

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6859

APPEAL OF JOAN M. MITRIC AND ALFRED CARR

OPINION OF THE BOARD

(Board hearing held May 22, 2024)
(Effective Date of Opinion: June 18, 2024)

Case No. A-6859 is an administrative appeal filed March 13, 2024 by Joan M. Mitric and Alfred Carr (the "Appellants"). The Appellants charged error on the part of Montgomery County's Department of Permitting Services ("DPS") in the "[g]ranteeing of demolition permit #1036767." See Exhibit 1. The Appellants allege that DPS erred in: 1) failing to post the required demolition permit signage; 2) failing to enact regulations defining the design, content, size, and location of the required signage; and 3) failing to properly list the property subject to the demolition on DPS's website. See Exhibit 1. The subject property is Lot 1, Block 2, Bethesda Outside Subdivision, located at 3728 Manor Road, Chevy Chase in the R-30 Zone. (the "Property"). See Exhibit 1. Appellant Mitric resides at 3304 Edgewood Road, Kensington, Maryland and Appellant Carr resides at 3904 Washington Street, Kensington, Maryland. See Exhibit 1.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance¹, the Board scheduled a hearing for May 22, 2024. Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals' Rule of Procedure 3.2, on April 11, 2024, the County filed a Motion to Dismiss or for Summary Disposition. See Exhibit 4. The Appellants filed a Response to Motion to Dismiss or for Summary Disposition. See Exhibit 6. The Board, pursuant to Board Rules 3.2.1, 3.2.2, and 3.2.5, decided the Motion to Dismiss or for Summary Disposition and the opposition thereto following a hearing on May 22, 2024.² Elana M. Robinson appeared on behalf of the County. The Appellants appeared *pro se*.

Decision of the Board: The County's Motion to Dismiss or for Summary Disposition
 granted;
 Administrative appeal **dismissed**.

¹ All references to the Zoning Ordinance refer to the 2014 Ordinance, unless otherwise indicated.

² At the pre-hearing conference on April 24, 2024, the Board voted to use the previously scheduled hearing date as a motions hearing.

RECITATION OF FACTS

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

1. On March 4, 2024, DPS issued Demolition/Move Permit No. 1036767 to Jeffrey S. Driscoll Toll Mid-Atlantic LP Company, LP to demolish a multi-family dwelling low rise on the Property. See Exhibit 3(a).

2. The Property is located approximately 2.9 miles from Appellant Mitric's residence and approximately 2.1 miles from Appellant Carr's residence. See Exhibit 4.

**MOTION TO DISMISS OR FOR SUMMARY DISPOSITION AND OPPOSITION—
SUMMARY OF ARGUMENTS**

1. Counsel for the County argued that 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" may appeal to the Board. She argued that case law outlines what the term "aggrieved" means and that a person must be specifically affected by the action in order to be aggrieved. Counsel argued that an aggrieved person must be within "sight or sound" range of the property or an adjoining, confronting, or nearby property owner. She argued that the Appellants do not meet this definition of aggrieved and therefore do not have standing to bring this appeal.

Counsel for the County argued that courts have found that persons who live within three-fourths of a mile, one-half of a mile, and six or seven blocks away from a property for which they have complained have been found not to be aggrieved. She argued that here the Appellants live 2.9 and 2.1 miles from the Property. Counsel argued that the Board should use case law as guidance, and that in this case the Appellants are *prima facie* not aggrieved. She argued that the Appellants have stated that this appeal is in the public interest, but that is not the standard to bring an appeal under section 8-23 of the County Code. Counsel argued that to allow this appeal to go forward would enable any person who lives anywhere in the County to file an appeal on a permit, which would impermissibly widen the appeal process.

2. Appellant Carr argued that there is a lower threshold for standing before the Board than there would be before a court or in Baltimore City. He argued that the proceedings before an administrative agency such as the Board are informal and encourage citizen participation. Appellant Carr argued that anyone clearly identified as having an interest in the outcome of a case before the Board becomes a party to the proceedings.

In response to questions from the Board, Appellant Carr argued that the County Code does not define what it means to be aggrieved. He argued that if the standard is to measure whether someone has an interest different than the general public, people who shop nearby and visit the location, or walk or drive by would have an interest in the

Property. Appellant Carr argued that he has been following the Property since 2022, and that he has appeared before the Planning Board and corresponded with the County Executive's office and multiple County agencies about development on the Property.

Appellant Carr argued that the demolition on the Property has impacted daily activities by, for example, creating dust in the air that could enter a nearby school. He argued that the County's practice is to have transparency and notice about what is going on in the County. Appellant Carr argued that he was a member of the Maryland House of Delegates and that his constituents came to him with concerns about the Property, and that he has a different interest in the Property than the general public because he has made inquiries about the Property to multiple County agencies.

Appellant Carr argued that the application for demolition on the Property was submitted in July of 2023, a sign went up on the Property, it passed inspection, and then the sign was taken down. He argued that there was a period of eight months between the submission of the application and the issuance of the permit, but that the sign was only up for a short time. He argued that a person can only challenge a permit after it has been issued and felt that the practice of DPS was flawed. Appellant Carr argued that it was not in the public interest to dismiss this appeal because the appeal is bigger than just this Property, and expressed his belief that DPS was not following the law.

3. Appellant Mitric argued that she is a reporter who has covered, among other things, zoning and development. She argued that the Maryland Public Information Act ("MPIA") provides the public a right to know and to be informed. Appellant Mitric argued that she informed Appellant Carr about the demolition sign and pending development on the Property when she noticed the sign during the COVID-19 pandemic. She argued that people who lived near the Property informed her that the Property had a pending sale, and that people had lost jobs. Appellant Mitric argued that it is the right of every citizen to file an MPIA request and that in this case no one knew what was being planned for the Property.

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.

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. The Board finds that the Appellants lack standing to bring this appeal. In order to have standing to appeal DPS’s issuance of a permit, Section 8-23(a) of the County Code requires that a person must be aggrieved by the issuance of the permit. To be aggrieved by DPS’s issuance of a permit, Maryland appellate courts have found that the person’s property interest or property rights be personally and specifically affected by the issuance in a way different from the general public. *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore*, 137 Md. App. 60, 85 (2001). Therefore, generally an aggrieved person must reside near the property, that is, in “sight or sound range of the property that is the subject of his complaint.” *Id.* at 86.

As outlined in the County’s motion, the Board notes that courts have found that property owners who resided approximately three-quarters of a mile and approximately one-quarter of a mile away from a property for which they had filed a complaint did not satisfy the nearby standard. *Marcus v. Montgomery County Council*, 235 Md. 535 (1964). Therefore, the Board finds that the Appellants, who reside approximately 2.9 and 2.1 miles from the Property, do not reside nearby to the Property and do not have an interest different than that of the general public. Accordingly, the Board finds that the Appellants lack standing to appeal the issuance of Demolition Permit No. 1036767, and the Board does not need to consider any other issues raised by the Appellants in this case.

6. The County’s Motion to Dismiss or for Summary Disposition in Case A-6859 is granted, and the appeal in Case A-6859 is consequently **DISMISSED**.

On a motion by Chair John H. Pentecost, seconded by Vice Chair Richard Melnick, with Members Alan Sternstein and Amit K. Sharma in agreement and Member Caryn Hines necessarily absent, the Board voted 4 to 0 to grant the County’s Motion to Dismiss or for Summary Disposition and to dismiss the administrative appeal.

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 18th day of June, 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).

