Publication

Sun Shines on Development: No Standing for Umbrella Association, Says Court

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When can a community association oppose development? The right to appeal a decision of a local zoning body—such as one made by a department of planning and zoning, a planning board, a hearing examiner, or a board of appeals—has been litigated in Maryland's courts for decades. Approvals of rezonings, special exceptions, conditional uses, and variances, among other decisions, have resulted in contested disputes between developers, property owners, and associations. The right to maintain an appeal, known as "standing," is generally held in land use and zoning cases by a "person aggrieved" by the zoning body's decision.

As with the right to appeal, numerous appellate decisions have been dedicated to explaining who exactly is a "person aggrieved." In the leading decision on that "aggrievement" standard, *Bryniarski v. Montgomery County Bd. of Appeals*, the Court of Appeals of Maryland, the state's highest court, explained that a "person aggrieved" is "one whose personal or property rights are adversely affected by the decision" of the zoning body, and that "the decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally." 274 Md. 137, 144 (1967). In other words, one important factor in determining whether a person has standing to appeal is that the decision of the zoning body affects that person in a way different from everyone else.

In a case involving the rezoning of real property, the Court of Appeals emphasized that "proximity is the most important factor to be considered" when determining whether someone has standing. *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 82–83 (2013). In that same rezoning case, the Court of Appeals explained that there are two types of "persons" who can obtain standing under the "aggrievement standard": those who are *prima facie* (or presumptively) aggrieved and those who are "almost" *prima facie* aggrieved. A court will presume that a person is aggrieved if she owns property that is "adjoining, confronting, or nearby" to the subject property. *Id.* at 85. If, however, a protestant does not meet these criteria, he or she may still have the right to appeal if she is still close enough to the subject property "to be considered almost *prima facie* aggrieved, *and* offers 'plus factors' supporting injury." *Id.* (emphasis in original). If a person is neither *prima facie* aggrieved nor almost *prima facie* aggrieved, then that person would have suffered harm no different from that shared with the general public and therefore have no standing to appeal.

On November 1, 2017, Maryland's second-highest court, added to the standing jurisprudence by deciding a case in which the issue was whether the protestant, an "umbrella group" representing the interests of more than 30 neighborhoods, had standing to challenge two decisions by a county's board of appeals. In that case, *Greater Towson Council of Community Associations v. DMS Development*, LLC, Nos. 853 & 854, Sept. Term 2016, one of the board of appeals' decisions at issue was an approval of a planned-unit development ("PUD"). The board's second decision that was appealed allowed the PUD's developer to both avoid having to reserve part of the development for open space and avoid having to pay any fee in lieu for not meeting the applicable open space requirements.

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The lower court had determined that the umbrella group, the Greater Towson Council of Community Associations ("GTC"), had standing to challenge the board of appeals' approval of the PUD because one of the group's neighborhood associations owned a community park and garden "somewhat near" the proposed PUD. It concluded that GTC had standing even though the umbrella group, itself, did not have a nearby property interest. With respect to the decision to waive the open space requirement without charging a fee, the circuit court found that GTC had standing to appeal that decision because of its a strong interest in the developer's fee, which would have provided benefits to the umbrella group's member neighborhoods.

In reversing the lower court, the Court of Special Appeals explained that, "[t]o have standing to appeal a zoning and land use decision of the Board, a neighborhood or community association itself must be 'aggrieved' by the decision of the Board regardless of its members' property ownership." And, furthermore, an "association lacks standing to sue where it has no property interest of its own—separate and apart from that of its members." The appellate court said that "without having any property ownership of its own, GTC, was required to overcome the difficult burden alleging and proving how the Board's decision in the open space waiver case harmed GTC differently than others in the community." In rendering its decision, the Court emphasized that GTC did not own property near the PUD, GTC did not even own property in Maryland, GTC could not rely on its members' property ownership to gain standing, and there was no evidence in the record that GTC was aggrieved differently from the general public.

GTC may file a petition asking the highest court to review the Court of Special Appeals' decision, which means that the issue of GTC's standing may not be settled until the Court of Appeals decides the case.