

IN THE MATTER OF DONNA GORJÓN

Appellant

v.

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

Appellee

Before the Board of Appeals
of Howard County, Maryland

Case No. BA-829-D / CE-26-17

**APPELLANT’S CONSOLIDATED RESPONSE TO
ADMINISTRATIVE AGENCY’S MOTION TO DISMISS AND REPLY
MEMORANDUM**

Appellant respectfully submits this consolidated response to the Howard County Department of Planning and Zoning’s (“DPZ”) Motion to Dismiss and Administrative Agency’s Reply Memorandum. The Board should deny dismissal because Appellant timely appealed DPZ’s **March 10, 2026 final code-enforcement closure determination** in CE-26-17, not the November 28, 2023 zoning email or the November 12, 2025 building permit.

Appellant does not seek revocation of Building Permit B25003489, nor does she ask the Board to reopen the independent appeal periods for either the 2023 email or the 2025 permit. Those earlier materials are relevant only as background and as evidence bearing on whether DPZ lawfully and rationally resolved the **March 2026 enforcement complaint** concerning the completed, as-built conditions.

I. Questions Presented

Question	Appellant’s Position
What agency action is before the Board?	DPZ’s March 10, 2026 final determination closing CE-26-17 with a finding of “no violations.”
Was the appeal timely?	The appeal was filed within the 30-day period stated in the notice and required by the applicable zoning and Board rules.
Does Appellant seek to invalidate the 2025 building permit?	No. The permit is not the target of the requested relief.

What is the limited merits issue?	Whether DPZ’s March 2026 closure decision was clearly erroneous, arbitrary and capricious, or contrary to law because DPZ did not adequately determine the applicable setback baseline, the status of the former shed, the claimed connection to the dwelling, and the actual as-built setback measurement.
What relief is requested?	Denial of dismissal; a hearing on the merits; and, if the Board finds DPZ’s closure legally or factually deficient, remand for a reasoned enforcement determination based on the completed structure and the governing regulation.

II. Applicable Framework

The Board has authority to hear an appeal alleging error in an administrative official’s “order, requirement, decision, or determination.” Howard County Code §16.301(b). The Zoning Regulations likewise authorize the Hearing Authority to hear and decide claims that DPZ “erred in the interpretation or application of any provisions of the Zoning Regulations.” Howard County Zoning Regulations §130.0.B.4.

That subject-matter authority is subject to a filing deadline. An appeal from DPZ action must be filed within 30 calendar days of the Department’s action, and the Board’s rules impose the same 30-day period unless another law provides otherwise. Howard County Zoning Regulations §130.0.A.3; Howard County Board of Appeals Rules of Procedure §2.206.

Appellant acknowledges that, at the merits hearing, she bears the burden to establish that the agency action was clearly erroneous, arbitrary and capricious, or contrary to law. Howard County Board of Appeals Rules of Procedure §2.210(a)(4)(ii). But that merits burden does not eliminate the Board’s jurisdiction to review a timely appeal from an actual final agency determination.

III. The March 10, 2026 Closure Letter Is the Agency Action Under Appeal

DPZ’s Motion characterizes this case as an untimely collateral attack on the November 2023 zoning interpretation and the November 2025 building permit. That characterization does not accurately identify the action Appellant appealed.

The action appealed is DPZ’s March 10, 2026 closure of Code Enforcement Case CE-26-17, following Appellant’s code-enforcement complaint, DPZ’s investigation, a site visit, and an asserted field measurement of approximately 4.8 feet. DPZ’s own Reply confirms that its March 2026 determination was a “finding of ‘no violations’ and closure of the case.”

Most importantly, DPZ’s March 10 letter expressly stated:

“Any person aggrieved by a decision of the Department of Planning and Zoning may file an appeal to the Board of Appeals. An appeal to this notice must be filed within 30 days of the date of the notice and must state the alleged error or other grounds for the appeal.”

That appeal-rights language is not itself the sole source of the Board’s jurisdiction. But it is powerful evidence that DPZ treated the March 10 letter as a final, appealable Department action and that Appellant reasonably and timely relied on DPZ’s explicit instruction.

DPZ cannot persuasively maintain both that it made a final “no violations” closure determination after a complaint and inspection and that its written notice of appeal rights referred to no appealable decision at all. An agency that issues a formal notice instructing the recipient that the notice itself is appealable within a stated deadline cannot later argue, after that deadline is met, that the notice was never appealable at all. The March 10 letter was the final action that resolved CE-26-17, and Appellant relied on DPZ’s own instruction in appealing it.

IV. Appellant Timely Appealed the March 10, 2026 Final Determination

Appellant timely filed this appeal within 30 days after DPZ issued its March 10, 2026 closure letter. The governing deadline therefore runs from the March 10 action, not from the earlier 2023 email or 2025 permit. Howard County Zoning Regulations §130.0.A.3; Howard County Board of Appeals Rules of Procedure §2.206.

Appellant does not contend that Howard County Zoning Regulations §130.0.B.4 eliminates the 30-day filing requirement. Rather:

1. Section 130.0.B.4 establishes the Board’s authority to review alleged DPZ errors in interpreting or applying the Zoning Regulations; and
2. Section 130.0.A.3 and Howard County Board of Appeals Rules of Procedure Rule 2.206 establish the applicable 30-day filing requirement.

This distinction resolves the issue DPZ identifies. Appellant is not seeking a new deadline to appeal the permit. Appellant seeks review of DPZ’s timely appealed enforcement determination.

V. The March 2026 Determination Was Not a Mere Restatement of the 2023 Email or 2025 Permit

DPZ relies principally on *United Parcel Service, Inc. v. People’s Counsel for Baltimore County*, 336 Md. 569, 650 A.2d 226 (1994) and *Nutter v. City of Baltimore*, 230 Md. 6, 185 A.2d 809 (1962). Appellant agrees with the general principles in those cases:

- A later letter that merely confirms a prior final decision cannot indefinitely restart an expired appeal period; and
- An appeal from a later decision ordinarily reaches only the validity of that later decision, not an earlier final approval. *United Parcel Service, Inc. v. People’s Counsel for Baltimore County*, 336 Md. 569, 583–85, 650 A.2d 226, 233–34 (1994); *Nutter v. City of Baltimore*, 230 Md. 6, 14–15, 185 A.2d 809, 813 (1962).

Those principles do not require dismissal here. The Court of Appeals in *United Parcel Service* explained that the relevant statutory language “obviously refer[s] to an operative event which determines whether the applicant will have a license or permit,” and that such language “would not

include a statement simply confirming that a license or permit was issued or denied in the past[,] or defending a past issuance or denial.” 336 Md. at 583. The central question, accordingly, is whether the later action merely restates a former decision or instead resolves a new matter through a current agency determination.

A. The March 2026 decision involved current, as-built facts.

The November 28, 2023 email addressed DPZ’s interpretation of a proposed garage design. The March 10, 2026 closure addressed whether the completed structure presented a current zoning violation after an enforcement complaint, site inspection, and field measurement.

The material facts evaluated in March 2026 did not exist in their completed form in 2023:

- Whether the structure was built as represented in the permit materials;
- The final as-built distance between the structure and the property line;
- The current physical condition of the former shed;
- Whether the former shed had been demolished;
- The actual relationship among the dwelling, carport, shed, and completed garage; and
- Whether the asserted 4.8-foot setback measurement was taken from the legally relevant point.

DPZ’s Reply confirms that the closure was supported, at least in part, by Inspector Blanding’s current field measurement. A current measurement of a completed structure is not a fact that DPZ could have resolved in the 2023 email.

B. DPZ’s formal enforcement process was an operative agency action.

Unlike a purely explanatory or defensive letter, DPZ processed Appellant’s complaint as CE-26-17, performed an investigation, made a field inspection, reached a “no violations” conclusion, closed the enforcement case, and issued a written notice containing appeal instructions.

Under the operative-event analysis in *United Parcel Service, Inc. v. People’s Counsel for Baltimore County*, 336 Md. 569, 583–85, 650 A.2d 226, 233–34 (1994), the central question is whether the later action merely restates a former decision or instead resolves a new matter through a current agency determination. The March 2026 closure should be treated as a reviewable determination because DPZ resolved a formal complaint about present, as-built conditions after conducting its own investigation.

C. DPZ’s “appeals ad infinitum” concern targets mere reiteration, not this determination.

DPZ’s Reply separately invokes *United Parcel Service’s* discussion of “appeals ad infinitum” — the concern that permitting review here would let any protestant revive a lapsed appeal window through later correspondence. That concern targets a narrow danger: an agency’s mere confirmation of a decision already made being treated as a fresh, independently appealable decision. It has no application where, as here, DPZ’s later letter followed a formal complaint, an

independent investigation, and a new field measurement of a structure that did not exist in its completed form when the earlier interpretation issued. Treating the March 2026 determination as time-barred by reference to the 2023 interpretation would not vindicate the ad infinitum principle; it would invert it, immunizing DPZ’s first substantive review of the as-built structure from any scrutiny at all.

D. Review of the March 2026 closure does not reopen the permit appeal.

Appellant does not seek to challenge the 2025 permit directly. The permit’s issuance remains final for purposes of a direct permit appeal.

The Board may nevertheless decide whether DPZ’s later enforcement closure was lawful. That inquiry may require consideration of the legal rationale DPZ used in closing CE-26-17, including DPZ’s application of Howard County Zoning Regulations §128.0.B.2.a. But the Board need not vacate, revoke, or otherwise adjudicate the validity of Building Permit B25003489 to decide whether DPZ adequately evaluated the present complaint.

This approach respects *Nutter v. City of Baltimore*, 230 Md. 6, 14–15, 185 A.2d 809, 813 (1962). In *Nutter*, the question whether a later time extension was properly granted could be resolved without revisiting the merits of the separately final variance approval — the two inquiries were genuinely severable. The Board should review only the validity of the March 2026 closure decision, not relitigate the permit as an independent target of relief.

VI. DPZ’s “No Violation” Theory Does Not Place Its Closure Decision Beyond Review

DPZ relies on *Angelini v. Harford County*, 144 Md. App. 369, 798 A.2d 26 (2002) for the proposition that an agency’s refusal to find a violation requires no affirmative evidentiary predicate because “an honest doubt is all it takes.”

Even accepting DPZ’s characterization of *Angelini* for present purposes, that principle does not establish that every code-enforcement closure is nonreviewable. The County Code authorizes review of an administrative official’s decision or determination, and the Zoning Regulations specifically authorize review where DPZ allegedly erred in interpreting or applying the Zoning Regulations. Howard County Code §16.301(b); Howard County Zoning Regulations §130.0.B.4.

DPZ’s position conflates two separate questions:

Question	Proper Inquiry
Jurisdiction	Did DPZ issue a final decision or determination that Appellant timely appealed?
Merits	Has Appellant shown that DPZ’s closure was clearly erroneous, arbitrary and capricious, or contrary to law?

The first question is answered by the March 10 closure letter and the CE-26-17 enforcement process. The second question requires an evidentiary hearing.

DPZ may ultimately establish that it had a reasonable basis to close the complaint. But it may not use the phrase “no violation” to avoid all scrutiny of whether it applied the proper zoning provision, used a legally proper baseline, considered material current facts, or explained the basis for its inspection conclusion.

VII. The Merits Require an Evidentiary Hearing

Appellant’s merits challenge is narrow. It does not rest on a generalized disagreement with DPZ or a request that the Board substitute its judgment merely because Appellant proposes another interpretation.

Rather, Appellant contends that DPZ’s March 2026 closure requires factual and legal examination because it rests on unresolved issues concerning:

1. **The correct regulatory baseline.** DPZ relies on Howard County Zoning Regulations §128.0.B.2.a and takes the position that the relevant setback baseline was the existing noncomplying dwelling structure, including a carport and shed said to be “connected to the house.”
2. **The factual basis for treating the former shed as part of the dwelling.** DPZ’s Reply identifies the 2023 conclusion that the carport and shed were connected to the house. The email chain shows this conclusion originated with Mr. Schoen himself: his November 17, 2023 email to Mr. Goins transmitted “attached letter, photographs, and boundary survey” and asked DPZ to confirm his own interpretation. Mr. Goins’s November 28, 2023 reply states, in full substance: “As your house is a noncomplying structure, Sec. 128.0.B.2.a applies. This includes the carport and shed as they are connected to the house. Therefore, your interpretation is correct.” The record does not reflect any independent DPZ site visit, measurement, or investigation preceding that conclusion — only a confirmation of the property owner’s own submitted materials and characterization. Notably, the underlying Dietz Surveying boundary survey does not itself characterize the shed as attached; the survey depicts a shed as a labeled structure without describing its relationship to the dwelling. The “attached” characterization appears only in a box captioned “ZONING REVIEWER NOTE” superimposed on a copy of that survey — not a surveyor’s certification — which states in relevant part that the “existing attached shed projects beyond current 7.5' side setback” and expressly cites “email from Geoff Goins” as its authority. The licensed surveyor never certified the shed as attached; a DPZ zoning reviewer’s annotation did, citing the same Goins email that itself merely confirmed Mr. Schoen’s own submission. Appellant maintains that the record requires examination of the physical, structural, historical, and documentary basis for that conclusion, including the shed’s actual relationship to the dwelling and its later demolition.
3. **The relevance of the shed’s demolition to the March 2026 evaluation.** The Board should hear evidence concerning whether, and how, a formerly existing shed could serve as part of the relevant “existing dwelling” baseline when DPZ evaluated the completed garage in March 2026.

4. **The method and legal relevance of the 4.8-foot measurement.** DPZ's Reply states that Inspector Blanding measured approximately 4.8 feet. The Board should hear evidence identifying the exact points measured, the property-line source, the measurement method, the date of measurement, the structure configuration measured, and why that measurement satisfied the applicable regulation.

5. **The relationship between approved plans and as-built conditions.** DPZ's closing decision should be evaluated based on the structure that exists, not solely the structure proposed in earlier plans or correspondence.

6. **The provenance and currency of DPZ's photographic evidence.** The photographs DPZ presented at the June 2026 hearing and produced in response to Appellant's MPIA requests were originally submitted by Mr. Schoen, the adjoining property owner, as attachments to his own November 17, 2023 email to Mr. Goins. The photographs are now nearly three years old, and predate the construction of the garage DPZ's March 2026 closure evaluates. DPZ has produced no photographs independently taken during any 2026 site inspection. Evidence of that vintage, submitted by the party seeking a favorable interpretation, cannot establish the current, as-built setback and connection facts DPZ's March 2026 closure purports to resolve.

7. **DPZ's proposed exhibits do not conclusively establish setback compliance or justify dismissal.** DPZ's proposed exhibits include Building Permit B25003489, which describes the proposed 27-foot-by-28-foot attached garage but leaves the zoning-setback fields blank and does not state that the completed structure satisfies the required setbacks. DPZ also identified a boundary survey containing a zoning-review note stating that the existing attached shed projected beyond the current 7.5-foot side setback and that the proposed garage would project no farther into the existing setback than the existing shed.

These documents may be offered or entered as exhibits, but their admission would not resolve the disputed factual issues. The survey and zoning note address the proposed design and cite Howard County Zoning Regulations §120.0.B.2.a and a communication attributed to Geoff Goins. They do not, standing alone, establish the location of the completed structure, the measurement points used during the March 2026 inspection, or whether DPZ accurately applied the governing regulation to the as-built condition. The electrical permit separately identifies Building Permit B25003489 but does not contain setback measurements or a setback determination.

Accordingly, Appellant does not seek to revoke or invalidate Building Permit B25003489. Appellant seeks review of whether DPZ's March 10, 2026 closure determination considered the relevant documents, applied the correct regulatory standard and baseline, used accurate measurements, and adequately explained its conclusion that no violation existed. These factual and legal issues cannot be resolved merely by characterizing the appeal as an untimely challenge to the building permit.

These are material issues. They cannot be resolved merely by labeling Appellant's case an untimely challenge to the permit.

VIII. Deference Does Not Excuse an Unexplained or Unsupported Application of the Regulation

DPZ correctly cites *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 978 A.2d 622 (2009) for the proposition that agency factual findings and interpretations within an agency's area of expertise are entitled to appropriate weight. Appellant does not dispute that standard.

But deference does not mean abdication. An agency decision must remain consistent with the governing text, supported by a sufficient factual basis, and capable of reasoned review. The Board's rules expressly require Appellant to establish clear error, arbitrariness, caprice, or legal error; they do not eliminate the Board's duty to consider competent evidence offered at the de novo hearing. Howard County Board of Appeals Rules of Procedure §2.210(a)(4)(ii).

Appellant seeks the opportunity to meet that burden through the administrative record and evidence concerning:

- The complete CE-26-17 Accela case file;
- The original complaint and attachments;
- The March 10, 2026 closure letter;
- Inspector Blanding's field notes, photographs, and measurement records;
- The permit plans, survey, and zoning-review materials;
- Records concerning the former shed's construction and demolition;
- Historic plans, aerial images, tax records, or permits that bear on whether the shed was separate or physically integrated with the dwelling; and
- Competent survey or as-built evidence concerning the actual setback.

The Board should not decide those disputed factual issues on a motion to dismiss.

IX. Section 129.0 and the Height Observation Are Not Necessary to Decide the Motion

DPZ correctly observes that Howard County Zoning Regulations §129.0 concerns nonconforming uses, whereas DPZ relied on Howard County Zoning Regulations §128.0.B.2.a concerning noncomplying structures and bulk setbacks. Appellant does not rely on Section 129.0.

Likewise, the asserted height observation is not the principal basis for relief. DPZ's Reply describes that observation as a courtesy finding outside the core complaint. The central issue is the March 2026 enforcement closure as it relates to the actual setback, the claimed connection of the former shed to the dwelling, the applicable baseline, and the as-built facts.

X. Requested Relief

For the foregoing reasons, Appellant respectfully requests that the Board:

1. **Deny DPZ's Motion to Dismiss;**
2. Hold that Appellant timely appealed DPZ's March 10, 2026 final closure determination in CE-26-17;
3. Clarify that the merits hearing will address the lawfulness of the March 2026 enforcement closure — not a direct appeal from the 2023 email or the 2025 building permit;
4. Permit the parties to present the complete CE-26-17 record and competent evidence concerning the completed structure, the former shed, the claimed connection to the dwelling, and the setback measurement; and
5. If the Board finds that DPZ's March 2026 decision was clearly erroneous, arbitrary and capricious, or contrary to law, reverse or remand the closure determination for DPZ to conduct and issue a reasoned evaluation of the present, as-built conditions under the applicable Zoning Regulations.

Respectfully submitted,

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240-417-1046

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2026, a copy of the foregoing Appellant's Consolidated Response to Administrative Agency's Motion to Dismiss and Reply Memorandum was served by electronic mail on the following:

- David R. Moore, Esq., Senior Assistant County Solicitor, Howard County Office of Law, dmoore@howardcountymd.gov;
- Gary W. Kuc, Esq., Howard County Office of Law, GKuc@howardcountymd.gov;
- Kel L. Berg, Board of Appeals Administrator, Howard County Board of Appeals;
- Lawrence Schoen, larryschoen@gmail.com;
- Marcie Karen Weil, hikingboots6@aol.com;

in accordance with Rules of Procedure Section 2.204(i).

Donna Gorjón