

Circuit Court for Montgomery County
Case No. C-15-CV-23-000012

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 803

September Term, 2023

IN THE MATTER OF CANDICE CLOUGH

Wells, C.J.,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: May 15, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Candice Clough, appellant, filed an administrative appeal to the Board of Appeals for Montgomery County (“the Board”), requesting review of three agency decisions. The Board dismissed the appeal upon a finding that it lacked subject matter jurisdiction over one of the decisions, and that the appeals from the other two decisions were filed after the time to do so had expired. Clough filed a petition for judicial review in the Circuit Court for Montgomery County, which affirmed the Board’s decision. This timely appeal followed.

Clough presents eleven questions in her brief, the majority of which are outside of the scope of our review.¹ The sole issue before this Court is whether the Board erred as a

¹ Clough’s verbatim questions to us read:

1. Was the Board of Appeals (BOA) decision correct to dismiss the appeal due to lack of jurisdiction, as not timely without evidence of compliance with Notice Specifications Section 59.7.5.2.A. to 59.7.2.H ?
2. Was the [c]ircuit [c]ourt opinion and order correct to affirm the dismissal by BOA, based on “deference to agency fact finding & inferences, case precedence, opinions, orders” – without strict scrutiny of validated “substantial evidence” for compliance with Notice Specifications Section 59.7.5.2.A. to 59.7.5.2.H, and the OZAH Examiner’s report for errors?
3. Was the [c]ircuit [c]ourt opinion and order correct to state that appellants have no legal standing?
- [4.] Was the Office of Zoning and Administrative Hearings (OZAH) Examiner correct to proceed with hearings without compliance with laws regarding application completeness?
- [5.] Was the Office of Zoning and Administrative Hearings (OZAH) Examiner correct to proceed with hearings without compliance with conditional use NO HARM laws?

matter of law in determining that it lacked jurisdiction to consider Clough’s appeal and granting summary disposition on that basis. For the reasons discussed below, we conclude that the Board did not err. Accordingly, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On February 12, 2020, a conditional use application was filed with the Montgomery County Office of Zoning and Administrative Hearings (“OZAH”).² The applicant sought

[6.] Was the OZAH Examiner correct to issue the report on 7-1-2020, identifying additional property owners but NOT requiring updated application, pre-submittal notifications & meeting as required by laws?

[7.] Was the OZAH Examiner correct to issue the report on 7-1-2020, without Section 59.7.3.1.E.1.g supplemented with specific requirements as specified in Section 59.7.3.1.F.1?

[8.] Did BOA, [c]ircuit [c]ourt comply with Maryland Const. Art. 9, stating that agencies have “no power of suspending Laws or the execution of Laws” – allowing agencies to assume power not delegated by legislature?

[9.] Did County agencies, Council, BOA, [c]ircuit [c]ourt comply with Maryland Const. Art. 19; U.S. Const. amend. 5 requiring due process?

[10.] Did County agencies, Council, BOA, [c]ircuit [c]ourt comply with Maryland Const. Art. 19, Art. 23; requiring speedy trial, enabling the Owner to complete two (5) story buildings, causing extended increased HARM & health hazards to property owners, families in residential communities?

[11.] Did County agencies, Council, BOA, [c]ircuit [c]ourt comply with U.S. Const. amend. 14 requiring equal protection under the law?

² As it relates to governmental land use regulations, “conditional uses are permitted uses, so long as the conditions set out in the zoning ordinance are satisfied.” *Cnty.*

approval to develop property, identified as 19105 N. Frederick Road, Gaithersburg (“Subject Property”), for use as an independent living facility for senior citizens. Clough did not participate in the public hearing on the application. On July 1, 2020, OZAH issued a written decision approving the conditional use application.

On April 26, 2022, the Montgomery County Department of Permitting Services (“DPS”) issued a sediment control permit for the Subject Property. On May 12, 2022, DPS issued a building permit for the construction of a senior apartment building on the Subject Property.

On October 10, 2022, Clough filed an administrative appeal with the Montgomery County Board of Appeals (“the Board”). She challenged the conditional use approval as well as the issuance of the sediment control and building permits. The title owner of the Subject Property, Frederick Road Senior 4% Owner, LLC (“Frederick Road”), which had intervened in the proceedings before the Board, filed a motion for summary disposition on grounds that the appeal was untimely. Montgomery County (“the County”) filed a motion for summary disposition on the same grounds. The County further asserted that the Board had no jurisdiction to review the issuance of a sediment control permit.

The Board heard oral argument on the motions for summary disposition. Clough, proceeding as a self-represented litigant, argued against dismissal on grounds that she had

Comm’rs of Queen Anne’s Cnty. v. Soaring Vistas Properties, Inc., 121 Md. App. 140, 154 (1998), *rev’d on other grounds*, 356 Md. 660 (1999) (citing *Cromwell v. Ward*, 102 Md. App. 691, 699 n.5. (1995)).

no notice of the application for conditional use or the hearing examiner’s decision approving the application until August 2022.³ She said that the sign that had been posted on the Subject Property, which she evidently never saw, was “not adequate notice” because its location would have been difficult to see from a moving vehicle.

On December 9, 2022, the Board issued a written opinion dismissing the appeal for lack of jurisdiction. The Board reasoned that it had no authority to review the issuance of the sediment control permit, and that the time for filing an appeal from the issuance of the building permit and the approval of the conditional use application had expired. Addressing Clough’s claim of lack of notice, the Board found that “all notice requirements were met prior to the granting of” the conditional use application. The Board based that finding on an exhibit in a substantively identical administrative appeal filed by Joseph Gothard, which, the Board noted, had also been dismissed for lack of jurisdiction.⁴ The exhibit referred to by the Board is not part of the record in this appeal. The Board further found that Clough was not legally entitled to receive mailed notice of the decision approving the conditional use application or the issuance of the building permit.⁵

³ Clough claimed that her homeowner’s association and surrounding property owners she spoke to told her that they did not receive notice of the conditional use application.

⁴ Gothard appealed the Board’s action to the circuit court and then to this Court. In an unreported opinion, this Court held that the Board did not err in granting summary disposition and dismissing Gothard’s appeal based on lack of jurisdiction. *In the Matter of Joseph Gothard*, No. 169, Sept. Term 2023 (Md. App. March 6, 2024).

⁵ The Montgomery County Code (“County Code”) requires that notice of an application for conditional use, as well as notice of the hearing on the application, be sent

Clough sought judicial review in the Circuit Court for Montgomery County. Following a hearing, the court affirmed the Board’s conclusion that it lacked jurisdiction to review the decisions at issue. On the issue of notice, the court agreed with the Board’s conclusion that Clough was not entitled to notice at any stage of the process that resulted in the approval of the conditional use application because she was not an “abutting or confronting property owner[,]” and she had not participated in the public hearing. The court further found that the Montgomery County Code (“County Code”) does not require DPS or permit holders to notify surrounding property owners of the issuance of a building permit. This timely appeal followed.⁶

STANDARD OF REVIEW

In reviewing a circuit court decision on appeal from a decision of an administrative agency, such as a county board of appeals, this court “looks through the circuit court’s . . . decision[], although applying the same standards of review, and evaluates the

to all “abutting and confronting property owners[.]” County Code secs. 59.7.5.2.D.1. and 59.7.5.2.E.1. It was undisputed that Clough’s property did not “abut” or “confront” the Subject Property.

Notice of the hearing examiner’s report and decision must be issued to the Board, the applicant, and “all parties of record[.]” County Code sec. 59.7.3.1.F.1.b.

⁶ Although Clough’s brief was submitted on behalf of herself as well as two other individuals, Danilo Molieri and Anabelle Molieri, Clough is the only appellant in the above-captioned case as she was the only one to sign the notice of appeal. *See Floyd v. Mayor and Cty. Council of Baltimore*, 179 Md. App. 394, 427 (2008) (“The failure of the *pro se* individuals listed as appellants to sign the notice of appeal disqualifies them as appellants”), *aff’d* 407 Md. 461 (2009).

decision of the agency.” *Anne Arundel Cnty. v. 808 Bestgate Realty, LLC*, 479 Md. 404, 419, *rev’d on other grounds*, 479 Md. 404 (2022) (quoting *People’s Counsel for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007)). “We review the agency’s decision in the light most favorable to it, and we presume it to be valid.” *Id.* (citing *Assateague Coastal Trust, Inc. v. Schwabach*, 448 Md. 112, 124 (2016)).

In this case, the agency decision at issue is the Board’s order granting summary disposition. Rule 3.2.2 of the Montgomery County Board of Appeals Rules of Procedure provides as follows:

Motion for summary disposition. Any party may file a motion to dismiss any issue in a case on the grounds that the application and other supporting documentation establish that there is no genuine issue of material fact to be resolved and that dismissal or other appropriate relief should be rendered as a matter of law.

“The legal standard for granting summary disposition is the same as that for granting summary judgment under Maryland Rule 2-501(a).” *Brawner Builders, Inc. v. State Highway Admin.*, 476 Md. 15, 31 (2021). “[S]ummary disposition is appropriate if ‘there is no genuine issue of material fact[,] and [a] party is entitled to prevail as a matter of law.’” *Id.* (citation omitted).

“It is well-settled that the propriety of granting a motion for summary disposition is a legal question which we review *de novo*.” *Id.* at 30-31. “When reviewing conclusions of law, . . .no . . . deference is given to the agency’s conclusion.” *808 Bestgate*, 479 Md. at 419 (citations omitted). “[A]lthough we often will give considerable weight to the agency’s experience in interpreting a statute that it administers, it is within our prerogative

to determine whether an agency’s conclusions of law are correct, and to remedy the situation if found to be wrong.” *Id.* at 419–420 (quoting *John A. v. Board of Ed. for Howard Cnty.*, 400 Md. 363, 382 (2007)).

DISCUSSION

A. The Board Did Not Err in Dismissing the Appeal From the Conditional Use Decision.

The Board’s jurisdiction is set forth in Chapter 2 of the County Code. As it relates to the issue before us, the Code provides that the Board has jurisdiction to “hear and decide each . . . conditional use appeal, unless Chapter 59 directs otherwise.” County Code sec. 2-112. Chapter 59, in turn, requires that an appeal from a decision of the hearing examiner be filed within 10 days after the issuance of the hearing examiner’s report and decision. County Code sec. 59.7.3.1.F.1.c. The Supreme Court of Maryland has “consistently held” that, where a statutory provision establishes a time for filing an appeal, and the appeal was not filed within the prescribed period, “the appellate tribunal ha[s] no authority to decide the case on its merits.” *United Parcel Service, Inc. v. People’s Couns. for Balt. Cnty.*, 336 Md. 569, 580 (1994) (citing *Dabrowski v. Dondalski*, 320 Md. 392, 397–98 (1990); *Walbert v. Walbert*, 310 Md. 657, 662 (1987)).

Here, the hearing examiner’s decision was issued on July 1, 2020, therefore, the time to appeal expired on July 11, 2020. It is undisputed that Clough filed her appeal on October 10, 2022, over two years later. Consequently, the Board lacked authority to review

the hearing examiner’s decision. The Board did not err in granting summary disposition and dismissing the appeal from the conditional use approval.⁷

Clough contends that the Board erred in granting summary disposition because, according to Clough, there was no evidence of compliance with the notice provisions applicable to a conditional use application. In response to this claim, Frederick Road asserts that the issue of notice is irrelevant to the question of the Board’s jurisdiction to hear the appeal.⁸ We agree with Frederick Road. A county board of appeals “is purely a statutory creature and may exercise only those powers expressly granted to it by law or those which can be fairly implied.” *Halle Companies v. Crofton Civic Ass’n*, 339 Md. 131, 140 (1995) (citation omitted). We find nothing in Chapter 2 or Chapter 59 of the County Code that authorizes the Board to extend the time to appeal a decision of the hearing examiner. *Accord United Parcel*, 336 Md. at 580–81 (holding that, where county code provides, without exception, that an appeal from the issuance of a building permit begins to run from a fixed date, the county board of appeals has no authority to apply the “discovery rule” to extend the time to appeal).

⁷ Although Frederick Road does not assert a standing argument, it does not appear that Clough had standing to appeal the hearing examiner’s decision in the first place, because she did not participate in the administrative hearing and therefore was not a “party of record.” See County Code, sec. 59.7.3.1.F.1.c. (“[a]ny party of record may appeal the Hearing Examiner’s decision[.]” *Accord Heard v. Cnty. Council of Prince George’s Cnty.*, 256 Md. App. 586, 614 (2022) (to have standing in a land use case, one of the two conditions that must be met is that “[the person or entity] must have been a party to the proceeding before the Board.” (question marks and citation omitted))).

⁸ No brief was filed on behalf of Montgomery County.

B. The Board Did Not Err in Dismissing the Appeal from the Issuance of the Building Permit.

Building permits are governed by Chapter 8 of the County Code. Section 8-23 of the County Code provides, in relevant part:

[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeals *within 30 days after the permit is issued*, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked.

(Emphasis added). It is undisputed that Clough’s appeal from the issuance of the building permit was filed more than thirty days after the permit was issued. Because the appeal from the issuance of the building permit was not filed within that time, the Board had no authority to consider the merits of the appeal. *See United Parcel, supra*, 336 Md. at 580. The Board did not err in dismissing it.

C. The Board Did Not Err in Dismissing the Appeal from the Issuance of the Sediment Control Permit.

The jurisdiction of the Board is governed by Section 2-112 of the County Code. Subsection (c) of that provision limits the Board’s appellate jurisdiction to appeals from decisions rendered under specific sections of the County Code. As the Board noted, sediment control permits are governed by Chapter 19 of the County Code. Section 2-112(c) of the County Code does not confer jurisdiction on the Board to hear and review appeals taken under Chapter 19. The Board did not err in dismissing the appeal from the issuance of the sediment control permit.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
IS AFFIRMED. APPELLANT TO PAY THE
COSTS.**