

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6847**

**APPEAL OF SIMONE LARSON**

OPINION OF THE BOARD

(Board discussion held February 21, 2024)  
(Effective Date of Opinion: March 19, 2024)

Case No. A-6847 is an administrative appeal filed December 20, 2023, by Simone Larson (the "Appellant"). The Appellant charged error on the part of Montgomery County's Department of Permitting Services ("DPS") in issuing Building Permit No. 1045524. The subject property for which Building Permit No. 1045524 was issued is Lot 47, Country Club Village Wynkoop Estates Subdivision, located at 6402 Winston Drive, Bethesda, Maryland, in the R-60 Zone. ("Property"). See Exhibit 3. The Appellant resides at 16 Wynkoop Court, Bethesda, Maryland 20817. See Exhibit 1. The Appellant alleged in her appeal that "the lot was incorrectly merged with the adjoining subplot which cannot be developed. The permit should have been for a smaller structure, like all other houses on that street." See Exhibit 1.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance<sup>1</sup>, the Board scheduled a hearing for March 20, 2024. Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals' Rule of Procedure 3.2, on January 29, 2023, the County filed a Motion to Dismiss the administrative appeal. See Exhibit 6. The Appellant filed a Reply to Motion to Dismiss (See Exhibit 7) and the County filed a reply to the Appellant's Reply on February 1, 2024. See Exhibit 8. The Board, pursuant to Board Rules 3.2.1, 3.2.2, and 3.2.5, decided the Motion to Dismiss, the opposition thereto, and the County's Reply at the outset of the prehearing conference on February 21, 2024. Walter Wilson appeared on behalf of the County. Leo Schwartz appeared on behalf of Edgewood Builders LLC (the Property's builder) and Leping Wallace and W. David Wallace appeared as owners of the Property through Refined Properties LLC. See Exhibit 4. Mr. Schwartz, and the Wallace's were permitted to intervene in this appeal ("Interveners"). The Appellant failed to appear at the prehearing conference.

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<sup>1</sup> All references to the Zoning Ordinance refer to the 2014 Ordinance, unless otherwise indicated.

Decision of the Board:     The County’s Motion to Dismiss **granted**;  
                                      Administrative appeal **dismissed**.  
                                      Alternatively, the Appellant failed to appear at the pre-hearing  
                                      conference;  
                                      Administrative appeal **dismissed**.

**RECITATION OF FACTS**

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

1. On November 24, 2023, DPS issued Building Permit No. 1045524 to Leo Schwartz Edgewood Builders, Inc. for the Property. See Exhibit 3.
2. Building Permit No. 1045524 was issued to construct a single-family dwelling on the Property. See Exhibit 3.
3. The Board sent a “Notice of Hearing” to the parties which stated “[t]he Board will hold a pre-hearing conference on this appeal in the Davidson Memorial Hearing Room (address above) on **Wednesday, the 21st day of February, 2024 at 9:30 a.m.** The subject of the conference will be pre-hearing submissions by the parties, pursuant to Section 2A-7(a) of the Montgomery County Code. Failure to appear at the pre-hearing conference may result in the dismissal of the appeal.”
4. The Appellant failed to appear at the pre-hearing conference on February 21, 2024.

**MOTION TO DISMISS AND OPPOSITION—SUMMARY OF ARGUMENTS**

1. Counsel for the County argued, in his Motion to Dismiss and Reply, that while the Appellant’s appeal objected to the planned size of the single-family dwelling for which Building Permit No. 1045524 was issued, the Appellant failed to allege that DPS misinterpreted or misapplied any County law in issuing the building permit. He further argued that the Property was created through a subdivision approved by the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission (“Planning Board”) on December 22, 2022, and recorded in the County land records on January 9, 2023. See Exhibit 8, ex. 1. Counsel argued that, therefore, the Property is one single buildable lot, not two lots being treated as one. He argued that the Board lacks jurisdiction to hear an appeal of a subdivision approved by the Planning Board under Chapter 50 of the County Code, which governs the subdivision of lands.
2. The Appellant argued in her Reply to Motion to Dismiss that DPS incorrectly allowed two lots to be merged. She argued that, by treating two lots as one lot, DPS has allowed a much larger house to be built than is allowed by Section 4.4.1, Residential Zones Standard Method Development, of the Zoning Ordinance.

## **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 section 8-23. That section does not provide the Board of Appeals with appellate jurisdiction over Chapter 50, which governs the subdivision of lands.

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. Section 8-23(a) of the County Code provides that “[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked. A person may not appeal any other order of the Department, and may not appeal an amendment of a permit if the amendment does not make a material change to the original permit. A person must not contest the validity of the original permit in an appeal of an amendment or a stop work order.”

4. Under section 2A-8 of the 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 prior to the hearing. Board Rule 3.2 specifically confers on the Board the ability to grant motions to dismiss for summary disposition 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). Under Board Rule 3.2.2, the Board may, on its own motion, consider summary disposition or other appropriate relief.

5. Section 2A-8(j) of the County Code provides that the hearing authority (in this case the Board) may impose sanctions against parties and witnesses for failure to abide by the provisions of this article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, dismissals of actions, denial of admission of documents and exhibits and admission of matters as adverse to a defaulting party.

6. The Board finds that the reason for the appeal is the Appellant’s allegations about the subdivision of the Property, in particular that the Property, before the Planning Board’s re-subdivision, consisted of two subdivided lots, not, as now, one, and that DPS committed error in issuing Building Permit No. 1045524, based on the Planning Board’s

re-subdivision creating the Property. The Board first finds that it has no jurisdiction over matters involving the Planning Board's subdivision of lands under Chapter 50 of the County Code. The Board's jurisdiction is created and limited by statute. *Holy Cross Hospital, Inc. v. Health Svcs. Cost Review Comm'n*, 283 Md. 677, 683, 383 A.2d 181 (1978). Because the Board does not have the authority to decide matters for which it has not been granted jurisdiction by statute, the Board must dismiss the appeal. See *United Parcel Service v. People's Counsel*, 336 Md. 569, 650 A.2d 226 (1992). Therefore, the Board finds that it lacks jurisdiction to hear the Appellant's argument ultimately concerning the Planning Board's subdivision of the Property.

The Board also notes that, although it does have jurisdiction to review DPS's actions, the Appellant merely argues that the proposed house is too large for the Property. The Board first finds that there are no genuine issues of material fact to be resolved by the Board. The Board finds that after the Planning Board's subdivision, the size of the Property is large, at 19,646 square feet, and that a larger house is allowable as a matter of law on a property of that size. See Exhibit 8, ex. 1. Accordingly, the Board finds no basis in the Appellant's argument that the proposed house is too large for the Property after subdivision, and the appeal should also be dismissed on this ground.

7. Alternatively, the Board also finds that the Appellant failed to appear at the pre-hearing conference. Under section 2A-8(j) of the County Code, the Board has the authority to dismiss this action, the administrative appeal, for unexcused delays to the pre-hearing process. The Board finds that the notice of the pre-hearing conference alerted the Appellant that failure to appear at the pre-hearing conference may result in dismissal of the appeal. Having failed to appear without providing any prior excuse, the Board therefore dismisses the Appellant's appeal.

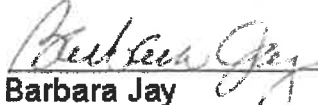
8. The County's Motion to Dismiss in Case A-6847 is granted, and the appeal in Case A-6847 is consequently **DISMISSED**. The Board also dismisses this appeal based on the Appellant's failure to appear at the pre-hearing conference.

On a motion by Chair John H. Pentecost, seconded by Member Alan Sternstein, with Members Caryn Hines and Amit K. Sharma in agreement, and with Vice Chair Richard Melnick necessarily absent, the Board voted 4 to 0 to grant the County's Motion to Dismiss and to dismiss the administrative appeal. The Board further voted to dismiss the appeal because the Appellant failed to appear at the pre-hearing and to adopt 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.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 19th day of March, 2024.

  
Barbara Jay  
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).

