

IN THE MATTER OF	*	BEFORE THE BOARD OF APPEALS
JAY ANDREW KOMSA,	*	FOR
Appellant	*	HOWARD COUNTY, MARYLAND
	*	CASE NO.: BA-833-D/CE-26-8

* * * * *

ADMINISTRATIVE AGENCY'S MOTION TO DISMISS

The Howard County Department of Planning and Zoning ("DPZ") moves to dismiss this appeal. Jay Andrew Komsa, Appellant, is the alleged violator named in a Notice of Violation DPZ issued on March 5, 2026. The Zoning Regulations do not permit an alleged violator to appeal a Notice of Violation to the Hearing Authority; his recourse is to defend any citation DPZ issues to enforce the Notice. Instead of presenting a defense if and when he is cited, Appellant asks the Board of Appeals Hearing Examiner (the "Hearing Authority") to overturn a July 1, 2026 letter, DPZ's response to his effort to persuade it to withdraw the Notice, but that letter merely reaffirms the Notice and does not create an appealable event in and of itself. The Hearing Authority is without jurisdiction, and the appeal should be dismissed.

On February 28, 2026, DPZ inspected the property. On March 5, 2026, DPZ issued a Notice of Violation (Case No. CE-26-8), finding that the use of the property "as a motor vehicle storage facility including the storage of buses, boats and recreation vehicles" is "prohibited in the RC (Rural Conservation) zoning district," and ordering that the use cease within 30 days.

In April 2026, Appellant met with DPZ staff to try to persuade them that the storage is a permitted accessory use to farming and to reconsider pursuing the Notice. On July 1, 2026, DPZ declined, explaining by letter that the use "does not qualify as an accessory use to farming," that the property "remains in violation of the Zoning Regulations," and that the use must cease on or

before July 31, 2026. Appellant then filed this appeal on July 17, 2026, naming the July 1, 2026 letter as the determination appealed, and conceding that the appeal "arises from, and the July 1 determination continues, the March 5, 2026 Notice of Violation." This appeal should be dismissed, as set forth below.

1. An alleged violator has no right to appeal a Notice of Violation, so the Hearing Authority has no jurisdiction to hear this appeal.

The Zoning Regulations do not permit the recipient of a Notice of Violation to appeal it. When DPZ becomes aware of a violation, it may issue a notice ordering that the offending activities end; but "[a] Zoning Violation Notice issued under this section is not appealable pursuant to Section 130.0.A.3 of these Regulations." HCZR § 102.0.B. The Regulations give the alleged violator a different avenue to contest the violation: DPZ "may enforce the Zoning Regulations by issuing citations to alleged violators to be heard in Court or in Administrative Proceedings as provided by Law," *id.*, and the violator may defend against that citation. If convicted, Mr. Komsa may appeal that adjudication.

The only appeal § 102.0.B affords is to a *complainant*, and only where DPZ declines to act. If DPZ "does not issue such a zoning violation notice within 60 days" of a written complaint, the non-issuance "shall be considered to be a final decision of the Department that the alleged violation does not exist, and the complainant shall have a right to appeal this decision to the Hearing Authority"; a complainant may likewise be advised "of the right to appeal the decision to close the case to the Hearing Authority." *Id.* Appellant is the alleged violator, not a complainant, and no provision authorizes him to appeal the Notice of Violation issued against him. Because the Regulations confer no such right, the Hearing Authority lacks jurisdiction and "will dismiss a petition if [it] lacks jurisdiction to hear the petition." Hearing Examiner Rules of Procedure, Rule

3.3; *accord* Howard County Code § 2.202(d) ("The Board shall dismiss a petition if it lacks jurisdiction to hear the petition.").

2. The July 1, 2026 letter is a reaffirmation of the Notice, not an appealable decision.

Appellant cannot supply the missing appeal right by pointing to the July 1, 2026 letter. That letter is DPZ's response to his request that DPZ reconsider the Notice. The Department declined to change course, restated the conclusion the Notice reached, and reset only the compliance date. A communication of that character is not an appealable "decision." The operative letter in *United Parcel Service* "did not grant, deny, decide, or order anything" and therefore "was not an 'approval' or 'decision' appealable to the Board of Appeals." *United Parcel Serv., Inc. v. People's Counsel for Balt. Cnty.*, 336 Md. 569, 583-85 (1994). The Appellate Court of Maryland recently stated the same rule: "an agency communication that merely reiterates or reaffirms a prior final administrative decision or order is not appealable." *Chiusano v. Two Farms, Inc.*, 268 Md. App. 322, 351 (2026); *accord Nat'l Insts. of Health Fed. Credit Union v. Hawk*, 47 Md. App. 189, 195-96 (1980) (jurisdiction over the original action is "not revived" by the agency's later refusal to disturb it, and "an administrative decision concerning reconsideration of zoning is not an appealable final order"). By Appellant's own admission, the July 1 letter "continues" the Notice of Violation. It is not a separate, appealable event.

3. Appellant cannot manufacture an appeal that the Regulations do not provide by engaging DPZ on the merits and appealing its refusal.

If a recipient of a non-appealable Notice could create a right of appeal simply by writing to DPZ, engaging it in a discussion of the alleged violation, and then appealing whatever response DPZ gave, the Regulations' allocation of enforcement to the citation process would collapse. Maryland law does not permit that. Allowing an appeal from an administrative official's "reaffirmation or statement that a license or permit had been properly issued or properly denied in

the past" would let a party pursue "a continuing stream of correspondence" and "appeals ad infinitum." *United Parcel Serv.*, 336 Md. at 584-85. A party accordingly cannot "collaterally attack" a prior zoning action by "obtaining written confirmation" of it "and then appealing the confirmation letter as a 'decision.'" *P Overlook, LLLP v. Bd. of Cnty. Comm'rs of Washington Cnty.*, 183 Md. App. 233, 253-54 (2008); a "mere confirmation of a prior decision is not itself a zoning decision." *Id.* Nor may a party "do indirectly what she cannot do directly ... [by] initiat[ing] a new request in hopes of reviving any rights she had or may have had under the prior case." *Cf. Sizemore v. Town of Chesapeake Beach*, 225 Md. App. 631, 650 (2015). The July 1 letter created no appeal right that the Notice itself did not carry, and the Notice carried none.

CONCLUSION

For these reasons, and as may be further addressed in any hearing before this Board, the Petition should be denied and the appeal dismissed.

Respectfully submitted,

HOWARD COUNTY OFFICE OF LAW

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2026, a copy of the foregoing Administrative Agency's Motion to Dismiss and the accompanying Certification Pursuant to Board Rule 2.207(e) was served by electronic mail, to:

Jay Andrew Komsa, Appellant, Pro Se
jkomsa1@gmail.com

/s/
David R. Moore
Senior Assistant County Solicitor

CERTIFICATION PURSUANT TO BOARD RULE 2.207(e)

I hereby certify that a copy of the accompanying Administrative Agency's Motion to Dismiss was provided to all persons known to have an interest in the case, including but not limited to the petitioner, the property owner, the Administrative Agency, and any person entitled to written notification under Rule 2.203(e) and (f), as the case may be.

PLEASE NOTE: Any person interested in responding to the motion shall file a written response with the Board within 15 days of the date that the motion was filed.

/s/
David R. Moore
Senior Assistant County Solicitor