

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0980

September Term, 2015

NORTH COURT ASSOCIATES, LLC

v.

CITY OF FREDERICK HISTORIC
PRESERVATION COMMISSION

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 20, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are asked to determine whether the Circuit Court for Frederick County erred when it dismissed North Court Associates, LLC’s (“North Court”) petition for judicial review of the City of Frederick Historic Preservation Commission’s (“Commission”) decision to approve a demolition and replacement plan. Because the circuit court correctly found that North Court’s case was moot, we affirm.

BACKGROUND

North Court owns property adjacent to the Evangelical Reformed United Church of Christ (“Church”) in the historic district of Frederick, Maryland. In July 2014, the Church applied to the Commission for approval of two plans: (1) a plan to demolish its garage and remove some adjacent landscaping (the “Demolition Plan”) (HPC 14-583); and (2) a plan to construct a new building on the site of the old garage (“Replacement Plan”) (HPC 14-584). That same month, the Commission held a public meeting on the Demolition Plan. North Court attended the meeting and expressed its opposition to the Demolition Plan. Despite this opposition, the Commission approved the Demolition Plan on the condition that the Church could not begin demolition until the Commission approved the Replacement Plan. Then, at a public meeting held in August 2014, the Commission approved the Replacement Plan.

North Court filed a single petition for judicial review of both the Commission’s approval of the Demolition Plan and the Replacement Plan. The Commission filed a motion to dismiss the petition, arguing that North Court was required to file two separate petitions—one for the Demolition Plan and one for the Replacement Plan. The circuit court denied the motion to dismiss. Nevertheless, the parties stipulated that North Court would

file two separate memoranda, one addressing the Demolition Plan and one addressing the Replacement Plan, and would argue each case separately, but at one joint hearing. The court scheduled that joint hearing for May 2015.

In February 2015, the Church obtained a demolition permit from the City of Frederick Building Department. In March 2015, eight months after the Commission approved the Demolition Plan, North Court filed a pleading captioned “motion to stay and or for injunction,” asking the circuit court to enjoin the Church from executing the Demolition Plan until after North Court’s petition for judicial review could be resolved. For reasons not disclosed in the record, the circuit court never ruled on this motion. But, two weeks later, North Court filed a motion for a temporary restraining order, which the circuit court denied. North Court failed to appeal from the denial of the temporary restraining order. Shortly thereafter, pursuant to the Demolition Plan, the Church demolished the garage and removed the landscaping.

In May 2015, the circuit court held the scheduled hearing on North Court’s petition for judicial review. At the hearing, the Commission made a motion to dismiss the petition due to mootness because the Church had already demolished the garage and removed the landscaping. The circuit court determined that North Court’s arguments in its Demolition Plan memorandum were moot because the Church had already demolished the garage and removed the landscaping. And the circuit court determined that North Court’s arguments in its Replacement Plan memorandum were also moot because—although titled as if it concerned the Replacement Plan—it too concerned the Demolition Plan. Therefore, the

circuit court granted the Commission's motion to dismiss the entire petition for judicial review. North Court filed a motion for reconsideration, which the circuit court denied. North Court appealed to this Court.

DISCUSSION

North Court argues that the circuit court erred in dismissing its petition for judicial review of the Replacement Plan. North Court contends that: (1) the circuit court failed to resolve North Court's issues with the Replacement Plan; and (2) the Church should not be rewarded for demolishing the garage and removing the landscaping before the circuit court could review the Commission's decision. The Commission responds that the circuit court did not err because the remedy that North Court sought—preservation of the garage and landscaping—was unavailable by the time of the hearing and no exceptions to the mootness doctrine applied. We conclude that the circuit court did not err.

I. Mootness of Replacement Plan

North Court contends that review of the Replacement Plan was not moot because the circuit court left issues concerning the Replacement Plan unresolved. We, however, agree with the circuit court that the issues North Court raised about the Replacement Plan were the same issues that North Court had raised about the Demolition Plan, and therefore, because the garage had already been demolished and the landscaping had already been removed, were moot. We explain.

The issues that North Court raised about the Replacement Plan were the same issues that it had raised about the Demolition Plan. In response to the Commission's motion to

dismiss, North Court’s lawyer argued not about the Replacement Plan, but that the demolition of the landscaping was in error:

I would make the same argument I just made in the [Demolition Plan] case. ... The simple fact is that our argument is that legally [the Church] had to go in and ... file [a] demolition application for the landscaping because it was part of the [C]hurch [The Church] did not do that. The [Commission] did not address that issue. I can’t imagine what authority given those circumstances and the law that the [C]hurch has to tear down anything over there.

Although its written opposition to the motion to dismiss was not a model of clarity, it is clear there too that North Court was arguing about preventing the garage demolition and landscaping removal, both issues that North Court had already raised about the Demolition Plan.

Because North Court was only arguing about preventing demolition, all of North Court’s issues were moot because the Church had already demolished the garage and removed the landscaping. “A case is ... moot when past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.” *La Valle v. La Valle*, 432 Md. 343, 351 (2013) (quotation omitted). “Generally, a case that is moot will be dismissed without a decision on the merits of the controversy unless it presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct or the issue presented is capable of repetition, yet evading review.” *Stevenson v. Lanham*, 127 Md. App. 597, 612-13 (1999) (quotations omitted).

North Court’s arguments about demolition were moot because the demolition of the garage and removal of the landscaping “produced a situation in which . . . any judgment or decree the court might enter would be without effect.” *La Valle*, 432 Md. at 351. The circuit court could not undo the demolition and, therefore, could not provide an effective remedy. Additionally, neither of the two mootness exceptions apply because the demolition of a garage and removal of the landscaping did not present “unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct,” nor is the demolition “capable of repetition, yet evading review.” *Stevenson*, 127 Md. App. at 612 (quotations omitted). Therefore, the circuit court did not err in concluding that North Court’s entire petition for judicial review (of both the Demolition Plan and Replacement Plan) was moot.

II. Motion to Stay the Demolition

North Court also argues that, in dismissing North Court’s case as moot, the circuit court rewarded the Church for what North Court considers the Church’s bad behavior in demolishing the garage and removing the landscaping prior to the hearing on the petition. The Commission contends that North Court had the opportunity to try to stop the demolition but failed to do so. We agree with the Commission.

Filing a petition for judicial review does not automatically stay an agency decision. Md. Rule 7-205. (“The filing of a petition [for judicial review] does not stay the order or action of the administrative agency.”) Thus, from the moment of the Commission’s

approval of the Demolition Plan, the Church was free to obtain a demolition permit and demolish the garage and remove the landscaping.

A party may, however, attempt to forestall the effect of a decision by filing a motion to stay. *Id.* (“Upon motion and after hearing, the court may grant a stay, unless prohibited by law, upon the conditions as to bond or otherwise that the court considers proper.”). North Court barely managed the effort. North Court waited nearly eight months after the Commission approved the Demolition Plan before it did anything at all. During that eight months, the Church could have, but did not, commence demolition. Thereafter, North Court filed a procedurally-defective document that it captioned as a “motion to stay and or for an injunction.”¹ The circuit court never ruled on that motion. North Court waited two weeks to file a motion for a temporary restraining order to keep the Church from commencing the demolition. When the circuit court denied North Court’s motion for a temporary restraining order, North Court failed to appeal to this Court. Thus, North Court failed to take any of the steps available to it to try to prevent the Church from conducting the demolition. Throughout the entire time period, the Church was under no compulsion whatsoever *not* to demolish the garage. It was not “bad behavior” for the Church to do what it was always permitted to do.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹ North Court captioned its motion as a request for a “stay” and an “injunction,” but those two types of relief are not the same. They are governed by different Rules—Rule 7-205 for a stay and Rule 15-501 for an injunction—which require different standards.