

STATE OF MICHIGAN
COURT OF APPEALS

QUALITY MARKET,

Petitioner-Appellee,

v

DETROIT BOARD OF ZONING APPEALS,

Respondent-Appellant.

UNPUBLISHED

December 17, 2019

No. 346014

Wayne Circuit Court

LC No. 18-003838-AV

Before: FORT HOOD, P.J., and SERVITTO and BOONSTRA, JJ.

PER CURIAM.

Respondent, the City of Detroit Board of Zoning Appeals (the BZA), appeals by delayed leave granted¹ the circuit court’s orders denying the BZA’s motion to dismiss petitioner Quality Market’s appeal and reversing the BZA’s denial of a variance. We vacate the circuit court’s order reversing the BZA’s denial, reverse the circuit court’s order denying the BZA’s motion to dismiss, and remand for entry of an order granting the BZA’s motion to dismiss.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The relevant facts in this case are undisputed. Quality Market has operated as a retail convenience store on Michigan Avenue in Detroit for 30 years. It has a Specially Designated Merchant (SDM) license, which enables it to sell carry-out beer and wine. At some point, Quality Market purchased a Specially Designated Distributor (SDD) license, which permits the sale of carry-out liquor, from a former liquor retailer in the neighborhood. However, because Quality Market’s building is located within 500 feet of a school and a residentially zoned area, Quality Market was required to seek a zoning variance from the BZA in order to add the license to its existing retail store.

¹ See *Quality Market v Detroit Board of Zoning Appeals*, unpublished order of the Michigan Court of Appeals, entered December 21, 2018 (Docket No. 346014).

In August 2017, the City of Detroit Buildings, Safety, Engineering and Environmental Department (BSEED) concluded that Quality Market's proposed use of the property to sell carry-out liquor under the SDD license met the requirements of Detroit's zoning ordinance. BSEED conditionally approved the use if a spacing waiver could be obtained from the BZA.

Quality Market submitted a petition to the BZA requesting to add the SDD license to its existing retail space and requesting a spacing waiver, stating that petitioner planned an expansion to include liquor and fresh produce, and that the license was a transfer from a former liquor retailer and thus would not increase the total number of liquor distributors in the area. The BZA held a public meeting on February 20, 2018. Opponents to the proposal included people from the nearby school and a nearby neighbor who did not believe that adding liquor to the store was in the best interests of the neighborhood.

The BZA denied Quality Market's petition at the meeting as reflected in its meeting minutes. The BZA approved the meeting minutes on February 27, 2018.

The BZA issued a written decision and order reflecting this denial on March 15, 2018. The decision stated that a spacing waiver would not be in keeping with the spirit and intent of Detroit's zoning ordinance and Master Plan, and would be injurious to the enjoyment of other property owners in the vicinity and could substantially impair property values. The BZA also noted that Quality Market had not met all of the relevant criteria for approval of a variance under Detroit's zoning ordinance. The BZA therefore denied the spacing waiver. The written decision contained the following statements:

Any decision of the Board of Zoning Appeals may be appealed to the Circuit Court as specified in 125.585 (MSA 5.2935) of the Zoning Enabling Act of Michigan, Act 207 of the Public Acts of 1921, as amended, within twenty one (21) days from the entry of such decision.

* * *

A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606. 125.3606. Circuit court; review; duties, Sec. 606(3)(a).

* * *

Any decision of the Board may be appealed to [sic] Circuit Court as specified in Sections 605 and 606 of the Michigan Zoning Enabling Act, being MCL 125.3605 and 125.3606.

An appeal from a decision of the Board shall be filed within 30 days after the Board issues its decision in writing signed by the chairperson. [Id. at 5-6.]

Quality Market filed its claim of appeal in the circuit court on April 6, 2018. The BZA moved to dismiss on the basis that the appeal was untimely under MCL 125.3606(3). The circuit court denied the motion following a hearing, stating that even if it granted the BZA's motion to dismiss, counsel for Quality Market would just file a delayed application for leave to appeal, and

opining that denying the motion to dismiss was the most efficient way to get the merits of the issues before the court. The circuit court subsequently considered the merits of Quality Market's appeal, and concluded that the BZA's decision was not supported by competent, material and substantial evidence. The circuit court therefore reversed the BZA's decision.

This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo questions of law in zoning cases. *Bell River Assoc v China Twp*, 223 Mich App 124, 129; 565 NW2d 695 (1997). We also review de novo issues of statutory interpretation, see *McQueer v Perfect Fence Co*, 502 Mich 276, 285-286; 917 NW2d 584, and whether the circuit court has subject-matter jurisdiction over a case, *Summer v Southfield Bd of Ed*, 310 Mich App 660, 667; 874 NW2d 150 (2015).

III. ANALYSIS

An appeal to the circuit court of a zoning board decision must be taken within the time allotted by statute. See MCR 7.104(A)(1); MCR 7.122(B). MCL 125.3606(3) provides:

An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

MCR 7.122(B) similarly provides in relevant part that

if no time is specified in the applicable statute, the appeal must be filed within 30 days after the certification of the minutes of the board or commission from which the appeal is taken or within 30 days after the board or commission issued its decision in writing, whichever deadline comes first.

The time limit for an appeal to the circuit court is jurisdictional; a circuit court lacks jurisdiction over an untimely-filed claim of appeal. MCR 7.104(A)(1); *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79, 82; 382 NW2d 737 (1985).

In this case, the BZA approved the minutes reflecting its denial of the spacing waiver on February 27, 2018, and later issued a written decision and order reflecting its denial on March 15, 2018. Quality Market did not file its appeal until April 26, 2018. Therefore, Quality Market's appeal was untimely under either MCL 125.3606(3) or MCR 7.112(B) if the applicable time period is measured from the approval of the BZA's minutes, which occurred before the issuance of the BZA's written decision.

Unambiguous statutory language must be enforced as written. *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012). The plain language of MCL 125.3606 and MCR 7.112(B) states that the time period for the filing of a claim of appeal is calculated from “whichever deadline comes first.” Quality Market urges this Court to interpret MCL 125.3606(3) as mandating that when a zoning board issues a written decision, the 30-day deadline in MCL 125.3606(3)(a) applies, regardless of the date of the approval of the minutes. We are not permitted to make such a construction of clear statutory language, which amounts to speculation about the intent of the Legislature beyond the language it chose to use, and we decline to do so. See *In re MCI Telecommunications Complaint*, 460 Mich 396, 414-415; 596 NW2d 164 (1999); *Pace v Edel-Harrelson*, 499 Mich 1, 7; 878 NW2d 784 (2016); *People v Breidenbach*, 489 Mich 1, 8; 798 NW2d 738 (2011).

Quality Market also argues that the language of the BZA’s written decision was misleading with regard to the time for an appeal, and therefore that the BZA should be estopped from arguing that Quality Market’s appeal was untimely. We disagree. Again, the time limit for an appeal to the circuit court is jurisdictional. MCR 7.104(A)(1); *Schlega*, 147 Mich App at 82. Subject-matter jurisdiction may not be conferred on a court by the actions of the parties. See *Smith v Smith*, 218 Mich App 727, 733; 555 NW2d 271 (1996). Additionally, while the BZA’s language concerning appeals may not have been a model of clarity, it did make reference to the relevant statute in which the relevant deadlines for appeal could be found.

Finally, to the extent that the circuit court concluded that it had the ability to consider Quality Market’s untimely appeal as a late application for leave to appeal, it erred. MCR 7.105(G) does permit the filing of late applications for leave to appeal. However, MCL 7.103(B)(4) provides that the circuit may grant leave to appeal from “a final order or decision of an agency if an appeal of right was not timely filed and a statute authorizes a late appeal[.]” The latter requirement was lacking, in that MCL 125.3606(3) does not authorize an appeal by leave granted or a late appeal. The circuit court therefore erred by concluding that it could review Quality Market’s untimely-filed appeal as on leave or by delayed leave granted. Because Quality Market failed to timely file its claim of appeal in the circuit court, the court lacked jurisdiction over its appeal. See MCL 125.3606(3)(a); MCR 7.104(A). And because we conclude that the circuit court lacked jurisdiction over Quality Market’s appeal, we need not consider the BZA’s remaining arguments on appeal.

For these reasons, we vacate the circuit court’s order reversing the BZA’s denial of a spacing waiver, reverse the circuit court’s order denying the BZA’s motion to dismiss and remand this matter to the circuit court for the entry of an order granting that motion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto
/s/ Mark T. Boonstra