

DAVID MARC, ET AL

Appellants

v.

Director, Department of Planning and Zoning,
Director, Department of Public Works, and
Administrator, Office of Community Sustainability.

Respondents

BEFORE THE

HOWARD COUNTY

BOARD OF APPEALS

Case No.: BA-823D

MOTION TO DISMISS

Maryland International School, Inc. (the “School” or “MDIS”), by and through its undersigned counsel, and pursuant to § 2.207(e) of the Howard County Code of Ordinances (the “Code” or “HCCO”), hereby submits this Motion to Dismiss and respectfully requests the Howard County Board of Appeals (the “Board” or the “BOA”) dismiss the above-captioned appeal. In support thereof MDIS states as follows:

BACKGROUND AND PROCEDURAL HISTORY

The School

MDIS is a private, non-profit school located at 6135 Old Washington Road, Elkridge, Maryland 21075 (the “Subject Property”). It is the first school in the State of Maryland to offer an International Baccalaureate program, which is an early college program that allows juniors and seniors to earn up to 32 credit hours prior to starting college.

MDIS has been operating on the Subject Property since 2017, and the Subject Property has been used as a school dating back to the 1930s. In or around 2015, the Board approved MDIS’s use of the Subject Property as a private academic school, nursery school, and child day care center with a

maximum of 500 students. *See*, BA-15-013C. On November 24, 2024, and January 20, 2026, the Board approved MDIS's request for an expansion of the School's campus. *See*, BA-22-023C&V.

The Administrative Appeals

Appellants have appealed every administrative decision or letter received by MDIS since the BOA's approval of the conditional use expansion in November 2024, as well as the BOA's approval itself. On or around June 23, 2025, the Director of the Department of Planning and Zoning, the Director of the Department of Public Works, and the Administrator of the Office of Community Sustainability (collectively, the "Departments") approved MDIS's Alternative Compliance Request, WP-25-076, allowing for (1) the removal of a single specimen tree on the Subject Property, and (2) limited disturbances to steep slopes on the Subject Property. The Appellants appealed the Departments' decision to the Howard County Hearing Authority (the "Hearing Authority") on July 15, 2025, and it was assigned BA-823D (the "Instant Appeal").

On August 14, 2025, the Department of Planning and Zoning ("DPZ") approved MDIS's request for a minor necessary disturbance to a stream buffer for the construction of a stormwater management outfall. Also on August 14, 2025, the Division of Land Development (DLD) and the Department of Public Works approved MDIS's request for a design manual waiver that allows for the construction of a shared use path along the Subject Property's frontage. Appellants appealed both decisions to the Hearing Authority and they were assigned BA-826D, and BA-825D, respectively.

On March 24, 2026, the Subdivision Review Committee (the "SRC") of DPZ issued a letter to MDIS noting the site development plan was deemed technically complete subject to conditions and comments. The technically complete letter further noted that the site development plan could be submitted for signature approval after the comments and conditions were resolved. Appellants appealed this letter to the Hearing Authority, and it was assigned BA-830D. (BA-823D, BA-825D, BA-826D, and BA-830D are collectively referred to therein as the "Administrative Appeals.")

The Hearing Examiner Hearings

In accordance with § 16.302(a) of the Howard County Code of Ordinances (the “Code” or “HCCO”), the Administrative Appeals were first heard by the Board of Appeals’ Hearing Examiner (the “Hearing Examiner”). On June 16, 2026, the Hearing Examiner held four separate *de novo*, evidentiary hearings on the Administrative Appeals. On June 18, 2026, the Hearing Examiner issued a Decision and Order dismissing BA-830D. On June 22, 2026, the Hearing Examiner issued three separate written Decisions and Orders denying Appellants’ appeals in BA-823D, BA-825D, and BA-826D.

The BOA Appeals

On July 23, 2026, thirty-one (31) days after the issuance of the Hearing Examiner’s decision in BA-823D, DPZ received Appellants’ appeal of the Hearing Examiner’s decision in BA-823D. *See*, Date stamp on the Instant Petition of Appeal noting July 23, 2026, as the date DPZ received the Petition. On July 30, 2026, Appellants filed a separate Petition of Appeal for BA-830D (the “BA-830D Appeal Petition”).¹ In Attachment A to the BA-830D Appeal Petition, Appellants provide a confusing and questionable footnote indicating that “Appellants originally filed an appeal of BA 830-D as well as BA 823-D, BA 825-D, and BA 826-D on July 17, 2026. Subsequently, DPZ requested that Appellants filed this amended version of the appeal for BA 830-D for clarity.” Of note, there is no information provided confirming when, or if, the filing fees were paid for the petitions of appeal. Moreover, Appellants did not copy MDIS on any communications regarding the filings, or the need for “clarity,” nor did they provide MDIS notice of the filings. MDIS did not become aware of the appeal filings with the BOA until August 3, 2026, when MDIS was contacted by the Board for the purposes of scheduling.

¹ MDIS is separately moving to dismiss BA-830D.

RELEVANT LAW

In Maryland, the right to appeal an administrative decision is wholly statutory in nature. *Maryland National Capital Park & Planning Comm'n v. Smith*, 333 Md. 3, 7 (1993) (“The right to take an appeal is entirely statutory, and no person or agency may prosecute an appeal unless the right is given by statute.”). In Howard County, § 16.105 of the Code provides the statutory right to appeal DPZ decisions to the BOA: “A person aggrieved by an order of the Department of Planning and Zoning may, within 30 days of the issuance of the order, appeal the decision to the Board of Appeals.”

In order to perfect an appeal of an administrative agency decision, the appellant must comply with the procedural requirements governing the right to appeal.² In Howard County, § 2.206 and § 2.202(e) of the Code provide the procedural requirements that must be met to perfect an appeal of a DPZ decision. HCCO § 2.206 provides that “An individual wishing to appeal an administrative decision of a County Agency **shall file an appeal on the petition provided by the Department of Planning and Zoning within 30 days of the date of that administrative decision**, unless the law provides a different time period for appeal.” (emphasis added). In addition, HCCO § 2.202(e) mandates that the appeal filing fee be paid at the time of filing: “At the time the petition is filed with the Clerk of the Board, the petitioner **shall pay the filing and/or hearing fees** in accordance with the current schedule of fees adopted by resolution of the County Council.” (emphasis added).

As noted above, per § 16.302(a) of the Code, an appeal of an agency decision is first heard by the Hearing Examiner. Like the initial appeal, an appeal of the Hearing Examiner’s decision must

² See, *Ohio Cas. Ins. Co. v. Ins. Comm’r*, 39 Md. App. 547, 551-557 (1978). There, the appellant sought judicial review of an administrative decision. *Id.* The statute gave the appellant the right to appeal, but the then-existing Maryland Rules prescribed additional procedural requirements for taking that appeal. *Id.* The Court explained that the statute creating the right to appeal and the procedural rules governing how the appeal must be taken operated together. *Id.* Compliance with those additional procedural requirements was necessary to perfect the appeal, and failure to comply subjected the appeal to dismissal. *Id.*

be filed within 30 days of the issuance of the decision: “A person aggrieved by a decision of a Hearing Examiner may, within 30 days of the issuance of the decision, appeal the decision to the Board of Appeals.” §16.304(a). Further, §§ 12.1 and 12.2 of the Rules of Procedure to the Board of Appeals Hearing Examiner (the H.E.’s Rules of Procedure”), which are adopted pursuant to §16.303 of the Code, provide that any appeal (1) must be filed within 30 days of the decision, and (2) that the filing fee must be paid at the time of filing:

12.1. Appeals to Board. A person aggrieved by a decision of the hearing examiner may appeal it to the Board within 30 days of the issuance of the decision. An appeal must be submitted to the clerk on a form provided by the clerk.

12.2. Payment of Fees. At the time the appeal petition is filed with the clerk, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees adopted by resolution of the County Council.

As such, in Howard County, in order to perfect an appeal of an administrative agency decision, the appellant must (1) file the appeal within 30 days of the date of the decision and (2) pay the filing fee at the time of filing.

ARGUMENT

I. Appellants seemingly failed to properly file and perfect the Instant Appeal within the 30 day statutorily mandated deadline requiring dismissal of the case.

The Hearing Examiner’s decision in BA-823D was issued on June 22, 2026, making the statutory appeal deadline, Wednesday, July 22, 2026. The Instant Petition of Appeal contains conflicting dates regarding when the appeal was actually filed. Though there is a handwritten date stating the submittal was on July 22, 2026, the formal date stamp from DPZ indicates it was not received until July 23, 2026, which is past the deadline. In addition, there is no indication of when, or if, the filing fee was paid for this appeal. Making matters more confusing, it appears from Appellants’ footnote in the BA-830D Appeal Petition that Appellants attempted to appeal all four Administrative Appeals through a single consolidated petition on July 17, 2026, but the filing was deemed to be insufficient and required resubmittal: “Appellants originally filed an appeal of BA-830D as well as BA

823-D, BA 825-D, and BA826-D on July 17, 2026. Subsequently, DPZ requested the Appellants filed this amended version of the appeal for BA 830-D” *See*, Footnote to Attachment A in BA-830D.

Accordingly, the timeliness issue presents two alternatives. If the operative petition is the petition stamped received on July 23, 2026, the Instant Appeal is facially untimely. Alternatively, if Appellants are relying on the July 17, 2026 consolidated submission, they must establish that the July 17 submission satisfied the requirements for perfecting this specific appeal, including payment of the required appeal fees for the appeals at the time of filing.

To the extent Appellants are attempting to rely on a deficient consolidated appeal filing to preserve the appeal in this case and in BA-830D, the Board should reject the attempt because it circumvents the statutorily mandated appeal deadlines and procedures. A deficient consolidated appeal petition cannot be used as a placeholder to avoid compliance with the mandatory 30-day appeal deadline, or the requirement of paying the filing fee for each appeal at the time of filing.³ The Howard County Code is clear—the specific appeal must be filed within the 30-day statutory appeal period, and the corresponding filing fee must be paid at the time of filing, in order to perfect the appeal.

CONCLUSION

The conflicting dates and information contained in the appeal petitions raise significant questions regarding whether Appellants properly and timely filed the Instant Appeal within the 30-day window. The key question is whether Appellants performed the acts the Code requires to perfect the Instant Appeal within the statutory time-period. Based on the face of the Instant Appeal Petition, it appears Appellants did not. As such, absent evidence that Appellants timely filed and paid the filing

³ *See, Colao v. Cty. Council*, 109 Md. App. 431, 450 (1996) (“We hold that appellants were required to file a separate petition for A-9900 or were at least required to state in their timely-filed petition that they were also seeking review of the approval of A-9900, because the Council's approval of A-9900 and its approval of A-9901 cannot be considered one appealable order or action of an administrative agency).”).

fee within the 30-day statutorily required time-period for this specific appeal petition, the Board should dismiss the appeal because it is time barred.

Respectfully submitted,

/s/ Christopher M. DeCarlo

Christopher M. DeCarlo

Venable LLP

210 W. Pennsylvania Avenue, Suite 500

Towson, Maryland 21204

Tel: (410) 494-6200

Fax: (410) 821-0147

cmdecarlo@venable.com

Counsel for Maryland International School, Inc.

CERTIFICATION PURSUANT TO HCCO § 2.207(e)

Any person interested in responding to this motion shall file a written response with the Board within fifteen days of the date that the motion was filed. The Board may rule on the motion at any time fifteen days after the filing of the motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2026, a copy of the foregoing was provided to all parties known to have an interest in this case or to their designated spokesperson, including:

Alex Votaw, Esq.
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204
(410) 296-8166
alex@gmacynelson.com

Counsel for Appellants

/s/ Christopher M. DeCarlo

Christopher M. DeCarlo