

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

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CASE NO. A-5854

APPEAL OF SUN YOUNG YU

OPINION OF THE BOARD
(Hearing held March 5, 2003)
(Effective date of Opinion: May 23, 2003)

Case No. A-5854 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Permitting Services (DPS) in its issuance of building permit number 289824, dated December 12, 2002, to alter a building at 9315 Georgia Avenue, Silver Spring, Maryland.

A public hearing was held pursuant to Section 59-A-4.3 of the Zoning Ordinance. Assistant County Attorney, Malcolm Spicer, represented Montgomery County, Maryland. Steve Elmendorf, Esq., Linowes and Blocher, appeared on behalf of the permit holder, Randall Yazhary. David Gardner, Esq. appeared on behalf of the appellant, Sun Young Yu, and Mitchell Herman appeared on behalf of the Woodside Forest Civic Association.

Decision of the Board: Administrative appeal **dismissed**

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. Mr. Yazhary filed an application with DPS to “alter/renovate” an existing building at 9315 Georgia Avenue, Silver Spring, Maryland, located in the C-2 zone. The principle use at the property is a retail dry cleaning business.
2. DPS granted the application and issued a building permit to Mr. Yazhary on or about December 12, 2002, allowing him to alter the building.
3. Sun Young Yu filed an appeal with this Board on or about January 10, 2003, challenging DPS’s issuance of the building permit. Mr. Yu operates

a dry cleaners business at 12009 Georgia Avenue, Silver Spring, Maryland, about three miles away from the subject property.

4. Counsel for Mr. Yazhary made a preliminary motion to dismiss the appeal, asserting that the appellant lacked standing to appeal to this Board. Mr. Yazhary contends, and the appellant concedes, that the sole basis for the appeal is that the appellant's business is in economic competition with Mr. Yazhary's business. Mr. Yazhary claims that appellant lacks standing before this Board under the Zoning Ordinance and applicable Maryland case law.

CONCLUSIONS OF LAW

1. The Board agrees with Mr. Yazhary. Section 59-A-4.3(a) of the Zoning Ordinance authorizes appeals to the Board by any person "allegedly aggrieved by the grant or refusal of a building. . . permit". Section 8-23(a) of the County Code also authorizes appeals to the Board by any person "aggrieved by the issuance. . .of a permit" by DPS. A review of Maryland decisional law indicates that the appellant is not "aggrieved".

2. Under *Kreatchman v. Ramsburg*, 224 Md. 209 (1960), the prevention of competition is not a proper element of zoning, and a person whose sole basis for objecting to a zoning decision on this basis is not "aggrieved". To be sure, the DPS action to grant a building permit was not a "zoning" decision. Nevertheless, the DPS action to grant the permit was appealable to this Board under the County's Zoning Ordinance. In addition, under *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137 (1967), a person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved by a zoning decision because he is not affected in a manner different from the public generally. In this case, appellant's property is three miles from the subject property. Appellant will not be affected in a zoning sense any differently than the public at large. Therefore, the Board finds that appellant has no standing to challenge the issuance of the building permit and the appeal must, therefore, be dismissed.

On a motion by Angelo Caputo, seconded by Allison I. Fultz, with Chairman Donald Spence, Jr., and Board members Donna Barron and Louise Mayer in agreement, Mr. Yazhary's motion to dismiss the appeal is **GRANTED**. Accordingly, the Board adopts 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.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of May, 2003.

Katherine Freeman
Executive Secretary to the Board

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 2-A-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.