter from W.R. Grace to DPZ (September 9, 2024)

Exhibit 8 – DPZ Closeout Letter to Nana Adadey (September 13, 2024)

Exhibit 9 – Letter from Aidan Morrell to DPZ (October 15, 2024)

Exhibit 10 – DPZ Permit (May 13, 2024) (marked for identification but not admitted)

Exhibit 11 – Commercial Alteration Permit Record Status Reports (marked for identification but not admitted)

Exhibit 12 – MD Department of the Environment Permit Application with Attachments (marked for identification but not admitted)

Exhibit 13 – Letter from MD Department of the Environment with Attachments (December 13, 2024) (marked for identification but not admitted)

Exhibit 14 – ZB1104M Petition to Amend the Zoning Map of Howard County (April 1, 2014)

Exhibit 15 – DPZ Technical Staff Report (April 17, 2024)

Exhibit 16 – ZB1104M Planning Board Recommendation (May 12, 2014)

Exhibit 17 – ZB1104M Approval of Community Enhancements and Conditions Document (January 21, 2015)

Exhibit 18 – Development Concept Plan Map for Simpson Oaks

Exhibit 19 – ZB1104M Order (November 10, 2016)

Exhibit 20 – Letter from Environmental Protection Agency (January 8, 2025) (marked for identification but not admitted)

Exhibit 21 – Decision & Order for BA 806D (February 27, 2025)

Exhibit 22 – Dave Arndt Curriculum Vitae

Exhibit 23 – Sara Christina Sadreameli Curriculum Vitae (marked for identification but not admitted)

Exhibit 24 – Fatima Hafsa Curriculum Vitae (marked for identification but not admitted)

Exhibit 25 – Shannon Jones Curriculum Vitae

Exhibit 26 – Decision & Order for BA813D (June 30, 2025)

Exhibit 27 – Photo of W.R. Grace Pilot Plant Apparatus (April 2024) (marked for identification but not admitted)

Exhibit 28 – Padma Swamy Curriculum Vitae

Exhibit 29 – Emails sent to DPZ by Anwer Hasan, et al.

DPZ, offered, and the Board accepted, the following documents into evidence:

Exhibit 1 – DPZ Case File for #CE-24-107

Exhibit 2 – Photos of W.R. Grace Property Building 30 (shielded)⁵

W.R. Grace offered, and the Board accepted, the following documents into evidence:

Exhibit 1 – MD Department of Commerce - List of Major Employers in Howard County

PRELIMINARY MATTERS

Before reaching the merits of this case, the Board must first address two contested preliminary issues: 1) a pre-hearing motion concerning the factual scope of the case; and 2) the burden of proof to be applied.

⁵ DPZ's investigative file contains confidential, proprietary, and security sensitive photos taken within the research and development property. The photos were taken by DPZ personnel during a site inspection with W.R. Grace's consent. The photos are not allowed to be disclosed or viewed by the public due to the descriptive nature of the photos. The Board issued a protective order for materials within the DPZ property file which W.R. Grace considers confidential, proprietary, or security sensitive.

I. Prospective Uses are Not Relevant to the Alleged Zoning Violations

Prior to the Board's hearing, W.R. Grace filed a Motion to Narrow the Scope of Appeal and Exclude Irrelevant Evidence. Specifically, W.R. Grace argued that, because this case concerns the sufficiency of DPZ's investigation into allegedly unlawful activity occurring at the Property as of September 2024, evidence concerning potential future uses should be excluded as irrelevant to that analysis. W.R. Grace acknowledged its plans to install a new pilot research pyrolysis plant at the Property, but noted that no construction had begun as of DPZ's September 13, 2024 decision to close the matter. Simply put, W.R. Grace contended that this Board should only consider the state of the Property at the time of the inspection on September 9, 2024.

In opposition, the Morrells responded that evidence of intended future uses at the Property is both material and probative to prove that W.R. Grace's illegal use of the Property. The Morrells asserted that "HCZR clearly permits DPZ review of any permitted *planned* use alongside any currently existing use, particularly when a challenge to that use is on the basis of nonconformity." Pet. Response to Motion at 9.

On August 18, 2025, Chairperson Ryan issued an Order on Motion to Narrow Scope and Exclude Irrelevant Evidence. The Order stated, in relevant part:

2. DPZ's enforcement authority under HCZR section 102.0 extends only to violations, defined in section 102.0(A) as existing or ongoing uses or structures contrary to the regulations. Speculative or future activities do not constitute violations.
3. Environmental permitting, emissions analysis, and related technical findings fall under the jurisdiction of the Maryland Department of the Environment (MDE) and the EPA and are not within the jurisdiction of the Board of Appeals in the context of this matter.
4. Evidence concerning speculative or future uses of the Property is irrelevant to this appeal and must be excluded.
5. Evidence of proposed activities may only be admitted if it is directly probative of whether a prohibited use was already occurring at the time of DPZ's September 2024 inspection.

At the hearing on August 21, 2025, the other members of the Board indicated that they agreed with the Order. The Morrells orally requested reconsideration, which W.R. Grace opposed. The Board then publicly deliberated and ultimately denied the request for reconsideration. Nonetheless, the Board instructed the Morrells to present whatever evidence or witnesses they wished, without limitation, and the Board would consider the admissibility of any disputed evidence.

Howard County Zoning Regulation Section 102.0 provides the authority for DPZ to issue NOVs generally. In describing what constitutes unlawful violations, Zoning Regulation Section 102.0.A provides:

Any structure erected, constructed, altered, enlarged, converted, moved or used contrary to any of the provisions of these Regulations by any person taking such action, or permitting such action, and any use of any land or any structure which is conducted, operated or maintained by any person using, or permitting the use thereof, contrary to any of the provisions of these Regulations, shall be, and the same is hereby declared to be unlawful.

Accordingly, Zoning Regulation 102.0.A regulates uses that have already been implemented (stating that structures may not be “used contrary to . . . these Regulations”) and uses that are presently occurring (declaring unlawful “any use of land or any structure which is conducted, operated or maintained . . . contrary to . . . these Regulations”). Because the Zoning Regulation regulates uses that have either already occurred or are presently occurring, Section 102.0.A. does not support consideration of potential or proposed future uses at the Property.

Nor does Zoning Regulation Section 129.0 support the claim that future prospective uses are relevant here in determining whether to issue an NOV. In response to W.R. Grace’s motion, the Morrells asserted,

when reviewing an appeal that alleges that a nonconforming use is in the process of expanding in a manner contrary to common law and Section 129 of the HCZR, it is not only material and probative to consider testimony and evidence related to

the upscaling of site activities—or construction of new facilities—for a proposed pilot plant, but it is *imperative* to do so.

Pet. Response to Motion at 12. In describing the conduct which they claim falls under the scope of Zoning Regulation Section 129.0, the Morrells describe the violation as “a nonconforming use [] in the process of expanding.” *Id.* The Board concludes, however, that this interpretation does not comport with language in the Zoning Regulation.

Zoning Regulation Section 129.0.A restricts the “enlargement” or “extension” of a nonconforming use. As shall be discussed in the Conclusion of Law section below, the Zoning Regulations define these terms as the increase in land area occupying a non-conforming use (enlargement), and “any change in the types of activities taking place in connection with the nonconforming use” (extension). HCZR § 129.0.A. Similarly, although Zoning Regulation Section 129.0.B. provides specific restrictions for nonconforming uses, it does not prohibit enlargements or extensions which have not yet occurred. Accordingly, evidence of future or prospective uses is irrelevant in this case.

II. The Morrells Bear the Burden of Proof

During the August 21, 2025 hearing before the Board, counsel for the Morrells argued that W.R. Grace should bear the burden of proof because it was W.R. Grace that appealed to this Board from the Hearing Examiner’s June 30, 2025 Order. Although W.R. Grace filed the Petition of Appeal to this Board, it does not follow that W.R. Grace bears the burden of proof. Rather, although W.R. Grace submitted the petition for appeal to this Board, the Morrells—not W.R. Grace—carry the burden of proof.

Howard County Code Section 16.304(a) provides, “A person aggrieved by a decision of the Hearing Examiner may . . . appeal the decision to the Board of Appeals.” That Section also clarifies that the Board shall hear the appeal “de novo.” *Id.* The Supreme Court of Maryland has

described “de novo” proceedings as “wholly original with regard to all issues properly raised.” *Halle Cos. v. Crofton Civic Ass’n*, 339 Md. 131, 142 (1995).

County Code Section 2.210 expressly applies to cases where the Board hears the matter as an administrative appeal. Because the Board must review DPZ’s decision and the sufficiency of its investigation, this case is an administrative appeal which falls under County Code Section 2.210. That Section provides that the appellant—here the Morrells—must “show that the action taken by the administrative agency was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.” HCC § 2.210(a)(4)(ii).

The Appellate of Maryland has stated that, when applying County Code Section 2.210(a)(4)(ii), the Board must “consider DPZ’s decision and treat it as correct unless, based on the facts found from the evidence, the Board determine[s] that DPZ’s decision was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.” *Id.*

Although the Morrells argue that W.R. Grace should bear the burden of proof, in *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, the Maryland Supreme Court rejected a similar switch in the burden of proof. 410 Md. 191, 194-98 (2009). There, a property owner applied to the county planning commission for approval of a subdivision plan, and, despite the opposition of the adjacent property owner, the commission approved the application. *Id.* The adjacent property owner then appealed to the county board of appeals, which held a *de novo* hearing and placed the burden of proof on the adjacent property owner, even though the subdivision applicant was the party seeking approval of the subdivision plan. *Id.* 198-200. The Court held that the board erred in shifting the burden of proof from the subdivision applicant to the adjacent property owner, because in the *de novo* proceeding before the board, the subdivision applicant continued to have the burden of establishing any facts necessary to any determination

required to be made on the application. *Id.* at 215-16. Likewise here, the Morrells continue to bear the burden of proving, by a preponderance of the evidence, that DPZ’s inspection and decision were clearly erroneous, arbitrary and capricious, or contrary to law. HCC § 2.210(a)(4)(ii).

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. Property Identification. The Property, known as 7500 Grace Drive, Columbia, Maryland, is located at Tax Map 35, Lot Par A, Parcel 145, and is approximately 54.80 acres. The Property is part of Councilmanic District 4.

2. Property Description. The Property is in the Planned Employment Center (“PEC”) zoning district. Per the Zoning Regulations, “[t]he PEC District is established to provide for comprehensively planned employment centers combining research and development, office, light manufacturing and assembly, limited commercial and other enumerated uses.” HCZR § 116.0. During the 2013 Comprehensive Zoning Plan (“CZP”), several permitted uses by right were removed from the PEC zoning district including “Research and development establishments.” The removal made existing legally established research and development facilities a nonconforming use in the PEC Zone. The parties do not dispute that “research and development” is a nonconforming use on the Property.

3. Research and Development Laboratory. Zoning Regulation Section 103.0 defines a “Research and Development Laboratory” as follows: “A structure or group of structures used primarily for applied and developmental research, where product testing is an integral part of the operation and goods or products may be manufactured as necessary for testing, evaluation and test marketing.”

4. Vicinal Properties. The Property is located north of MD-Route 32. To the north, east, and west of the Property are New Town and Community Enhancement Floating-Residential zoned properties improved with single family detached dwellings and townhomes.

5. Water and Sewer Service. The Property is located within the Metropolitan District of the Planned Service Area for Water and Sewer and is served by public water and septic facilities.

6. Subject Complaint. On August 8, 2024, the Complainants, thirty-one individuals, including the Morrells, filed a zoning Complaint, “CE 24-107,” with DPZ alleging that W.R. Grace was unlawfully conducting research and development in the PEC zoning district. The Complaint also stated that W.R. Grace is “illegally performing Engineering and Scientific Research, which is not permitted” in the Zoning Regulations. Complaint, Supp. Narr. at 1. The Complaint further alleged that W.R. Grace “has applied for another air permit from the MDE which constitutes an extension of the existing prohibited use.” *Id.* This Complaint requested that the illegal use cease immediately.

7. DPZ Closeout Letter. On September 13, 2024, Director Lynda Eisenberg, on behalf of DPZ, issued a Closeout Letter to the Complainants titled, “Alleged Zoning Violation, 7500 Grace Drive, CE-24-107.” The Closeout Letter stated

In response to your request regarding the above-mentioned property, a representative of the Zoning Division inspected the property on September 9, 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. If you are interested in reviewing the case file for more details, please submit a written request to me at 3430 Court House Drive, Ellicott City, MD 21043 or via email.

The Closeout Letter provided DPZ personnel's contact information.

8. DPZ Closeout E-mail. On September 13, 2024, DPZ Public Service and Zoning Administration Division Chief, Mr. Geoff Goins, e-mailed the DPZ Closeout Letter to the

Complainants, attaching a detailed explanation supporting DPZ's decision not to issue the NOV.

Specifically, the email reported that

On Monday September 9, 2024, the Chief of Public Service and Zoning Administration, along with representatives from the Maryland Department of the Environment and W.R. Grace, visited the site and toured the inside of the facility to investigate possible zoning violations. During this inspection, there were no zoning violations observed and no unapproved exterior development evident.

The email further stated that,

In September of 2023, WR Grace requested a Zoning Compliance Certificate associated with an application for a research-scale pilot plant for development purposes only at the request of Maryland Department of the Environment (MDE). The zoning compliance certificate was limited to whether this use is permitted at 7500 Grace Drive (Building 30 Lab 120). A letter was issued to WR Grace and MDE in September of 2023, confirming R&D as an allowable use

Chief Goins also stated that “[a] nonconforming use may be continued subject to the requirements of [Zoning Regulation] Section 129.0.B. The proposed research and development lab complies with these requirements.” The Closeout E-mail concluded by stating that

The Department of Planning and Zoning only has the authority to inspect and validate the zoning and site conditions of the property and is not the issuer of the Air Quality Permit. The Maryland Department of Environment issues the permit and has previously conducted public meetings to receive comments and questions.

9. The Morrells' Witnesses.

Nine individuals testified in support of the Morrells.

9.a. David Arndt testified for the Morrells on behalf of himself and the Maryland Legislative Coalition Climate Justice Wing. Mr. Arndt submitted required papers to testify on behalf of that entity in accordance with Howard County Code Section 2.208. Mr. Arndt testified that he is a Chemical Engineer by trade, and that he previously worked at the world's largest polyester plant for several years and then went into different businesses as a product engineer. He stated that he has other experiences with the National Institute of Health working with chemicals,

chemical processes, and plastics. Mr. Arndt testified that W.R. Grace planned to create a pilot production facility based on a small 1-gram lab testing project, using plastics to create a liquid gas fuel product. He also testified that W.R. Grace is following proper processes for standing up a lab process but that W.R. Grace made many assumptions in their permit application. Mr. Arndt did not specify how DPZ's decision was clearly erroneous, arbitrary or capricious, or contrary to law.

9.b. Padma Swamy, M.D., a resident in the residential neighborhood adjacent to the Property, and a pediatrician by profession, testified that there are residential homes and children living within fifty meters of the Property, and that DPZ was required to do its due diligence and conduct a thorough investigation. She also testified that she has concerns about potential health impacts from the Property and that she "would like that evidence from DPZ."

During cross-examination, Dr. Swamy testified that she was aware that the DPZ property file was available for her to review, but that she had not requested to review the materials.

9.c Dr. Shannon Jones, a toxicologist from Henrico, Virginia, was also called to provide testimony on behalf of the Morrells. Dr. Jones testified that she earned a PhD in toxicology from University of North Carolina at Chapel Hill, and completed her post-doctoral training in toxicology at the University of North Carolina at Chapel Hill. Her expertise is in the toxicity of biomass smoke, and she specializes in health impacts on the immune system. Dr. Jones testified that DPZ did not complete an adequate or thorough investigation as to the health effects of air pollutants from the Property. Dr. Jones stated that she was asked to testify on behalf of the Morrells to provide her expertise in indoor air pollutants. On cross-examination, Dr. Jones stated she did not review the DPZ file concerning its investigation and findings in the instant case. She clarified that she reviewed documents provided to her by the Morrells' counsel but was unsure whether

those documents are contained in DPZ's file. Dr. Jones also testified that she did not review the Zoning Regulations in forming her opinions regarding the sufficiency of DPZ's investigation.

9.d Renee Maldonado also testified as a witness for the Morrells. Mr. Maldonado, a resident in the residential neighborhood adjacent to the Property, testified that DPZ did not adequately consider the pilot plant at the Property. Mr. Maldonado stated that W.R. Grace did not provide truthful information to MDE concerning the burning of plastics at the Property as well as other future and intended uses at the property. Mr. Maldonado did not provide testimony as to how DPZ's decision was clearly erroneous, arbitrary and capricious, or contrary to law.

9.e Shameika Preston, a resident in the neighborhood adjacent to the Property, testified that she lives 400 feet from the Property and has lived there since the adjacent residential neighborhood was constructed three years prior. Ms. Preston stated that the DPZ investigation conducted on the Property, and the details of that investigation, are unclear to her, and that the DPZ Closeout Letter lacked details. Ms. Preston stated that for weeks she has heard sounds, smelled odors, and seen "squiggly smoke" emanating from the ground at the Property. Based on those observations, she testified that DPZ must have erred in failing to find any zoning violations. Ms. Preston testified that DPZ did not contact her while conducting its investigation despite the proximity of her home to the Property. Ms. Preston also testified that the only documents she reviewed with respect to the matter include the Morrells' Exhibits 6, 7, and 8 and she has not reviewed the complete DPZ file referenced in DPZ's Closeout Letter. Ms. Preston acknowledged that she never requested DPZ's case file concerning this matter. Ms. Preston testified that she could not identify any precise provision in the Zoning Regulations or any other specific rule or regulation which W.R. Grace had violated as of September 2024.

9.f. Lisa Krausz, a resident from the neighborhood adjacent to the Property, testified on behalf of the Morrells. Ms. Krausz initially wished to testify on behalf of a group representing her community, but did not provide any affidavit or resolution as required in County Code Section 2.208. Accordingly, Ms. Krausz testified only in her individual capacity. She stated that she did not participate in the filing of the Complaint with DPZ, but nevertheless alleged that DPZ did not undertake an adequate investigation into potential zoning violations on the Property by failing to indicate the standards it used during the inspection, and by electing not to contact nearby homeowners to assist with the investigation.

Ms. Krausz testified that she reviewed the DPZ Closeout Letter, as well as the complete DPZ investigation file which she said she received from Chris Alleva. She testified that DPZ's file contained no pictures and was only about four to five pages. On cross-examination, Ms. Krausz acknowledged that she could not identify a specific Zoning Regulation which W.R. Grace had violated.

9.g. Chris Alleva testified for the Morrells that he had reviewed the DPZ Closeout Letter, but not the DPZ investigative property file. Mr. Alleva further testified that DPZ did not conduct an investigation, and that W.R. Grace is using the Property inconsistently with its permitted nonconforming use. Finally, Mr. Alleva clarified that the records he shared with others (such as Ms. Krausz) were obtained through a public records request, and that he had not represented that he had, in fact, viewed the DPZ file.

9.h. Alan Schnieder testified that the Board must adhere to the requirements of the County's General Plan. He stated that the Board risks losing millions of dollars' worth of state expenditures by failing to comport with its general plan, which requires the protection of public health.

9.i. Aiden Morrell, a signatory Complainant on the original Complaint, and a party to the instant case before the Board, testified that he met with Director Eisenberg, DPZ Director, and Chief Goins regarding the matter after DPZ issued the September 13, 2024 Closeout Letter. Mr. Morrell testified that during this meeting, he requested the DPZ file concerning this matter. He testified that Director Eisenberg and Chief Goins replied that they could not share the complete file with him but could discuss their findings in the file. The documents he did obtain from DPZ included a letter from W.R. Grace to DPZ regarding W.R. Grace's activities at the Property which Mr. Morell characterized as "self-serving."

Mr. Morrell testified that, during this meeting, DPZ could not produce any notes from the site visit performed during the investigation, nor could it identify the MDE employee who accompanied Chief Goins to the site. The evidence showed that Chief Goins first visited the Property on August 26, 2024, but was denied entry by security. Chief Goins then arranged to perform his inspection on September 9, 2024.

Mr. Morrell testified that Chief Goins stated he observed several labs that appeared scientific in nature. Mr. Morrell also testified that Chief Goins operated under the assumption that he did not need to make a determination regarding the nature of the scientific labs or activities at the site, or have someone who could do that accompany him on the site visit, because all activities related to research and development which satisfied the definition of that term in the Zoning Regulations, regardless of the type, constituted a continued nonconforming use which was not in violation of the Zoning Regulations.

Mr. Morrell further testified that during this in-person meeting, Chief Goins stated that neither the use nor physical footprint of the building on the Property had substantially changed since 2013 when the Property became a nonconforming use. Based on that representation, Mr.

Morrell testified that he shared copies of building permits which he had acquired, which W.R. Grace reportedly had obtained for the Property indicating that changes had occurred at the site. Mr. Morrell testified that he informed Director Eisenberg and Chief Goins that the complaint he co-filed did not completely rely on change in footprint of the building but a substantial change in use of the property. Mr. Morrell also testified that after the meeting, he submitted a request for reconsideration of DPZ's decision finding no violation based on Director Eisenberg's instructions and this request for reconsideration was denied.

Mr. Morrell testified that the chief issue in this matter is whether DPZ conducted a lawful and adequate investigation before reaching its conclusions, though he did not allege any bad faith by DPZ. Mr. Morell testified that during his meeting with Director Eisenberg and Chief Goins, he understood that DPZ's determination was based on a cursory walkthrough of the Property which did not reveal any changes to the footprint of the building. In his testimony, Mr. Morrell stated that, contrary to Maryland law, DPZ cursorily performed its inspection and lacked the necessary expertise to assess potential violations. He added that, in his view, DPZ's review was limited to determining whether the use in question could meet the definition of a "research and development laboratory" pursuant to the Zoning Regulations. He asserted that DPZ simply characterized W.R. Grace's activity as research and development and concluded their inquiry without any meaningful analysis.

According to Mr. Morrell, DPZ concluded the Property was being used for research and development based on the appearance of several labs in the building and W.R. Grace's "self-serving" document outlining uses at the Property. Mr. Morrell testified that the "self-serving" document from W.R. Grace represented that the company had been conducting the same form of research and development since 2013 and, on that basis alone, DPZ concluded that continuation

of research and development was permitted under the Zoning Regulations. Mr. Morrell further testified that DPZ viewed research and development as a single, undifferentiated category without regard to whether activities within that label might be materially different in kind, scale or impact.

Mr. Morrell testified that not all research and development activities or operations are the same. According to Mr. Morrell, the term “research and development” encompasses a vast spectrum of activities from computer modeling to small print scale labs to larger more intense operations. Based on his interpretation of the law, Mr. Morrell testified that the Zoning Regulations require examination of the nature and character of a nonconforming use to determine if the use is permissible. Mr. Morrell stated that by collapsing everything into a single category of “research and development,” DPZ unlawfully declined to perform an adequate analysis. Specifically, Mr. Morrell testified that such an approach is inconsistent with the treatment of nonconforming uses under the law which requires gradual elimination of inappropriate and incompatible nonconforming uses, not the unfettered expansion of such nonconforming uses.

During his testimony, Mr. Morrell also stated that DPZ had no notes concerning the site visit, did not interview nearby property owners, and conducted no review of the building and other permits W.R. Grace obtained. Mr. Morrell characterized DPZ’s investigation not as a systematic inquiry, but as a rubber stamp on W.R. Grace’s reassurances.

During cross-examination, Mr. Morrell acknowledged that although DPZ did not interview members of the community, neither he nor other members of the community had any way to enter the Property to personally observe the allegedly unlawful expansion of the nonconforming use. Mr. Morrell further acknowledged that the 1955 conditional use approval W.R. Grace obtained was repealed in the 1980s when the Property was rezoned from residential zoning district to PEC, and research and development became permitted as a use by right.

Mr. Morrell acknowledged that, to the extent that W.R. Grace's conditional use approval was based on a prohibition against research and development operations including pilot plants, that pilot plant exception was no longer applicable after the 1980s rezoning. Mr. Morell testified that the restriction on pilot plants as research and development activity at that time illustrates that not all research and development activities should be treated equally under the Zoning Regulations. He further added that the definition of "research and development" in Zoning Regulations Section 103.0 does not distinguish between different types of research and development activities, nor does it differentiate between pilot plants and research and development activities. Finally, Mr. Morrell testified that he believed he and the Morrells have been improperly restricted from providing evidence showing how the proposed operations at the Property are unlawfully hazardous in violation of the Zoning Regulations.

10. Respondent's Witness: Director Eisenberg testified on behalf of DPZ. She testified that she has been the Director of DPZ for approximately two years, and issued the Closeout Letter in this matter. She testified that she was familiar with the investigation DPZ performed, and that the individual who conducted the inspection—Chief Goins—was no longer employed with the County. She explained that, upon receipt of the Complaint, Chief Goins initially attempted to inspect the Property on August 26, 2024. Due to the sensitive security nature of the facility, however, security personnel denied him access that day.

Subsequently, Chief Goins arranged with W.R. Grace to visit the site on September 9, 2024. Based on Director Eisenberg's testimony, Scott Thompson, a Regulations and Compliance Senior Engineer from the Maryland Department of the Environment, accompanied Chief Goins on this site visit. Per Director Eisenberg's testimony, DPZ does not routinely seek such persons to accompany inspectors during a site visit to investigate a potential zoning violation. Director

Eisenberg clarified that Mr. Thompson accompanied Chief Goins to assist in the investigation to assess if other uses were occurring on site that were inconsistent with research and development activities and to provide expertise regarding the air quality permit process. Director Eisenberg further testified that MDE did not produce any report following the site visit and she is not aware of any enforcement action against W.R. Grace involving MDE. She also testified that if MDE did observe some violation of air quality regulations, they would handle the matter internally without reporting to DPZ.

During this September 9, 2024 site inspection, Messrs. Goins and Thompson inspected the perimeter of the Property to determine whether there were any observable enlargements or extensions of the nonconforming use. Per Director Eisenberg, Chief Goins looked for unpermitted uses other than research and development in Building 30. Director Eisenberg further testified that Chief Goins concluded that research and development had been ongoing as a nonconforming use since the 2013 Comprehensive Zoning Plan was implemented when several permitted uses by right were removed from the PEC zoning district including “research and development establishments.” Per Director Eisenberg’s testimony, the removal made existing legally established research and development facilities a nonconforming use in the PEC zoning district. Chief Goins took pictures during his visit which were included in DPZ’s file. Director Eisenberg further testified that Chief Goins was at the site for more than an hour. Director Eisenberg testified that Chief Goins did not observe any changes to the building which could constitute an improper enlargement, in violation of the Zoning Regulations.

Director Eisenberg testified that a pilot pyrolysis plant falls within the definition of research and development articulated in the Zoning Regulations. She stated that the Zoning Regulations do not distinguish between research and development activities or operations. She acknowledged

that the Zoning Regulations could have provided such a distinction between different research and development activities.

Director Eisenberg testified that Chief Goins did not observe a pilot plant during his site visit at the Property. When conducting such inspections, Director Eisenberg testified that inspectors are looking for clear and convincing evidence of an unpermitted use at the Property pursuant to Howard County Code Section 24.110. She clarified that the Closeout Letter DPZ issued was not lacking in any way pursuant to the Zoning Regulations.

Director Eisenberg explained that DPZ cannot issue a zoning violation based on the health effects that a lawful use may pose to vicinal properties or property owners. Director Eisenberg testified that Chief Goins thoroughly investigated the Complaint and considered the applicable permitted uses on the Property. Per Director Eisenberg's testimony, W.R. Grace's nonconforming use may continue until it is abandoned for at least two years.

Director Eisenberg testified about the official DPZ file produced during the hearings in this matter. Director Eisenberg testified that DPZ received the Complaint on August 8, 2024. Director Eisenberg testified that JJ Hartner, an Inspections Supervisor, entered the Complaint into DPZ's case management system on August 16, 2024. She testified that Mr. Hartner performed no personal investigation, and instead assigned the investigation to Chief Goins. When Mr. Hartner entered the Complaint into DPZ's system, he noticed an internal note in the tracking system that stated: "[e]xisting NCU allowed on the property. Letter to complainant to follow once finalized." Director Eisenberg clarified that Mr. Hartner's notation was not a final agency determination but an internal comment. Director Eisenberg testified that there are no handwritten notes associated with the administrative record concerning this matter.

Director Eisenberg also testified that when determining whether a particular use comports with a category in the Zoning Regulations, DPZ personnel will conduct independent research concerning that question which may include researching the Zoning Regulations and consulting with others who have specialized knowledge on the relevant subject. She stated that inspectors conducting such an evaluation may or may not document such research in the administrative file. In this matter, Director Eisenberg testified that Chief Goins used his professional expertise regarding whether the existing uses at the Property constituted a violation of the Zoning Regulations. However, she also testified that, other than the fact that he was a planning supervisor, she could not speak to Chief Goins' expertise in research and development. Director Eisenberg was unaware of any other pilot pyrolysis plant anywhere else in the County.

Director Eisenberg testified regarding the Closeout E-mail dated September 13, 2024, attaching DPZ's Closeout Letter. She testified that the Closeout E-mail provided information regarding the zoning changes at the Property since 1948, DPZ's Zoning Compliance Certificate associated with an application for a research scale pilot pyrolysis plant at MDE's request, and she identified an MDE contact for information regarding W.R. Grace's Air Quality Permit application.

Director Eisenberg testified that following the site inspection, Chief Goins developed sufficient information to determine that no zoning violation was occurring at the Property and that she agreed with his assessment based on the file and his reporting.

CONCLUSIONS OF LAW⁶

As explained above, this Board presumes that DPZ's investigation and decision were correct, unless the Morrells can show that the investigation and decision were clearly erroneous, arbitrary and capricious, or contrary to law. HCC § 2.210(a)(4)(ii); *see also Hikmat*, 148 Md. App. at 527. The Morrells must show such error by a preponderance of the evidence. *See Calvert Cty. Planning Comm'n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301, 327 (2001) ("The standard of proof normally applicable in . . . administrative proceedings . . . is the preponderance of evidence."). At bottom, the Morrells claim that DPZ erred in two ways: 1) DPZ erred by failing to issue W.R. Grace an NOV for its unlawful use of the Property; and 2) DPZ failed to perform an adequate and proper investigation at the Property. The Board concludes that the Morrells have not met their burden, and accordingly, the Board affirms DPZ's decision. HCC § 2.210(a)(4)(ii).

I. The Preponderance of the Evidence Does Not Rebut the Presumption that DPZ Correctly Declined to Issue an NOV

The Morrells claim that W.R. Grace was unlawfully using the Property as of September 2024 and that DPZ should have issued an NOV for a zoning violation. In arguing that W.R. Grace used the Property unlawfully, the Morrells first argue that the proposed plastic pyrolysis plant fails to comport with the permitted "Research and Development Laboratory" use pursuant to Zoning Regulation Section 103.0. The Morrells next argue that the proposed pyrolysis plant constitutes

⁶ Mr. Moore, representing DPZ, made an oral motion for judgment in favor of DPZ following the conclusion of the Morrells' case in chief. Mr. Moore argued that the Morrells, being the party with the burden of proof, had failed to meet their burden. Mr. Coale, representing W.R. Grace, joined with the motion and cited that each witness who appeared in support of the Morrells testified that they had no direct knowledge of any zoning violations occurring on the Property as of September 2024. The Morrells, represented by Mr. Geil, argued that they had presented sufficient evidence to prove that DPZ did not conduct a sufficient investigation to support the finding of no zoning violation. The Board reserved ruling on the motion and instead resolved the matter on the merits.

an improper expansion of a nonconforming use in violation of Zoning Regulation Section 129.0. The evidence in the record does not support either contention.

The Morrells first argue that DPZ erred in concluding that W.R. Grace was using the Property for a “Research and Development Laboratory” as that term is defined in Zoning Regulations Section 103.0. Instead, they claim that DPZ should have distinguished the proposed pyrolysis plant from a research and development laboratory. Section 103.0 of the Zoning Regulations defines a research and development laboratory as “[a] structure or group of structures used primarily for applied and developmental research, where product testing is an integral part of the operation and goods or products may be manufactured as necessary for testing, evaluation and test marketing.”

The Morrells cite *McKemy v. Baltimore Cty.*, 39 Md. App. 257, 267-68 (1978), for the proposition that DPZ was required to distinguish between different types of research and development laboratories. There, the Appellate Court of Maryland held that the Baltimore County Board of Appeals erred when it failed to distinguish between different parking uses and instead concluded that “a parking lot is a parking is a parking lot[.]” *Id.* at 268. The Morrells note that the *McKemy* Court held, “county zoning regulations have rejected the notion that all parking lots are the same, and have instead drawn careful distinctions between types of parking uses[.]” *Id.* The Morrells urge this Board to similarly reject the notion that all research and development laboratories are the same, and find that W.R. Grace was no longer operating a research and development laboratory as of the September 2024 inspection.

The *McKemy* case, however, does not provide support for the Morrells. First, *McKemy* is inapposite in construing the Howard County Zoning Regulations; that case specifically interpreted Baltimore County ordinances which do not apply here. Indeed, the *McKemy* Court held, “the

county zoning regulations have rejected the notion that all parking lots are the same, and have instead drawn careful distinctions between types of parking uses.” *Id.* at 268. Thus, the Appellate Court did not conclude that all public bodies must distinguish between different types of activities which fall within the same classification (there, parking uses)—the Appellate Court simply concluded that the Baltimore County Code required such analysis. Whereas the Baltimore County Code distinguished between different types of parking uses, here, Zoning Regulation Section 103.0 draws no such distinction between different types of research and development laboratories. Accordingly, the Board cannot conclude that DPZ’s interpretation of “research and development laboratory” was clearly erroneous, arbitrary and capricious, or contrary to law. HCC § 2.210(a)(4)(ii).

The Morrells next argue that the proposed pyrolysis plant constitutes an improper extension or enlargement of the nonconforming use in violation of Zoning Regulation Section 129.0. The Morrells argue that by introducing new equipment, and making changes to the doors, floors, and roof of the building, W.R. Grace improperly extended and enlarged its use of the land in violation of Zoning Regulation Section 129.0.B.1(a). That Section provides: “No nonconforming use shall be extended or enlarged to occupy more land area or more area within a building than that occupied by the use at the time it became nonconforming[.]” HCZR § 129.0.B.1(a). Section 129.0.A of Zoning Regulations defines “enlargement” as “the increase in size of any structure containing a nonconforming use, the construction of an additional structure on the same lot, or an increase in the land area occupied by a nonconforming use.” HCZR § 129.0.A. That Section also defines an “extension” as “any change in the types of activities taking place in connection with the nonconforming use.” *Id.*

As noted above, the Morrells bear the burden of showing, by a preponderance of the evidence, that DPZ's actions were clearly erroneous, arbitrary and capricious, or contrary to law. To meet this burden, the Morrells alleged that W.R. Grace had unlawfully extended or enlarged its nonconforming use at the Property. Because the record before Board does not show, by a preponderance of the evidence, that such a violation was taking place in September 2024, the Board holds that DPZ's decision not to issue the NOV was neither clearly erroneous, nor arbitrary and capricious, nor contrary to law.

II. The Preponderance of the Evidence Does Not Show That DPZ's Inspection of the Property was Clearly Erroneous, Arbitrary and Capricious, or Contrary to Law

Finally, the Board concludes that the evidence does not show, by a preponderance, that DPZ's inspection of the Property was clearly erroneous, arbitrary and capricious, or contrary to law. HCC § 2.210(a)(4)(ii). In arguing that the inspection was deficient, the Morrells claim that DPZ should have investigated the negative health impacts caused by ongoing operations at the Property, should have interviewed neighbors living near the Property, and should have taken more notes and made more specific findings.

The Morrells first argue that DPZ's inspection ignored potential health effects. Zoning Regulation Section 129.0, which regulates nonconforming uses, however, does not mention health effects as a factor to be considered when analyzing the lawfulness of a nonconforming use. Rather, as noted above, that Section regulates the manner by which extant nonconforming uses may be enlarged or extended. HCZR § 129.0.A. Turning to whether DPZ should have interviewed neighbors to the property, the record shows that, at most, these individuals could only surmise about the alleged zoning violation.

Finally, the Zoning Regulations do not require, nor have the Morrells identified a specific law which mandates that DPZ make specific factual findings or notations despite no evidence of a

zoning violation. The record establishes that Chief Goins spent over an hour inspecting the Property, and that he did not observe a pilot pyrolysis plant or any clear and convincing evidence of a zoning violation at the Property. Because the record does not show, by a preponderance of the evidence, how DPZ's inspection was clearly erroneous, arbitrary and capricious, or contrary to law, the Board must affirm. HCC § 2.210(a)(4)(ii); *Hikmat*, 148 Md. App. at 527.

CONCLUSION

The Board is tasked with determining whether DPZ's actions were clearly erroneous, arbitrary and capricious, or contrary to law. *Id.* The Morrells bore the burden of proof, and did not show, by a preponderance, how DPZ's decision and inspection were erroneous. Accordingly, the Board affirms DPZ's decision.

ORDER

Based upon the foregoing, it is this 18 day of June, 2026, by the Howard County Board of Appeals, **ORDERED:**

That the decision of the Department of Planning Zoning is hereby **AFFIRMED.**

ATTEST:

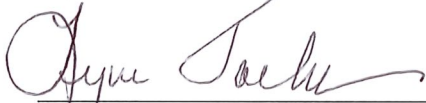
HOWARD COUNTY BOARD OF APPEALS



Kel Berg, Secretary




Gene Ryan, Chairperson



Lynn Foehrkolb

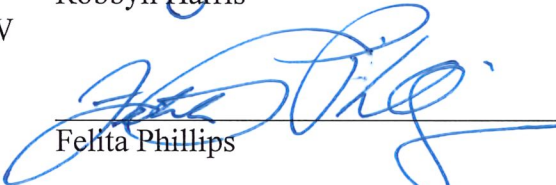
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