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 Nos. A-5904, A-5905, & A-5906

APPEAL OF DAVID M. ZWERDLING

OPINION OF THE BOARD

(Hearings held October 1, 2003 and December 10, 2003)
(Effective Date of Opinion: April 23, 2004)

Case No. A-5904 is an administrative appeal filed by David M. Zwerdling, J. Michael Crye, and Kim Kaplan (the "Appellants"). The Appellants charge error on the part of the County's Department of Permitting Services ("DPS") in issuing Building Permit No. 280588, dated May 13, 2003, for the construction of a single-family dwelling on the property located at 2921 Woodstock Avenue, Silver Spring, Maryland.

Case No. A-5905 is an administrative appeal filed by the Appellants charging error on the part of DPS in issuing Right-of-Way Construction Permit No. 218230, dated May 8, 2003, for the restoration and/or repair of the public right-of-way adjacent to the properties located at 2919 and 2921 Woodstock Avenue, Silver Spring, Maryland.

Case No. A-5906 is an administrative appeal filed by the Appellants charging error on the part of DPS in issuing Building Permit No. 283962, dated May 13, 2003, for the construction of a single-family dwelling on the property located at 2919 Woodstock Avenue, Silver Spring, Maryland.

In accordance with Rule 1.7 of the Board's Rules of Procedure, the Board consolidated the three appeals. 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 public hearings on the appeals on October 1, 2003 and December 10, 2003. Norman G. Knopf, Esquire, represented the Appellants. Assistant County Attorney Malcolm Spicer represented DPS. Stacy Plotkin Silber, Esquire, represented Crane Homes, LLC, and Peter and Kathleen Gerard, who intervened.

Decision of the Board: Administrative appeal **denied in part and granted in part**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The two properties involved in this appeal, known as 2919 and 2921 Woodstock Avenue in Silver Spring, are adjacent parcels identified as Lots 9 and 12, respectively, in Block 6 of the Forest Glen Park subdivision. The two lots are owned by Peter and Kathleen Gerard (the "Owners").

2. The two subject lots are bordered on the north by Lots 10 and 11, each improved with a single-family dwelling. The subject lots are bordered on the south by the right-of-way of Wilton Avenue, an unimproved street. This "paper street" also borders the west side of the two westernmost lots, Lots 11 and 12. Lots 9 and 10 are bordered on the east by two other residential lots, Lot 8 and 5, respectively. All of these lots have vehicular access to Woodstock Avenue, which is located approximately 180 feet to the east of Lot 9, through a 10-foot wide, paved, private common driveway that runs along the northern boundary of Lots 9 and 12.

3. The original subdivision plat for the properties (Exhibit 9(d)), which was recorded in 1877, shows Lot 9 as being 8,851 square feet in area and Lot 12 as being 8,836 square feet in area. Lots 9 and 12 are identified on the County's zoning maps as being located in the R-90 zone.

4. On or about June 19, 2002, Crane Homes, LLC ("Crane"), on behalf of the Owners, submitted an application for a building permit to build a single-family home on Lot 12. On or about July 30, 2002, Crane did likewise for Lot 9. On May 13, 2003, DPS issued Permit No. 280588 for Lot 12 and Permit No. 283962 for Lot 9.

5. On or about July 30, 2002, Crane, on behalf of the Owners, submitted an application for a permit to gain access to Lots 9 and 12 through the existing driveway apron of Woodstock Avenue. DPS issued Right-of-Way Construction Permit No. 218230 on May 8, 2003.

6. Delvin Daniels, Permitting Services Specialist for DPS, testified that he reviewed the building permit applications and accompanying plans. Based upon the areas of the lots shown on the 1877 subdivision plat, Mr. Daniels determined that the lots were less than 9,000 square feet in area and, therefore, he applied the zoning standards of the 1928 Montgomery County Zoning Ordinance. He stated that, under that law, the lots were subject to a 7-foot side yard setback, a

20-foot rear yard setback, and a 25-foot front yard setback. Mr. Daniels testified that he determined that the height of the building proposed for Lot 12, measured from the proposed grade at the front of the building to the midpoint of the roof, will be 26.5 feet. The lot coverage of the dwelling on Lot 12 will be 20%. The height of the building proposed for Lot 9 will be 27 feet and the lot coverage will be 23%. Both proposed dwellings are two-story structures that will be oriented to face north.

Mr. Daniels further testified that, in his opinion, by virtue of the 1887 subdivision plat, Wilton Avenue is a "dedicated" although unpaved County right-of-way. The front yard setbacks were measured from the Wilton Avenue right-of-way, although the homes would be facing the opposite direction.

7. Malcolm Shaneman, Supervisor of the Development Review Division of the Maryland-National Park and Planning Commission, testified that his division determines whether a building permit application involves a recorded lot and whether that lot fronts or abuts a road dedicated for public use. He does not consider issues relating to access to a lot as part of the building permit review process.

8. Joseph Cheung, Manager of the Right-of-way Permitting and Plan Review Section of DPS, testified that Right-of-Way Construction Permit No. 218230 was issued after his section determined that Lots 9 and 12 have legal access to Woodstock Avenue by virtue of a Declaration of Easement governing the private driveway (Exhibit 14). The driveway was determined to meet the minimum width of 10 feet and had adequate sight distance onto Woodstock Avenue. Mr. Cheung testified that his section does not apply Chapter 50 of the County Code to right-of-way permits because that chapter applies only to new subdivisions. He also stated that in his opinion a performance bond to build Wilton Avenue was not required under Section 8-26(j) of the County Code because a subdivision was not involved and because he saw no need to build Wilton Avenue since the lots have access to Woodstock Avenue.

9. Dr. David Zwerdling, Sheila Crye, and Kim Kaplan testified that they live on the other properties bordering on and using the driveway easement. They stated that the driveway is very narrow, turns sharply in two places, and slopes down steeply at the end. There is no turnaround area for the driveway. Some of the homes and structures along the drive are situated very close to the easement. Mail trucks and garbage trucks do not use the driveway. Dr. Zwerdling testified that to his knowledge there have been three occasions when an ambulance has been called to one of the houses on the easement, and in each instance the ambulance stopped at the entrance to the driveway and the emergency personnel walked to the residence. Ms. Kaplan testified that she recalls an occasion when an emergency rescue truck did come down the driveway and took 30 minutes to back out of it, running over her garden. She also stated that when her house was built, the construction vehicles used the

right-of-way of Wilton Avenue. The witnesses presented photographs of the condition of the driveway (Exhibits 17A-Z).

10. Martha Anne Teitlebaum, Dr. Zwerdling's wife and a statistician, testified that she measured the area of Lot 12 based upon the dimensions shown on the building permit site plan (Exhibit 9C) and determined that it is 9,271 square feet. She used the same methodology to measure the area of Lot 12 based upon the dimensions shown on the 1887 subdivision plat and determined that it is 8,826 square feet, or 10 square feet less than is depicted on the plat - a difference of 1/10th of a percent. She stated that the site plan shows the east side lot line of Lot 12 as being 84.87 feet long, while the subdivision plat shows it as being 81 feet long. Also, the site plan shows the west side lot line as being 57.85 feet long, while the subdivision plat shows it as being 55 feet long. She estimated the difference to account for at least 300 square feet of area that is not depicted on the site plan.

11. At the December 10, 2003 hearing, Eric Day, a professional land surveyor and an expert in land surveying, testified that the original site plan submitted with the building permit applications was in error. He stated that he reviewed the measurements given on the 1887 subdivision plan and determined that the lots in question do not close by mathematical calculation. He stated that such discrepancies are typically found in older subdivisions. He prepared and submitted a boundary survey indicating an approximate 3'-5' wide gap between the northern boundaries of Lots 9 and 12 and the southern boundaries of Lots 10 and 11 (Exhibit 32(d)). Mr. Day testified that the original subdivider likely did not intend to leave a gap of such dimensions. He stated that the gap is in effect additional land owned by one of the four lot owners. In preparing the boundary survey, Mr. Day stated that he attempted to harmonize the survey with the subdivision plat. He used the field reference markers that were most in harmony with the plat and that appeared to be undisturbed. Based upon this revised survey, the area of Lot 9 is 8,892 square feet and the area of Lot 12 is 8,945 square feet.

12. Mr. Daniels testified that, subsequent to the October 1 hearing, the Owners submitted to him a revised site plan for Lots 9 and 12 based upon Mr. Day's boundary survey. Mr. Daniels reviewed the revised site plan and determined that it complied with all applicable zoning requirements and approved the site plan (Exhibit 33(b)).

13. Ms. Kaplan testified that a water connection runs from Wilton Avenue between lots 9 and 12 to her property (Lot 10). She stated that the utility company has dug extensively in the areas where Mr. Day's survey indicates that iron pipe markers were found. She also testified that digging has occurred to create the roadbed of the common driveway and for a parking space and concrete structure on the southeast corner of Lot 11.

CONCLUSIONS OF LAW

1. Section 8-23 of the Montgomery County Code authorizes any person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of DPS to 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. Section 59-A-43(e) of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show by a preponderance of the evidence that the building permits and right-of-way construction permit were properly issued.

2. The Appellants first argue that Right-of-Way Construction Permit No. 218230 was not properly issued because the County did not give ample consideration to the substandard narrowness, curves, and dangerous conditions of the use-in-common driveway or to the effect construction vehicles would have on the condition and use of the driveway. Mr. Chueng testified that, in reviewing the application for a right-of-way construction permit, his section looked only at whether the applicant has legal access to the site, if the driveway meets minimum road width requirements, and if it has adequate sight distance at the point of access with Woodstock Avenue. Mr. Cheung's office determined, and the Appellants do not dispute, that the application met these requirements. The issue, then, is to what extent DPS should have reviewed the condition of the driveway before issuing the permit. A review of the permit itself reveals the answer.

The right-of-way construction permit (Exhibit 3, A-5905) states that it is issued for the purpose of permitting Crane to restore and/or repair the public right-of-way. More specifically, it requires that "complete repair (restoration of right-of-way) shall be made of any and all damages done to the existing improvements *in the public right-of-way* caused by construction operation on this site" (italics added). The permit requires that the work comply with the provisions of the Montgomery County Road Construction Code and the standards and specifications adopted thereunder.

We think it is clear from the language of the permit that it is limited in scope to only that work that is required to repair any damage that may be done to the right-of-way of Woodstock Avenue. It does not authorize or require any work to be done to the private driveway. There is no logical reason why DPS should review the condition of the private driveway for such a limited purpose. Moreover, we are not aware, nor have the Appellants advised us, of any provision of the County Code or regulations that requires such a review. The permit was issued under Section 49-38 of the County Code, which simply requires the applicant to submit plans for the work proposed within the public right-of-way and the payment of a permit fee. There is no dispute that these

requirements were met. Consequently, we find that DPS acted properly in issuing the right-of-way construction permit.

3. Next, the Appellants argue that DPS applied the wrong zoning standards when it approved Building Permit Nos. 280588 and 283962 because, they claim, Lots 9 and 12 exceed 9,000 square feet. This argument is predicated on Section 59-B-5.1 which provides:

> "Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded except that:
>
> (a) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance;
>
> (b) any new one-family dwelling on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgomery County Planning District must comply with the standards set forth in Section 59-B-5.3(b);
>
> (c) the maximum building height and maximum building coverage for any building or structure must comply with the current standard of the zone in which the lot is now classified. In addition to compliance with the maximum building height and the maximum building coverage standards, any building or structure constructed pursuant to a building permit issued after August 24, 1998 that conforms to the lot area and width standards of the zone in which the lot is classified must comply with the current yard requirements of the zone in which the lot is classified; and
>
> (d) an established building line setback must conform to the standards for determining the established building line in effect for the lot when construction occurs. Any building permit issued before November 23, 1997 must conform to the development standards in effect when the lot was recorded."

In the R-90 zone, the minimum lot size is 9,000 square feet. Section 59-C-1.322(a). The parties agree that under the above-quoted provision, if the two subject lots are less than 9,000 square feet in area, they are subject to the

development standards of the 1928 Zoning Ordinance; if however, they are more than 9,000 square feet in area, development must comply with the yard requirements currently in effect. The issue is therefore a factual one – what is the area of the lots?

When he initially approved the building permits for zoning compliance, Mr. Daniels relied (we think reasonably) on the 1887 subdivision plat to determine that the two lots are less than 9,000 square feet in area. The subsequent testimony of Ms. Teitlebaum and Mr. Day revealed, however, that the measurements shown on the 1887 subdivision plat are internally inconsistent. Mr. Day, a qualified expert in land surveying, demonstrated that there is a 3' to 5' "gap" of unassigned land between the northern boundaries of Lots 9 and 12 and the southern boundaries of Lots 10 and 11.

The Appellants do not dispute the existence or calculation of this gap; rather, they argue that a portion or the entire gap should be assigned to Lots 9 and 12. It is conceded that, if at least half of the gap is so assigned, the areas of Lots 9 and 12 would exceed 9,000 square feet.

The Appellants base their argument upon certain tenets of common law relating to the resolution of boundary disputes. Specifically, the Appellants cite the following principles in support of their contention:

> "The primary function of a trial court resolving a boundary dispute is to ascertain the intent of the parties at the time of the original subdivision of a tract of land. …
>
> The intention of the parties controls and is to be followed when the location of the boundary lines of the land is uncertain by reason of inconsistent or conflicting descriptive calls in the conveyance which cannot be explained by any competent evidence. …
>
> If after a tract of land has been subdivided into parts or lots, and title thereto has become vested in different persons, it is discovered that the original tract contained either more or less than the area assigned to it in a plan or prior deed, the general rule is that the excess should be divided among, or the deficiency borne by, all of the subdivided tracts or lots in proportion to their areas. …
>
> It is presumed that a party granting land does not intend to retain a narrow strip between the land sold and his boundary line in the absence of express provision to that effect in the deed, especially where the strip is so narrow as to be of no practical us to the grantor." American Jurisprudence, Second Edition (Exhibit 43(a)).

The flaw, as we see it, in the Appellants' argument is that the principles of law they would have this Board (and DPS) apply to a zoning requirement are meant only to be applied by the courts in land title actions. "It is the unquestioned right and jurisdiction of the Courts to decide on the construction of grants and deeds, as well as to the description of the land which is to be transferred, . . ." Millar v Bowie, 115 Md. App. 682; 694 A.2d 509 (1997), *quoting* Carroll v. Norwood's Heirs, 5 H. & J. 155, 163 (Md. 1820). Maryland's courts have clearly instructed, however, that zoning law is not conveyancing law. "Zoning ordinances … **do not create lots**. Zoning does not create parcels of real property." Friends of the Ridge v. Baltimore Gas & Electric Company, 352 Md. 645, 650-651, 724 A.2d 34, 37 (1999) (emphasis in original). "Zoning is concerned with dimensions and uses of land or structures, not with any particular description 'lot,' 'parcel,' or 'tract' applicable to or necessary for conveyancing. Conveyancing is a separate area of law involving the transfer of property between buyers and sellers that generally is not directly connected with government regulations and restrictions on the use of property through the zoning power." Id., 352 Md. at 655.

The principles espoused by the Appellants are conveyancing rules to be followed by courts when exercising their equitable powers to determine who should be the rightful owner of real property. These determinations are the exclusive province of the courts. Neither DPS nor the Board has the authority to resolve conveyancing issues. In this case, we are persuaded by Mr. Day's testimony and evidence that a 3' to 5' gap exists. We are also convinced that this gap is a separate parcel of land distinct from Lots 9 and 12. We also agree that the ownership of this gap is unknown; likely, it is owned in some proportion by the owners of the four contiguous lots. Who owns it and to what extent is a determination that has not yet been made by any court. It is not within our purview, nor that of DPS, to determine land ownership matters. We need only determine from the evidence presented the lot areas of the subject properties.

Consequently, we decline to assign any portion of the gap to Lots 9 or 12, and find that the area of Lot 9 is 8,892 square feet and the area of Lot 12 is 8,945 square feet, as set forth on Exhibit 32(d). Because both lots are less than 9,000 square feet in area, the 1928 Zoning Ordinance standards apply. The evidence is undisputed that the revised site plan complied with all applicable zoning requirements under the 1928 law.

4. The Appellants' third argument is that DPS issued Building Permit Nos. 280588 and 283962 in violation of Section 50-20(a) of the Montgomery County Code, which provides in pertinent part:

> "(a) A building permit must not be approved for the construction of a dwelling or other structure, except structures or dwellings on a farm strictly for agricultural use, unless such

structure is to be located on a lot or parcel of land which is shown on a plat recorded in the plat books of the county, and which has access as prescribed in Sec. 50-29(a)(2)…."

Section 50-29(a)(2) provides in pertinent part:

> "Except as otherwise provided in the zoning ordinance, every lot shall abut on a street or road which has been dedicated to public use or which has acquired the status of a public road. In exceptional circumstances, the board may approve not more than two (2) lots on a private driveway or private right-of-way; provided, that proper showing is made that such access is adequate to serve the lots for emergency vehicles, for installation of public utilities, is accessible for other public services, and is not detrimental to future subdivision of adjacent lands."

Lots 9 and 12 abut the right-of-way of Wilton Avenue. The Appellants concede that Wilton Avenue is a street which has been dedicated to the public by virtue of the 1887 subdivision plat. The Appellants argue, however, that because the portion of Wilton Avenue abutting Lots 9 and 12 is unimproved, it does not provide sufficient safe and adequate access for emergency vehicles and other public services to meet the requirements of Section 50-29(a)(2). Further, they contend, because there are already at least three homes using the private driveway, no more homes may be allowed to use it.

We disagree with the Appellants' first premise, and therefore reject their argument. The language of Section 50-29(a)(2) states clearly and unambiguously that the abutting street or road must be "dedicated to public use" or have "acquired the status of a public road." It does not require that the abutting street or road have been actually constructed. Indeed, had the legislature intended that the abutting street be an improved one, it could have simply required a "public street or road." Instead, it carefully chose to modify the words "street or road" to refer to one that has been "dedicated as" or has "acquired the status of" a public road. These additional phrases suggest that the legislature anticipated circumstances in which a road right-of-way may exist by plat or other legal means, but has not actually been built (i.e, a "paper street"). In enacting Section 50-29(a)(2), it clearly intended to permit lots on paper streets and, via Section 50-20(a), to permit the construction of homes on such lots.

The Appellants' reliance on the second clause of the second sentence of Section 50-29(a)(2) is misplaced. This provision requires consideration of the adequacy of access for emergency vehicles and other public services only in those instances when the Planning Board is considering allowing up to two lots on a private driveway. That is not the case here. Because Lots 9 and 12 meet the requirement of the first sentence of Section 50-29(a)(2), the adequacy of the access of Wilton Avenue (or of the private driveway) does not come into play.

We therefore conclude that DPS issued Building Permit Nos. 280588 and 283962 in compliance with of Section 50-20(a) of the Montgomery County Code.

5. The Appellants' final argument is that DPS issued Building Permit Nos. 280588 and 283962 in violation of Section 8-26(j) of the Montgomery County Code, which provides:

> "(j) *Compliance with performance bond for construction of streets before issuance of permit*. As used in this subsection, the phrase "such streets" means streets abutting the building site plus those extensions of streets necessary to meet the minimum requirements of Chapter 49.
>
> (1) No permit shall be issued for the erection of any building or structure unless the applicant shall first deliver to the County a performance bond for the construction of streets in all rights-of-way abutting the property upon which such building or structure is to be erected plus those extensions of streets necessary to meet the minimum requirements of Chapter 49 of this Code; provided, that no performance bond for the construction of streets shall be required to the extent that:
>
> a. Such streets are paved with a hard surface and have been accepted for maintenance or are being maintained by the County; or
>
> b. Construction of such streets has been authorized by the County Council on a front foot assessment basis.
>
> (2) The performance bond to be delivered shall be that bond required by Section 49-40 of this Code, and such bond shall be in an amount to cover the entire cost of construction of such streets.
>
> (3) If the applicant owns, or is obligated by contract to develop, all or substantially all of the property abutting the streets, a bond in an amount to cover the cost of grading of the streets is sufficient to obtain a building permit. When the applicant does not own, and is not obligated by contract to develop, all or substantially all of the property abutting the streets, the applicant may demand that the Director of the Department of Public Works and Transportation present to the County Council the applicant's proposal to construct the streets on a front-foot-assessment basis. If the County Council refuses to authorize the construction of the

streets on a front-foot-assessment basis, the Department must not require the applicant to post a performance bond.

(4) Whenever the applicant must post a performance bond to cover the entire cost of construction, the applicant simultaneously must apply to the Department of Permitting Services for a permit to construct the streets. If the bond covers only grading, the applicant simultaneously must apply for a permit to grade the streets.

(5) If the construction or grading guaranteed by such bond is not begun and completed within a period of one (1) year after the delivery of such bond, the County may proceed to cause such work to be done, in accordance with the provisions of Chapter 49 of this Code and hold the principal or surety on such bond or both liable for the cost thereof."

The Appellants argue that Section 8-26(j) was violated because no bond was posted. DPS concedes that no bond was posted, but argues that one is not necessary because the lots have access to the private driveway.

We agree with the Appellants that DPS failed to follow the requirements of Section 8-26(j) by not requiring the Owners to post a performance bond for the construction of the portions of Wilton Avenue abutting Lots 9 and 12. The language of Section 8-26(j) is clear and unequivocal – no permit may be issued for the erection of any building or structure unless the applicant has first delivered to the County a performance bond for the construction of streets in all rights-of-way abutting the property upon which such building or structure is to be erected. There are only two exceptions to this rule – (1) if the road has already been built and is maintained by the County, or (2) the Council has authorized construction of the road on a front foot assessment basis.

There is no exception written in Section 8-26(j) to allow the issuance of a building permit for a building on a lot that has alternative access to a private driveway. When the legislature has expressly enumerated certain exceptions to a principle, others should not be inserted by implication. Taylor v. Friedman, 344 Md. 572, 689 A.2d 59 (1997); State v. Brinkley, 102 Md. App. 774, 651 A.2d 465 (1995); Ferrero Construction Co. v. Dennis Rourke Corp., 311 Md. 560, 536 A.2d 1137 (1988); Miller v. Forty West Builders, Inc., 62 Md. App. 320, 489 A.2d 76 (1985). We find no reason to read such an exception into this law. To the contrary, we believe Section 8-26(j) complements Sections 50-20(a) and 50-29(a)(2), which require homes to be built on lots that abut dedicated roads. Where, as here, a road is dedicated but unimproved, Section 8-26(j) requires that the owner make provision for the financing of construction of the road in order to provide adequate access to the lot for emergency vehicles, public utilities and other public services.

Consequently, we find that DPS' failure to require the Owners to submit a performance bond violated Section 8-26(j).

5. Pursuant to Section 8-23(b), the Board is authorized to affirm, modify, or reverse the order or decision of the Department. With respect to Case No. A-5905, for the reasons stated in Conclusion No. 2, we will affirm DPS' decision to issue Right-of-Way Construction Permit No. 218230. The appeal in Case A-5905 is therefore **DENIED**.

6. With respect to Case Nos. A-5904 and A-5906, we find that Building Permit Nos. 280588 and 283962 were not properly issued because, for the reasons stated in Conclusion No. 5, DPS failed to require the Owners to submit a performance bond in accordance with Section 8-26(j). Because we find that the permits were otherwise properly issued, we will **modify** DPS' decision as follows:

> Building Permit Nos. 280588 and 283962 are valid and remain in full force and effect subject to the following condition:
>
> The permit holders must comply with Section 8-26(j) of the Montgomery County Code before commencing construction under the permits.

On a motion by Member Allison Ishihara Fultz, seconded by Member Angelo M. Caputo, and Chairman Donald H. Spence in agreement, with Vice-Chair Donna L. Barron and Member Louise L. Mayer necessarily absent, the Board voted 3 to 0 to deny the appeal in Case No. A-5905 and grant the appeal in Case Nos. 5904 and 5906 and 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.

_____

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 April, 2004.

_____
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 on accordance with the Maryland Rules of Procedure.