

DAVID MARC, et al	:	BEFORE THE
Appellants	:	HOWARD COUNTY
v.	:	BOARD OF APPEALS
HOWARD COUNTY DEPARTMENT OF	:	HEARING EXAMINER
PLANNING AND ZONING	:	BA Case No. 823D
IN WP-25-076		
Appellee		

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DECISION AND ORDER

On June 16, 2026, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of David Marc, et al (Appellants). Appellants are appealing the Department of Planning and Zoning's June 23, 2025 approval of Maryland International School's request for alternative compliance with respect to §16.116(b)(1) of the Subdivision and Land Development Regulations to disturb steep slopes to construct a retaining wall and athletic field for private school use. Appellants are also appealing the Department of Planning and Zoning's June 23, 2025 approval of Maryland International School's request for a variance with respect to §16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree.

The Subject Property is located at 6135 Old Washington Road, Elkridge, Ellicott City, Maryland. The appeal is filed pursuant to §130.0.B.4 of the Howard County Zoning Regulations (HCZR).

The Appellants certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Ms. Alex Votaw, Esq appeared on behalf of Appellants David Marc, et al. Mr. Christopher DeCarlo, Esq. appeared on behalf of the Property Owner Maryland International School (School). No one appeared on behalf of the Appellee Department of Planning and Zoning. The factual record developed in the Hearing Examiners hearings in BA-825D and BA-826D are incorporated into the record in the instant appeal.

Appellants presented the following Exhibits:

1. Location map of Appellants and School property
2. The Schools Alternative Compliance Applications
3. June 23, 2026 DPZ letter notifying School of the approval of Alternative Compliance
4. Contour Maps
5. Slopes Maps
6. Stream Buffer Maps
7. Soils Maps
8. Forest Cover Maps
9. Forest Conservation Easement Maps
10. TSR, BA-22-023C&V, School

School presented the following Exhibits:

1. Alternative Compliance Exhibit Map
2. Aerial Maps with layers (4)
3. Wetland and Forest Stand Delineation Plan (2 sheets)
4. Nove 14, 2024 BOA D&O BA-22-023C&V

BACKGROUND

The approximately 8.96 acre property is located on the south side of Old Washington Road, southeast of Rt 1 (Washington Blvd), northwest of MD 295 (Baltimore Washington Parkway) east of Md 100 and west of I-895 and I-195. The Subject Property lies in Council District 1, and is located at Tax Map 38, Grid 9, Parcel/Lots 820 and 830, on 8.96 acres of land, in the R-12 (Residential: Single) zoning district, also identified as 6135 Old Washington Road, Elkridge, Maryland.

A Conditional Use for a School on the subject property was approved June 23, 2023. (BA-22-023C&V) On January 27, 2025, the School applied for Alternative Compliance with respect to §16.116(b)(1) of the Subdivision and Land Development Regulations to disturb steep slopes to construct a retaining wall and athletic field for private school use and for a variance with respect to §16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree. By letter dated June 23, 2026, DPZ notified the School

“On June 12, 2025, and pursuant to Section 16.116(d), the Director of the Department of Planning and Zoning, Director of the Department of Public Works, and Administrator of the Office of Community Sustainability considered and

approved your request for alternative compliance with respect to Section 16.116(b)(1) of the Subdivision and Land Development Regulations to (sic) The purpose is to disturb steep slopes to construct a retaining wall and athletic field for private school use. Please see the attached Final Decision Action Report for more information.

On June 12, 2025, and pursuant to Section 16.1216, the Director of the Department of Planning and Zoning, Director of the Recreation and Parks, and Administrator of the Office of Community Sustainability considered and approved your request for a variance with respect to Section 16.1205(a)(3) of the Subdivision and Land Development Regulations to remove one specimen tree.”

It is from this approval of Alternative Compliance and a variance for WP-25-076 that the instant appeal is noted.

As a basis for the instant appeal, Appellants argue that the School “failed to provide sufficient evidence to demonstrate that it satisfies the requirements under Section 16.104(a)(1) and 16.116(b)(1) for the alternative compliance request to disturb steep slopes or the requirements under Section 16.1205(a)(3) for the variance request to remove a specimen tree. Moreover, the evidence relied on by the Directors does not meet the legal standard for every required criterion.

The Directors’ findings regarding almost every required criterion are legally erroneous or insufficient. To give just a few examples, the Directors’ decision fails to identify aspects of the Subject Property that are unique or peculiar and relate to the land itself as required by Maryland Law. The allegedly unique features lack a sufficient nexus to the alleged need for the alternative compliance and variance requests. The Directors failed to identify practical difficulty or unreasonable hardships other than economic

concerns associated with maximizing the development on the Subject Property. The alleged difficulty or hardship was caused by previous owners of the Subject Property which, under Maryland Law, means that the hardship is a self-created hardship. Finally, there is insufficient evidence to demonstrate that the proposed development would not negatively impact adjoining properties and/or water quality.”

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 §16.105, appeals to the Board of Appeals of decisions made pursuant to the Director 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. Per 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.

APPLICABLE LAW

The instant administrative appeal is from the Maryland International School's request for Alternative Compliance with respect to § 16.116(b)(1) of the Subdivision and Land Development Regulations to disturb steep slopes to construct a retaining wall and athletic field for private school use and for a variance with respect to § 16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree.

HCZR §16.116 (b)(1) states:

(b) Steep Slopes. Steep slopes are slopes that average 25 percent or greater over ten vertical feet.

(1) Grading, removal of vegetative cover and trees, new structures, and paving shall not be permitted on land with existing steep slopes, except when:

(i) The on-site and off-site contiguous area of steep slopes is less than 20,000 square feet; and

(ii) There is sufficient area, a minimum ten feet, outside of stream and wetland buffers for required sediment and erosion control measures.

HCZR §16.116(d) establishes the required criteria for approval of alternative compliance from §16.116(b)(1).

(d) Waivers.

(1) The Director of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability and the Director of the Department of Public Works may grant waivers which allow for alternative compliance to this Section if the applicant can demonstrate in sufficient detail through evidence

that the project meets the criteria set forth in section 16.104 and the following additional criteria:

- (i) Any area of disturbance is returned to its natural condition to the greatest extent possible;
- (ii) Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat; and
- (iii) Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects.

HCZR §16.104 requires the following additional criteria for alternative compliance:

(a) *Authority to Grant.*

- (1) So that substantial justice may be done and the public interest secured, the Department of Planning and Zoning may grant waivers of the requirements of this subtitle, except as prohibited in subsection (d), in situations where the Department finds that unreasonable hardship or practical difficulties may result from strict compliance with this subtitle and for requests to waive or alter the requirements in article II and article III of this subtitle all of the following criteria are met:
 - (i) Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - (ii) The uniqueness of the property or topographical conditions would result in practical difficulty, other than economic, or unreasonable hardship from strict adherence to the regulations;
 - (iii) The variance will not confer on the applicant a special privilege that would be denied to other applicants; and
 - (iv) The modification is not detrimental to the public health, safety or welfare or injurious to other properties.

HCZR §16.1205(a)(3) provides

a) *On-Site Forest Retention Required.* Subdivision, site development, and grading shall leave the following vegetation and specific areas in an undisturbed condition.

3) State champion trees, trees 75 percent of the diameter of state champion trees, and trees 30 inches in diameter or larger.

The criteria for approving a variance are contained in HCZR §16.1216:

a) The Department may grant waivers to the requirements of this subtitle in accordance with the procedures of subsection 16.104(b), subsection 16.104(c), and subsection 16.104(d) of the subdivision regulations.

(b) A variance to the provisions of this subtitle shall be considered and approved or denied in writing by the Directors of the Department of Planning and Zoning, the Administrator of the Office of Community Sustainability, and the Director of the Department of Recreation and Parks.

(c) Consideration of a variance requested under this section shall include a determination as to whether an applicant has demonstrated to the satisfaction of each Department that enforcement of this subtitle would result in unwarranted hardship. Increased cost or inconvenience of meeting the requirements of the these regulations does not constitute an unwarranted hardship to the applicant. The applicant shall:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship**
- (2) Describe how enforcement of these regulations would deprive the landowner of rights commonly enjoyed by others in similar areas;**
- (3) Verify that the granting of a variance will not adversely affect water quality;**
- (4) Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants;**
- (5) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;**
- (6) Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and**

(7) Provide any other information appropriate to support the request.**CONCLUSIONS OF LAW**

Pursuant to §§ 16.104(a)(1) and 16.116(d), the Director of the Department of Planning and Zoning, Director of the Department of Public Works and the Administrator of the Office of Community Sustainability considered and approved the Schools request for Alternative Compliance with respect to §16.116(b)(1) to disturb steep slopes to construct a retaining wall and athletic field for a private school. The Departments collectively made the following findings in their Final Decision Action Report:

1. Strict conformance with the requirements will deprive the applicant of rights commonly enjoyed by others in similar areas;

The property is located on the south side of Washington Road and 320 feet west of Lebanon Road in the Elkridge Community. The property was originally constructed as a Howard County public school and is currently used as a private academic school. The property is 8.96 acres and includes the original school building, subsequent additions/modifications, driveway and a parking lot. The property is regularly shaped but the existing grade falls approximately 86 feet from the northwest corner to the southeast corner. The property contains forest, intermittent and perennial streams, their buffers, steep slopes and specimen trees. The applicant received Conditional Use approval to expand the private academic school. The applicant is requesting disturbance to the steep slopes for construction of an athletic field and retaining wall. The proposed athletic field is located 50 feet from adjoining residential properties in

accordance with the Conditional Use requirements. The field dimensions are the minimum required to facilitate activities associated with a school. The overall contiguous steep slopes is 44,443 square feet and the applicant is requesting the disturbance of 15,535 square feet. The area above the retaining wall which will be permanently impacted is 8,730 square feet. Disturbance to the 10-foot-wide area below the wall (3,802 square feet) and the area associated with the storm drain outfall (2,823 square feet) is temporary and will be restored and stabilized. Based on the application and justifications, strict conformance with the requirements would prevent the applicant from expanding the private academic use. (Expansion is a right commonly enjoyed by other property owners.)

2. Uniqueness of the property or topographical conditions would result in practical difficulty; other than economic, or unreasonable hardship from strict adherence to the regulations;

The subject property accommodates approximately 85 feet of vertical grade and includes environmental features which will mostly be protected in a forest conservation easement. The proposed improvements are designed to accommodate the existing grade to the greatest extent possible. The proposed auditorium/parking garage is designed with an upper-level front entry and lower-level rear entry and also requires an external elevator to transport handicapped persons from the lower campus to the upper campus. The driveway is also designed to accommodate the Old Washington Road elevation and descent to the ultimate drop-off/turnaround area. The athletic field must be designed flat and cannot accommodate grades. The Directors deliberated and found the uniqueness of this site results in a practical difficulty adhering to the regulations. Strict adherence to the regulations would not permit the

private academic school expansion and accommodate a multi-purpose athletic field. (School testified that the field area had been reduced from regulation size to a smaller size in order to minimize the impact on steep slopes. School also testified that no property in the vicinity has the same combination of historic structure, steep slopes, specimen trees and environmental features. The environmental maps submitted by Appellants did not have an accompanying identification key and contained errors, such as the failure to show a particular stream impacting the subject property. It would be a hardship to be denied expansion rights that are given to other property owners. Appellants argue that the hardship is a financial hardship, School testified to the contrary.)

3. The Variance will not confer to the applicant a special privilege that would be denied to other applicants and;

The proposed grading on the high side of the retaining wall will be permanent to facilitate a flat athletic field. The disturbances outside the wall will be restored and stabilized. The applicant states the disturbances are necessary for expansion of a private academic school. (Expansion is a right commonly enjoyed by other property owners and is not a special privilege.)

4. The modification is not detrimental to the public health; safety or welfare, or injurious to other properties.

The proposed disturbances accommodate a stormwater management detention system which will be located under the subject athletic field. There will also be a stormwater management collection system located along the perimeter of the field to capture runoff and prevent runoff over the wall. This applicant states this results in the reduction of runoff drainage area flowing toward the adjacent residence. Therefore,

the applicant states the modification is not detrimental to public health, safety or welfare, or injurious to other properties. (The athletic field was reduced in size from regulation size to a smaller size to move the location of the retaining wall further from Mr. David Marc's property. This new interior location will provide an expanded buffer area for the Marc property and the new stormwater management system to be created under the athletic field will greatly reduce the existing runoff onto the Marc property.)

5. Disturbance is returned to its natural condition to the greatest extent possible:

The athletic field will be flat and will be vegetated with grass. The 10-foot temporary disturbance area and the storm drain outfall will be appropriately and promptly stabilized and the natural vegetation will ultimately be reestablished.

6. Mitigation is provided to minimize adverse impacts to water quality and fish, wildlife, and vegetative habitat; and

The application states sediment and erosion controls will be used to minimize or prevent sediment runoff during construction. Permanent stormwater management will be provided and will be discharged directly to the stream. The retention of woods and the establishment of permanent forest conservation easements are intended to protect the environmental resources onsite. Directing the managed runoff directly to the stream subsequent to construction will result in reduced runoff directly toward the existing downhill house.

7. Grading, removal of vegetative cover and trees, or construction shall only be the minimum necessary to afford relief and to the extent required to accommodate the necessary improvements. In these cases, the least damaging designs shall be required, such as bridges, bottomless culverts or retaining walls, as well as environmental remediation, including the planting of the areas where grading or removal of vegetative cover or trees has taken place, utilizing best practices for ecological restoration and water quality enhancement projects.

The application states the size of the athletic field has been reduced to the greatest extent possible while providing reasonable use for its intended purpose. The retaining wall has been implemented in order to retain vegetation and minimize grading.

Directors Action: Approval of alternative compliance of Section 16.116(b)(1) is subject to the following conditions:

1. Protective measures shall be used during construction to protect the specimen trees that are to remain, including how the critical root zones are to be protected. Include details of the proposed tree protection measure on the site development plan.

Pursuant to §§ 16.1216 and 16.1205(a)(3), the Director of the Department of Planning and Zoning, Director of the Department of Public Works and the Administrator of the Office of Community Sustainability considered and approved the Schools request for a variance with respect to Section 16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree. The Departments collectively made the following findings in their Final Decision Action Report:

Each Department hereby determines that the applicant has demonstrated to its satisfaction that strict enforcement of the above-cited regulation would result in an unwarranted hardship. This determination is made with consideration of the alternative compliance application and the six (6) items the applicant was required to address, pursuant to Section 16.1216:

- 1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;**

The property is located on the south side of Washington Road and 320 feet west of Lebanon Road in the Elkridge Community. The property was originally constructed as a Howard County public school and is currently used as a private academic school.

The property is 8.96 acres and includes the original school building, subsequent

additions/modifications, driveway and a parking lot. The property is regularly shaped, but the existing grade falls approximately 86 feet from the northwest corner to the southeast corner. The property contains forest, intermittent and perennial streams, their buffers, steep slopes and eight specimen trees. The applicant is requesting removal of two (School subsequently amended the application to one specimen tree) trees. The applicant received Conditional Use approval to expand the private academic school, and the applicant states the subject plan is the result of several design iterations. Specimen Tree #6 is currently located within the stairs, road, retaining wall, sidewalks and utilities, which encompasses 46% of the critical root zone. The tree is also located precariously within a 2:1 slope. The applicant states that for pedestrian and handicapped accessibility, it is imperative that the proposed auditorium be vicinal to the existing school's main access and at a similar elevation. If the tree were to be retained with no more critical root disturbance, the proposed expansion of the private school would be compromised. The intent of the site design is to minimize the disturbance to the environmental features on the west side of the site, including other specimen trees, stream buffers and wooded resources. The retention of specimen tree would shift the proposed campus expansion, impacting the forested area. Strict conformance with the requirements would prevent the applicant from expanding the private academic use and result in an unwarranted hardship. (The tree is located in a conflux of sidewalks and parking areas, all impervious surfaces and this location will, over time, continue to degradate the health of the tree.)

2. Describe how enforcement of the regulations would deprive the landowner of rights commonly enjoyed by others in similar areas;

Enforcement of the Regulations would deprive the applicant from the ability to expand

the private academic school as required to accommodate the student population approved in conjunction with the Conditional Use. Specimen Tree #6 is centrally located to the existing and proposed construction. (Expansion is a right commonly enjoyed by others in similar areas.)

3. Verify that the granting of a variance will not adversely affect water quality;

There is no evidence that the granting of a variance will adversely affect water quality. The development is subject to the current Environmental Site Design criteria for all proposed construction. Stormwater detention is proposed so that post development site runoff is less than current runoff rates. Stormwater management and soil erosion and sediment control measures will be implemented under the grading permit.

4. Verify that the granting of a variance will not confer on the applicant a special privilege that would be denied to other applicants;

Approval will not confer the applicant a special privilege that would be denied to other applicants. Due to its location, the removal of Specimen Tree #6 is required for any reasonable expansion or improvement to the existing use. (Expansion is a right commonly enjoyed by other property owners and is not a special privilege.)

5. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

The site was originally constructed as a public school site and the applicant's intent is to retain the existing building and preserve the character of Old Washington Road. The site contains environmental areas that limit the developable area. The request is not based on conditions or circumstances which are the result of actions by the applicant. (Appellants argue that when Howard County constructed the original public school structure which continues, and will continue, to be occupied as a school,

Howard County may have deposited any left-over dirt from the construction on the rear of the property, contributing to the existing steep slope. Since the slope may have been caused by Howard County over 100 years ago, and since Howard County is in the Schools chain of title, Appellants argue that the steepness of the slope should be attributed to the School. There is no evidence that the slope was created in this manner, it is merely speculation. It is unreasonable to place on an applicant the burden of what a predecessor in title may have done over 100 years ago especially where, as here, there is no actual evidence of what may have occurred.)

6. Verify that the condition did not arise from a condition relating to land or building use, either permitted or nonconforming on a neighboring property; and

There is no evidence that the conditions arose from a condition relating to land or building use, either permitted or nonconforming on a neighboring property.

7. Provide any other information appropriate to support the request.

The number of specimen trees to be removed has been reduced by one. To retain Specimen Tree #2, the athletic field has been reduced to the minimum practical size and is smaller than regulation. Root pruning will be used in accordance with the County details. During construction, mud mats will be used below the wall and over The critical root zone to prevent compaction or disturbance. The permanent critical root zone disturbance to Specimen Tree #2 is limited to 25%.

Directors Action: Approval of alternative compliance of Section 16.1205(a)(3) is subject to the following conditions:

1. The alternative compliance approval grants the applicant the authority to remove one specimen trees (ST-6). The removal of any other specimen tree

on the subject property is not permitted under this approval.

2. The removal of one specimen trees is permitted and requires the planting of two native shade trees on site per Section 16.1216(d) of the Forest Conservation regulations. The trees shall be a minimum of 3" DBH and shall be shown on the site development plan and forest conservation plan sheets. The trees must be bonded along with the developer's required landscaping or forest conservation.

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. Appellants have failed to meet its burden of proof of showing by substantial evidence that the approval of Alternative Compliance with respect to §16.116(b)(1) to disturb steep slopes to construct a retaining wall and athletic field for a private school and/or that the approval of a variance with respect to §16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree was clearly erroneous, arbitrary and capricious, or contrary to law.

At the onset of the hearing, the School argued a Motion to Dismiss for want of necessary parties, being the Department of Public Works and the Office of Community Sustainability. Appellants argued against the Motion. HCZR states that a waiver under §§16.104 and 16.116 is issued solely by DPZ, albeit after consultation with the Department of Public Works and the Office of Community Sustainability. Section 16-104(b) provides that DPZ may approve a waiver to a provision of the Subdivision and

Land Development Regulations. Although DPZ, the Department of Public Works, and the Office of Community Sustainability are all signatory to the Final Decision Action Report, DPZ issued the Report and the failure to name the Department of Public Works and the Office of Sustainability as parties is not fatal to the appeal and does not preclude meaningful review of the Final Decision Action Report. Therefore the Motion is denied.

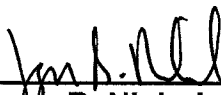
ORDER

Based upon the foregoing, it is this 22nd day of June, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That Appellants appeal of the Department of Planning and Zoning's June 23, 2025 approval of Maryland International School's request for Alternative Compliance with respect to §16.116(b)(1) of the Subdivision and Land Development Regulations to disturb steep slopes to construct a retaining wall and athletic field for private school use and Appellants appeal of the Department of Planning and Zoning's June 23, 2025 approval of Maryland International School's request for a variance with respect to §16.1205(a)(3) of the Forest Conservation Regulations to remove one specimen tree, for WP-25-076, for the Property located in Council District 1, at Tax Map 38, Grid 9, Parcel/Lots 820 and 830, on 8.96 acres of land in the R-12 (Residential: Single) zoning district, also identified as 6135 Old Washington Road, Elkridge, Maryland, be and is hereby **DENIED**, and it is further **ORDERED** that the Motion to Dismiss for lack of necessary parties be, and is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.