



FREDERICK COUNTY GOVERNMENT

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MEMORANDUM

To: Frederick County Board of Appeals
From: Kathy L. Mitchell, Senior Assistant County Attorney
Date: November 7, 2022
Re: B-22- 31 – Enclave at Carrollton Manor – Preliminary Plan

This Memorandum is submitted on behalf of the Division of Planning and Permitting in connection with Appeal B-22-31:

BACKGROUND/FACTS

This appeal arises out of a development application for the Enclave at Carrollton Manor, which was heard and decided by the Frederick County Planning Commission (“Commission”) on May 11, 2022. The applicant, Becker Building Company, LLC, requested preliminary subdivision plan approval for 39 single-family lots on a 10.16 acre site (the “Property”) in Frederick County. At the May 11, 2022 meeting, the Planning Commission granted conditional approval of the preliminary subdivision plan, with modifications and conditions as listed in the staff report.

On June 10, 2022, the Appellants, who are mainly neighbors of the Property, noted an appeal to the Circuit Court for Frederick County, Maryland by filing a Petition for Judicial Review under Maryland Rule 7-201. This appeal was filed in error, since there is no statute authorizing or permitting the Circuit Court to review an action of the Planning Commission directly; the appeal must first be presented to the Board of Appeals. On July 28, 2022, the

County filed a Motion to Dismiss the appeal, which was granted by the Court on August 22, 2022. See Exhibit A, which is attached.

Section 1-16-29 of the Frederick County Code, which is titled “Appeals”, provides direction as to the proper order of filing appeals of Planning Commission actions. It states: “Any person aggrieved by any action of the Planning Commission pursuant to this chapter [the Subdivision Regulations] may appeal to the Frederick County Board of Appeals within 30 days after the Planning Commission action.” This section goes on to provide that the subsequent Board of Appeals’ decision can be appealed to the Circuit Court, and that the decision of the Circuit Court can be appealed to the Maryland Court of Special Appeals.

On or about August 2, 2022, the Petitioners attempted to file an appeal of the May 11, 2022 Planning Commission action with the Frederick County Board of Appeals (“Board” or “BOA”). The County Director of Development Review rejected the appeal, since it was filed long past the deadline, which is “30 days after the Planning Commission action” per §1-16-29. The action being appealed occurred on May 11, 2022; therefore, the appeal window for that action closed on June 10, 2022.

On September 1, 2022, the Appellants filed the appeal that is before this Board tonight, claiming that their late-filed appeal should not have been rejected.

ARGUMENT

1. The appeal to the Board of Appeals was filed almost 60 days late and was properly denied by County staff.

As discussed above, §1-16-29 of the County Code clearly states that an appeal of a Planning Commission action must be filed with the Board of Appeals within 30 days after that

action has been taken. It is unfortunate that the Appellants chose the wrong venue for filing their appeal, and if the Appellants had filed their Circuit Court appeal before the 30th day after the Planning Commission action, staff could possibly have directed the Appellants to the proper venue. But filing in the proper venue is a threshold jurisdictional issue and failure to do so means that this Board has no jurisdiction over the appeal. See Queen Anne’s Conserv., Inc. v. County Commissioners, 383 Md. 306 (2004). (The Conservation Association failed to follow the statutory procedure for appeals of administrative decisions to the Board of Appeals for Queen Anne's County, and having missed the deadline for an administrative appeal, could not now perfect one.)

2. The May 11, 2022 decision was the “Planning Commission action” to which the 30-day filing deadline applied.

The Appellants admit, on page 1 of their August 15, 2022 Letter, which was included with their notice of appeal, that a “decision [was] made by the Planning Commission at its May 11, 2022 meeting”.¹ The fact that the decision was a conditional approval is not relevant, nor is all of the development history included with their filing in this appeal. The Planning Commission’s conditional approval of the preliminary plan on May 11, 2022 was the Commission’s final action on the application, and any appeal of that action needed to be filed with the Board by June 10, 2022.

Virtually every Planning Commission approval of a subdivision or site plan is conditional, because there are almost always certain technical requirements that need to be

¹ In addition, since they filed with the Circuit Court on June 10, 2022, the Appellants demonstrated that they clearly understood that June 10, 2022 was the last day for filing an appeal.

submitted to staff and approved at staff level. This is the standard procedure in Frederick County. The Planning Commission, does not make any further decisions on the preliminary plan.

This process has been in place in Frederick County for decades, which is one of the reasons why the Code sets the appeal period from the date of “Planning Commission action”, rather than from the date of final approval (signature) of the preliminary plan. The conditional approval takes place at a public meeting, making it easy for anyone aggrieved by the decision to determine when the appeal period starts.

The Appellants here have confused Planning Commission “action”, in §1-16-29, and “final approval”, under §1-16-71(M). The Commission’s decision at the public meeting is the last action they took in connection with the preliminary plan. Satisfaction of the conditions of approval is determined by County staff.

3. There is Board of Appeals’ precedent supporting rejection of this appeal.

On November 19, 2014, the Planning Commission conditionally approved a preliminary plan. On February 18, 2015, the appellants in that case (mainly neighbors of the project who had spoken against it during the Planning Commission meeting) filed an appeal to the Board of Appeals. The Zoning Administrator rejected the appeal, explaining that the appeal was filed 90 days (instead of 30 days) after the Planning Commission action. As in this case, the appellants filed an appeal of the Zoning Administrator’s rejection of their appeal, arguing that the Planning Commission’s November 19, 2014 decision did not start the 30-day time clock for an appeal.

The 2015 appeal was heard as Case No. B-15-14, and the Board of Appeals upheld the decision of the Zoning Administrator. The Board of Appeals rejected the appellants’ arguments

and determined that the 30-day appeal period for the Planning Commission action started on the date of the public meeting in which the Planning Commission voted and announced their decision. The Board held that, since the Planning Commission action occurred on November 19, 2014, the 30-day appeal window closed on December 18, 2014. See the Board's Findings and Decisions for Case No. B-15-14, which is attached as Exhibit B.

CONCLUSION

This case is really very simple. The Planning Commission's action took place on May 11, 2022. The deadline for filing an appeal with the Board of Appeals was June 10, 2022. The Appellants attempted to file an appeal with the BOA on August 2, 2022. The appeal was properly rejected by the Director of Development Review, because the Board has no jurisdiction over an appeal filed after the 30-day deadline. In addition, the Board of Appeals previously upheld the rejection of a late-filed appeal under very similar circumstances, so there is precedent for finding no error in rejection of this appeal.

**CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND**

100 West Patrick Street

Frederick, Maryland 21701

Clerk of the Court: 301-600-1976 Assignment Office: 301-600-2015

Case Number:**C-10-CV-22-000339****Other Reference Numbers:****IN THE MATTER OF RYAN CIANCI ET AL.****ORDER OF COURT**

Upon consideration of the pleadings filed in this case, it is by this Court,

19th of August, 2022

ORDERED that the the Motion to Dismiss and **NO** Response filed, is:

- ☒ GRANTED
☐ DENIED
☐ MOOT
☐ Shall be heard with the hearing already set for
☐ to be set for a hearing and a notice be sent to all parties by the Assignment Office

☐

08/19/2022 3:16:53 PM

Date

Judge, Circuit Court for Frederick County Maryland

Entered: Clerk, Circuit Court for
Frederick County, MD
August 22, 2022

**IN MATTER OF:
RALE, Inc. represented by
Michele Rosenfeld, LLC**

**Before the Board of Appeals
for Frederick County MD
Case No. B-15-14**

* * * * *

FINDINGS AND DECISIONS

This matter comes before the Board on the application of RALE, Inc., as represented by Michele Rosenfeld, LLC (hereinafter "Appellant") for an Administrative Appeal to the Board of Appeals (Board) as provided for in the Frederick County Zoning Ordinance (hereinafter "Ordinance"). The Appellant is appealing the Zoning Administrator's March 30, 2015 decision letter rejecting an Appeal of Administrative Error filed by the Appellant in the matter of the Frederick County Planning Commission's (FCPC) conditional approval of the Combined Preliminary Subdivision and Site Plan for Monrovia Town Center PUD. (Tax Map 88, Parcels 28, 127, 146, and containing approximately 457 acres). The Zoning Administrator's letter indicated the Appellant's appeal could not be accepted, as it was not filed within 30 days of the Planning Commission decision.

The Board finds that Assistant County Attorney Kathy Mitchell testified that Monrovia Town Center Combined Preliminary Subdivision and Site Plan was approved by the FCPC on November 19, 2014, and a subsequent letter of approval, representing the written decision was issued on November 26, 2014. The Appellant's filed an Appeal on February 18, 2015 to the Board of Appeals regarding the FCPC decision of November 19, 2014.

The Board finds that Assistant County Attorney Kathy Mitchell testified that this Appeal was filed nearly 90 days after the FCPC decision.

The Board finds that Zoning Ordinance Section 1-19-3.230(A) states "Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the jurisdiction affected by any decisions of the administrative officer. Such appeal shall be taken within 30 days after the date of the action of decision being appealed, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the ground thereof"...


The Applicant is bound by all exhibits and testimony.

The Board conducted an onsite inspection of the Properties June 17, 2015.


The Board held a public hearing on the Appellant's Appeal on June 25, 2015.

On a motion by Mr. Duke, and seconded by Mr. Conard, the Board of Appeals was not persuaded that the Zoning Administrator committed any Administrative Error, and that the Appellant's Appeal filed February 18, 2015 was not timely filed within 30 days. The Board voted on the motion (5-0) to dismiss the Appellant's Appeal to the March 30, 2015 letter issued by the Zoning Administrator.

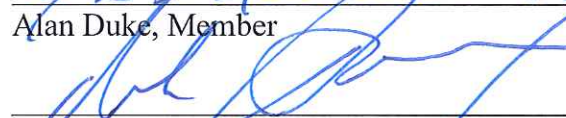
Adopted by the Board of Appeals on the 23 day of July, 2015.



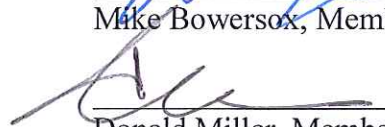
John Greenwell, Chair



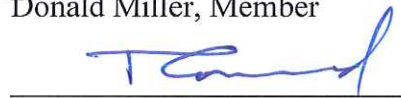
Alan Duke, Member



Mike Bowersox, Member



Donald Miller, Member



Thomas Conard, Alternate-Member