Circuit Court for Baltimore City
Case Nos. 24C21002006 & 24C21001771

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1099, Sept. Term, 2021

No. 1158, Sept. Term 2021

IN THE MATTER OF THE PETITION OF CLIFF RANSOM, ET AL.

IN THE MATTER OF THE PETITION OF CLIFF RANSOM, ET AL.

Wells, C.J.
Friedman,
Albright,

JJ.

Opinion by Wells, C.J.

Filed: May 18, 2022

These appeals assert the right of appellants, Cliff Ransom and 17 other individuals (collectively "Ransom")—neighbors who live within sight and sound of historic property under preservation easement—to challenge separate approvals from the Maryland Historical Trust ("Trust"), appellee in Number 1099, and Baltimore City's Commission for Historical and Architectural Preservation (CHAP), appellee in Number 1158, relating to the construction of a rooftop deck atop the property. The developer who submitted the application for construction, Thames Street Holdings, LLC ("Thames") is also an appellee in both cases. Because two of the parties are the same (Ransom and Thames) and Thames' request for the addition of a rooftop deck to its historic Fells Point property is the subject of each appeal, we exercise our discretion to resolve both appeals in the same opinion.

In case Number 1099, Ransom appeals from the Circuit Court for Baltimore City's grant of the Trust's and Thames's motions to dismiss. Ransom presents three issues for our review, which we have consolidated[1] into the following question:

[1] Ransom's questions presented in No. 1099, verbatim, were:

1. Did the Circuit Court err in granting the Motion to Dismiss, when the approval at issue is a land use matter for which Appellants as aggrieved neighbors enjoy proximity-based standing?

2. Did the Circuit Court erred [*sic*] in determining that neighboring property owners could not be aggrieved by the MHT Director's approval of interior test pits, when the record established that the purpose of the interior test pits was to advance the disputed rooftop addition?

3. Did the Circuit Court erred [*sic*] in proceeding to rule on the merits of the Petition after declining jurisdiction over the matter?

> Did the circuit court err in granting the appellees' motions to dismiss based on its finding that Ransom lacked standing to challenge the [Trust's] Director's approval of [Thames'] excavation of interior test pits?

We do not reach the merits of this issue because, as we shall explain, the issue of the approval of the test pits is moot.

In the second appeal, Number 1158, Ransom appeals from the circuit court's grant of CHAP's and Thames' motions to dismiss, based on the court's determination that CHAP's April 14, 2021 approval of Thames' proposed "height, massing and scale" was not a final decision from CHAP. Ransom presents two issues for our review[2], which we have consolidated into the following question:

> Was Ransom's petition for judicial review of CHAP's April 14, 2021 height, massing and scale approval proper under Maryland Rule 7-203 and Baltimore City Code Article 6, §9-1(a)?

After Ransom appealed to this Court, CHAP filed a motion to dismiss the appeal for mootness. As we will explain, we agree with CHAP that the issue of its April 14 approval of height, massing and scale is now moot.

Therefore, both appeals will be dismissed for mootness. Critically, we add that to the extent that Ransom is also challenging the concept of the originally proposed rooftop

[2] Ransom's questions presented in No. 1158, verbatim, were:

1. Was filing of the Petition for Judicial Review within 30 days of CHAP's action allowed under Maryland Rule 7-203 and Baltimore City Code Article 6, §9-1(a)?

2. Is CHAP's approval of "height, massing and scale" a judicially reviewable "action" or "decision" under Maryland Rule 7-203 and Baltimore City Code Article 6, §9-1(a)?

deck, in either case, that issue is not yet ripe and thus provides no additional grounds on which this Court can grant relief.

PROCEDURAL AND FACTUAL BACKGROUND

The Historic Properties and Restrictions on Alterations

At the center of these appeals are two properties in the Fells Point neighborhood of Baltimore City: 1724-26 Thames Street and 808 S. Ann Street. Over 20 years ago, separate perpetual preservation easements were executed on the properties, to be held by the Trust[3] for the purpose of preserving and maintaining the properties' "substantial historic, aesthetic and cultural character." Any changes to a property protected by a Trust easement require express written approval from the Trust's director. To obtain approval, easement property owners must submit the Trust's "Change/Alteration Request Application" form. The Trust's Easement Committee reviews the application, considering the requirements of the specific easement, the integrity and significance of the property, the details of the proposed project, and the United States Secretary of the Interior's *Standards for the Treatment of Historic Properties* set forth at 36 C.F.R. § 68. The Easement Committee recommends approval or disapproval to the Director, who makes the final decision and communicates

[3] The Maryland Historical Trust is established under section 5A-310 of the State Finance and Procurement Article of the Maryland Code. Its purpose is to "preserve, protect, and enhance districts, sites, buildings, structures, and objects of significance in the prehistory, history, upland and underwater archaeology, architecture, engineering, and culture of the State[.]" Md. Code Ann., State Fin. & Proc. § 5A-311.

that decision to the property owner.[4] Notably, Trust approval suffices only for purposes of the easement; it does not supplant the need for the owner to obtain a building permit or license as may be required under local law.

According to the specific deeds of preservation easement for 1724-26 Thames Street and 808 S. Ann Street, the properties are to be used for maritime museums, and no new building, structure or improvement may be constructed on either property, with the exception that 808 S. Ann Street may be restored or renovated in accordance with specific plans approved by the Trust in January 1998. The restrictions of the easements are to run with the properties in subsequent conveyances.

As a separate matter, the City's Commission for Historical and Architectural Preservation[5] has designated Fells Point a Baltimore City Historic District.[6] As properties within such a district, any building permits for 1724-26 Thames Street and 808 S. Ann Street require approval by CHAP, based on its Historical Preservation Guidelines. The

[4] Maryland Historical Trust Historic Preservation Easement Program, Report to the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee dated December 1, 2018, at 47-51. https://mht.maryland.gov/documents/PDF/easement/2018-Easement-JCR-Report.pdf

[5] CHAP is established under Article 6 of the Baltimore City Code. CHAP's "mission is to enhance and promote the culture and economy of Baltimore through the preservation of buildings, structures, sites, and neighborhoods that have aesthetic, historic, and architectural value." Baltimore City Historic Preservation Rules and Regulations, 1, December 2015. Available at https://chap.baltimorecity.gov/sites/default/files/CHAP%20RULES%20AND%20REGULATIONS%2012%209%2015.pdf.

[6] Historical and Architectural Preservation, Historic District List. https://chap.baltimorecity.gov/historic-districts/maps.

CHAP review process is distinct for minor and major projects. Major projects include those such as the one at issue in this appeal, that "significantly change the massing, or scale, or appearance of a structure." For a major project, a public hearing is to be held once CHAP determines an application is complete. Applicants must also first seek "concept approval," providing photographs, drawings, and scale models that demonstrate the height, massing and scale of the proposed altered structure. Upon receiving concept approval, applicants may seek final approval from CHAP, providing various updated plans and models, as well as physical samples and data indicating the color and texture of the exterior materials. CHAP grants final approval of a permit in the form of an Authorization to Proceed.[7]

New Ownership and Proposed Changes to the Historic Properties

Ownership of both properties transferred to Thames by a special warranty deed dated December 30, 2020. On February 16, 2021, Architect David Lopez filed on behalf of Thames a "Historic Preservation Easement Program Change/Alteration Request Application" with the Trust, seeking to repurpose, by way of building additions and renovations, the 1724-26 Thames Street property[8] into a bar/restaurant with a rooftop deck. On the same day, Lopez also filed with CHAP on behalf of Thames an Application for Authorization to Proceed with those changes and additions to 1724 Thames Street and 808 S. Ann Street.

[7] Baltimore City Historic Preservation Rules and Regulations, 2-19.

[8] Thames' application to the Trust does not list the 808 S. Ann Street address, but the submitted plans appear to pertain to that property in addition to 1724 Thames Street based on the designs included, as well as the corresponding application submitted to CHAP that does name 808 S. Ann Street.

Appeal Number 1099 – the Trust's approval of test pits

The Trust's Easement Committee considered Thames' application that day and determined that the project, with its "proposed structural support system", "would result in a negative cumulative impact to the historic building." A few weeks later, the Trust's Director denied Thames' application based on incompleteness, and in large part, on concerns arising from the proposed steel frame that would be necessary to support the rooftop addition. Thames and the Trust engaged in further discussions on how to achieve Thames' desired plans with the Trust's approval. Following these discussions, Thames proposed excavating four interior test pits to assess the quality of the existing party wall and foundation, which could permit an alternative structural design.

On April 7, 2021 the Trust's Director approved Thames' excavation of the test pits. On May 5, Ransom filed a petition for writ of administrative mandamus in the Circuit Court for Baltimore City, alleging Thames' action in furtherance of the building additions and new use "violates the terms of the perpetual preservation easement." The Trust responded, asserting that it had not yet approved the rooftop addition or use, and therefore Ransom's petition was based on nothing more than speculation about what might happen in the future. On May 29, Thames excavated the test pits.

On June 17, the Trust filed a motion to dismiss the petition, which Thames adopted, asserting Ransom did not have standing to challenge the approval, as he was not in privity to the easement, nor was he aggrieved by the approval since it was not a land use decision. Ransom opposed the motion, disagreeing with the Trust's position on standing and arguing that the Trust's approval of the test pits was for the purpose of enabling footing for the

proposed rooftop addition, which is prohibited under the easement. The Trust responded to Ransom's memo and Thames filed a verified reply in support of its motion to dismiss, adopting the Trust's arguments, adding that the matter was now moot since the test pits had already been excavated.

On August 20, the circuit court held a hearing and granted the motions to dismiss from the bench. The court ruled that Ransom did not have standing to challenge the approval as it was not a land use matter for which neighbors such as Ransom could enjoy proximity-based standing. Additionally, the court ruled that Ransom could not be aggrieved by digging the interior test pits, which were but one step in the approval process. The court noted that Ransom's aggrievement argument was based solely on the approval of the completed rooftop addition. The court also held that the Trust's approval was correct on its merits. Ransom timely appealed.

Appeal Number 1158 – CHAP's approval of "height, massing and scale"

On April 13, 2021 CHAP held a hearing on Thames' application for Authorization to Proceed, and on April 14 it approved the "height, massing and scale" of Thames' proposed building additions. Specifically, CHAP stated by letter that it was granting

> Approval of the plans for height, massing and scale as the additions meet the CHAP Guidelines. Final design to return to the full Commission.
>
> Please work with Eddie Leon to complete the details for the next review of the proposal.

On April 26, Ransom filed a petition in the circuit court for judicial review or writ of administrative mandamus, alleging that Ransom and the other neighbors were aggrieved by the approval.

On June 17, however, Thames submitted to CHAP revised plans that did not include a rooftop addition. Instead, the revised plan's only proposed exterior modifications were cosmetic, and the number of initially proposed interior design changes was reduced. Lopez, the architect, explained that Thames had been working to alleviate neighbors' concerns about the project. The final sentence of Lopez's email read, "While we still may pursue the rooftop addition at a later date, that part of the discussion is off the table for this submission."

On July 1 and 2, CHAP and Thames each filed responses and motions to dismiss Ransom's petition challenging the April 14 height, massing and scale approval, arguing it was not a final administrative decision and thus was not reviewable. Neither motion mentioned Thames' revised plans. Ransom opposed the motions.

On September 1, CHAP granted final approval of Thames' revised application by issuing an Authorization to Proceed ("ATP"), which specified:

> This ATP covers a revised scope-of-work and plans submitted to CHAP on 6/17/2021 and DOES NOT give authorization for concept plans for a third floor addition, rooftop deck or a one-story addition for the kitchen reviewed and approved by the Commission on April [1]4, 2021. The 6/17/2021 plans only cover[] minor work that clearly meet[] the guidelines.

On September 3, the circuit court held a hearing and granted the motions to dismiss, holding that CHAP's approval for height, massing and scale was not a final decision from the agency and so Ransom's appeal was premature. Ransom timely appealed to this Court. In February 2022, CHAP filed a motion to dismiss Ransom's appeal, asserting that the issue of the challenged approval is now moot, as the proposed height, massing and scale will not be used because Thames withdrew their proposal for the rooftop deck.

STANDARD OF REVIEW

"When reviewing the grant of a motion to dismiss, the appropriate standard of review 'is whether the trial court was legally correct.'" *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018)). "Therefore, 'we review the grant of a motion to dismiss de novo. We will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Id.* (quoting *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015), *cert. denied, Sutton v. FedFirst Fin.*, 446 Md. 293 (2016)).

DISCUSSION

A. Parties' Contentions

In appeal number 1099, Ransom argues the circuit court erred in granting the motions to dismiss, since the Trust's approval of the test pits was a land use matter for which Ransom enjoys proximity-based standing as an aggrieved neighbor. Ransom alleges that his aggrievement arises from the fact "that the sole purpose of the test pits was to advance the disputed rooftop addition." Finally, Ransom adds that the circuit court erred in proceeding to rule on the merits of the petition (holding the Trust's approval was proper), after having found Ransom lacked standing. The Trust counters that the circuit court was correct in concluding Ransom lacked standing, as he was not in privity with the easement, nor was the approval of the test pits a land use decision that might otherwise afford Ransom a pathway to standing. The Trust adds that the circuit court's conclusion that the record failed to support the issue of a writ of administrative mandamus was correct as a matter of

law. Thames joined in those arguments. Counsel for the Trust also briefly addressed mootness at oral argument, stating that because the test pits had already been excavated, the matter may in fact be moot. Counsel also stated: "If, at some point in time, [Thames] decides they have a plan or a new plan for construction of this rooftop bar, they would have to come back to the Trust, back to the Director, to ask for approval of that."

In appeal number 1158, Ransom asserts the circuit court erred in dismissing his petition since CHAP's approval of the height, massing and scale of Thames' proposed additions was timely and ripe for adjudication under both the Maryland Rules and the Baltimore City Code. CHAP responds that the circuit court was correct in holding that its approval was not an appealable final decision, and that the issue is now moot since the rooftop addition to which the height, massing and scale proposals pertained is no longer pending approval. Significantly, at oral argument, counsel for CHAP offered what he acknowledged to be a judicial admission on behalf of CHAP: He stated that CHAP considered the April 14 height, massing and scale approval "to have been withdrawn." He echoed the statements of counsel for the Trust, stating that if Thames wishes to pursue a rooftop addition, it will have to "start the whole process over again." Counsel further clarified that its April 14 approval "has no binding effect; there is no carryover approval" regarding any future plans that Thames might submit. He added that the approval "may have some rhetorical, persuasive effect, but. . . it has no precedential value going forward." Thames adopts CHAP's arguments once more, and adds that here too, Ransom lacks standing to challenge CHAP's approval.

In his brief to this Court, Ransom disagrees with CHAP's mootness argument, somewhat conspiratorially asserting that because CHAP and Thames had not sworn that the height, massing and scale approval is now "void," Thames could simply resume its original plans for the rooftop addition based on CHAP's still-valid approval. Following oral arguments by the Trust and CHAP, however, counsel for Ransom thanked opposing counsel for their statements regarding the rooftop addition made on the record and said that he had "no reply."

We do not reach the merits of these arguments in either appeal concluding that both appeals are moot. Consequently, each appeal shall be dismissed.

B. Analysis

Mootness

"Generally, appellate courts do not decide academic or moot questions. A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide. Accordingly, an injunction should not issue if the acts sought to be enjoined have been discontinued or abandoned." *Att'y Gen. v. Anne Arundel Cty. Sch. Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979) (citations omitted). "Of course, a court may decide a moot question where there is an imperative and manifest urgency to establish a rule of future conduct in matters of important public concern, which may frequently recur, and which, because of inherent time constraints, may not be able to be afforded complete appellate review." *Id.* at 328 (citations omitted).

Several older appellate decisions are helpful in illustrating when an issue may be moot. In *Attorney General v. Anne Arundel County School Bus Contractors Ass'n, Inc.*, the Attorney General sought to enjoin, following the expiration of a previous injunction, the county School Bus Contractors Association from refusing to provide bus services when it was disappointed with a reimbursement rate. 286 Md. 324, 327 (1979). However, the Court of Appeals deemed this issue moot, where "[d]uring the effective period of the injunction, the Association neither threatened to stop services nor did it in fact stop services," and accepted the rate supplement for the following school year, and where there was "no evidence to show that since the expiration of the injunction or the termination of the controversy, the Association either threatened to stop services or did in fact stop them." *Id.*

In *C.N. Robinson Lighting Supply Co. v. Board of Education of Howard County*, a lighting supply company sued the county for not awarding it a contract when it had been the lowest bidder. 90 Md. App. 515, 518–19 (1982). By the time of the appeal, the one-year contract had already expired. *Id.* at 524. Given the contract's expiration, and the Court's conclusion that a bidder in the company's situation had no cause of action for damages, the Court held the issue of the contract award was moot. *Id.* at 526.

In *County Commissioners of Charles County v. Secretary of Health and Mental Hygiene*, the county appealed the circuit court's judgment affirming the Health Department's order to declare a building permit null and void. 302 Md. 566, 567–68 (1985). By the time of the appeal, the permit had expired since work on the building had been abandoned for a period of six months after commencement. *Id.* at 568. The Court of Appeals dismissed the appeal as moot, explaining that "[w]hether the Department had the

authority to declare the permit null and void is a purely academic question because the permit has expired." *Id.*

Ripeness

Ripeness is a related issue of justiciability also relevant to this case. "Generally, an action for declaratory relief lacks ripeness if it involves a request that the court 'declare the rights of parties upon a state of facts which has not yet arisen, [or] upon a matter which is future, contingent and uncertain.'" *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 591–92 (2014) (quoting *Boyds Civic Ass'n v. Montgomery Cnty. Council*, 309 Md. 683, 690 (1987)). "The purpose of ripeness is 'to ensure that adjudication will dispose of an actual controversy in a conclusive and binding manner.'" *Id.* (quoting *Boyds*, 309 Md. at 691).

In *Boyds Civic Association v. Montgomery County Council*, the county amended a master plan to provide that certain land might be suitable for imposition of a mineral resource recovery zone, as a prerequisite to adoption of that zoning for a specific area. The complainants sought a declaratory judgment that the master plan amendment was illegal and unconstitutional, but the circuit court dismissed the case as non-justiciable and this Court affirmed. On appeal, the Court of Appeals reviewed an earlier case this Court had deemed not ripe:

> In [*Anne Arundel County v.*] *Ebersberger* [62 Md. App. 360 (1985)], a group of homeowners ... challenged as unconstitutional and ultra vires a county ordinance which authorized their community association ... to raise money for swimming pool renovation and maintenance.
>
> The Court of Special Appeals held that the action lacked ripeness. In so doing, it emphasized the fact that the ordinance merely authorized, but did

> not require, the renovations and the fact that there was no certainty the work would ever be done:
>
> > "[T]he ... ordinance does not **require** the district to renovate the pool; it merely **authorizes** such work. Nor does it specify any particular means of financing the renovation. There is certainly no assurance, from the record now before us, that a budget containing an appropriation for the pool will ever be approved or that a special benefit tax to support such an appropriation will ever be levied.
> >
> > "At least until the prospect of such an appropriation or such a tax becomes substantially more certain, the plaintiffs will have suffered no injury from the challenged ordinance, and its validity or invalidity is therefore of no practical consequence." [*Ebersberger*,] 62 Md. App. at 371, 489 A.2d at 101–02 (emphasis in the original).

Boyds, 309 Md. at 695–96. The Court of Appeals, however, disagreed that *Ebersberger* would deem the case before it not ripe:

> There is, however, an important distinction between *Ebersberger* and the case at bar. The *Ebersberger* court reasoned that the challenged ordinance could have no injurious effect upon the plaintiffs until the prospect of its implementation became "substantially more certain." 62 Md. App. at 371, 489 A.2d at 102. Here, by contrast, **the challenged plan amendment was initiated, approved, and adopted in furtherance of an actual, pending application to amend the local zoning map**. Moreover, the designation of an area on the applicable master plan as suitable for a Mineral Resource Recovery Zone was a condition precedent to the granting of an application for zoning of an area as a Mineral Resource Recovery Zone. . . The prospect of a controversy, therefore, lay well beyond the realm of matters "future, contingent and uncertain."

Boyds, 309 Md. at 696–97 (emphasis added). Thus, whether an issue is ripe depends on whether the factual situation giving rise to the complainant's injury has already arisen or is at least sufficiently certain to arise. When neither can be said, the issue is not ripe.

Appeal Number 1099: The Trust's Approval of Excavation of Test Pits is Moot.

As in *County Commissioners of Charles County*, it would be a purely academic exercise at this juncture to determine whether Ransom has standing to challenge the Trust's approval of the test pits. First and most simply, this issue is moot because the record demonstrates the test pits have already been excavated. *See Morris v. Weinberger*, 401 F. Supp. 1071 (D.Md.1975) (when the thing sought to be prevented has been done and cannot be undone by an order of the court, the case is moot).

Further, Ransom's arguments in support of his aggrievement-based standing to challenge the Trust's approval of the test pits assume the ultimate approval of a rooftop deck. In his brief to this Court, Ransom asserts "**The test pits and the rooftop addition were inextricable**." (Emphasis in original). And in his opposition to the motions to dismiss below, Ransom countered Thames' mootness argument by saying:

> the test pits are not an end unto themselves; they have a purpose. Their intended purpose is to provide information to facilitate [the Trust's] further consideration of a proposed rooftop addition to 1724-26 Thames Street. In particular, the record establishes that the purpose of the approved test pits was to accommodate footings to support the rooftop addition. If the perpetual preservation easement prohibits the proposed rooftop addition, or the Director's approval of the test pits cannot be affirmed for any reason, then information obtained from the test pit excavation cannot be used by [Thames] or [the Trust] to advance the plan to build the rooftop addition. **A ruling by this Court in favor of the Petitioners should prevent the proposed addition from being further advanced and pursued**.

(Emphasis added). Clearly then, the relief Ransom seeks would, at this time, amount to nothing more than an advisory opinion. Unlike the application to amend the zoning map in *Boyds*, Thames' application for a rooftop deck was not approved, and according to both them and the Trust, that plan is no longer in progress.

The crux of Ransom's basis for his aggrievement by the test pits—that they would be used by the Trust to consider approving the proposed rooftop desk—is now purely speculative. Through this framing, the issue is *not ripe*. That is, determining the propriety of an approval of the proposed rooftop deck under the easement would require assuming "a state of facts which has not yet arisen," and would amount to deciding "upon a matter which is future, contingent and uncertain.'" *State Ctr.*, 438 Md. at 591 (quoting *Boyds*, 309 Md. at 690). Through either lens—mootness or ripeness—there is no effective remedy this Court can grant.

Appeal Number 1158: CHAP's April 14, 2021 "height, massing and scale" Approval is Moot.

We agree with CHAP that the issue of whether the approval of the "height, massing and scale" is a final judgment from CHAP is moot. This approval undeniably pertained to Thames' proposed rooftop addition. But the issue is now moot because Thames' architect, Lopez, when he submitted revised plans, stated that a rooftop addition "is off the table for this Submission." Further, in affidavits appended to CHAP's motion to dismiss, Lopez and Walter Edward Leon on behalf of CHAP both have testified that should Thames choose "to seek approval for a roof deck at some point in the future, it will need to file a new application." And as a matter of final assurance, CHAP offered the judicial admission that the approval would hold no precedential value. Consequently, the appealability of a challenge to the merits of CAHP's approval of the "height, massing and scale" of a rooftop

addition is no longer an existing controversy.[9] "[T]he acts sought to be enjoined"—here, the use of the approved height, massing and scale for consideration of a rooftop addition—"have been discontinued or abandoned." *Anne Arundel Cty. Sch. Bus Contractors Ass'n, Inc.*, 286 Md. at 327. Somewhat analogous to the expired contract in *C.N. Robinson Lighting Supply Co.* or the expired permit in *County Commissioners of Charles County*, the significance of the height, massing and scale approval has evaporated.

And finally, to the extent Ransom's challenge to the approval of height, massing, and scale is a challenge to the ultimate approval of a rooftop addition—considering that Thames could conceivably one day re-pursue those plans—that issue is not ripe, for the same reasons discussed regarding the test pit approval. That is, determining whether CHAP properly will approve the proposed rooftop deck would require assuming "a state of facts which has not yet arisen," and would amount to deciding "upon a matter which is future, contingent and uncertain.'" *State Ctr.*, 438 Md. at 591 (quoting *Boyds*, 309 Md. at 690).

Without an effective remedy this Court could grant, this appeal must also be dismissed.

APPEAL NO. 1099 IS DISMISSED. APPELLANT TO PAY THE COSTS.

APPEAL NO. 1158 IS DISMISSED. APPELLANT TO PAY THE COSTS.

[9] We emphasize that our finding of mootness prevents us from reaching the issue of whether, if the proposed rooftop addition was still in submission, the height, massing and scale approval would be a final (reviewable) decision from CHAP.