

IN THE MATTER OF	:	BEFORE THE
PHILIP C. ROUSSEAU	:	HOWARD COUNTY
Appellant	:	BOARD OF APPEALS
vs.	:	HEARING EXAMINER
HOWARD COUNTY PLANNING BOARD & WEGMANS FOOD MARKETS, INC.	:	BA Case No. 683-D

Appellees

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DECISION AND ORDER

On September 12, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Philip C. Rousseau (Appellant). The Appellant is appealing the Howard County Planning Board's approval of Wegmans Food Market Inc.'s (Wegmans or Appellee) request for approval of a "red-line" revision to the previously approved Site Development Plan (SDP) SDP-07-131/Wegmans Food Market to allow for a height adjustment of a proposed clock tower structure.

The Appellant certified to compliance with the notice requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Traci Scudder, Esquire, represented Appellant Philip C. Rousseau. Sang Oh, Esquire, represented Appellee Wegmans Food Markets, Inc.

As a preliminary matter, the Hearing Examiner heard oral arguments on the Motion to Dismiss filed by Appellee. Upon consideration of the Motion to Dismiss and for the reasons stated below, the Hearing Examiner determined to grant the motion and dismiss the appeal.

General Background

SDP-07-131/Wegmans Food Market was presented to the Howard County Planning Board (the Planning Board) at a public meeting on January 3, 2007. The Planning Board approved the SDP at a January 31, 2008 worksession. The Planning Board subsequently approved a height adjustment for the Wegmans clock tower from the 50-foot height limitation to 92 feet, 1 inch on April 24, 2008. On April 7, 2011, the Howard County Planning Board (Planning Board) approved Wegmans Food Market Inc.'s (Wegmans) "red-line" revision to SDDP-07-131 following a public meeting.¹ The Board's red-line revision approval allowed Wegmans to adjust the height of the clock tower to 80 feet.

Appellee Wegmans is a large full service food and grocery store constructing a store at the northwest corner of Snowden River Parkway and McGaw Road in Columbia, MD on approximately 12 acres of land.

Appellant Philip C. Rousseau is a resident of Howard County who is opposed to the approved clock tower red-line revision. Appellant contends the Planning Board erred by 1) adjusting the maximum allowable height in excess of 50 feet, which will alter the character of the area in which the property is located, 2) the adjustment will be detrimental to the public

¹ A "red-line" revision is a revision to an approved Site Development Plan used when minor modifications or revisions are required for active or inactive commercial site development plans, residential site development plans,

welfare, 3) the adjustment is not needed due to practical difficulties or necessary hardships, arising from strict compliance with the Final Development Plan, and 4) the adjustment does not result in better design than strictly complying with the development criteria.

According to an attachment to the administrative appeal petition, Appellant will be aggrieved by the Planning Board's action because he lives in close proximity to the subject property and will be negatively impacted by the deleterious effects that the improper planning will have on the health, safety, and welfare of the community. Appellant further claims in the affidavit attached to his memorandum in opposition to Appellee's preliminary motion to dismiss that he will be aggrieved by the Planning Board's action because he can constantly hear noise from Snowden River Parkway traffic, that the increase in traffic from the proposed construction of the grocery store and parking garage at the Wegmans property will be adverse to him and his property and will affect his life, that the noise from traffic on Snowden River Parkway will increase and make it more dangerous for him to make a left turn out of his neighborhood, and that the clock tower will adversely affect his property values.

Discussion

Pursuant to Howard County Code (HCC) Section 16.900(j)(2)(iii), any person "specially aggrieved by any decision of the Planning Board and a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the Board of Appeals in accordance with section 501 of the Howard County Charter." Appellee contends the Hearing Examiner has no

road construction plans or public water and sewer plans. The revisions or modifications are shown in red on the Site Development Plan.

jurisdiction to hear Appellant's petition with respect to the Planning Board's approval of the red-line revision because he lacks standing, having not been a party to the proceeding before the Planning Board and not specially aggrieved by the Planning Board's decision.

Planning Board Rule of Procedure (PBROP) Section 1.103.D.2, grants party status to a person in a Planning Board proceeding by:

- a. Providing the name, address and signature of the party and/or of the legal entity's duly authorized representative on a sign-up sheet provided by the Board.
- b. Testifying before the Board and providing it with the name and address of the party and/or legal entity; or
- c. In Quasi-Judicial Public Hearings, sending a letter to the Board, received before the close of the record in the case, indicating that the individual and/or legal entity is an interested party to the matter before the Board and providing the party's name, address and signature. Such letters may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a zoning matter shall not be used for purposes of conferring party status on those individuals signing the petition under this provision.

When the Planning Board approved the red-line revision, it was meeting in its capacity as an administrative decision-making authority following a public meeting pursuant to PBROP Section 1.106. Appellant could have obtained party status by providing his name, address and signature on the April 7, 2011 sign-up sheet provided by the Planning Board, or by testifying before the Planning Board and providing it with his name and address.

Appellant produced no sign-up sheet with his signature or any other evidence that he had spoken or otherwise participated at the April 7, 2011 meeting. As such, the Hearing Examiner finds Appellant was not a party to the Planning Board proceeding of April 7, 2011, when it held a public meeting on a red-line revision to SDP-07-131 and voted to approve the

revised SDP. Appellant's claim to party status in the instant appeal based on his party status in prior proceedings concerning SDP-07-131/Wegmans Food Markets, Inc. lacks merit.

Conclusion

Standing to appeal a Planning Board decision is a two-prong test. The first prong requires the Appellant to have been a party to the Planning Board proceeding. If the Appellant was not a party to the proceeding, the inquiry ends and the Hearing Authority must dismiss the appeal. In this case, the Hearing Examiner concludes Appellant Rousseau was not a party to the Planning Board proceeding of April 7, 2011, when it held a public meeting on a red-line revision to SDP-07-131 and voted to approve the plan. The Hearing Examiner is therefore dismissing Appellant's appeal.

ORDER

Based upon the foregoing, it is this **22nd day of September 2011**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Appeal of Philip C. Rousseau in Board of Appeals Case No. 683-D is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.