

Circuit Court for Worcester County  
Case No. C-23-CV-23-000234

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 880

September Term, 2024

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HARRISON HALL HOTEL, INC., ET AL.

v.

MHROC PROPERTY OWNER, LLC, ET AL.

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Leahy,  
Zic,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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Filed: November 17, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from MHROC Property Owner, LLC’s (“MHROC”) plan to redevelop property (“Property”) located on the east side of Baltimore Avenue between 13th and 14th Streets in Ocean City, Maryland, into a 230-room hotel. On September 21, 2021, the Ocean City Zoning Administrator determined that the property retained legal nonconforming use rights for hotel and multi-family residential units. Two years later, the Ocean City Planning Commission (“Commission”) approved MHROC’s site plan for the hotel based on the Zoning Administrator’s determination. Appellants opposed the approval.<sup>1</sup> Appellants simultaneously filed a notice of appeal with the Board of Zoning Appeals (“BZA”) and a petition for judicial review in the Circuit Court for Worcester County, challenging the Commission’s approval of the site plan. The appeal to the BZA was stayed by agreement among the parties during the pendency of the underlying circuit court proceedings.<sup>2</sup>

Appellants now challenge the circuit court’s order granting Appellees’<sup>3</sup> motions to dismiss on the ground that Appellants failed to exhaust their administrative remedies before seeking judicial review. Appellants present two questions for our review, which

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<sup>1</sup> There are eight appellants in this case: Harrison Hall Hotel, Inc., Bill Horine, Kevin Moore, Robert Moore, Ross Rapaport, Bill Rinaca, Lisa Rinaca, and Mario Villasanta.

<sup>2</sup> Appellants requested an extension of this stay in July 2024, but the Commission and the Mayor and City Council of Ocean City note that, as of February 2025, the BZA had not yet responded.

<sup>3</sup> Appellees include the Commission, the Mayor and City Council of Ocean City (collectively, “City”), and MHROC.

we have recast and rephrased as one:<sup>4</sup> Did the circuit court err in granting Appellees' motions to dismiss? For the following reasons, we answer this question in the negative and affirm.

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<sup>4</sup> Appellants phrased the questions as follows:

1. Whether the [c]ircuit [c]ourt's stated rationale in granting the [m]otion to [d]ismiss was legally correct.
2. Whether arguments put forward by Appellees, if relied upon, could have been legally correct.

MHROC presented the following three questions in its brief:

1. Did the [c]ircuit [c]ourt correctly rule that Harrison Hotel was required to exhaust administrative remedies by appealing the Planning Commission's decision approving MHROC's site plan to the BZA prior to seeking judicial review in the [c]ircuit [c]ourt?
2. Is Harrison Hotel barred from challenging the Zoning Administrator's September 19, 2021 determination as [to] the existence and extent of a legal nonconforming use on the Property [] because Harrison Hotel failed to appeal the [d]etermination [to] the BZA within 30 days, pursuant to [Town] Code § 110-93(1)?
3. Was the Zoning Administrator's September 19, 2021 [d]etermination as to the existence and extent of a nonconforming use on the Property supported by substantial evidence?

For the sake of thoroughness, we note that the record indicates the Zoning Administrator issued the factual determination on September 21, 2021, rather than on September 19, 2021, as cited in MHROC's original second and third questions.

The City presented the following question in its consolidated brief: Did the [c]ircuit [c]ourt commit any error in dismissing the [p]etition for [j]udicial [r]eview because Appellants had not proceeded first with their administrative appeal to the Ocean City BZA?

## BACKGROUND

### *Appeals Process*

For context, we begin by discussing the relevant statutory authority regulating the administrative appeals process. The Ocean City, Maryland Code of Ordinances (“Town Code”) outlines the proper procedure for appeals challenging a zoning determination. Pursuant to § 110-181(a) of the Town Code, “[n]o building permit shall be issued for any work in connection with a use or structure until a site plan has been reviewed and approved for such use or structure.” The beginning of the building permit process for nonconforming uses, structures, and lots requires the “administrator” to make factual determinations about the “existence and extent of [the] nonconformi[ty.]” Ocean City, Md., Code of Ordinances § 110-72(a). The Commission must then review the proposed site plan for compliance with specified matters, including vehicular traffic flow, access to structures and public streets, pedestrian movement, fire equipment and emergency access, refuse removal, landscaping, drainage, signage, lighting, building height, utilities, and impact on surrounding properties. *Id.* at § 110-181(b).

The Town Code also governs appeals from decisions of the Commission. Specifically, § 110-92(b) provides:

An appeal to the board may be taken by any person aggrieved by an adverse decision of the administrator, or by any officer, department, board, or bureau of Ocean City affected by any decision of the administrator. Such appeal shall be taken within 30 days after the decision appealed from by filing with the administrator and with the board a notice of appeal specifying the grounds thereof.

Although we acknowledge that this section of the Town Code is not a model of clarity, as applied to the instant case, the “administrator” means the “[Z]oning [A]dministrator of Ocean City,” and “the board” refers to the BZA. *Id.* at § 110-92(b). Accordingly, the BZA has the power “[t]o hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the administrator in the administration or enforcement of this chapter.” *Id.* at § 110-93(1).

With the statutory framework now briefly described, we turn to the facts of the case before us.

### ***The Zoning Administrator’s Determinations***

On August 18, 2021, MHROC applied to the Ocean City Zoning Administrator for a legal nonconforming use determination, pursuant to Town Code § 110-72(a). MHROC proposed redeveloping the Property into a 230-room hotel complex to be known as the Oceanfront Boardwalk Hotel. On September 21, 2021, the Zoning Administrator determined that the Property supported a legal nonconforming use consisting of hotel and multi-family residential units.

### ***The Commission’s Approval***

On September 19, 2023, the Commission approved MHROC’s site plan for the Oceanfront Boardwalk Hotel. In doing so, the Commission relied on the Zoning Administrator’s recommendation that the plan complied with the September 21, 2021 nonconformity determination, as well as the Zoning Administrator’s testimony that the project otherwise satisfied applicable zoning requirements. The Commission also

emphasized that site plan approval was not the final stage of regulatory review and that additional approvals would be required at the building permit stage.

***Circuit Court Proceedings***

On October 17, 2023, Appellants filed a petition for judicial review in the Circuit Court for Worcester County, challenging the Commission’s approval of the site plan for the Oceanfront Boardwalk Hotel. Contemporaneously, Appellants filed a notice of appeal with the BZA but took the position that the BZA lacked statutory authority to review the matter.<sup>5</sup> In both filings, Appellants challenged (1) the Commission’s reliance on the Zoning Administrator’s September 21, 2021 determination and (2) the sufficiency of the site plan’s treatment of accessory retail uses and interior access. On December 11, 2023, the City moved to dismiss, arguing that (1) the nonconforming use determinations were made by the Zoning Administrator, not by the Commission, and were appealable only to the BZA; (2) Appellants had failed to timely appeal the Zoning Administrator’s determination to the BZA; (3) Appellants’ claims regarding interior access to retail units were not properly before the court; and (4) Appellants lacked standing. On December 14, 2023, MHROC filed its own motion to dismiss, in which it incorporated the same arguments.

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<sup>5</sup> As of the filing of this opinion, the BZA has not rendered a decision on the merits of the appeal because the parties agreed to stay proceedings pending judicial review.

On June 7, 2024, the circuit court granted both motions to dismiss.<sup>6</sup> The circuit court did not adopt the arguments advanced by Appellees but instead concluded that Appellants had failed to exhaust administrative remedies.<sup>7</sup> The circuit court reasoned that Town Code § 110-92(b) “clearly requires that appeals challenging the Commission’s decisions be filed with the BZA.” Appellants timely filed an appeal in this Court challenging the circuit court’s order granting Appellees’ motions to dismiss.

### STANDARD OF REVIEW

This Court “review[s] the grant of a motion to dismiss *de novo* [and 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.” *Grier v. Heidenberg*, 255 Md. App. 506, 520 (2022) (quoting *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015)). Moreover, the determination of whether a plaintiff must exhaust administrative remedies before seeking judicial review is a legal question, *Comptroller of Md. v. Comcast of Cal.*, 484 Md. 222, 231 (2023), which Maryland

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<sup>6</sup> We note that the circuit court’s order indicates the Commission approved the site plan on September 29, 2023. Based on our understanding of the record, the order should have stated that the Commission approved the site plan on September 19, 2023. This simple typo has no effect on our analysis.

<sup>7</sup> In support of their motion to dismiss, Appellees argued that Appellants failed to timely appeal the Zoning Administrator’s September 21, 2021 determination to the BZA within the prescribed 30-day period, pursuant to Town Code § 110-92(b). Thus, Appellees reasoned that “[Appellants] cannot now challenge those [Z]oning [A]dministrator determinations, factually or legally, through a purported judicial appeal[.]” The circuit court declined to address the timeliness issue, concluding that “this issue is not appropriately before this [c]ourt at this time, because[] . . . the appeal of that issue lies with the BZA, and not with this [c]ourt.” For the reasons set forth in this opinion, we agree.

appellate courts review *de novo*. *Mayor & City Council of Balt. v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (internal citation and quotation omitted). Indeed, “an appellate court has the authority to raise on its own the issue of failure to exhaust statutory administrative remedies.” *Young v. Anne Arundel County*, 146 Md. App. 526, 556 (2002) (citation omitted); *see also Falls Road Cmty. Ass’n v. Balt. Cnty.*, 437 Md. 115, 134 (2014) (holding that “no deference is due to the lower court” on issues related to exhaustion of administrative remedies).

## DISCUSSION

### **I. THE CIRCUIT COURT DID NOT ERR IN GRANTING APPELLEES’ MOTIONS TO DISMISS BECAUSE APPELLANTS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.**

In their brief, Appellants primarily argue that the BZA’s jurisdiction is limited to decisions of the Zoning Administrator, “whether they be challenges from an aggrieved party or from another organ of the Ocean City government affected by the Administrator’s decision[.]” Appellants further contend that judicial review is appropriate because “[n]owhere in Sections 110-92 or -93 [of the Town Code] is it stated, even obliquely, that the Commission’s decisions are to be referred to the BZA, nor is there any other section in the [Town Code] that permits such an appeal.” According to Appellants, the Zoning Administrator and the Commission are “unambiguously legally distinct,” and the Zoning Administrator has no authority under the Town Code to approve site plans. Thus, Appellants argue, the Commission’s approval of the site plan was not reviewable by the BZA.

Conversely, Appellees contend that the factual determinations regarding the Property's nonconforming use were made exclusively by the Zoning Administrator, not by the Commission, in connection with the site plan approval. Thus, in the City's view, such appeals must be made to the BZA.

**A. The Plain Language Of The Town Code Requires That Appeals Challenging The Commission's Decisions Be Filed With The BZA Prior To Seeking Judicial Review.**

It is a well-established principle in Maryland that an action against an administrative agency is ordinarily subject to dismissal when a petitioner fails to exhaust available administrative remedies. *Prince George's Cnty. v. Blumberg*, 288 Md. 275, 283 (1980) (articulating that "there are few legal tenets which have received greater acceptance into the jurisprudential law of this State"). Additionally, "when the Legislature enacts a comprehensive remedial scheme in which a claim is to be determined by an administrative agency and reviewed in an administrative appeal before judicial review is available, it establishes, as public policy, that such a procedure produces the most efficient and effective results." *Secretary, Dep't of Hum. Res. v. Wilson*, 286 Md. 639, 645 (1979). "[W]here a special form of remedy is provided, the litigant must adopt that form and must not bypass the administrative body or official, by pursuing other remedies." *Schneider v. Pullen*, 198 Md. 64, 68 (1951). Thus, when an administrative remedy is created by statute, "relief provided under those statutory provisions must be exhausted before a litigant may resort to the courts." *State Dep't of Assessments & Tax'n. v. Clark*, 281 Md. 385, 401 (1977).

This Court has consistently held that an administrative agency, officer, or unit includes a planning commission. *See Bd. of Cnty. Comm’rs for St. Mary’s Cnty. v. S. Res. Mgmt., Inc.*, 154 Md. App. 10, 40 (2003) (“[A]n ‘administrative officer’ includes a planning commission[.]”); *Wharf at Handy’s Point, Inc. v. Dep’t of Nat. Res.*, 92 Md. App. 659, 672-73 (1992) (“[W]e hold that the term ‘an administrative official’ . . . includes the Kent County Planning Commission.”). In the instant case, the Commission is, therefore, an administrative body whose decisions are subject to appeal to the BZA before judicial review. Ocean City, Md., Code of Ordinances § 110-93(1).

Here, the circuit court correctly concluded that Appellants failed to exhaust their administrative remedies by not appealing the Commission’s decisions to the BZA prior to seeking judicial review. To read the Town Code as Appellants propose would effectively nullify § 110-92(b)’s exhaustion requirement and create parallel avenues of review for the same administrative action. The plain language of the Town Code, particularly its allocation of factual determinations to the Zoning Administrator and its designation of the BZA as the appropriate direct administrative appeals body, establishes that judicial review is available only after those remedies are pursued and exhausted.<sup>8</sup>

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<sup>8</sup> Appellants also contend that the Commission’s decision is “intrinsically reviewable” pursuant to Maryland Rules 7-401 and 7-402. Because we hold that Appellants have not exhausted their administrative remedies, we decline to address this additional argument.

## **CONCLUSION**

We hold that, pursuant to the Town Code, appeals challenging the Commission's decisions must be filed with the BZA prior to seeking judicial review. Ocean City, Md., Code of Ordinances §§ 110-92(b), 110-93(1). Therefore, we affirm the circuit court's decision to grant the Appellees' motions to dismiss.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WORCESTER COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**