

IN THE MATTER OF
TTV Properties III, LLC
Building Permit No. B919358

10401 York Road
Cockeysville, MD 21030

3rd Councilmanic District
8th Election District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-17-007

* * * * *

ORDER OF DISMISSAL

On September 1, 2016 an appeal was filed by Rebecca Gerber, James and Lisa McBean, Mary Slafkosky, Christopher Baumann, and John and Amy Spencer, (the “Appellants”), relative to a building permit (Permit No. B919358) issued to TTV Properties III, LLC by the Baltimore County Department of Permits, Approvals and Inspections on August 4, 2016.

A Motion to Dismiss was filed Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC on behalf of TTV Properties III, LLC. J. Carroll Holzer, Esquire, representing the Appellants, filed a Response to the Motion to Dismiss. A hearing was held before this Board on October 25, 2016, followed by a public deliberation.

Baltimore County Code (“BCC”) §35-2-302(e)(1), entitled “Appeal,” states as follows:

(e) Appeal.

(1) **An applicant** for a building permit **may appeal** to the County Board of Appeals **for review of the denial, revocation, suspension, annulment, or modification of a permit** by the Building Engineer by:

- (i) Filing a written notice of appeal to the county Board of Appeals not more than 30 days after the **denial, revocation, suspension, annulment, or modification of the permit** by the Building Engineer;
- (ii) Serving a copy of the notice of appeal on the County Attorney; and
- (iii) Setting forth in the notice of appeal the grounds for the appeal in clear and concise terms.

(2) Upon payment by the applicant of all costs for preparation, the Department of Permits, Approvals and Inspections shall promptly certify and send to the Board of Appeals the complete file of the record in the case.

(Emphasis added.)

In the Subsection immediately preceding the right to appeal, the language of BCC, §35-2-302(d)(2) indicates that, in the event the Building Engineer denies, revokes, suspends annuls or modifies the permit, it is only “the permit applicant” who receives the reasons for the denial in writing.

Pursuant to BCC 35-2-302(e)(1), the right of appeal was granted only to the “Applicant” upon the “denial, revocation, suspension, annulment, or modification of a permit by the Building Engineer.” It is evident from a clear reading of the statute that the Baltimore County Council, while specifically providing a right of appeal to the Applicant from the “denial, revocation, suspension, annulment, or modification of a permit,” did not provide for any right of appeal relative to the granting of a building permit, and therefore, Appellants have not been granted the right to appeal the action of the Building Engineer in this matter.

At least since 1997, this Board has consistently ruled that an appeal by any person other than the “applicant” is dismissed. Indeed, in each of the following cases before this Board, an appeal by anyone other than the “applicant” was dismissed: *In the Matter of Property of Peter Kahl*, CBA-97-115; *In the Matter of Albert Bierman*, CBA-02-141; *In the Matter of Smyth Property, Odessa Development*, Case No. CBA-04-143; *In the Matter of Bellevale Farm LTD., Robert Prigel*, CBA-08-112; *In the Matter of William Hach and Ann Hach*, Case No.: CBA-09-005 and *In the Matter of GSS Properties, LLC*, Case Nos CBA-14-001 and 002.

To be sure, this Board reviewed the legislative history of BCC, §35-2-302. In reviewing the 1968, 1978 and 1988 BCC, the term “applicant” was a defined term in the 1988 BCC as follows:

Sec. 7-36(a)(3)

In the matter of: TTV Properties III, LLC – Legal Owners
Rebecca Gerber, et al. – Appellants
Case No: CBA-17-007

Whenever the building engineer shall deny, revoke, suspend, annul, or modify any permit, he shall certify his reasons therefor in writing to the applicant. For the purposes of this section, “applicant” means any person who is an owner, contract purchaser, or the legally authorized representative of either requesting approval of the aforementioned permit.

With the passage of Bill 25-01, which Bill made substantive and renumbering changes to then Section 7-36, the definition of “applicant” was deleted and replaced with the phrase “permit applicant” in the current BCC§35-2-302(d)(2) as above. More importantly, the County Council explained its reasoning for deleting the definition of “applicant” in the ‘Revisor’s Note’ as follows:

REVISOR’S NOTE:

* * * *

In subsection (d) of this section, the former definition of the term “applicant” is deleted as unnecessary. First, the term “applicant” has a very clear and unambiguous meaning. Second, in this context, the applicant can only be the person who filed the application, therefore it is not necessary to list the types of individuals who could have filed the application.

(Bill 25-01, pp. 23-25).

In the Board’s view, the legislative history supports the Board’s interpretation of BCC, §35-2-302 in that only the “applicant” (here, TTV Properties III, LLC) can appeal the denial of the building permit. The County Council was clear when the term “applicant” was defined in the 1988 BCC followed by the Revisor’s Note in Bill 25-01 which explained why it was no longer necessary to define who the “applicant” was, as that term, using the County Council’s words, is both ‘clear’ and ‘unambiguous.’ If the County Council intended that someone other than the “applicant” could appeal, it could have provided clarification in Bill 25-01.

In addition to Bill 25-01, the County Council passed Bills both before and after the passage of Bill 25-01, namely: Bill 34-95 (1995); Bill 39-97 (1997); Bill 76-03 (2003); Bill 122-10 (2010) which made changes to other aspects of ‘Permits’ and ‘Building and Building Regulations’ which

sections are not applicable to the specific issue in this case. In all, if the term “applicant” was unclear or an error, the Council had 4 additional opportunities to change the identity of the person who could appeal a building permit but declined to do so. This Board finds the existence of these other Bills further supports its interpretation of BCC §35-2-302.

The cases cited by the Appellants are not dispositive of the issue before us. *Hope v. Baltimore County*, 288 Md. 656 (1980) involved the appeal of a subdivision plat. The Court of Appeals held that BCC (1968) §22-38 which required a person aggrieved by an action of the Planning Board on final plats of subdivision to appeal directly to the Circuit Court was void. The Court found that the right to appeal was directly to this Board.

In *UPS v. People’s Counsel*, 336 Md. 569 (1994) the issue was whether a letter written by a Baltimore County official constituted an ‘appealable event.’ The Court of Appeals held that the letter did not meet the definition of an ‘administrative order or approval’ and therefore could not be appealed to this Board. The Court held that the ‘appealable event’ was the issuance of a building permit. The Appellants here argue that the *UPS* holding takes precedent over BCC, §35-2-302 because Footnote 5 suggests that appeals could have been filed from the date of the building permit approval. (*Id.* at 591).

In reviewing this argument, this Board is not convinced that the Court of Appeals in *UPS* intended, by Footnote 5, to address whether any person, other than the building permit applicant, has the right to appeal. Indeed, we do not find support for the Appellants’ cause in *UPS* particularly in light of Footnote 2 which highlighted that the 1988 BCC was applicable in 1994. As previously addressed, the 1988 BCC defined “applicant” and therefore, the Court of Appeals would have had no reason to address the issue presented here.

CONCLUSION

Accordingly, this Board, will dismiss the appeal filed by Rebecca Gerber, James and Lisa McBean, Mary Slafkosky, Christopher Baumann, and John and Amy Spencer, Appellants/Protestants, in the above-captioned matter on the grounds that only the “applicant” has been given the right to appeal from the “denial, revocation, suspension, annulment, or modification of a permit by the Building Engineer,” pursuant to BCC§ 35-2-302(e)(1), entitled “*Appeal*,” and none of the Appellants/Protestants in this matter are the “Applicant.”

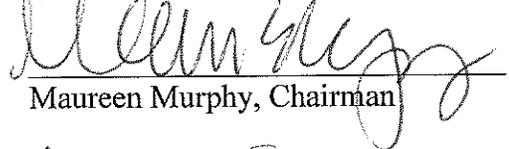
ORDER

IT IS, THEREFORE, THIS 7th day of November, 2016 by the Board of Appeals of Baltimore County;

ORDERED that the appeal filed in Case No: CBA-17-007 by Appellants/Protestants, Rebecca Gerber, James and Lisa McBean, Mary Slafkosky, Christopher Baumann, and John and Amy Spencer, from the issuance of Building Permit No: B919358 be and the same is hereby **DISMISSED** for the reasons stated herein.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen Murphy, Chairman


Meryl W. Rosen


Andrew M. Belt



Board of Appeals of Baltimore County

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November 7, 2016

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RE: In the Matter of: *TTV Properties III, LLC*
Case No.: CBA-17-007

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Ham".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: TTV Properties III, LLC
Benjamin Kulp/Site Resources, Inc.
Office of People's Counsel
Jan Cook, Development Manager/PAI
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

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James and Lisa McBean
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