

Circuit Court for Baltimore City
Case No. 24-C-24-000798

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1135

September Term, 2024

IN THE MATTER OF THE PETITION
OF LINDA D. STEWART, ET AL.

Wells, C.J.,
Tang,
Kenney, James A., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: November 5, 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 Rule 1-104(a)(2)(B).

This appeal arises from a decision of Baltimore City’s Board of Municipal and Zoning Appeals (“BMZA”) that the nonconforming density of 1911 E. 31st Street (“the Property”) in the R-6 zone was not lost due to vacancy, and therefore, the current property owner could use the Property for three dwelling units without the need for a variance. Certain neighbors (“the neighbors”) who opposed the use, collectively filed a timely petition for judicial review and a hearing regarding that petition was held. The Circuit Court for Baltimore City affirmed the BMZA’s ruling in a written order. The neighbors noted a timely appeal and present us with a single question that we have rephrased:

Was the BMZA’s determination that the nonconforming density of the Property for three dwelling units was not lost due to vacancy and could, therefore, be continued by the current owner without the need for a variance a correct application of the law?

For the reasons to be discussed, we conclude that the BMZA’s determination that the nonconforming density of the Property was not lost due to vacancy and that it could be continued by the current owner without the need for a variance was a correct application of the Zoning Code as it is currently written. Therefore, we shall affirm the judgment of the circuit court.

BACKGROUND

This issue arose in 2023 when the current owner of the Property, Kendo Properties, LLC, through its representative, Anthony Diggs, Sr., received a construction permit and began to renovate the then-vacant row home and convert it into a multi-family dwelling unit with three separate apartments. Those renovations included installing interior doors, repairing a cracked ceiling, installing carpet, and more. The owner also applied in 2023 for

a use and occupancy permit to continue the prior use of the Property as three separate apartments, but that application was denied by Baltimore City’s Department of Housing and Community Development (“DHCH”) Zoning Administrator because the Property lacked the minimum lot area required by the Zoning Code for three dwelling units. The owner then applied for review by the BMZA to re-establish the prior use of the Property as three dwelling units. The BMZA scheduled a hearing.

At its hearing, the BMZA discussed the nature and history of the Property. The Property is in the Coldstream-Homestead-Montebello neighborhood of Baltimore City. A three-story brick building was constructed in 1922 with intended use as a single-family home. The BMZA determined that the Property had been approved for use as three apartments in 1931, that the Property was in fact converted into three separate dwelling units at that time, and that the use of the Property as three apartments continued until at least 1967.¹ Multiple building permits were issued over the years to prior owners so that various repairs could be made—in 2006 for bathroom and kitchen repairs, in 2007 for the removal of a rear addition, in 2008 for work on the heating system, and in 2015 to upgrade the electrical system.

At some point, though the parties are not sure exactly when, the Property became vacant. The record shows the Building Official issued a vacant building violation notice to

¹ The “Zoning Summary Card” indicates the last certificate of occupancy issued for the Property was to continue its use as a multi-family dwelling. As noted by the City, the summary card refers to an application for a certificate of occupancy to use the first-floor apartment as a daycare, but no such permit was ever issued.

the property owner in 2018. However, the district’s Councilperson, the Honorable Odette Ramos, testified at the BMZA hearing that she thought the property had been vacant prior to 2018. A transfer of title to the Property also occurred in 2018. In fact, while vacant, title to the Property had been transferred once in 2018 and twice in 2023.

The area where the Property is located is zoned R-6 residential. Multi-family dwellings are permitted in the R-6 residential zoning district, but they are subject to the bulk regulations set forth in the Baltimore City Code Article 32, Table 9-401. According to Table 9-401, the bulk regulations for multi-family dwelling units in the R-6 zoning district allow for one dwelling unit per 1,500 square feet of lot area. The Property encloses an area of 3,375 square feet and, therefore, was determined to lack the minimum required lot area for three dwelling units. That was the reason the DHCH Zoning Administrator rejected the Property owner’s initial application to use the Property for three dwelling units. It is also why the owner requested a “variance from the R-6 lot area requirements” in his appeal to the BMZA.

The BMZA, however, determined that a variance was not necessary because the last authorized density for the Property was for three units and that use had not been lost during the period of vacancy. In making that determination, the BMZA conferred with its staff as to how the board has treated cases with similar circumstances of nonconformity relating to residential density in the past. The BMZA’s director explained there was a provision in the old Zoning Code that when a residential property located in a district where multi-family dwellings are a permitted use became vacant, its status would convert to a single-family

dwelling. If the owner then desired a conversion back to multi-family dwelling status, they would be subject to BMZA review.

The BMZA director testified, however, that when Baltimore City’s current zoning code, known as TransForm Baltimore, was enacted in 2017, that provision was removed. She testified that the city council removed that provision because they “believed that [it] was getting [in] the way of vacant properties being redeveloped if they have to go through this process, this conversion process, to be able to be used the way they had always been used.” She continued:

So now that section doesn’t exist, and there’s this thing called nonconforming density in Section 18-206. It says that given that – **whether a nonconforming density or other form of nonconformity exists is a question of fact that has to be decided by the BMZA.**²

So that’s why the case is here. The way that the Board has interpreted it since I’ve been here the past two years, probably more than that, is that **the Board will approve whatever the last legal use of the property is even if it’s nonconforming**, this nonconforming density thing. Because, basically, **the structure is nonconforming under the bulk regulations.**

(emphasis supplied)

² Indeed, Zoning Code §18-206(a) states:

§18-206. Determination of nonconformity.

(a). By BMZA.

Whether a nonconforming use, nonconforming density, or other form of nonconformity exists is a question of fact that, except as specified in subsection(b) of this section, must be decided by the Board of Municipal and Zoning Appeals after public notice and hearing in accordance with the rules of the Board.

The director also stated the practice of the BMZA under the current zoning code is to approve an application for use and occupancy of a multi-family dwelling structure as an existing nonconforming density “as long as the existing number of units matches the last legal use.” The BMZA ultimately found there was no subsequent use permit in the file to show the density of the Property was reduced from three units at any time after 1967. The BMZA thus determined the Property retained its status as a multi-family dwelling with three dwelling units and could continue to be used as such without the need for a variance.

The neighbors opposed the notion that the Property did not lose its status as a multi-family dwelling due to the period of vacancy. They submit that they have been engaged in a battle “to keep a balance of homeowners and investors” in their community and “the idea that non-conforming density can exist in perpetuity is frightening.” They complain that the Property “has sat vacant leeching the value from [their] neighborhood.” The neighbors also complain that the nonconforming density of the Property, which was “set more than 30 years ago” does not “support the idea of a safe and healthy city” today. They cite Zoning Code §18-206(b) and §18-207 for the proposition “that a nonconforming density becomes void after a period of non-use.”

STANDARD OF REVIEW

The applicable standard of review for an administrative agency’s decision is highly deferential. A reviewing court looks to whether there was substantial evidence to support an administrative agency’s decision. *Balt. Lutheran High Sch. v. Emp. Sec. Admin.*, 302 Md. 649, 662 (1985). An administrative agency’s decision is deemed *prima facie* correct

and carries the presumption of validity. *Tomlinson v. BKL York, LLC*, 219 Md. App. 606, 614–15 (2014), *cert. denied*, 441 Md. 219 (2015). We noted in *Tomlinson* that reviewing courts “may reverse an administrative decision premised on erroneous legal conclusions.” *Id.* at 614. Reviewing courts, however, are “bound by the agency’s findings of fact and may not substitute [their] judgment for that of the agency unless no ‘reasoning mind reasonably could have reached the factual conclusion the agency reached.’” *Pollard’s Towing, Inc. v. Berman’s Body, Frame & Mech., Inc.*, 137 Md. App. 277 (2001) (citing *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)).

The parties agree the underlying issue here is one of statutory construction. They do not agree, however, on how the Zoning Code should be construed. The standard used by the Maryland appellate courts to decide issues of statutory construction is well-settled. *75-80 Properties, L.L.C. v. Rale, Inc.*, 470 Md. 598, 623 (2020). “The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010) (internal citations omitted). To make that determination, courts first look to the “plain meaning of the words chosen by the Legislature.” *Leppo v. State Highway Admin.*, 330 Md. 416, 422 (1993) (internal citations omitted); *Revis v. Auto. Ins. Fund*, 322 Md. 683, 686 (1991). “If the statutory language itself is insufficient to lead us comfortably to conclude what the Legislature intended, we look beyond the words and examine legislative history when it is available and the context of the legislation.” *Leppo*, 330 Md. at 422 (internal citations omitted).

DISCUSSION

The neighbors and the City disagree on whether the BMZA correctly interpreted and applied the Zoning Code in this case. The neighbors argue that the BMZA should have treated this case as a request for a variance under Title 5, Subtitle 3 of the Zoning Code and not as a request for a determination of noncomplying density under Title 18 Nonconformities. Additionally, the neighbors argue that the BMZA failed to consider the expiration and abandonment provisions of Title 18. The City responds that the BMZA’s decision that the nonconforming density of the Property was not lost due to its vacancy is consistent with the text of the Zoning Code when the language, structure, and context of the applicable provisions are read in their entirety. We agree with the City that the BMZA properly confirmed the nonconforming density of the Property in the R-6 zone, thereby permitting the owner to use the premises as a multi-family dwelling with three dwelling units without needing to obtain a variance.

Title 18 of the Zoning Code covers nonconformities. Title 18 distinguishes between nonconforming structures and nonconforming uses at §18-201:

(c) Nonconforming structure. “Nonconforming structure” means a lawfully existing structure that, as of the effective date of this Code (June 5, 2017) or the effective date of an amendment to this Code, does not comply with the bulk, yard, or other regulations applicable to the district in which it is located.

(d) Nonconforming use. “Nonconforming use” means a lawfully existing use of a structure or of land that, as of the effective date of this Code (June 5, 2017) or the effective date of an amendment to this Code, does not conform to the use regulations applicable to the district in which it is located.

Table 9-301 of the Zoning Code covers the use regulations applicable to the R-5 through R-10 zoning districts whereas Table 9-401 covers the bulk and yard regulations applicable

to those same zoning districts. The minimum lot area standards that control permissible density are part of the bulk and yard regulations of Table 9-401. Table 9-301 of the Zoning Code, in contrast, does not address the specific density of a multi-family dwelling at all. We agree with the City that, therefore, a nonconformity arising from the application of the regulations of Table 9-401 creates a nonconforming structure under the definition of §18-201(c). Nonconforming uses and nonconforming structures are covered under two separate subtitles of the Code.

Nonconforming structures are covered under Title 18, Subtitle 4 of the Zoning Code. Under Subtitle 4, a nonconforming structure may be continued but not expanded where the expansion would create a new nonconformity or would increase the degree of the nonconformity. *See* Zoning Code §18-402 and §18-403. An exception to that rule applies, however, to multi-family structures of four or more dwelling units. Zoning Code §18-412. Under §18-412(b), if the active and continuous use of a dwelling unit ceases for a period of 12 or more months, then that dwelling unit is considered abandoned, and the permissible density is thereafter reduced by one. There is no similar provision concerning the abandonment of a dwelling unit in a multi-family dwelling structure of three or less units. It is reasonable therefore, as argued by the City, to assume the legislative body intended not to impose the same active and continuous use requirements on multi-family structures of three or less units that they impose on multi-family structures of four or more units. Indeed, the Maryland Supreme Court stated in *Leppo*, 330 Md. at 423, “[w]here a statute expressly provides for certain exclusions, others should not be inserted.”

The neighbors cite two provisions of the Zoning Code, §18-206(b) and §18-207, to support their argument that the Property’s nonconforming density was lost due to its vacancy and could not be re-established without a variance. They argue §18-206(b) requires continued and uninterrupted use for the Zoning Administrator to issue a permit to continue a nonconforming density. Although this is a correct statement of the law, we agree with the City that §18-206(b) relates only to when the Zoning Administrator has the authority to issue a use permit for a nonconformity without the need to conduct a BMZA hearing. We also agree with the City that §18-207 is inapplicable to this case because it concerns only how much time a property owner has to act *after* receiving the authorization to reestablish or continue a nonconformity.³ This is evidenced by the words of §18-207:

- (a) Any authorization to reestablish or continue a nonconforming use, density, or other nonconformity lapses and becomes void 1 year from the date of its final approval, unless within that year:
 - (1) a use permit under this Code and an occupancy permit under the Baltimore City Building Code have been obtained for that use;
 - (2) the erection or alteration of a structure for that use has lawfully begun; or
 - (3) the use has lawfully begun.
- (b) The Board of Municipal and Zoning Appeals may grant an extension of this period, as established under subsection (a), by not more than 18 months on written application and for good cause shown without notice or hearing.

It is clear from the statute’s plain meaning that neither §18-206(b) nor §18-207 apply in this case. §18-206(b) does not apply because in this case the Zoning Administrator

³ The City incorrectly cites §18-307 in this section of their brief but it is clear that their discussion relates to §18-207.

denied the owner’s application to continue the Property’s nonconforming density, and a hearing was held before the BMZA. §18-207 does not apply in this case either because a multi-family dwelling consisting of three units was indeed constructed and maintained for many years before it became vacant.

We hold the BMZA properly interpreted and applied the Zoning Code to the facts of this case. It is clear from the plain meaning of the applicable statutory provision, namely §18-206, that the BMZA properly determined that the nonconforming density of the Property was not lost due to vacancy. The BMZA was allowed to rely on information from its director as to how similarly situated cases have been treated. The BMZA properly determined that past practice was to look at the last legal use on file, which in this case was for use as a multi-family dwelling of three dwelling units. Therefore, the BMZA did not err when they approved the application for use of the Property as a multi-family dwelling with a nonconforming density.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**