

IN THE MATTER OF

DONNA GORJÓN,

Appellant

* BEFORE THE BOARD OF APPEALS

* OF

* HOWARD COUNTY, MARYLAND

* CASE NO. BA-829-D / CE-26-17

* * * * *

ADMINISTRATIVE AGENCY'S REPLY MEMORANDUM

The Howard County Department of Planning and Zoning ("DPZ") submits this Reply Memorandum, pursuant to Section 2.210 of the Rules of Procedure of the Board of Appeals, in response to Appellant's Memorandum of Points and Authorities filed July 30, 2026. The initial hearing is set for September 17, 2026.

DPZ has separately moved to dismiss this appeal, and that motion should be granted. This reply addresses Appellant's memorandum on the merits and demonstrates that, even if the Board reaches them, none of Appellant's arguments satisfy her burden.

Appellant's entire case attacks the setback and "connected" treatment underlying Building Permit B25003489, issued November 12, 2025, which was never appealed. Two settled principles dispose of the appeal. First, the determination approving the building permit and as explained in the November 28, 2023, interpretive email applying HCZR Section 128.0.B.2.a cannot be attacked now through an appeal of a later "no violations" closure letter. Second, as to the March 10, 2026, closure letter, Appellant bears the burden to show that DPZ's action was "clearly erroneous, and/or arbitrary and capricious, and/or contrary to law," Rules of Procedure Section 2.210(a)(4)(ii), and she has not met it.

Standard of Review and Burden of Proof

"[T]he burden of proof is upon 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." Rules of Procedure Section 2.210(a)(4)(ii); accord Section 2.210(b)(6). Appellant concedes that she bears this burden.

Maryland law confirms the deference owed to DPZ. Review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law," and the agency's decision is "prima facie correct" and viewed "in the light most favorable to the agency." *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 203–04 (2009). An agency's "interpretation and application of the statute which the agency administers should ordinarily be given considerable weight." *Id.* at 204; *see also Angelini v. Harford Cnty.*, 144 Md. App. 369, 373–74 (2002) (deference to a board's interpretation of "a law or regulation with respect to which the agency has a special expertise"). Where, as here, the agency declines to find a violation, no affirmative evidentiary predicate is required. An agency "not persuaded to do anything" need not support inaction with substantial evidence, because "[a]n honest doubt is all it takes." *Angelini*, 144 Md. App. at 386.

1. Appellant's recharacterization of her appeal does not change what she is challenging.

Appellant contends that the Hearing Examiner misidentified her appeal as a code-enforcement complaint under Section 130.0.B.4 when it was really a challenge to a "connected" determination under Section 128.0.B.2.a. The label does not matter. However described, the object of the challenge is the setback treatment that authorized the garage and that treatment was

established by the November 28, 2023 Goins interpretation and adopted in Building Permit B25003489. The Board's appellate jurisdiction under Howard County Code Section 16.301(b) reaches "error in any order, requirement, decision, or determination made by any administrative official," but only if invoked within thirty days of that action. HCZR Section 130.0.A.3 and Rules of Procedure Section 2-206. Appellant did not do so.

2. Whether the Complaint was in the Accela system does not satisfy Appellant's burden.

Appellant avers that the Hearing Examiner erred in finding her Complaint absent because it was filed and logged in DPZ's Accela system. Even accepting that the Complaint existed in DPZ's files, it does not advance her appeal. The dispositive point is not the Complaint's availability but the nature of DPZ's response. A finding of "no violations" and closure of the case. A no-violation closure requires no affirmative evidentiary predicate, *Angelini*, 144 Md. App. at 386. Appellant cannot convert the agency's refusal to act into a reviewable substantive determination.

3. The "connected" determination is not independent of the permit's appeal deadline.

Appellant's central theory is that her challenge to the Section 128.0.B.2.a "connected" determination is "entirely independent of the building permit and its appeal deadline." It is not. The "connected" treatment was an interpretive premise of the permit. DPZ's Chief of Zoning Administration applied Section 128.0.B.2.a in November 2023, expressly concluding that "your house is a noncomplying structure" and that "the carport and shed ... are connected to the house," and the zoning reviewer incorporated that conclusion into the approved survey supporting the permit. A challenge to that premise is a challenge to the permit.

Maryland law forecloses recasting an untimely permit challenge as a fresh "determination" appeal. The appealable event was the permit's issuance, *United Parcel Serv., Inc. v. People's Counsel for Balt. Cnty.*, 336 Md. 569, 583–84 (1994), and a later action related to a prior unappealed approval "will lie only as to the validity of the subsequent action and not relate or reach back to the original action." *Nutter v. City of Baltimore*, 230 Md. 6, 14–15 (1962). Otherwise, any protestant could revive a lapsed appeal window through later correspondence, leading to "appeals ad infinitum." *United Parcel*, 336 Md. at 584–85. The Hearing Examiner correctly held the permit "approval is final" and beyond her jurisdiction.

4. The "connected" determination is entitled to deference and, in any event, is not properly before the Board.

Appellant argues that the "connected" finding lacks substantial evidence because various historical sources show the shed as separate. This argument attacks the permit and is time-barred for the reasons in Section 3. It also misapprehends the standard. DPZ's determination that the noncomplying house included its connected carport and shed for purposes of Section 128.0.B.2.a is an "interpretation and application" of the regulation DPZ administers, entitled to "considerable weight." *Grasslands*, 410 Md. at 204; *Angelini*, 144 Md. App. at 373–74. Appellant asserting that there are inferences that may be drawn towards a different conclusion does not make DPZ's interpretation "clearly erroneous". The Board does not "substitute its judgment for the expertise of th[e] administrative agency." *Grasslands*, 410 Md. at 203–04.

5. The setback measurement does not satisfy Appellant's burden.

Appellant criticizes Inspector Blanding's 4.8-foot field measurement as unreliable. The argument fails for two reasons. First, the measurement supported a finding of no violation, and a refusal to find a violation requires no affirmative evidentiary predicate. "An honest doubt is all it

takes." *Angelini*, 144 Md. App. at 386. Appellant's critique, at most, establishes doubt, which is a reason DPZ was entitled to decline enforcement, not a basis to overturn that decision. Second, the underlying setback authorization was approved pursuant to the building permit and is time-barred. Appellant's burden is to show clear error, arbitrariness, or illegality. A disagreement about measurement methodology does not meet it.

6. Alleged gaps in the record below are cured by *de novo* review and do not warrant reversal.

Appellant identifies asserted omissions from the record before the Hearing Examiner: photographs, an unproduced letter, and an email containing measurements. Whatever their bearing below, they provide no ground to reverse DPZ's determination. This appeal is heard *de novo*, and both parties may present evidence subject to the Board's rules, including the pre-submission requirements of Section 2-207(a). A complaint about the completeness of the Examiner's record is not evidence that DPZ's underlying no-violation determination was clearly erroneous, arbitrary, or contrary to law.

7. The "existing dwelling" text of Section 128.0.B.2.a does not defeat DPZ's determination.

Appellant argues that Section 128.0.B.2.a measures a permissible encroachment against "the existing dwelling," not a shed, so the demolished shed cannot serve as the baseline. DPZ's determination is consistent with the text. The Chief of Zoning Administration determined that the carport and shed were "connected to the house," that is, a part of the noncomplying dwelling structure, so that the dwelling's existing noncomplying building line, not a detached accessory structure, furnished the baseline. That is an application of Section 128.0.B.2.a to the facts DPZ

found, and it is owed deference. *Angelini*, 144 Md. App. at 373–74. Appellant's contrary reading is an argument about the permit's correctness, which is not before the Board.

8. The height finding provides no basis for relief.

Appellant challenges DPZ's finding that the garage "does not supersede the height of the actual house," noting it arose from a "courtesy inspection" outside her Complaint. By Appellant's own account this was a courtesy observation, not the determination she complained of. A finding of no height violation, like the setback closure, required no affirmative evidentiary predicate, *Angelini*, 144 Md. App. at 386, and does not carry Appellant's burden to show clear error.

9. Section 129.0 does not apply and does not aid Appellant.

Appellant invokes HCZR Section 129.0 for two propositions: that it defines nonconforming status by use rather than bulk, and that its Section 129.0.C bar on intentional demolition forecloses reliance on the demolished shed. Section 129.0 does neither.

Section 129.0 governs Nonconforming Uses. By its own terms, "[a] structure that is conforming in use but which does not conform to the height, setback, land coverage ... or other bulk requirements of these Regulations, shall not be considered to be nonconforming within the meaning of these Regulations." Section 129.0.A. The subject property's issue is a setback (bulk) condition, not a use condition, as Appellant concedes. Section 129.0 therefore has no application here, and DPZ never relied on it.

DPZ relied on Section 128.0.B, governing Noncomplying Structures, and specifically Section 128.0.B.2.a, the provision the Chief of Zoning Administration actually applied. Appellant's Section 129.0.C intentional-demolition bar is expressly limited to "any building containing a nonconforming use", does not reach a bulk-setback matter, and supplies no basis to

disturb DPZ's determination. Appellant's Section 129.0 argument thus attacks authority that DPZ never invoked.

CONCLUSION

For these reasons, and those set forth in DPZ's Administrative Agency's Motion to Dismiss, the Board should dismiss the appeal for lack of jurisdiction as an untimely collateral attack on the unappealed Building Permit B25003489 and, in the alternative, deny the appeal and affirm DPZ's determination of no violation, because Appellant has not shown, and cannot show, that DPZ's action was clearly erroneous, arbitrary and capricious, or contrary to law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2026, a copy of the foregoing Administrative Agency's Reply Memorandum was served by electronic mail to Donna Gorjón, Appellant, Pro Se, at gorjondo@att.net, in accordance with Rules of Procedure Section 2.204(i).

/s/ David R. Moore
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