

Circuit Court for Prince George's County
Case No: CAL20-13237

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 707

September Term, 2020

LARAY J. BENTON

v.

WOODMORE OVERLOOK
COMMERCIAL, LLC

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 8, 2021

*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.

In May 2020, the Prince George’s County Planning Board issued a resolution concerning the “Preliminary Plan of Subdivision 4-18007” located “at or about 9700-9800 Landover Road in Landover, Maryland.” LaRay J. Benton, appellant, petitioned for judicial review in the Circuit Court for Prince George’s County to challenge the resolution. However, upon the filing of a motion to dismiss by Woodmore Overlook Commercial, LLC (“Woodmore Overlook”), appellee, contending that Mr. Benton lacked standing or any meritorious argument to challenge the resolution, the circuit court dismissed the action.

Mr. Benton noted a timely appeal to this Court. On appeal, he raises 17 questions for our consideration. We will only exercise review with respect to the following question:

1. Did the circuit court err in granting the motion to dismiss without a hearing pursuant to Maryland Rule 2-311(f)?

As to the remaining 16 questions, we decline to exercise review because these issues were not passed upon by the circuit court in dismissing the action. *See Robinson v. State*, 404 Md. 208, 216 (2008) (“an appellate court ordinarily will not consider any point or question unless it plainly appears by the record to have been raised in or decided by the trial court.”).

For the following reasons, we shall affirm the judgment of the circuit court.

ARGUMENT

On appeal, Mr. Benton contends that the circuit court erred in granting Woodmore Overlook’s motion to dismiss without a hearing pursuant to Maryland Rule 2-311(f). However, Mr. Benton failed to request a hearing in the title of his response to the motion to dismiss as required by the Rule. Even had he done so, we would decline to remand this

matter to the circuit court for a hearing because “[s]uch a remand would be an exercise in futility and a waste of judicial resources.” *Morris v. Goodwin*, 230 Md. App. 395, 410-11 (2016) (declining to remand for a hearing where the circuit court’s “dismissal of appellant’s petition [was] mandated by law”).

A hearing on remand would be a “futile exercise” because Mr. Benton lacked standing to challenge the resolution of the planning board in the circuit court. To establish standing for judicial review of a zoning action pursuant to §22-407 of the Land Use Article, Mr. Benton needed to make a showing that, in relation to the affected area, he was “[a]n adjoining, confronting or nearby property owner” (*Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 145 (1967)) or that he was in close proximity to the affected area and could point to related basis of aggrievement, such as increased traffic, decreased property values, or problems with lights, noise, and refuse. *See Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 83-84 (2013). Because Mr. Benton failed to advance such a proximity related basis of aggrievement, the circuit court was permitted to dismiss his action for lack of standing.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**