

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
240-777-6600

(www.montgomerycountymd.gov/mc/council/board.html)

Case No. A-6335

APPEAL OF TRISTAN QUINN

OPINION OF THE BOARD

(Hearing held April 6, 2011)
(Effective Date of Opinion: April 27, 2011)

Case No. A-6335 is an administrative appeal filed January 20, 2011, by Tristan Quinn (the “Appellant”). The Appellant charges error on the part of the County’s Department of Permitting Services (“DPS”) in issuing Demolition/Move Permit No. 553241, dated December 23, 2010, for the demolition of a home that the Appellant used to live in, and that he asserts he was “renting to own.” The home is located at 18529 Strawberry Knoll Road in Gaithersburg, Maryland 20879 (the “Property”).

Pursuant to Section 59-A-4.4 of the Montgomery County Zoning Ordinance, codified as Chapter 59 of the Montgomery County Code (the “Zoning Ordinance”), the Board held a public hearing on the appeal on April 6, 2011. Assistant County Attorney Malcolm Spicer represented the County. The Appellant appeared pro se. At the outset of the hearing, pursuant to its authority in Section 2A-8 of the Montgomery County Code, the Board entertained a preliminary Motion to Dismiss put forward by the County.

Decision of the Board: Motion to Dismiss **granted**; administrative appeal **dismissed**.

RECITATION OF FACTS

The Board finds, based on undisputed evidence in the record, that:

1. The Property, known as 18529 Strawberry Knoll Road, Gaithersburg, Maryland 20879, is an R-90 zoned parcel.
2. The Appellant lived at the subject Property for many years, until early 2006. The Appellant did not own the Property, but maintains that he had a verbal agreement

with owners Rakesh and Yogeth Batheja to “rent to own,” with a portion of his monthly rental payments supposedly going toward his purchase of the Property. The Appellant maintains in his written submissions that between 1993 and 2006, he contributed substantial sums toward the purchase of the Property.

3. The dwelling on the subject Property was inspected by Montgomery County’s Department of Housing and Community Affairs on January 6, 2006, which resulted in the issuance of an Emergency Field Notice condemning the Property. This condemnation is memorialized in a January 11, 2006, letter order from Joseph Giloley, Chief, Division of Housing and Code Enforcement, to Mr. Batheja, which indicated that the Property was condemned and either needed to be demolished or repaired. See Exhibit 6 (attachments to that Exhibit, hand-labeled “Exhibit 3, 3/16/11”).

4. The Bathejas no longer own the Property. The Appellant lists Arun Sareen as the current owner of the Property on the face of his appeal. See Exhibit 1.

5. On December 23, 2010, DPS issued Demolition/Move Permit No. 553241 to Arun Sareen, authorizing demolition of the single family dwelling on the subject Property. See Exhibit 3.

6. The Appellant appealed the issuance of that permit on January 20, 2011. The “Charging Document” in this case asserts that DPS erred in issuing this Demolition/Move Permit because the Appellant was never effectively represented by counsel in his attempts to demonstrate his asserted ownership interest in the subject Property, and because the Appellant still has a portion of his belongings at the subject Property. The Appellant asserts that instead of issuing the Demolition/Move Permit, he should have received a judgment for a monetary award greater than \$30,000, or the subject Property should have been ordered sold to him for the agreed upon price of \$127,000 minus his accumulated equity. See Exhibit 1.

7. As acknowledged by the parties, by the time of the April 6, 2011, hearing, the house on the subject Property had been demolished.

MOTION TO DISMISS—SUMMARY OF ARGUMENTS

1. Counsel for the County stated that the house on the subject Property had been condemned by the County and has been demolished. In light of the fact that the house no longer exists, Counsel argued that any challenge to the issuance of the underlying demolition permit was moot, and that there was no relief that the Board could grant.

Counsel further argued that if the Board were not inclined to grant his Motion to Dismiss on grounds that the appeal was moot, he would argue that the Appellant does not have standing to challenge the issuance of the demolition permit because he has not lived at the subject Property for a number of years, and because he has produced no legal basis on which to establish a legally recognizable interest in the Property.

2. The Appellant stated that he had \$36,500 in equity invested in the house, and that he had made another \$75,000 in improvements to the house. He stated that he had pursued legal action to establish his interest in the house to the greatest extent that he could, through the Montgomery County Circuit Court and on up to the United States Supreme Court, which he indicated had declined to hear his appeal. See Exhibits 4(b), (c), and (d). He argued that there is a question about the ownership of the house, and that he was taking whatever action he could to pursue that. When reminded by the Board that questions of ownership such as that put forward by the Appellant were beyond their jurisdiction, and that in the context of this appeal, the Board could only address whether the demolition permit had been correctly issued, the Appellant indicated that he understood that, and stated that he had another action pending in Circuit Court. See Exhibit 6. He went on to indicate that the only reason he was before the Board was to say that he had pursued that avenue as well.

CONCLUSIONS OF LAW

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including sections 2B-4, 4-13, 8-23, 15-18, 17-28, 18-7, 22-21, 23A-11, 24A-7, 25-23, 29-77, 39-4, 41-16, 44-25, 46-6, 47-7, 48-28, 49-16, 49-39A, 51-13, 51A-10, 54-27, and 58-6, and chapters 27A and 59.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in Section 2-112, Article V, Chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. Under Section 2A-8 of the Montgomery County Code, the Board has the authority to rule upon motions and to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions at the outset of the hearing. Board Rule 3.2 specifically confers on the Board the ability to grant Motions to Dismiss for lack of jurisdiction (Rule 3.2.1) and in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2).

The Court of Appeals, in *Green v. Nassif*, 401 Md. 649, 654-55, 934 A.2d 22, 26 (2007), reiterated that “[a] case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy.” (citing *In re Kaela C.*, 394 Md. 432, 452, 906 A.2d 915, 927 (2006)), and that the Court “does not give advisory opinions; thus, we generally dismiss moot actions without a decision on the merits.” (citing *Dep’t of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143, 919 A.2d 1217, 1221 (2007); see *State v. Peterson*, 315 Md. 73, 82, 553 A.2d 672, 677 (1989); *In re Rosa A. Riddlemoser*, 317 Md. 496, 502, 506, 564 A.2d 812, 815 (1989)). See also *Washington Suburban Sanitary Commission v. TKU Assoc.*, 281 Md. 1, 25, 376 A.2d 505, 518 (1977) (“[i]t is well

established that Maryland courts “do not give opinions on abstract propositions or moot questions” and that “appeals which present nothing else for decision are dismissed as a matter of course”). Like the Court of Appeals, the Board does not issue advisory opinions, and will dismiss moot actions.

4. Section 8-23(a) of the County Code provides that “[a]ny person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of the Department [of Permitting Services] under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, or revoked, or the order or decision is issued.”

5. Section 8-27 of the County Code provides for the issuance of permits for the demolition or removal of buildings, as follows:

Sec. 8-27. Demolition or removal of buildings.

(a) Notice. The Director must mail written notice, at least 10 days before the Director issues a permit to remove or demolish a building or structure, to the owner of each adjacent and confronting lot. The applicant must give the Department the name and address of the owner of each adjacent and confronting lot. The notice must identify the building or structure to be demolished or removed, specify the process for issuing the permit and the time limit to appeal the issuance of a permit to the Board of Appeals, and include any other information the Director finds useful. The Director need not deliver this notice if unsafe conditions require immediate demolition or removal of the building or structure.

(b) Signage. The Director need not deliver the notice required by subsection (a) if, at least 10 days before the Director issues a permit to remove or demolish a building or structure, the applicant posts at a conspicuous location on the lot a sign describing the proposed demolition or removal, specifying the process for issuing the permit and the time limit to appeal the issuance of a permit to the Board of Appeals, and including any other information the Director requires. The sign must conform to design, content, size, and location requirements set by regulation under Section 8-13(a).

(c) Special notice for older buildings. At least 30 days before the Director issues a permit to demolish or remove a building, other than a single-family dwelling, that will be more than 25 years old when it is demolished or removed, the Director must list the address of the property on a properly designated website or other widely available form of electronic notice.

(d) Notice to utilities. Before the Director may issue a demolition or removal permit, the applicant must notify each connected public utility and obtain a written release confirming that all service connections and appurtenant equipment, such as meters and regulators, have been safely disconnected and sealed.

(e) Permit requirement; conditions. A person must not demolish or remove a building or structure unless the Director has issued a permit to do so under this Section. Each demolition or removal permit must require the applicant to:

- (1) before demolishing or removing a building or structure, exterminate any rodents or other pests in it;
 - (2) after demolition or removal, clear all construction and demolition debris;
 - (3) restore the established grade of the surrounding land, unless a sediment control permit is otherwise required; and
 - (4) at all times keep the site free from any unsafe condition.
- (f) Bond or surety. Each applicant for a demolition or removal permit must file a performance bond, cash, certificate of guarantee, or surety with the Department, in an amount equal to the cost of demolition or removal, to assure the safe and expedient demolition or removal of the building or structure and clearing of the site. If the building or structure is not demolished or removed and the site is not cleared of all debris within the time specified in the permit, but not sooner than 60 days after the permit is issued, the Director may enter the property, demolish or remove the building or structure, clear the site of debris, and take action to forfeit the performance bond, enforce the guarantee, or otherwise reimburse the Department for its cost.
- (g) Definitions. As used in this Section:
- (1) remove means to move a building or structure substantially intact from or within a site; and
 - (2) demolish means to tear down or destroy an entire building or structure, or all of a building or structure except a single wall or facade.

6. This is an appeal from the issuance by DPS of Demolition/Move Permit No. 553241. Demolition/Move Permits are issued pursuant to Section 8-27 of the County Code, and thus are appealable to the Board under Section 8-23(a). The specifics of this appeal are set forth in the Recitation of Facts, above. See Exhibit 1.

7. The Board finds that that any controversy regarding the correctness of the issuance of Demolition/Move Permit No. 553241 was rendered hypothetical by the actual demolition of the house, and is, at this point, a moot question. Since the Board does not issue advisory opinions, and there is no longer a controversy for the Board to adjudicate, the Board finds that this case must be dismissed per the case law cited above. Indeed, the Board notes that even if it were to find that the Demolition Permit was incorrectly issued, it could not fashion an effective remedy in this case as such a finding would not change the fact that the house has already been razed. Having concluded that any question as to the correctness of the issuance of the Building Permit is moot, the Board need not reach the question of whether the Appellant had standing to bring this appeal.

8. Assuming without deciding that the Appellant has standing to pursue this appeal, the Board finds that this appeal should be dismissed under Board Rule 3.2.2 because there is no genuine issue of material fact to be resolved and dismissal is called for as a matter of law. The fact that the house has been demolished has eliminated any adjudicable controversy and the potential for an effective remedy.

9. The Motion to Dismiss in Case A-6335 is granted, and the appeal in Case A-6335 is consequently **DISMISSED**.

On a motion by Member Carolyn J. Shawaker, seconded by Vice Chair David K. Perdue, with Chair Catherine G. Titus and Members Walter S. Booth and Stanley B. Boyd in agreement, the Board voted 5 to 0 to grant the Motion to Dismiss and thus to dismiss the appeal, and adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Catherine G. Titus, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of April, 2011.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).