

IN THE MATTER OF	:	BEFORE THE
	:	
<b>BRITISH AMERICAN BUILDING</b>	:	
<b>LLC et al.</b>	:	HOWARD COUNTY
	:	
Appellants	:	BOARD OF APPEALS
	:	
v.	:	BA Case No. 766-D
	:	
<b>HOWARD COUNTY PLANNING</b>	:	
<b>BOARD</b>	:	
	:	
Appellee	:	

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**DECISION AND ORDER**

The Howard County Board of Appeals (the “Board”) convened on June 6, 2023 and held an evidentiary hearing and oral arguments on the Preliminary Motion to Dismiss for Lack of Standing filed by Two Farms, Inc. (“Respondent”) and the Opposition thereto filed by James Mazzullo, Managing Member of Efficient Properties, LLC (“Appellant”). The hearing was held pursuant to Rule 2.207(e) of the Rules of Procedure of the Board of Appeals.

Board members Steven Hunt, Gene Ryan, Jean Xu and Felita Phillips were present at the hearing. Board member Lynn Foehrkolb was absent and did not participate in the hearing. Chairperson Steven Hunt presided over the hearing. Barry Sanders, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Appellants, Efficient Properties, LLC and 9620 Gerwig Lane, LLC, were not represented by counsel. Respondent Two Farms Inc. was represented by counsel, Sang Oh, Esquire.

The Board held an evidentiary hearing and oral arguments on Two Farms Inc.’s Preliminary Motion to Dismiss for Lack of Standing. Because the Board determined that Appellant Efficient Properties, LLC and 9620 Gerwig Lane, LLC were *prima facie* aggrieved,

Two Farms, Inc. had the burdens of production and persuasion to rebut the presumption of Efficient Properties, LLC and 9620 Gerwig Lane's aggrievement.

The following person testified on behalf of the Appellant Efficient Properties LLC: James Mazzullo, managing member of Efficient Properties LLC. No one appeared or testified on behalf of Appellant 9620 Gerwig Lane, LLC.

The following persons testified on behalf of Two Farms, Inc., : Chris Rosato and Mickey Cornelius.

The Appellants did not offer or present any documents into evidence.

Respondent Two Farms Inc., offered, and the Board accepted, the following documents into evidence:

Exhibit 1 – Chris Rosata Curriculum Vitae

Exhibit 2 – Chris Rosata Certified Appraiser State License

Exhibit 3 – View of 9620/9630 Gerwig Lane (panned back)

Exhibit 4 – View of 9620/9630 Gerwig Lane (close up)

Exhibit 5 – View of Gerwig Lane and Minstrel Way – Collision Center

Exhibit 6 – Map Depicting Distance from MPD to Efficient Properties

Exhibit 7 – Map Depicting Distance from Retail Store to Efficient Properties

Exhibit 8 – Map Depicting Distances from Property Line and Retail Store to Efficient Properties

Exhibit 9 – SDAT Search Result for 9620 Gerwig Lane

Exhibit 10 – SDAT Search Result for 9630 Gerwig Lane

Exhibit 11 – SDAT Search Result for Hotel

Exhibit 12 – SDAT Search Result for Exxon Nova Oil

Exhibit 13 – SDAT Search Result for:

(A) Taco Bell

(B) Kentucky Fried Chicken

Exhibit 14 – SDAT Search Result for Twinkies

Upon consideration of Two Farms Inc.’s Preliminary Motion to Dismiss for Lack of Standing and for the reasons stated below, the Board determined to grant the motion and dismiss the appeal.

### **Background**

This matter arises out of the Howard County Planning Board’s (the “Planning Board”) March 7, 2019 Decision Letter approving SDP-17-041 (the “SDP”) for the construction of a motor vehicle fueling facility, car wash, convenience store, and carry out restaurant, which is currently operating as Royal Farms 186 Canton Carwash, located at 9585 Snowden River Parkway, Columbia, Maryland 21046 (the “Subject Property”). On November 4, 2020, the Howard County Hearing Examiner affirmed the Planning Board’s approval. Efficient Properties, LLC and 9620 Gerwig Lane, LLC filed the instant appeal. British American Building, LLC, who was dismissed as an appellant before the Hearing Examiner in this matter, did not join in the instant appeal before the Board of Appeals.

The Appellants are property owners and business organizations that are challenging the Planning Board’s approval of the SDP. In their Petition of Appeal (the “Petition”), the Appellants allege that their “property rights are adversely affected by the decision that would allow a change in allowing retail gas stations and convenience stores that will irreparably alter the character of this industrial zoned area. It will create conflicts and congestion with negative implications to the value of their property and the conduct of their business.”

## Discussion

The right to appeal is wholly statutory in nature. *Howard County v. JJM, Inc.*, 301 Md. 256, 261, 482 A.2d 908, 910 (1984) (citing *Maryland Bd. v. Armacost*, 286 Md. 353, 354-55, 407 A.2d 1148, 1150 (1979); *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 500, 331 A.2d 55, 64 (1975); *Urbana Civic Ass'n v. Urbana Mobile Vill., Inc.*, 260 Md. 458, 461, 272 A.2d 628, 630 (1971)). Howard County Code §16.900(j)(2)(iii) provides that a decision of the Planning Board may be appealed as follows: “Any person *specially aggrieved* by any decision of the Planning Board and a party to the proceedings before it may, within 30 days thereof, appeal said decision to the Board of Appeals in accordance with Section 501 of the Howard County Charter” (emphasis added).

An aggrieved person is “one whose personal or property rights are adversely affected by the decision of the Board” and one who “is personally and specially affected in a way different from that suffered by the public generally.” *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 144, 230 A.2d 289, 294 (1967). An adjoining, confronting or nearby owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved. *Id.* at 145, 230 A.2d at 294. If an appellant is found to be *prima facie* aggrieved, the presumption of aggrievement is rebuttable, and the burden is on the one challenging aggrievement to show that the appellant is no more aggrieved than any other member of the public. *See id.*

“When deciding whether a protestant is *prima facie* aggrieved . . . *proximity is the only relevant factor*. The inquiry is *focused solely* on whether the protestant is [a]n adjoining, confronting or nearby property owner.” *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 83 n.6, 59 A.3d 545, 550 n.6 (2013) (emphasis added) (internal quotation omitted). When the properties in question are not adjoining or confronting, Maryland courts have generally required

that an appellant's property be within sight or sound of a proposed development to be considered "nearby." See *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 297-98, 686 A.2d 605, 619 (1996). When an appellant's property is greater than 200 feet from the subject property, however, courts have generally found such distances to be too great to support *prima facie* aggrievement. See *Ray* at 83-84, 59 A.3d at 550-51.

If an appellant is not *prima facie* aggrieved, the appellant has the burden to prove special aggrievement by presenting sufficient evidence of a special and adverse effect different from that of the general public. See *Bryniarski*, 247 Md. at 145, 230 A.2d at 295. The appellant must be "close enough to the [subject property] to be considered almost *prima facie* aggrieved, and offer[] "plus factors" supporting injury." *Ray*, 430 Md. at 85, 59 A.3d at 551-52 (emphasis in original). Distances between 200 feet and 1,000 feet have been found close enough to be "almost *prima facie* aggrieved." *Id.* at 83-84, 91, 59 A.3d at 550-51, 555. The "plus factors" required are specific facts of injury to the appellant's particular property. See *id.* at 83, 59 A.3d at 550.

If an appellant is not *prima facie* or almost *prima facie* aggrieved, Maryland courts have referred to a third category of appellants who are "far removed from the subject property" but could still potentially establish standing. *Id.* at 85-86, 59 A.3d at 552. The Court in *Ray* "found no instance in which the Court held that a person who was far removed" qualified as specially aggrieved. *Id.* at 86, 59 A.3d at 552. Generally, distances greater than 1,000 feet have been found to be too far to support a claim of special aggrievement. See *id.* at 84-85, 59 A.3d at 551. "[P]rotestants who lived more than 1,000 feet from the [subject property] have repeatedly been denied standing," even when offering evidence of aggrievement. See *id.* at 92, 59 A.3d at 555.

In addition to requirements of standing based on an appellant's proximity to the subject property, certain factors are impermissible considerations in the standing analysis. "[M]ere competition is not an evil which business men may enjoin as a wrong to them." *Long Green Valley Ass'n v. Bellevalle Farms, Inc.*, 205 Md. App. 636, n. 29, 46 A.3d 473, n. 29 (2012) citing *Cook v. Normac Corp.*, 176 Md. 394, 397, 4 A.2d 747, 749 (1939); see also *Kreatchman v. Ramsburg*, 224 Md. 209, 222, 167 A.2d 345 (1961) (noting that zoning laws give a party no standing to enjoin another's use of land where the sole basis for invoking them is the prevention of competition). The Court of Special Appeals has also written that:

It is not the function of county zoning ordinances to provide economic protection for existing businesses. Neither the fact that the parties may suffer reduced incomes or be put out of business by more vigorous or appealing competition, nor the fact that properties on which such businesses are operated would thus depreciate in value, give rise to a standing to sue.

*Superior Outdoor Signs, Inc., v. Eller Media Company*, 150 Md. App. 479, 501, 822 A.2d 478, 491 (2003).

### **Findings of Fact**

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. Chris Rosata, a certified commercial real estate appraiser, testified that he is knowledgeable about the Subject Property, the Efficient Properties at 9630 Gerwig Lane and the 9620 Gerwig Lane, LLC property, as well as the commercial real estate market in the general area of the Subject Property. Mr. Rosata described the general area of the Subject Property as an industrial park area and is known as the Guilford Industrial Park. Mr. Rosata stated that he would describe the Efficient Properties at 9630 Gerwig Lane and the 9620 Gerwig Lane property as light industrial warehouse buildings. The 9630 Gerwig Lane property's tenant is a plumbing

business and the 9620 Gerwig Lane property's tenant is a door manufacturing company. Mr. Rosata testified that these industrial uses are not impacted by other commercial uses such as the Royal Farms facility at 9585 Snowden River Parkway. Mr. Rosata noted that the Royal Farms facility was constructed in 2020 and has been in operation for about three years at this location. Mr. Rosata testified that the Royal Farms approved development would not diminish the real property values of Efficient Properties, LLC or the 9620 Gerwig Lane, LLC properties. Mr. Rosata examined the Maryland State Department of Assessments and Taxation records for the Appellants' properties and other nearby commercial properties to further support his conclusion that there is no evidence of any diminution in real estate property values for Efficient Properties, LLC and 9620 Gerwig Lane, LLC property as a result of the Royal Farms and convenience store business being established. Mr. Rosata noted that almost all property values increased since they were last assessed and this is consistent with his conclusion there has been no diminution in real property values of Appellants' properties as a result of the Royal Farms facility being established.

2. Mickey Cornelius, a certified professional traffic operations engineer, testified that he previously testified before the Board of Appeals in the BA702-D AHMA, LLC, et al. matter in 2015 regarding traffic impacts of the proposed Royal Farms development. In that matter, he testified that the nearby Exxon gasoline service station was not specially aggrieved by the proposed Royal Farms development. Mr. Cornelius stated that his opinion hasn't changed and testified that Efficient Properties, LLC will not suffer any diminution of property due to the Royal Farms facility. Mr. Cornelius previously performed traffic counts at the surrounding intersections on November 27, 2018. Mr. Cornelius stated that he did a current evaluation of the traffic volumes since this Royal Farms facility has been in place for about 3 years. Mr.

Cornelius testified that he did a traffic count analysis of traffic volumes on May 25, 2023. Mr. Cornelius compared the May 23, 2023, traffic counts at the surrounding intersections during both morning and evening peak hours with those that were done on November 27, 2018. Mr. Cornelius testified that the results show that the current traffic counts are no different or less than those that existed in 2018 as a result of the development. Mr. Cornelius testified that a 12-hour video was also performed on September 1, 2022, to see if cars would back up from the signalized intersection of Minstrel Way and Snowden River Parkway to Gerwig Lane. Mr. Cornelius testified that cars would not back up and there would be no traffic impact to Gerwig Lane. Mr. Cornelius stated that his traffic count analysis performed in May, 2023 demonstrated that the nearby intersections were operating at “level of service” A and B conditions. Mr. Cornelius concluded that the Efficient Properties, LLC will not suffer any diminution of property value due to traffic impacts from the Royal Farms facility.

3. James Mazzullo testified on behalf of Efficient Properties, LLC that it is an adjoining property owner located 250 feet away from the Royal Farms facility’s property. Mr. Mazzullo stated that Efficient Properties, LLC is specially aggrieved due to the noises, chicken smell and traffic congestion generated on the nearby roads by the Royal Farms facility. Mr. Mazzullo stated that he believed that the value of the business he operates from Efficient Properties, LLC property is not doing well during this economy and attributes this to the Royal Farms development.

### **Conclusions of Law**

Based upon the foregoing Findings of Fact, the Board concludes as follows:

**A. Standing of Efficient Properties, LLC and 9620 Gerwig Lane, LLC**



1. Efficient Properties, LLC and 9620 Gerwig Lane, LLC are nearby property owners and are *prima facie* aggrieved. Two Farms, Inc., as a party challenging Efficient Properties, LLC's aggrievement, has the burden to prove that Efficient Properties, LLC and 9620 Gerwig Lane, LLC are not, in fact, specially aggrieved.

2. Efficient Properties, LLC and 9620 Gerwig Lane, LLC's allegations of special aggrievement rest on three bases: (1) a diminution in the real property value of the Efficient Properties, LLC and 9620 Gerwig Lane, LLC properties, and (2) an increase in traffic congestion in the area, and (3) the character of the industrial area will be irreparably altered. Based on the testimony presented, Two Farms, Inc., has offered sufficient evidence to rebut the presumption that Efficient Properties, LLC and 9620 Gerwig Lane, LLC are specially aggrieved.

3. On the issue of diminution in real property value, Two Farms Inc. presented the testimony of Chris Rosata, a certified commercial real estate appraiser. Mr. Rosata testified that the approved Royal Farms facility would not diminish the real property values of the Efficient Properties, LLC and 9620 Gerwig Lane, LLC properties.

4. On the issue of traffic impacts, Two Farms Inc. presented the testimony of Mickey Cornelius, a certified professional traffic operations engineer. Mr. Cornelius testified from a traffic standpoint, that Efficient Properties, LLC would not suffer any diminution of property value due to the Royal Farms facility.

5. With the presumption of Efficient Properties, LLC and 9620 Gerwig Lane, LLC and special aggrievement rebutted, the Board, after weighing all of the evidence presented, concludes that Efficient Properties, LLC and 9620 Gerwig Lane, LLC's personal and property rights will not be adversely affected by the development approved on the SDP-17-041 by the Planning Board and that Efficient Properties, LLC and 9620 Gerwig Lane, LLC properties will

not be personally and specially affected in a way different than that suffered by the public generally.

6. Efficient Properties, LLC presented the testimony of James Mazzullo, who offered a lay opinion that the Royal Farms development has created traffic congestion and that the value of Efficient Properties, LLC's tenant's business during this economy is not doing well. Mr. Mazzullo provided no empirical evidence regarding traffic to contradict the evidence presented by Mr. Cornelius or any evidence to contradict Mr. Rosata's evidence that the Appellants have not suffered any diminution in their real property values as a result of SDP-17-041 approval. Furthermore, the Board finds that the Appellants' allegation that their "property rights are adversely affected by the decision that would allow a change in allowing retail gas stations and convenience stores that will irreparably alter the character of this industrial zoned area" is an allegation of general harm and not specific to their properties. Appellants failed to establish how their properties would be specially and adversely affected in a way that is different than the general public or any other member of the other properties of the Guilford Industrial Park.

7. Appellant 9620 Gerwig Lane, LLC failed to appear at this preliminary hearing and present facts to show that it was specially aggrieved by the Howard County Planning Board's March 7, 2019 Decision Letter approving SDP-17-041.

8. The Board finds the testimony of Mr. Rosata and Mr. Cornelius on diminution of real property values and traffic impacts to be persuasive and concludes that the Planning Board's SDP-17-041 approval letter will not diminish the value of the Efficient Properties, LLC and 9620 Gerwig Lane, LLC properties or result in adverse traffic impacts upon the Efficient Properties, LLC and 9620 Gerwig Lane, LLC properties. There has been no evidence presented to the

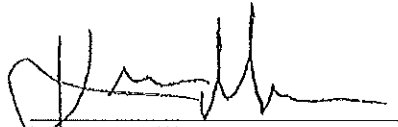
Board of any detrimental traffic effects or decrease in property values specific to Appellants' individual properties or to properties in the general area. The Board determines that Efficient Properties, LLC and 9620 Gerwig Lane, LLC are not specially aggrieved and do not have standing to maintain this appeal.

ORDER

Based upon the foregoing, it is this 2<sup>nd</sup> day of October, 2023, by the Howard County Board of Appeals, ORDERED:

That the Preliminary Motion to Dismiss Appeal Petition for Lack of Standing filed by Two Farms, Inc. ("Respondent") is GRANTED and the Administrative Appeal petition of Efficient Properties, LLC and 9620 Gerwig Lane, LLC ("Appellants") in BA Case No. 766-D is hereby DISMISSED.

ATTEST:

  
Klaster Miller, Secretary

HOWARD COUNTY BOARD OF APPEALS

Steven F. Hunt  
Steven F. Hunt (Sep 29, 2023 10:04 EDT)  
Steven Hunt, Chairperson

Gene Ryan  
Gene Ryan (Sep 29, 2023 10:10 EDT)  
Gene Ryan, Vice-Chairperson

PREPARED BY:  
HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc,  
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Barry M. Sanders  
Barry M. Sanders  
Senior Assistant County Solicitor

\_\_\_\_\_  
Jean Xu

Felita Phillips  
Felita Phillips (Sep 29, 2023 12:45 EDT)  
Felita Phillips

\_\_\_\_\_  
Did Not Participate  
Lynn Foehrkolb