

Circuit Court for Howard County  
Case No. C-13-CV-24-000479

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND\*

No. 1686

September Term, 2024

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IN THE MATTER OF LUBNA KHAN

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Nazarian,  
Beachley,  
Albright,

JJ.

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Opinion by Beachley, J.

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Filed: January 15, 2026

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a decision by the Howard County Board of Appeals (the “Board”) affirming a decision by the Howard County Department of Planning and Zoning (“DPZ”) not to issue a notice of violation to a property owner regarding the location of a dumpster on the owner’s property. Following the Board’s decision, a neighboring property owner, Lubna Khan, sought judicial review in the Circuit Court for Howard County. The circuit court ultimately affirmed the Board’s decision, and Khan noted this appeal.

In this appeal, Khan, self-represented, presents 11 questions for our review. For clarity, we have consolidated those questions into a single question<sup>1</sup>:

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<sup>1</sup> Khan’s questions were presented, verbatim, as follows:

1. Whether the court violated appellants due process and/or erred as a matter of law or abused its discretion for not considering evidence of document fraud when the matter was sub-curia?
2. Whether the court committed a prejudicial and reversible in not finding the respondents commit fraud extrinsic or intrinsic when appellant met the requisite burden on raising it before the court rendered its decision?
3. Did the court err for not holding the board lacked jurisdiction because there was no final appealable event?
4. Did the court commit a reversible, and prejudicial legal errors—by holding that the speed memo was the operative event for the 2011 revision when there was no engineer identified, the application for pad and enclosure?
5. Whether the court erred when it applied to substantial evidence test when appellant had requested reasonable as there was no substantial evidence that support relocation of dumpster of dumpster pad when the application was for pad and enclosure?

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Was the Board’s decision supported by substantial evidence and premised upon a correct application of the relevant law?

For reasons to follow, we answer that question in the affirmative and affirm the judgment of the circuit court.

## **BACKGROUND**

The instant case concerns a dispute over the location and maintenance of a dumpster and associated refuse on a commercial property in Howard County (the “Subject Property”). In 2000, DPZ approved an initial site development plan for the Subject Property that allowed for an enclosed dumpster to be placed on the southwest side of the

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6. Did the court commit legal—reversible, and prejudicial errors when the board fail to recognize and apply the correct legal principles of law governing the construction documents, and in its determination of operative event?
7. Whether use of evasive devices during deliberation is a violation of the Open Meeting Act—thereby suppressing public access, leaving no record of its deliberations?
8. Did the court commit legal error prejudicial and reversible in not correcting the record prior to its ruling?
9. Whether the court committed a legal error prejudicial and reversible in holding absence of design engineering seal in all documents was a ministerial act?
10. Did the court commit legal error reversible and prejudicial for failing to apply legal principles to substantial evidence that would yield different results?
11. Did the Board have ex-parte communication that voids its decision?

property. In 2011, DPZ approved a revision to the site development plan that permitted the dumpster to be relocated to the northeast corner of the property.

In February 2022, Khan, the owner of residential property neighboring the Subject Property, submitted a written complaint to DPZ regarding the dumpster. Khan alleged that the dumpster needed to be enclosed and that trash had been “left outside,” causing a “public nuisance” and attracting animals.

Shortly thereafter, an inspector with DPZ visited the Subject Property and observed two violations, neither of which had been raised by Khan in her written complaint. First, the inspector noted that the dumpster was located in the southeast corner of the property rather than the northeast corner. Second, the inspector noted that no landscaping had been planted around the dumpster. The inspector subsequently issued a notice of violation (“NOV”) to the property owner requiring that the two violations be remedied.

In April 2022, DPZ informed Khan that no further NOVs would be issued regarding the dumpster. DPZ explained that, per the revised site development plan, the dumpster did not need to be enclosed.

In May 2022, Khan appealed that decision to the Board. At the hearing that followed, Khan argued that the dumpster needed to be moved back to its original location—the southwest side of the Subject Property—and that it needed to be enclosed. Khan maintained that the dumpster was in violation of the Subject Property’s initial site development plan. Khan insisted that the revised site development plan was invalid because it was missing the requisite signature and seal from an engineer.

Chad Edmondson, the chief of DPZ’s Engineering Division, testified that the Subject Property’s initial site development plan was properly revised in 2011 by way of a “speed memo.” Edmondson explained that, when a property owner wishes to have a site development plan altered, the owner must submit the proposed changes to DPZ for review. Edmondson explained that, if DPZ approves the changes, a speed memo is then sent to an engineer, who is then responsible for making the changes to the site development plan. Edmondson testified that the revised site development plan for the Subject Property was approved by way of that process. A copy of the speed memo and the revised site development plan for the Subject Property was then admitted into evidence. Edmondson explained that, initially, the revised site development plan was missing a signature and seal from the engineer. Edmondson stated that DPZ considered the revised site development plan to be valid even in the absence of a signature and seal from an engineer. According to the revised site development plan, a signature and seal from a certified engineer was added in 2017.

Tamara Frank, an inspector with DPZ, testified that she investigated Khan’s complaint by reviewing the revised site development plan and visiting the Subject Property. Frank testified that, based on her investigation, she concluded that the dumpster was in compliance with the revised site development plan and all relevant codes and regulations. Frank testified that she therefore decided not to issue a second NOV based on Khan’s complaint.

At the conclusion of the hearing, the Board affirmed DPZ’s decision not to issue an NOV. The Board found that Khan’s challenge to the validity of the 2011 revised site development plan was untimely because, under the Howard County Code, a party who wishes to challenge a decision by DPZ must file an appeal within 30 days of the decision. The Board concluded that Khan’s ability to challenge DPZ’s 2011 revision of the site development plan had “long passed.” The Board separately found that any issue regarding the validity of the revised plan was cured in 2017, when a seal and signature was added. Finally, the Board found that DPZ’s decision not to issue a second NOV was not arbitrary and capricious because the dumpster was in compliance with the 2011 revised site development plan.

Following the Board’s decision, Khan filed a petition for judicial review in the circuit court. Khan argued that the Board erred in determining that her challenge to the revised site development plan was untimely. Khan also argued that the Board’s decision to uphold DPZ’s election not to issue a second NOV was unsupported by the record and was arbitrary and capricious.

While her petition was pending, Khan filed several motions for the court’s consideration. First, Khan filed a “Motion for Violation of Open Meetings Act,” in which she argued that the Board had improperly deliberated in private prior to making its decision on her appeal. Second, Khan filed a “Motion for Spoliation Sanction,” in which she argued that DPZ and the owner of the Subject Property, Clarksville Ridge Professional Center, LLC, had conspired to falsify documents that were submitted to the Board. Lastly, Khan

filed a “Motion to Correct the Record,” in which she asked the court to consider evidence beyond that which was submitted to the Board.

The court held a hearing on Khan’s petition and outstanding motions. Following that hearing, the court issued a written opinion denying Khan’s motions and affirming the Board’s decision. The court found that Khan’s claim that the Board deliberated in private was not supported by the record. The court found that Khan’s claims regarding forged evidence were likewise not supported by the record. The court further found that, in attempting to validate her claims, Khan sought to introduce exhibits and materials that were not presented to the Board, which was procedurally improper. Finally, the court found that the Board did not err in determining that Khan’s challenge to the revised site development plan was untimely, and the court concluded that the Board’s decision to affirm DPZ’s decision not to issue an NOV was neither arbitrary nor capricious.

This timely appeal followed. Additional facts will be supplied as needed below.

#### **STANDARD OF REVIEW**

“The overarching goal of judicial review of agency decisions is to determine whether the agency’s decision was made ‘in accordance with the law or whether it is arbitrary, illegal, and capricious.’” *Sugarloaf Citizens Ass’n v. Frederick Cnty. Bd. Of Appeals*, 227 Md. App. 536, 546 (2016) (quoting *Long Green Valley Ass’n v. Prigel Fam. Creamery*, 206 Md. App. 264, 274 (2012)). In making that determination, “we take the same posture as the circuit court . . . and limit our review to the agency’s decision.” *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007). “[I]f we determine that the

agency’s decision is based on an erroneous conclusion of law, no deference is given to those conclusions.” *Kenwood Gardens Condos., Inc., v. Whalen Props., LLC*, 449 Md. 313, 325 (2016). That said, “we accord a degree of deference to an agency’s decision involving interpretation and application of a statute which that agency administers[.]” *Kim v. Bd. of Liquor License Comm’rs for Baltimore City*, 255 Md. App. 35, 46 (2022). “With regard to the agency’s factual findings, we do not disturb the agency’s decision if those findings are supported by substantial evidence.” *Sugarloaf*, 227 Md. App. at 546.

When determining whether an agency’s decision is supported by substantial evidence, “our task is ‘merely to evaluate whether the evidence before the [agency] was fairly debatable[.]’” *Crawford v. Cnty. Council of Prince George’s Cnty.*, 482 Md. 680, 695 (2023) (quoting *City of Hyattsville v. Prince George’s Cnty. Council*, 254 Md. App. 1, 24-25 (2022)). “Substantial evidence review is narrow; the question is not whether we would have reached the same conclusions, but merely whether ‘a reasoning mind’ could have reached those conclusions on the record before the agency.” *Bert v. Comptroller of the Treasury*, 215 Md. App. 244, 264 (2013) (quoting *Schwartz v. Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)). Moreover, we “must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is *prima facie* correct and presumed valid[.]” *Md. Bd. of Physicians v. Elliott*, 170 Md. App. 369, 407 (2006) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999)). This deference extends to the agency’s findings of fact and any inferences drawn from those facts, provided that those findings and inferences are supported by the record. *Bert*, 215 Md. App. at 264. Thus,

“[t]he agency’s determination of factual issues will be upheld if the record of the agency proceeding affords a substantial basis of fact from which the issue can be reasonably inferred.” *Id.* at 265.

## DISCUSSION

### *Parties’ Contentions*

Khan contends that the Board’s decision affirming DPZ’s decision not to issue an NOV was “arbitrary, capricious, clearly erroneous, contrary to law, and lacked any rational basis.” Specifically, Khan argues: that the evidence presented to the Board by DPZ was fraudulent and had been altered; that the 2011 revised site development plan was void because it lacked a seal and signature and was not approved pursuant to the appropriate procedure; and, that the Board erred in concluding that Khan’s challenge to the revised site development plan was untimely. Khan also contends that the circuit court erred in affirming the Board’s decision, in refusing to consider evidence beyond that which was presented to the Board, and in denying her request for relief under the Open Meeting Act.

DPZ contends that the Board’s decision was based on substantial evidence and should be upheld. DPZ argues that the Board properly rejected, as untimely, Khan’s challenge to the validity of the 2011 revised site development plan.

### *Analysis*

Before discussing the merits of Khan’s contentions, we note that Khan has presented myriad allegations of wrongdoing concerning the actions of DPZ, various interested parties, and the circuit court. Regarding those contentions, we reiterate that our role in

reviewing the administrative agency’s decision is narrow: “it 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 determin[ing] if the administrative decision is premised upon an erroneous conclusion of law.” *John A. v. Bd. of Educ. for Howard Cnty.*, 400 Md. 363, 381 (2007) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005)). In that respect, we are not concerned with whether the court or other parties erred, but rather whether the agency erred. *Id.* Furthermore, we review an agency’s decision based solely on the grounds and evidence relied upon by the agency in reaching that decision. *Broadway Servs., Inc. v. Comptroller of Md.*, 478 Md. 200, 214 (2022). Regarding the weight of that evidence, we do not substitute our judgment for that of the agency, and any credibility findings by the agency are entitled to great deference. *Geier v. Md. State Bd. of Physicians*, 223 Md. App. 404, 430-31 (2015). It is the province of the agency, not this Court, to resolve conflicting evidence, and “where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.” *Matter of Homick*, 256 Md. App. 297, 308 (2022) (quoting *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. 195, 221 (2018)).

Against that backdrop, we hold that the Board’s decision affirming DPZ’s decision not to issue an NOV based on Khan’s complaint was supported by substantial evidence and was premised upon a correct application of the law. Under the Howard County Code, DPZ may issue an NOV if a property is used or maintained in violation of an approved site development plan or certain land development regulations. Howard County Code

§§ 16.106, 16.1602, and 24.105. If DPZ decides not to issue an NOV and that decision is appealed to the Board, the appealing party must show that the decision “was clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.” Howard County Code § 2.210(a)(4)(ii).

Here, Khan complained that the dumpster at the Subject Property needed to be moved from its current location in the northeast part of the Subject Property to its original location in the southwest part of the property. Khan also complained that the dumpster needed to be enclosed. DPZ investigated the matter and determined that an NOV was unwarranted because the revised site development plan showed the dumpster in its current location (the northeast part of the property) and neither the revised site plan nor the relevant codes and regulations required the dumpster to be enclosed.

At the hearing before the Board, Chad Edmondson, the chief of DPZ’s Engineering Division, testified that the revised site development plan was approved by DPZ in 2011 according to the appropriate procedure, and he added that, although the revised plan did not initially include the requisite seal and signature, DPZ still considered the revision to be valid. A copy of the revised plan was admitted into evidence, and that evidence showed that a signature and seal from a certified engineer had been added in 2017. Tamara Frank, the inspector with DPZ who investigated Khan’s complaints, testified that she ultimately decided not to issue an NOV because the dumpster was in compliance with the revised site development plan and all relevant codes and regulations.

From that, a reasoning mind could have concluded that DPZ’s decision regarding the issuance of an NOV was not “clearly erroneous, and/or arbitrary and capricious, and/or contrary to law.” Howard County Code § 2.210(a)(4)(ii). The Board’s affirmation of that decision was therefore supported by substantial evidence, and Khan has presented no compelling evidence or argument to overcome the presumption of validity attached to the Board’s decision. Furthermore, we find no merit to Khan’s insistence that the Board’s decision, including its reliance on the revised site development plan, was premised upon an erroneous conclusion of law. There is absolutely no evidence that the revised plan is fraudulent or was doctored, and, as the Board explained, any issue regarding the lack of a seal or signature from a certified engineer was cured in 2017.<sup>2</sup> Accordingly, we see no reason to overturn the Board’s decision affirming DPZ’s decision not to issue an NOV.

The only remaining issue that is properly before this Court is the circuit court’s decision to deny Khan’s request for relief based on the Board’s alleged violation of the Open Meeting Act. Under the Open Meeting Act, a public body is generally required to meet in an open session, to provide reasonable notice of the session, to allow the public to attend the session, and to maintain minutes of the session. Md. Code, Gen. Prov. §§ 3-301, 3-302, 3-303, and 3-306(c). If a public body fails to comply with those provisions, any

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<sup>2</sup> To the extent that Khan complains that the 2017 seal and signature are somehow invalid, we note that those complaints were not raised before the Board and are therefore not properly before this Court. *Matter of HRVC Ltd. P’ship*, 338 Md. App. 391, 430-32 (2025). And, because the Board decided the issue on the merits, we need not address whether it erred in finding that Khan’s challenge to the revised site development plan was untimely.

person may file, in the circuit court, a petition asking the court to, among other things, “void the action of the public body.” Md. Code, Gen. Prov. § 3-401(b)(1)(iii). “A court may . . . declare the final action of a public body void if the court finds that the public body willfully failed to comply with § 3-301, § 3-302, § 3-303, or § 3-306(c) of this title and that no other remedy is adequate[.]” Md. Code, Gen. Prov. § 3-401(d)(4). In such an action, it is presumed that the public body acted in compliance with the Act, and the complaining party has the burden of proof. Md. Code, Gen. Prov. § 3-401(c).

We have reviewed the record and found no compelling evidence to suggest that the Board violated the Open Meeting Act in conducting its deliberations. At the conclusion of the proceedings, the Board’s Chairperson made clear that, although there would be “no further input from the public or witnesses,” the public would “get to hear what happens” during the Board’s deliberations. Khan claims that the Board used a “husher” that rendered its discussions “inaudible and untranscribable,” but there is nothing in the record to support that claim. Based on that evidence, or lack thereof, we cannot say that the court abused its discretion in declining Khan’s request for relief pursuant to the Open Meeting Act.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HOWARD COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**