Circuit Court for Baltimore County
Case No. C-03-CV-23-004032

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1520

September Term, 2024

IN THE MATTER OF FALLS ROAD COMMUNITY ASSOCIATION, *et al.*

Tang,
Kehoe, S.,
Hotten, Michele D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises out of administrative proceedings regarding a proposed residential development in Baltimore County. Proceedings were held before Administrative Law Judge Maureen Murphy ("ALJ Murphy") with the Baltimore County Office of Administrative Hearings ("OAH") as well as the Baltimore County Board of Appeals ("BOA").

Appellee, Alvin B. Krongard ("Mr. Krongard"), submitted a development plan to the Baltimore County Planning Department for "Torch Hill," a residential development with thirty-one detached single-family homes on 44.24+ acres in the Lutherville-Timonium area of Baltimore County. The development plan included a Petition for Special Variance to authorize development within a traffic shed containing a failing intersection. On October 13, 2022, ALJ Murphy approved both requests and issued a "Combined Development Plan and Zoning Opinion and Order" ("Opinion and Order") detailing findings and conclusions.

Appellant, Falls Road Community Association ("FRCA"), timely noted an appeal to the BOA. Baltimore County residents Peter George ("Mr. George"), Douglas Sachse ("Mr. Sachse"), Doug Carroll ("Mr. Carroll"), and Diedre Smith ("Ms. Smith") (collectively, "Protestants") opposed the Torch Hill Development Plan and joined the FRCA in its appeal to the BOA. On July 11, 2023 and July 13, 2023, the BOA held hearings on the request for Special Variance—and accompanying traffic impact analysis—*de novo*. On July 13, 2023, the BOA held a hearing on the Development Plan—and accompanying sewer capacity dispute—on the record. The BOA's consideration of the Development Plan was based on the record before ALJ Murphy. The BOA affirmed ALJ Murphy's Opinion

and Order approving the Torch Hill Development Plan and granted the Special Variance in the "Board of Appeals' Combined Opinion on Appeal of Development Plan Approval & *De Novo* Hearing on Requested Variance Relief" ("Combined Opinion"). FRCA and Protestants (collectively, "Appellants") requested judicial review in the Circuit Court for Baltimore County.

On September 2, 2024, the circuit court determined that Appellants lacked standing to appeal the administrative decisions of ALJ Murphy and the BOA. Nonetheless, the circuit court concluded that even if Appellants had standing, the administrative decisions of ALJ Murphy and the BOA should be affirmed. Appellants timely appealed the decision. The parties submitted briefs to this Court, and oral argument was held on November 6, 2025.

I. QUESTIONS PRESENTED

Appellants presented three questions for our review:

1. Did the Circuit Court err in concluding that Appellants lack standing?

2. Did ALJ Murphy err in approving the development plan despite the capacity problems in the sanitary sewer system?

3. Did the Board of Appeals err in approving the special traffic variance?

For the reasons stated herein, we reverse the judgment of the circuit court in part, as we hold that Appellants do have standing. However, since we hold that both the approval of the Torch Hill Development Plan by ALJ Murphy and the grant of the Special Variance by the BOA were proper, we affirm the judgment of the circuit court on the merits.

II. PROCEDURAL BACKGROUND

A. Administrative Review

1. OAH Proceedings & ALJ Murphy's Opinion and Order

On July 7, 2022, July 8, 2022, and August 22, 2022, ALJ Murphy considered the Torch Hill Development Plan and Special Variance requests submitted by Mr. Krongard.

Prior to the hearings, Mr. Krongard submitted a Redlined Development Plan and Greenlined Development Plan prepared by Stacy McArthur, RLA ("Ms. McArthur") of D.S. Thaler & Associates, Inc., for ALJ Murphy's review. Along with the Development Plan, Mr. Krongard filed a Petition for Special Variance from Baltimore County Zoning Regulations ("BCZR") § 4A02.4.G, to allow development, despite Torch Hill being located within a traffic shed[1] containing a failing intersection.

Representatives of various Baltimore County agencies reviewed the development plan, attended the hearing, and testified on behalf of Baltimore County. Importantly, every representative of a reviewing agency testified that Torch Hill satisfied applicable rules and regulations, and each recommended the Development Plan for approval, including:

- Shaun Crawford ("Mr. Crawford"), on behalf of Office of Zoning Review ("OZR")
- LaChelle Imwiko ("Ms. Imwiko"), on behalf of Real Estate Compliance ("REC")
- Stephen "Steve" Ford ("Mr. Ford"), on behalf of Department of Environmental Protection and Sustainability (including Stormwater

[1] A traffic shed is a County-designated area surrounding a failing intersection in which 50% or more of the projected traffic is directed to that intersection, such that future development would significantly contribute to the failing intersection, warranting regulation. The Petition for Special Variance discussed in this opinion concerns the traffic shed consisting of the failing Falls Road/Seminary Avenue intersection.

Management, Ground Water Management, and Environmental Impact Review) (collectively, "DEPS")
- Marta Kulchytska ("Ms. Kulchytska") and Jenifer Nugent ("Ms. Nugent"), on behalf of Department of Planning ("DOP")
- James "Jim" Hermann ("Mr. Hermann") on behalf of Department of Recreation and Parks ("R&P"), along with Skinner Patel ("Mr. Patel") on behalf of Development Plans Review ("DPR")
- Kristoffer "Kris" Nebre ("Mr. Nebre") and Angelica Daniel ("Ms. Daniel") on behalf of Department of Public Works and Transportation ("DPWT")

Inasmuch as much of the agency representatives' testimony listed above is not relevant to our review, we omit details from our summarization of the administrative proceedings. Three agency representatives, however, offered critical background information on the review process as it relates to the Special Variance. We recap the testimony of Ms. Nugent, Ms. Daniel and Mr. Nebre here.

On July 7, 2022, Ms. Nugent explained that DOP deferred review of the Petition for Special Variance and accompanying "Traffic Impact Analysis" ("TIA") to DPWT given its expertise in reviewing traffic impact studies and improvements to intersections.[2] Ms. Nugent added that the director of DOP had reached out to DPWT in regard to the Special Variance but was unsuccessful in obtaining an answer.

At the request of ALJ Murphy, Ms. Daniel and Mr. Nebre testified on behalf of DPWT.[3]

[2] Like Ms. Nugent, Ms. Kulchytska also testified that "[t]he Department of Planning has reviewed the petition, and the Department of Planning defers this request to the Department of Public Works and Transportation."

[3] Since Mr. Nebre was not present to testify with the remainder of the Baltimore County agency witnesses on July 7, 2022, and there was some debate between the parties

Ms. Daniel explained that Falls Road and Seminary Avenue are State roads, and the signal at Falls Road/Seminary Avenue intersection is also owned by the State. As a result, the State, not Baltimore County, has jurisdiction to undertake work to improve those

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regarding whether Mr. Nebre, acting in his role at DPWT, had accepted Mr. Krongard's traffic impact analysis and recommended the Special Variance be approved, ALJ Murphy felt it appropriate to request his attendance at a later date. At the conclusion of the July 7, 2022 hearing, FRCA advanced an argument that ALJ Murphy was assisting Mr. Krongard in meeting his burden of proof, which ALJ Murphy denied. The following colloquy occurred:

> [COUNSEL FOR FRCA]: Well, I really look at all this as a failure of proof, Judge Murphy, as opposed to, you know, us helping the Developer prove its case, which I think is what's going on here.
>
> [ALJ MURPHY]: Oh, no, it wasn't—
>
> [COUNSEL FOR MR. KRONGARD]: Judge Murphy, may I be heard on that?
>
> [ALJ MURPHY]: Well, it's not—no. It's not my intention to do that. What I'm trying to do is get to, really, the bottom of it. Sounds like what happens is—with the County, I mean, you know, is that it—there's, I guess, a—you know, Department of Planning defers over to another department, which does happen sometimes, you know. So it's—but in this case—
>
> [COUNSEL FOR FRCA]: I just don't think that's what's happening here. I don't think that's what happened here. We don't have a report from the Director of Planning, and we don't have a final word from Mr. Nebre. And we're trying to get a final word from Mr. Nebre, when the Developers should have gotten one. So that's my view. I'm not saying you're doing it on purpose, Your Honor, I'm just suggesting.
>
> [COUNSEL FOR MR. KRONGARD]: No. You're suggesting I'm doing it on purpose.
>
> * * *
>
> [ALJ MURPHY]: I'll reach out and see if Mr. Nebre can come in tomorrow.

Mr. Nebre and his supervisor, Ms. Daniel, testified on the final day of proceedings before the OAH on August 22, 2022.

roadways and/or to make changes to the signal timing or the State could approve plans by a developer to improve roadways.[4]

Mr. Nebre explained that Baltimore County uses the "loaded cycle methodology" ("LCM") under the 1965 Highway Capacity Manual ("HCM") to assess traffic conditions. Application of the LCM involves on-the-ground observation of traffic volumes and congestion. According to Mr. Nebre, a traffic cycle becomes "loaded" if, on a green light, the last vehicle in line does not get through the intersection. The percentage of loaded cycles determines the level of service (A through F). For intersections rated A through C, Mr. Nebre explained that DPWT conducts annual traffic counts to be able to reevaluate the ratings every three years. For intersections rated D through F, Mr. Nebre explained that DPWT reevaluates the ratings every year. Although Mr. Nebre does not determine the boundaries for traffic sheds, he verified that Torch Hill is only included in the traffic shed for Falls Road/Seminary Avenue intersection. Mr. Nebre confirmed that the Falls Road/Seminary Avenue intersection is currently rated F and has been since 2009. When asked if there is any other standard besides the LCM, Mr. Nebre indicated that Baltimore County defers to the State standard and uses the critical lane volume analysis ("CLV") "for comparison sake" when evaluating traffic impact studies. Mr. Nebre explained that the "district standard" relates to impact from the development, measured by calculations

[4] Mr. Nebre also testified that "[b]oth roads that form this intersection are owned and maintained by the State Highway Administration. So they are outside our jurisdiction." Mr. Nebre explained "…it's a State road, so it would be up to the State to make, to ensure, that [the road improvement] is feasible."

contained in the trip generation manual. Ultimately, Mr. Nebre concluded that "the proposed improvements were enough to handle the assumed impact from the trip generation manual." Additional testimony by Mr. Nebre is discussed below.[5]

As part of his principal case in support of the Torch Hill Development Plan and Special Variance, Mr. Krongard called two witnesses.

First, Mr. Krongard called Ms. McArthur, who prepared the Development Plan. Ms. McArthur explained that Torch Hill is inside the "Urban Rural Demarcation Line" and will connect to public water and sewer. Ms. McArthur noted how the 42.44-acre property is zoned "Density Residential" which allows for forty-two dwellings. Ms. McArthur explained, however, that a covenant restricted the maximum number of dwellings to thirty-two (hence, Torch Hill's plan to construct thirty-one additional dwellings with the retention of the existing dwelling). Ms. McArthur clarified that the Redlined Development Plan contains all changes, additions and corrections requested by Baltimore County agencies during the review process, and the Greenlined Development Plan reflected additional corrections.

Second, Mr. Krongard called Mickey Cornelius, P.E. ("Mr. Cornelius"), to offer expert testimony regarding the TIA his company conducted which supported the Special Variance. Mr. Cornelius opined that the Torch Hill Development Plan will have a net zero

[5] *See infra* Section IV.B.1.b.

effect on the Falls Road/Seminary Avenue intersection and recommended that the Special Variance be approved. Additional testimony by Mr. Cornelius is discussed below.[6]

FRCA called two witnesses, neither of whom rebutted Ms. McArthur's testimony describing the Development Plan and changes therein or Mr. Cornelius's testimony regarding the traffic impact on the Falls Road/Seminary Avenue intersection. Instead, both of FRCA's witnesses addressed the sewer capacity issue.

First, FRCA called Randall Grachek, P.E. ("Mr. Grachek"), an environmental engineer employed by New Fields, Inc., to testify regarding sewer capacity. Mr. Grachek's testimony is explained in greater detail below.[7]

FRCA's second witness was Beth Miller ("Ms. Miller"), a licensed architect and member of the executive committee for Green Towson Alliance. Ms. Miller has investigated development applications within the sewer shed where Torch Hill would be located since 2012. She created a chart listing existing and proposed developments as well as those under construction. Ms. Miller's chart was last updated on July 22, 2021 and lists the estimated sewage for each development based on square feet of the particular project.

Mr. Krongard recalled Mr. Cornelius to rebut an exhibit presented by FRCA related to the district standard. Toward the end of Mr. Cornelius's rebuttal testimony, the following exchange occurred:

> [COUNSEL FOR MR. KRONGARD]: Okay. If . . . the district standard were to be, effectively, the loaded cycle methodology, do you think [ ] that

[6] *See infra* Section IV.B.1.a.

[7] *See infra* Section IV.C.1.a.

> you've satisfied that standard through your testimony and/or this document and the traffic study?
>
> [MR. CORNELIUS]: The district standard, no matter how you interpret it, or what you interpret it to be, based upon the improvement that is being proposed, the traffic study clearly shows that we not only have a net zero impact, we actually have a positive impact in terms of reducing delay at the intersection. So, in combination with the, the traffic study and considering both the information from the County, [Mr. Nebre] indicated he agrees there's net zero impact. State Highway Administration approved our traffic study and is in favor of providing the improvements and those improvements would actually give you the ability to change signal timing and, therefore, potentially reduce the amount of loaded cycles.

Finally, Mr. Krongard called John Motsco, P.E. ("Mr. Motsco") to rebut the testimony of Mr. Grachek. Mr. Motsco testified that, according to an email he received from David Bayer ("Mr. Bayer") on behalf of DPWT, Baltimore County's sewer system is capable of accommodating sewerage generated by Torch Hill. Additional testimony by Mr. Motsco is discussed below.[8]

In lieu of closing argument, ALJ Murphy requested that both parties submit memoranda concisely summarizing their arguments. Both parties filed post-hearing memoranda on September 30, 2022.

With respect to the Special Variance, ALJ Murphy thoroughly reviewed the evidence presented and articulated findings and reasoning in the Opinion and Order. Notably, ALJ Murphy emphasized her trust in the testimony from Mr. Nebre demonstrating that certain improvements proposed to Falls Road/Seminary Avenue intersection by Mr. Krongard would cause the proposed development to have a net zero impact on the

[8] *See infra* Section IV.C.1.b.

intersection. That is, ALJ Murphy agreed with Mr. Nebre that the BCZR requires Mr. Krongard to demonstrate that the actual impact of the Development Plan and traffic that results therefrom (as mitigated by the proposed improvements) is less than that assumed by trips generated from the proposed project (i.e., the "district standard"). ALJ Murphy clarified that the LCM is the proper methodology to rate intersections, whereas the analysis for a Petition for Special Variance, which ALJ Murphy said is "essentially a waiver or exception," "focuses on what impact the particular development will have on the intersection rated as failing, so that it can be determined whether or not the building restriction permit can be lifted for a project." Consistent with this interpretation, ALJ Murphy concluded that "the Special Variance does not require a finding that [Baltimore] County's level of service be improved, only that the intersection will be able to accommodate the traffic generated by the Torch Hill Project."

ALJ Murphy ultimately concluded that "the proposed 190 ft. left-turn lane extension, along with the signal timing changes which SHA will perform, will not only increase capacity, but will reduce delays at the intersection." Accordingly, ALJ Murphy ordered that "the Petition for Special [Variance] under BCZR, §500.7 and pursuant to §[ ]4A02.4.G, to allow the construction of 31 single family residences within the Falls Road and Seminary [Avenue] traffic shed, be, and is hereby, **GRANTED**."

With respect to the sewer capacity issue, ALJ Murphy devoted several pages to her analysis. First, ALJ Murphy assessed the relevance of the *Bluestem*[9] decision, an Administrative Opinion written by Administrative Law Judge John E. Beverungen ("ALJ Beverungen") in 2019 concerning the same sewer shed. ALJ Murphy distinguished *Bluestem* from the subject application on the grounds that, while ALJ Beverungen had been provided with similar testimony from Mr. Grachek, along with the Long Term Capacity Report ("LTC Report") and the Sewershed Repair, Replacement and Rehabilitation ("SRRR Plan"), in *Bluestem*, ultimately "no evidence was provided as to planned or completed repairs, replacements and rehabilitation." Here, ALJ Murphy had the benefit of Mr. Motsco's informed testimony, along with a "Performance Assessment Report" ("PAR") from 2021. ALJ Murphy noted that the SRRR Plan "details that capacity in the system would be improved by virtue of the sewer linings, sealings, manhole linings, and manhole sealings." ALJ Murphy underscored how the SRRR Plan makes clear that remedial work to eliminate "sanitary sewer overflows" ("SSO")[10] within Baltimore County had been completed. The PAR makes clear that rehabilitation on public manholes, laterals and sewers within areas that exhibited excessive "infiltration and inflow" ("I&I")[11] reduced model-predicted SSO. Concerning Mr. Motsco's testimony, ALJ Murphy noted that Mr. Motsco was only able to testify that "almost all" of the SRRR Plan improvements have

[9] *See* Case No.: 09-0861, *In re: Development Plan Hearing (CPC Falls Road Project/Bluestem)* ("*Bluestem*").

[10] *See infra* note 26.

[11] *See infra* note 31.

been completed. Importantly, ALJ Murphy highlighted how Mr. Motsco conceded that all of the sewer linings downstream of Torch Hill, as required by the SRRR Plan, have not been completed. Thus, ALJ Murphy imposed the following condition:

> Accordingly, prior to connecting Torch Hill Project to the public sewer system, the completion of all work required under the 2012 SRRR Plan (whether for linings for sewers, manholes or both) and which is within the sewage path from Torch Hill Project . . . shall be completed as a condition of the Order.

Finally, ALJ Murphy addressed the E. coli levels in Lake Roland, a significant concern of FRCA. ALJ Murphy explained that if E. coli levels were caused by the Lake Roland interceptor, then the geometric mean would consistently be at higher levels; it would not spike to high and then low levels from week to week. ALJ Murphy also stressed the lack of definitive evidence that the Lake Roland interceptor is leaking, particularly in light of the PAR which stated that repairs were effective.

ALJ Murphy found as follows: "the sewer system has the capacity to accommodate 32 homes from Torch Hill Project and as such it meets requirements, rules, regulations and County policies set forth in BCZR, §4A02.3.G; BCC §32-4-102(b); DPW Design Manual Sanitary Sewer; and PAI, Development Plans Review Manual." Accordingly, ALJ Murphy ordered that "the Torch Hill project as set forth on the attached Greenlined Development Plan…be, and is hereby, **APPROVED**."

ALJ Murphy also granted Mr. Krongard's additional requests not raised here.[12]

[12] The Opinion and Order grants Mr. Krongard's additional requests for a setback variance and forest conservation variance. ALJ Murphy also found that the residential

2. BOA Proceedings, Public Deliberation & Combined Opinion

Beginning on July 11 and continuing on July 13, 2023, the BOA[13] conducted a *de novo* hearing on the Special Variance. The BOA received testimony and evidence from Ms. McArthur, Mr. Cornelius, Mr. Nebre and a handful of community residents.

Much of Ms. McArthur's testimony before ALJ Murphy and the BOA related to issues not raised on appeal. Her testimony regarding the approval of the Development Plan before the BOA did not substantively differ from her testimony before ALJ Murphy. Mr. Cornelius and Mr. Nebre's testimony before the BOA also mirrored their testimony before ALJ Murphy. Though we do review the BOA's factual findings and reasoning as part of our review given the scope of the BOA's review (*de novo*), we do not feel it is necessary to repeat Mr. Cornelius's and Mr. Nebre's testimony. The record makes plain: the BOA and ALJ Murphy relied on essentially the same facts adduced from the same expert witnesses in deciding to grant the Special Variance.[14]

performance standards, as set forth in BCZR § 260, have been met. Next, ALJ Murphy found that the projected full-time equivalent enrollment for the public K-12 schools in the area is below the state-rated-capacity and concluded that BCC §§ 32-6-103(e)(1)(2) and (f)(3) have been satisfied. Finally, ALJ Murphy found that the open space requirement for the new dwellings in Torch Hill is met as required by BCC §32-6-108. Appellants did not challenge any of these conclusions or orders in their appeals to the BOA, circuit court nor this Court.

[13] The BOA consisted of Andrew Belt ("Chairman Belt"), Bryan Pennington ("Mr. Pennington"), and Sharonne Bonardi ("Ms. Bonardi"). Chairman Belt presided.

[14] This is evidenced by the factual background section of the BOA's Opinion, which parrots ALJ Murphy's Opinion and Order verbatim with respect to the testimony of the aforementioned witnesses.

One major difference regarding the breadth of evidence the BOA had at its disposal was the additional testimony of five community members: Gail Shelhoss ("Ms. Shelhoss"), Mr. George, Mr. Sachse, Mr. Carroll, and Elias Poe ("Mr. Poe"). Some of the community witness testimony is discussed in greater detail below.[15] All of the community witnesses agreed that improvements should be made to the intersections to improve the queuing and overall conditions at the intersection, before additional development should be permitted in the area.

On July 13, 2023, the BOA conducted an on-the-record review of ALJ Murphy's approval of the Development Plan. The BOA heard oral argument from both counsel for Appellants and counsel for Mr. Krongard. Counsel for Appellants was also afforded an opportunity to make a rebuttal argument to the BOA.

A public deliberation was held by the BOA on both issues on August 24, 2023. Chairman Belt noted that "the review for the development plan is the BCZ[R §] 32-4-281-2, where, basically, it states that we're not to substitute our judgment for fact finding basis and there's a lot of deference that is given to the findings of the ALJ." Chairman Belt thoughtfully pointed out:

> [A] lot of what's going on and being described [ ] is occurring on a subterranean level. So, we're sort of accepting the testimony of others, which is really all expert testimony for us, to figure out, you know, who has presented the best case and, and- who we would hang our hat on to be believable. We didn't have to make that determination, the ALJ did. So, [ ] we're sort of bound with that.

[15] *See infra* Sections IV.A.1 and IV.B.1.c.

Chairman Belt also explained the relevance of the *Bluestem* case, where he participated on the BOA. Importantly, he noted, in the *Bluestem* case:

> [T]here was no rebuttal expert. There was no expert who challenged Mr. Grachek's assessment to say that there was any compliance. So, on our review here at the Board of Appeals, what I was really hanging my hat on is the deference to the ALJ in that matter, in that there was an expert who gave a lot of information and that was pretty much unrefuted.

Contrary to the present posture, where ALJ Murphy not only had the benefit of Mr. Bayer's conclusion that sewer capacity existed for thirty-two units, ALJ Murphy also heard Mr. Motsco's testimony. In light of this, Chairmen Belt voted to "affirm the findings of the ALJ as to the development plan." Chairman Belt explained the scope of the review as follows: "Rather than relitigating the entire development plan case, I think our charge as to the issue that has been made to be the most prevalent, is to whether or not the ALJ was reasonable in determining that she sided with Mr. Motsco's testimony."

Ms. Bonardi explained why she believed ALJ Murphy's decision should stand: "[ALJ Murphy] had thoroughly outlined the testimony, the substantial evidence that was presented, her statements of fact, her conclusion was well reasoned." Mr. Pennington agreed, "the ALJ did a quite thorough job in outlining [ ] the history of the sewer problems starting in '05 with the Consent Decree" as well as "going through with hiring [ ] the company to come through and do the LTC report and then follow up with the SRRR [Plan], which was approved by the [Maryland Department of the Environment] and the [Environmental Protection Agency] and incorporated into the Consent Decree. She went through that and then made a finding of fact that the SRRR [P]lan controls." Mr.

Pennington then said, "I can't see how that was not a reasonable conclusion." The BOA collectively agreed that it would be wise to incorporate ALJ Murphy's condition, requiring that the work on the sewer system be completed in conjunction with the Development Plan.

Pertaining to the Special Variance, the BOA began by discussing the "district standard," and agreed they were looking for a "net zero impact":

> [CHAIRMAN BELT]: [I]n my thought, for a variance, you know, we're varying to allow you to have it. I'm not seeing in the statute, or the Code, that it's requiring there be an improvement of conditions beyond of, what they are at that time. I think it's more of a do no harm type of analysis. So, I will defer to you and your thoughts on that one.
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> * * *
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> [MR. PENNINGTON]: I agree with you. And plus, I mean, we had the experts testify that that's what the standard is, right? So, I, I agree with you.
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> [CHAIRMAN BELT]: All right.
>
> [MS. BONARDI]: I agree as well . . . Cornelius and Nebre both testified that that was sufficient, and we didn't need to consider that loaded cycle method.
>
> [CHAIRMAN BELT]: Yeah. Yeah, and as I said before, the LCM, it, it just doesn't seem applicable for capturing something that would be a, a future hypothetical. Since it's measuring conditions on the ground.

Ultimately, the BOA granted the Special Variance and affirmed ALJ Murphy's decision to approve the Development Plan and in its unanimous Combined Opinion issued September 8, 2023. The BOA summarized the facts and testimony it and ALJ Murphy relied upon.

With respect to the Special Variance and traffic concerns, the BOA credited the testimony of Mr. Cornelius and Mr. Nebre and found that "after the left turn lane is constructed the demand or impact from the development (i.e., the trips to be generated plus

the existing trips) will result in a 'net zero impact' to the intersection." The BOA therefore held that "the Special Hearing relief to approve the Special Variance under BCZR § 4A02.4.G to allow the Torch Hill Project within the Falls [Road] and Seminary [Avenue] traffic shed, should be granted.

On review of the Development Plan, the BOA explained how ALJ Murphy was "presented with the competing expert testimony of Mr. Grachek and Mr. Motsco, ultimately deciding that Mr. Motsco's opinions carried the day. It is not within the purview of the Board to second guess the ALJ's assessment as to the persuasiveness of the witnesses." The BOA recognized "that the ALJ's approval of the development plan was supported by competent, material, and substantial evidence in light of the entire record as submitted and not arbitrary and capricious."

B. Judicial Review

Appellants (FRCA joined by Protestants) timely petitioned for judicial review of ALJ Murphy and the BOA's decisions, pursuant to Baltimore County Charter § 604 and Maryland Rule 7-202(a)–(e), in the circuit court. In their petition, Appellants argued that:

> 1. [T]he ALJ and the Board committed clear and obvious error by approving the Development Plan due to their misunderstanding of the sewer capacity issue; and
> 2. [T]he Board committed clear and obvious error by granting the Special Variance due to its misunderstanding of the applicable standard for granting a special variance.

A hearing was held before the Honorable Keith R. Truffer on August 9, 2024. The circuit court reviewed briefing and heard oral argument on the matter, and ultimately dismissed the appeal in a "Memorandum Opinion and Order" on September 3, 2023.

First, the circuit court determined that Protestants were not aggrieved and did not have standing in this matter. In so ruling, the circuit court explained that Protestants "rel[y] upon characteristics applicable to a sweeping number of Baltimore County property owners – directly contradicting the notion that the aggrievement they will suffer is 'distinct from the general public.'"

Then, the circuit court concluded that even if Protestants did have standing, their case fails on the merits. In its review, the circuit court determined that "there was substantial evidence in the record as a whole to support the findings and conclusions of the ALJ regarding sewer capacity" and that "the ALJ's decision to approve [Torch Hill] with regard to sewer capacity was not premised upon an erroneous conclusion of law." As such, the circuit court affirmed the ALJ's approval of the Development Plan.

Finally, the circuit court reviewed the approval of the Special Variance by the BOA and determined that the BOA's decision was supported by substantial evidence and no error of law. After summarizing the testimony of Mr. Cornelius and Mr. Nebre, the circuit court explained that a "reasonable mind could have reached the same factual conclusion" reached by the BOA. Consequently, the circuit court affirmed the BOA's grant of the Special Variance.

III. STANDARD OF REVIEW

When an appellate court reviews a trial court's decision, the standard of review is different than that used by the trial court in reviewing an agency decision.

A circuit court's determination as to whether a party has standing to appeal an administrative decision to the courts is a question of law which this Court reviews *de novo*. *Greater Towson Council of Cnty. Ass'ns v. DMS Dev., LLC*, 234 Md. App. 388, 408 (2017) (citing *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 484 (2003)).

Regarding the merits of this appeal, "[w]hen reviewing the decision of an administrative agency, we look through the circuit court's decision and 'evaluate the decision of the agency.'" *Hayden v. Md. Dep't of Nat. Res.*, 242 Md. App. 505, 520 (2019) (quoting *Kor-Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 409 (2017)). Courts have a narrow role in reviewing adjudicatory decisions by administrative agencies. *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999). A reviewing court may only uphold the decision of the administrative body if it is sustainable on the agency's findings or reasons stated by the agency. *United Parcel Serv., Inc. v. People's Couns. for Balt. Cnty.*, 336 Md. 569, 577 (1994). "[T]he inquiry is not whether the Circuit Court erred, but whether the ALJ erred." *John A. v. Bd. of Educ. for Howard Cnty.*, 400 Md. 363, 381 (2007). Our review "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005)).

As explained, when assessing a factual finding of an agency, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Balt.*, 141 Md. App. 76, 84 (2001). The substantial evidence test has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978) (citing *Snowden v. Mayor & City Council of Balt.*, 224 Md. 443, 448 (1961)). In applying the substantial evidence test, a "court should not substitute its judgment for the [e]xpertise of those persons who constitute the administrative agency from which the appeal is taken." *Id.* at 513 (citation omitted). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the reviewing court has no power to reject that conclusion. *Columbia Rd. Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994).

Additionally, we review the agency's decision in the light most favorable to the agency, since "decisions of the agency are *prima facie* correct." *Id.* (citation omitted) (emphasis added). On the other hand, "a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *People's Couns. v. Md. Marine Mfg. Co.*, 316 Md. 491, 497 (1989).

In *United Steelworkers v. Bethlehem Steel Corporation*, our Supreme Court explained a key distinction between judicial review of an administrative decision as opposed to appellate review of a trial court judgment. 298 Md. 665, 679 (1984). In the latter context, "the appellate court will search the record for evidence to support the

judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court." *Id.* By contrast, in undertaking judicial review of an agency action, "the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.*

In reviewing an agency's decision, a court ordinarily is "confined to the record" made before the administrative agency. *See Dep't of Health and Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001) (noting that a reviewing court is restricted to the record made before the administrative agency); *see also Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 60 (2002) (holding that for purposes of judicial review of an agency's final decision, the entire administrative record consists of all transcripts, documents, information, and materials that were before the final decision maker at the time of his or her decision).

IV. DISCUSSION

Baltimore County Code ("BCC") § 32-4-227 sets forth that a final action on a Development Plan may not be taken until after a public quasi-judicial hearing before an ALJ. BCC § 32-4-227(a). The ALJ, acting in a quasi-judicial capacity, has the authority to enter findings of fact and conclusions of law regarding the Development Plan proposed. Additionally, the ALJ "shall consider any comments and conditions submitted by a county agency[.]" BCC § 32-4-227(e)(1). And "[i]f no comments or conditions are received, the

development plan "shall be considered to be in compliance with county regulations." BCC § 32-4-227(e)(2).

BCC § 32-4-281(b)(1) states that "a person aggrieved or feeling aggrieved by final action" on a development plan may file a notice of appeal with the BOA within thirty days after the date of the final decision of the ALJ. BCC § 32-4-281(a)(1) allows for "duly constituted civic, improvement, or community association[s]" to appeal to the BOA if the subject of the Development Plan is located within the association's geographic limits.

BCC § 32-4-281 establishes that in reviewing an ALJ's final decision on a development plan, the BOA shall hear oral argument of the parties and receive written briefs, if requested by either party. Additionally, the BOA has discretion to allow additional evidence and testimony. BCC § 32-4-281(d).

BCC § 32-4-281(e)(1) authorizes the BOA to either remand the case to the ALJ, affirm the decision of the ALJ, or, reverse or modify the decision of the ALJ. BCC § 32-4-281(e)(1)(i)–(iii). The BOA may reverse or modify the decision of the ALJ where the BOA determines that the decision:

1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
2. Results from an unlawful procedure;
3. Is affected by any other error of law;
4. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
5. Is arbitrary or capricious.

BCC § 32-4-281(e)(1)(iii).

Here, the BOA identified that it was conducting an on-the-record review of the appeal of the Development Plan, though its review of the grant of the Special Variance would be *de novo*. With the scope of the BOA's review in mind, we examine whether the BOA correctly determined that ALJ Murphy did not err in approving the Torch Hill Development Plan and granting the Special Variance. Preliminarily, we must address the circuit court's determination that Appellants lacked standing.

A. Standing

1. Factual Background – Community Participation

Before the BOA, several lay witnesses testified in opposition to the Special Variance and Torch Hill Development Plan, including Ms. Shelhoss, Mr. George, Mr. Sachse, Mr. Carroll and Mr. Poe. Additionally, three Protestants, Mr. Sachse, Mr. George, and Mr. Carroll, submitted affidavits to the BOA explaining their relationship to and concerns regarding the Torch Hill Development Plan.

Ms. Shelhoss, who resides at 8207 Tally Ho Road, Lutherville, MD 21093, was the first community witness to testify. She explained that she has lived in the area for most of her life and stressed that the intersection is only getting "worse and worse" as far as traffic and dangerousness.

Mr. George, who resides at 8214 White Manor Drive, Lutherville, MD 21093, testified next, largely agreeing with Ms. Shelhoss, that congestion plagues the intersection and explained that many people use the roads in the area to avoid I-695.

Mr. Sachse, who resides at 9 Sedgefied Court, Lutherville, MD 21093, testified next, and in describing the traffic congestion coming out of St. Paul's Schools, called driving in the area "ridiculous," explaining that he occasionally prefers to walk because "it is a lot of traffic coming in and out, and it's kind of scary, walking is dangerous, but probably a little less dangerous than driving." Paragraph 4 of his affidavit largely mirrors his testimony before the BOA: Mr. Sachse explained that (1) he "frequently drives and walks towards, from, and past the subject property at 1400 W. Seminary Avenue," (2) "[t]raffic at the intersection of Falls Road and Seminary Avenue and along Seminary Avenue is frequently backed up and often presents a safety hazard for drivers and pedestrians," and "[i]t can be particularly treacherous for walkers, runners and bikers considering the road width of Seminary and lack of adjoining walk paths." Mr. Sachse continued:

> During the time schools are in session, the backup on Seminary from the intersection at Falls and Seminary has reached Tally[] Ho Road. This has only worsened over time. Moreover, cars frequently use Tally Ho Road, which runs from Seminary Avenue east of the subject property through my neighborhood and past my house, as a cut-through in order to avoid the intersections on Falls Road and the congestion on Seminary Avenue. This practice adds significant traffic to my neighborhood and presents safety issues for the many young children who live here, especially since portions of Tally Ho have no sidewalks. The proposed development, if approved, will result in even more cars using Tally Ho as a cut-through and present great traffic safety concerns.

Both Mr. Carroll and Mr. Poe reiterated the concerns of their fellow community members and explained their worries about traffic congestion in the area.

2. Parties' Contentions

Protestants contend they have standing because of their proximity to the subject property in addition to plus factors that distinguish them from the public at large. Appellants argue that contrary to Mr. Krongard's assertions, there is no bright line rule governing distance requirements permitting standing and that Maryland courts have found standing for protestants who reside a variety of distances away. Appellants further contend that even if Protestants' properties are not close enough to fall within the distances deemed sufficient in other cases for *prima facie* aggrieved status, they have a physical connection to the property apart from where they live. Specifically, "Mr. George and Mr. Sach[se], on almost a daily basis, walk, run, or bike to, from and past the property." Appellants assert: "Mr. Sach[se] resides within the boundary of the County-designated 'traffic shed' of the Falls [Road]/Seminary [Avenue] intersection." Moreover, "Appellants live within the same sewer shed as the subject property, but more specifically, within close proximity to the path along which new sewage from the proposed development would travel." Finally, Appellants take issue with the circuit court's failure to elucidate its reasoning for denying standing. Appellants contend that the circuit court did not identify what "characteristics" they deem applicable to a "sweeping number" of property owners, nor what a "sweeping number" even means.

Mr. Krongard contends that the Court in *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74 (2013) ("Ray II"), explained that "[p]rotestants who lived more than 1000 feet from [the property at issue] have repeatedly been denied standing." Mr. Krongard argues

that similar to the nearest protestant in *Ray II* (living .40 miles/2,112 ft. away) and *State Center LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451 (2014) (living .57 miles/3,009 feet away), the circuit court was correct in holding that Mr. Sachse, the closest protestant here (living .34 miles/1,800 feet away), does not satisfy "strict proximity requirements" and thus, is "ineligible for almost *prima facie* aggrieved status." Since all "Protestants live beyond the maximum distance wherein Courts have ever considered and applied so-called 'plus factors,'" i.e., "specific facts of their injury," Mr. Krongard urges this Court to dismiss the proceeding with prejudice. *See Ray II*, 430 Md. at 83.

3. Applicable Law – Aggrievement

Section 604 of the Baltimore County Charter provides that:

> Within thirty days after any decision by the county board of appeals is rendered, *any party* to the proceeding who is *aggrieved* thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require.
>
> * * *
>
> Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is *aggrieved* thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive.

Baltimore County Charter § 604.

Similarly, Maryland Rule 7-202 sets out the method of securing judicial review of an agency decision. In relevant part, Maryland Rule 7-202(c) states as follows:

> (1) Contents. The petition shall:
>
> (A) request judicial review;

> (B) identify the order or action of which review is sought;
>
> (C) state whether the petitioner was *a party to the agency proceeding*, and if the petitioner was not a party to the agency proceeding, *state the basis of the petitioner's standing to seek judicial review*…

Md. Rule 7-202(c)(1)(A)–(C).

While "[t]he requirements for administrative standing under Maryland law are not very strict,"[16] to have sufficient standing to petition the circuit court for judicial review of an administrative decision, a party must satisfy two prongs: (1) the party must have participated in the proceeding before the BOA, and (2) the party must demonstrate that they were "aggrieved" by the BOA's decision. *Greater Towson Council of Cmty. Assoc.*, 234 Md. App. at 417.

Generally, there are two categories of aggrievement: (1) "*prima facie* aggrievement," and (2) "almost *prima facie* aggrievement." *Ray II*, 430 Md. at 85 (quoting *Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 144 (1967)). A party is *prima facie* aggrieved when that party's proximity makes them an adjoining, confronting, or nearby property owner. *See id.* When a party is further away than an adjoining, confronting, or nearby property owner and offers "plus factors" supporting injury, the Court in *Ray II* explained that the party may still be close enough to the site of the rezoning action to be considered "almost *prima facie* aggrieved." *Id.*

While proximity to the affected land is the critical factor, the standard is flexible in the sense that it is based on a fact-dependent, case-by-case analysis. *Id.* at 83. Indeed,

[16] *Sugarloaf Citizens' Ass'n v. Dep't of the Env't*, 344 Md. 271, 286 (1996), *superseded by statute on other grounds* ("*Sugarloaf*").

Maryland's highest Court has recognized additional claims of aggrievement present besides proximity: Increased traffic congestion, a change in the nature of the neighborhood, and the protestant's ability to see and hear the rezoned property have been mentioned in *prima facie* cases. *See, e.g.*, *Wier v. Witney Land Co.*, 257 Md. 600, 604, 612–13 (1970) (protestants *prima facie* aggrieved by reclassification of 299.192 acres to permit apartments and businesses and referencing increased traffic, change in nature of land, and location within sight distance).

The Court in *Ray II* collected several cases where the Court held that without sufficient proximity, similar facts merely supported general aggrievement. *Ray* II, 430 Md. at 84–85. One cited case, *DuBay v. Crane*, 240 Md. 182 (1965), contains similar facts to the case *sub judice*.

In *DuBay*, three protestants residing "a considerable distance away," opposed a thirty-five-acre development plan based on alleged increase in sewage disposal, increased traffic, and decreased property values. *DuBay*, 240 Md. at 184. Notably, Mr. Dubay, the closest protestant residing approximately .40 miles away, failed to show that he could see the property from his home nor that the value of his property would be depreciated by the development plan. Our Supreme Court in *DuBay* reasoned as follows:

> The appellant DuBay is the nearest (a distance of 1500 feet) to the reclassified property, but his property is on the opposite side of the Beltway, which, if not a complete shield against the apartments to be constructed, will serve as an adequate barrier. The appellants Aiken and Rice both reside a considerable distance (more than four-tenths of a mile) and possibly out of sight of the proposed apartments.

Id. at 185–86. None of the protestants were held to have standing in *DuBay*. *Id.* at 183. Given the lack of specialized aggrievement, the Court did not opine on the merits of protestants' claims regarding increased traffic and sewage disposal. *Id.* at 183–84.

Recently, this Court emphasized the requirement that the affidavit contain a certain level of specificity. *See Matter of Carpenter*, 254 Md. App. 138, 178 (2024) ("Nothing in the record, however, outside her deficient affidavit, establishes that [Protestant] would suffer any harm by the proposed [development] that would set her apart from the general public."). The Court in *Carpenter* noted that types of harm that are "pre-existing and/or widespread" *can* support special aggrievement. *Id.* In *Carpenter*, several protestants were denied standing due to a lack of supporting evidence. *Id.* at 180.

4. All Parties Have Standing

It is undisputed that FRCA was a party in all administrative proceedings, and though Protestants did not participate in the proceedings before ALJ Murphy, Protestants were parties in the proceedings before the BOA. As such, all Appellants complied with the "party" requirements set out in Baltimore County Charter § 604 and Maryland Rule 7-202. Mr. Krongard and the circuit court, however, took issue with the Protestants' standing, or "aggrievement." As Section 604 lays out, parties who are not "aggrieved" lack standing to appeal to the circuit court and this Court. The circuit court determined that Protestants were merely "generally aggrieved" and rather than "*prima facie* aggrieved" or "almost *prima*

facie aggrieved." We disagree. Accordingly, we assess this issue prior to discussing the merits.

Protestants are certainly not adjoining or confronting property owners. Mr. Sachse, the closest Protestant to Torch Hill, lives approximately 0.34 miles/1,800 feet away. Mr. George resides approximately .51 miles/2,700 feet away; Mr. Carroll resides approximately 1.08 miles/5,700 feet away. In our view, none of the Protestants reside close enough to be considered "*prima facie* aggrieved." However, contrary to Mr. Krongard's and the circuit court's assertions, there is no exact proximity demarcation at 1,000 feet that precludes "almost *prima facie* aggrievement." At .34 miles away, Mr. Sachse resides *closer* than the protestants in the cases cited by Mr. Krongard. *See also Bd. of Zoning Appeals v. Bailey*, 216 Md. 536, 539 (1958) (affording aggrievement status to protestants who live .75 miles away); *Ray v. Mayor and City Council of Balt.*, 203 Md. App. 15, 36 (2012) ("*Ray I*") (denying aggrievement status to protestant living 0.4 miles away). Mr. Sachse also resides within the traffic shed at issue, where at least 50% of the traffic from the Torch Hill Development Plan will end up.

Mr. Krongard seemingly forgets that standing is a highly fact-dependent inquiry. We point to *DuBay*, where the Court held that a protestant who resided more than .40 miles from the proposed development who claimed injury due to increased traffic was denied "almost *prima facie* aggrieved status." Critically, however, within that .40 mile radius in *DuBay*, was the Baltimore Beltway (I-695). With this fact in mind, the Court concluded

that Mr. DuBay and company were not sufficiently aggrieved, given the "adequate barrier" of the Beltway, which made the proposed developments out of sight.

By contrast, the .34 mile distance between Mr. Sachse's house and the Torch Hill Development Plan does not contain any major highway, let alone the Beltway. Instead, the much-discussed Seminary Avenue along with Tally Ho Road lies between his home and the Torch Hill subdivision. Testifying that he travels on Seminary Avenue "[p]retty much every day" and "walk[s] it a lot," Mr. Sachse is very familiar with the area. Mr. Sachse explained that, "very often [and] pretty regularly[,] traffic [is] backed up from Falls and Seminary on Seminary east to Tally Ho." Mr. Sachse's proximity to, and frequent need to travel on, Tally Ho Road, to which traffic from the failing Falls Road/Seminary Avenue intersection routinely spills, is a plus factor supporting Mr. Sachse's "almost *prima facie* aggrievement" status under our caselaw, given that this is not an experience of a "sweeping" number of community members, but rather, is limited to Mr. Sachse and his neighbors who frequent Tally Ho Road. In his testimony, Mr. Sachse reproached the current situation in his neighborhood:

> [MR. SACHSE]: I do love the fact that the county has put up signs at Joppa and Tally Ho and Seminary and Tally Ho, indicating that it's a pass through from one to the other, which is really helpful; in making sure that anybody who sees a backup will try to speed down Tally Ho or up Tally Ho to the other side. It is marked for people to do it, and Tally Ho has just become a little bit of a speedway, which is why they had the stop signs and now the speed humps, but it's really overburdened.
>
> [COUNSEL FOR PROTESTANTS]: Were you being sarcastic when you were taking about the—

> [MR. SACHSE]: Yeah, I'm sorry, I'm being very sarcastic. The county is not helpful at all, it's, those signs are like an invitation to please use Tally Ho.

Mr. Sachse called driving in the area "ridiculous," explaining that he occasionally prefers to walk because "it is a lot of traffic coming in and out, and it's kind of scary, walking is dangerous, but probably a little less dangerous than driving."

The nature of Mr. Sachse's neighborhood is also a relevant "plus factor." Mr. Sachse resides in a cul-de-sac, and the only way for Mr. Sachse to get to either Joppa Road or Seminary Avenue is via Tally Ho Road. As such, Mr. Sachse is uniquely positioned such that he is *required* to face the repercussions of the failing Falls Road/Seminary Avenue intersection and increased traffic from the development any time he leaves his house. Mr. Sachse also noted in his affidavit dated March 20, 2024 that he walks and runs along Tally Ho Road and the portion of Seminary Avenue west of Tally Ho Road approximately six to seven days per week and has done so for the last forty years.

Several key facts, when taken together, are sufficient "plus factors" under *Ray II* including that (1) Mr. Sachse's residence is located within the failing traffic shed, (2) Mr. Sachse's residence is located very close to Tally Ho Road, such that he is forced encounter the dangerous spillover from the neighboring failing intersections, and (3) Mr. Sachse frequently walks, runs, and drives along many of the problematic routes. Accordingly, these facts "nudg[e Mr. Sachse] against that line," separate and apart from grievances experienced by the general public, allowing this Court to find that Mr. Sachse has standing to appeal. *Ray II*, 430 Md. at 83. Despite the traffic shed's pre-existing history of

congestion, Mr. Sachse put forth sufficient evidence in his affidavit and through his testimony that Mr. Sachse is specially aggrieved. *See Carpenter*, 264 Md. App. at 178–80.

As Appellants correctly note, it is well-settled that where one party has standing to appeal, the courts "shall not ordinarily inquire as to whether another party on the same side has standing." *Long Green Valley Ass'n v. Bellavale Farms*, 205 Md. App. 636, 652 (2012). If any appellant is a person aggrieved, the court will entertain the appeal even if the other appellants are not persons aggrieved. *See, e.g.*, *Marcus v. Montgomery Cnty. Council*, 235 Md. 535, 539 (1964). Hence, the remaining named Protestants: Mr. George, Mr. Carroll and Ms. Smith also have standing.

As noted by Mr. Krongard, an organization like FRCA does not, by itself, have standing and "cannot acquire standing to appeal simply because one or more of its members has standing." *Clyburn Arboretum Ass'n, Inc. v. Mayor & City Council of Balt.*, 106 Md. App. 183, 191 (1995). However, this argument is misplaced as FRCA's standing argument is not premised upon any Protestants' membership. In fact, none of the Protestants testified that they are members of the FRCA.

Because standing is an issue this Court has a continuing obligation to examine even absent argument by the parties,[17] we expressly recognize that FRCA has standing to appeal.

[17] "'[S]tanding . . . [goes] to the very heart of whether the controversy before the court is justiciable.'" *State of Md. Comm'n on Hum. Rels. v. Anne Arundel Cnty.*, 106 Md. App. 221, 236 (1995) (quoting *Sipes v. Bd. of Mun. & Zoning Appeals*, 99 Md. App. 78, 87–88 (1994)). Since standing determines whether a court has the authority to hear the case at all, it is considered a jurisdictional issue. Accordingly, all courts, including this Court, have an obligation to examine the issue of standing before proceeding onto the merits. *See*

A representative, or representatives, of a civic association may be heard by a zoning board in proceedings affecting the neighborhood in which their members reside or conduct business. *See Turkey Point Property Owners' Ass'n, Inc. v. Anderson*, 106 Md. App. 710, 713 (1996). As explained, BCC § 32-4-281 provides that: a "person aggrieved or feeling aggrieved" includes a duly constituted civic, improvement, or community association if the property that is the subject of the Development Plan is: (1) Located within the association's geographic limits…." FRCA is a community association that defines its geographic limits as: "bounded on the east by Interstate 83, on the south by Interstate 695, on the west by Park Heights and Worthington Avenues, and on the north by Butler and Belfast Roads."[18] Thus, the Torch Hill Development Plan, located at 1400 W. Seminary Avenue, is within the geographic limits of the association. FRCA has standing to appeal. Contrary to Mr. Krongard's assertion at oral argument, FRCA's choice to send counsel on its behalf (as opposed to a representative) has no bearing on our standing analysis.

Although we recognize that "a person may properly be a party at an agency hearing under Maryland's relatively 'lenient standards' for administrative standing but may not have standing in court to challenge an adverse agency decision," we do not feel it necessary to draw a distinction with respect to FRCA's standing before the administrative bodies

Stachowski v. State, 416 Md. 276, 285 (2010) ("Although none of the parties raised a jurisdictional issue in these cases, this Court is obligated to address *sua sponte* the issue of whether we can exercise jurisdiction.").

[18] Facebook, *Falls Road Community Association*, https://www.facebook.com/thefrca/about_details (last accessed Dec. 10, 2025).

versus here. *Sugarloaf*, 344 Md. at 286 (quoting *Maryland-Nat'l v. Smith*, 333 Md. 3, 11 (1993)). Our Supreme Court's recent precedent allowing FRCA to proceed as an "aggrieved party" in a similarly contested development case concerning Falls Road,[19] persuades us further that FRCA is sufficiently aggrieved to challenge the rulings of the OAH and BOA all the way up to Maryland's highest Court, if it so chooses.

We hold that all parties have standing and reverse the circuit court's judgment on this issue.

B. Special Variance

1. Factual Background – Traffic Impact

ALJ Murphy primarily relied on Mr. Cornelius and Mr. Nebre's testimony when granting the Special Variance. The BOA followed suit, although it also heard testimony of several lay witnesses. Accordingly, we discuss the witnesses' testimony in detail below.

a. Mr. Cornelius's Testimony

Mr. Cornelius was admitted as an expert witness in traffic engineering with expertise in Baltimore County's zoning regulations related to policies regarding traffic issues. On behalf of The Traffic Group, Mr. Cornelius prepared the TIA for Mr. Krongard. The Traffic Group collected existing traffic volume information from several intersections near the proposed development.[20] The Traffic Group then projected future traffic volume

[19] *See e.g.*, *Becker v. Falls Road Community Association*, 481 Md. 23 (2022).

[20] At the hearing, Mr. Cornelius explained that the only intersection that falls within the traffic shed of the proposed development is the Falls Road/Seminary Avenue intersection.

from the proposed development and calculated the impact the proposed development would have during peak morning and evening hours. To do these calculations, The Traffic Group used two techniques: the CLV and the HCM.[21] Mr. Cornelius stated that although Baltimore County uses the LCM to rate intersections,[22] he explained that this methodology can only be used to assess current traffic conditions and does not have any predictive capabilities. Mr. Cornelius then explained that the CLV and HCM are accepted predictive methodologies used by both Maryland Department of Transportation State Highway Administration ("SHA") and Baltimore County to predict future traffic. Mr. Cornelius explained that in conducting the TIA, they "looked at potential improvements," specifically an extension of the left-turn lane.[23] In relevant part, Mr. Cornelius testified as follows:

> [MR. CORNELIUS]: . . . And what seemed to be one of the best alternatives was a lengthening of that existing westbound [left] turn lane [from Seminary Avenue to Falls Road]. What happens today is because of the demand, and especially it's more pronounced in the morning, peak hour. With the westbound approach of Seminary, the existing left turn lane is not long enough to accommodate the queues during the peak time. So those left turning vehicles end up sitting out in the through lane, westbound through lane of Seminary, basically blocking vehicles that are trying to proceed straight through or make a right turn up at Falls Road intersection. So you

[21] *See supra* Section II.A.1.

[22] Baltimore County is apparently the only jurisdiction in the United States to use the loaded cycle methodology according to Mr. Nebre who testified, ". . . to be quite frank, I think Baltimore County is like the only jurisdiction in the whole nation that uses it."

[23] Initially, it was believed that an extension of only 150 ft. was feasible. Following a survey and field observation of the property, it was determined that the existing shoulder of the left-turn lane could accommodate an extension of 190 ft. The Greenlined Development Plan reflects this adjustment. Though the TIA reflects an extension of 150 ft., Mr. Cornelius testified (and logic tells us) that a longer extension would accommodate more vehicles, further reduce queue times and resulting delays, lessening the number of loaded cycles.

> end up with a significant queue that extends back. And that is one of the reasons why you end up with loaded cycles. Anytime you get a long queue, there's a better chance you're going to have a loaded cycle. So we looked at the potential of providing more storage for that left turn lane that would enable motorists that are wishing to go straight and wishing to make a right turn to not get stuck behind those motorists . . . .

When asked what sort of interactions he had with DPWT regarding the proposal for this improvement, Mr. Cornelius said:

> Once this traffic study was reviewed[,] Mr. Nebre came back and said he'd like to see an additional analysis that shows that the lengthening of the left turn lane that we are proposing is sufficient to accommodate any additional trips we would be generating. So then, that March 4 analysis was prepared to basically show him that not only is the 190 feet lengthening accommodating any traffic we would generate, but it's accommodating much more than we would generate.

Mr. Cornelius ultimately opined that given the decrease in delay with the proposed improvement, Torch Hill is "not going to have any impact on this intersection." When asked what Mr. Cornelius's understanding of DPWT's position following the submission of the March 4 letter, Mr. Cornelius replied as follows:

> [B]ased on my discussion with [Mr. Nebre], he had no more comments. I was expecting we would just get a letter saying, you know, he agrees…but he doesn't always do that. I've had other cases where he just basically says no more comments. And in his mind, that means he's okay with it, because he doesn't have any more comments.

Mr. Cornelius specified that Mr. Nebre did not make any more comments after his last email.

b. Mr. Nebre's Testimony

As mentioned, Mr. Nebre reviewed the TIA prepared by Mr. Cornelius. Mr. Nebre explained his email dated December 22, 2021 wherein he requested more information from

Mr. Cornelius as to how the level of service at the intersection would be improved from a loaded cycle standpoint and commented about the proposed condition eastbound "remov[ing] green time."

Mr. Nebre explained that the "district standard" is determined by the trip generation manual and measures whether the proposed development will have an "impact" on the intersection. If improvements to the roadway are proposed, the issue is whether the proposed improvement would accommodate the additional traffic generated by the development such that it would have a net zero impact on the intersection.

Mr. Nebre testified that Mr. Krongard has proposed to lengthen the left-turn lane 190 ft. Mr. Nebre agreed that 190 ft. would accommodate eight additional vehicles. On behalf of DPWT, Mr. Nebre agreed that the proposed left-turn lane extension will not make the Falls Road/Seminary Avenue intersection any worse with the traffic generated by Torch Hill.

Mr. Nebre also acknowledged receiving Mr. Cornelius's letter dated March 4, 2022 to which he responded by email dated April 28, 2022. He testified that, even with the proposed left-turn lane extension, the Falls Road/Seminary Avenue intersection may still be rated a level of service of "F" but that it will be reevaluated each year.

c. Lay Witness Testimony

While we do not intend to bypass the named Protestants' and additional community witnesses' testimony, the BOA seemed to find the testimony of the lay witnesses to be less

credible than that of the experts. Nonetheless, an excerpt from Ms. Shelhoss's earnest testimony encapsulates many concerns of the witnesses:

> [MS. SHELHOSS]: That intersection was so incredibly dangerous. We would be woken up in the middle of the night with screeching brakes, and then you'd hearing crashing cars together because of that intersection, and it's got a lot of traffic that goes through it that long ago, and it was just really congested at the time.
>
> I have watched over the years development after development submit variances and get granted, and that traffic is not mitigated, it's not resolved, it's getting worse and worse and worse, and the challenge I have is why does the county have a grading system at all if three decades later they haven't done anything to change or rectify that situation, why do you even grade it, because you're not doing anything about it, and it's just now development after development finds a little bit of a wiggle with some kind of study with a .3 second, you know, increase in traffic going through the intersection that they say is going to, and we all know common sense, that is not going to happen, and that is not going to affect that intersection. It's just going to add.
>
> When you've got that many houses and two to three car garages, you know that affluent level is going to have at least two cars in their family, and so you've got two people that are going to be driving those cars, which is going to put 64 cars back into that intersection, and I can just tell you, that is the artery, that's where everybody is going. They are not coming across Seminary to go to Towson, they're going to get on the beltway, and it's just, it has been congested, it continues to be congested. If you drive it, you would know it and feel as passionately as I do. Both of our boys went to St. Paul's for a total of 15 years, and so I know that traffic coming in and out of there at those various times of days.
>
> Our boys ran cross country, started at 4, over at 4:30. Traffic at 4:30, crazy traffic, and it is always there. It's coming from Seminary, and it's coming from Falls, and by adding that new development, you're just pushing more into that artery, and you really have to use common sense.
>
> Those three subsequent failing intersections, one is not without the other. So if you're going to say oh, no, we're just talking about the Falls and Seminary, those cars that you are granting that 150 now foot variance so that you can turn left are going into that next failing intersection, so you can't look away from that. That is something that you really should consider.

> What are we trying to accomplish here? What are we trying to do? It just doesn't make any sense at all to put more cars into that mix without rectifying those intersections. So current day, current day I drive it all the time, and I can tell you whenever there is an accident, which is quite often, or there's traffic on the beltway, Seminary is the bypass, and people get off and they have [Waze[24]] and [Waze] now tells them to get off on York Road or get off on Seminary and Bologna and then take Seminary over to bypass whatever, and go across Green Spring Valley, and so now you've compiled more traffic into that mix of development traffic, because now you are filtering people on those roads.

The remaining community witnesses expressed their misgivings and testified in opposition to the Torch Hill Development Plan before the BOA.

2. Parties' Contentions

Appellants contend the BOA erred in its interpretation of the standard for granting a Special Variance. Appellants argue that a plain reading of BCZR § 4A02.4.G mandates that a Special Variance be sought "from" the LCM, i.e., that "(1) the variance 'will not violate the provision's purpose' and (2) there must be 'a finding' that either (a) the demand or impact of the development proposed will be less than the district standard that would otherwise restrict or prohibit the development, or (b) that the standard is not relevant to the development proposal." Principally, Appellants assert that the "district standard" is the level of service itself. Appellants aver that a "developer could obtain a special variance by simply proving that less than 50% of the traffic from the proposed development would travel to the intersection, i.e., that the impact of the development will be less than assumed

[24] Waze is a mobile phone application that provides drivers with directions to their destination based on live traffic updates from fellow drivers. Waze, http://www.waze.com (last accessed December 11, 2025).

by the level of service F." Appellants claim Mr. Krongard put forth no evidence to show that the Development Plan is consistent with the purpose of the transportation standards. Appellants also contend that Mr. Krongard's expert, Mr. Cornelius, "was unable to say to a reasonable degree of certainty that the level of service will change from an 'F.'"

Mr. Krongard argues that the BOA correctly interpreted and applied the Growth Act, because it does not require a developer to upgrade an F-rated intersection. Furthermore, Mr. Krongard avers that the Growth Act does not require the use of the LCM to prove entitlement to the Special Variance. The proper test, Mr. Krongard argues, is the one relied upon by ALJ Murphy and the BOA as described by Mr. Cornelius – namely, that the development will have a net zero impact on the intersection within the traffic shed it lies. Mr. Krongard argues that there was substantial evidence supporting the BOA's finding that Torch Hill will have such a net zero effect. Finally, Mr. Krongard spends considerable space rejecting Appellants' arguments that attack the probative weight or credibility of Mr. Cornelius's opinions.

3. Applicable Law – Special Variance

BCZR § 4A02.3[25] states as follows:

> C. Basic Services Maps *are not intended to permanently establish either areas of service deficiencies or areas of service availability and*

[25] The term Special Variance under § 4A02.3 appears to be a discrete vehicle that is conceptually distinct from special exceptions as defined under Md. Code Ann., Land Use Art. ("LU") § 1-101(p) and variances as defined under LU § 1-101(s). A special exception is a presumptively valid land use that should be granted unless its adverse effects are greater than those associated with the use anywhere in the zone. *Schultz v. Pritts*, 291 Md. 1, 14 (1981). A variance is a deviation from the standards of the zone that would create an

> *adequacy*. Such maps will be reviewed annually, *as it is the intent of the County Council that existing service deficiencies will be corrected* in accordance with the Master Plan and capital improvements program. It is also recognized by the County Council that continuing development in certain areas may create service deficiencies in areas that presently have adequate levels of service. In some cases, changes in underlying zoning classifications may have to be made to better correlate development potential.

BCZR § 4A02.3.F (emphasis added).

BCZR § 4A02.4 states as follows:

> D. Transportation.
>
> 1. Intent. The transportation standards and maps are intended to *regulate nonindustrial development* where it has been determined that the capacity of arterial and arterial collector intersections is *less than the capacity necessary to accommodate traffic both from established uses and from uses likely to be built* pursuant to this article. Such development is not intended to be restricted unless there is a *substantial probability* that an arterial and arterial collector intersection situated within the mapped area *will*, on the date the map becomes effective, *be rated at level-of-service E or F under standards established by the Highway Capacity Manual, 1965*, published by the Highway Research Board of the Division of Engineering and Industrial Research, National Academy of Sciences National Research Council.
>
> * * *
>
> G. Petitions for special variance from provisions of this subsection.
>
> 1. The Zoning Commissioner may, after a public hearing, grant a petition for a special variance from a provision of this subsection, *only to an extent that will not violate that provision's purpose*, pursuant to a finding:

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unnecessary hardship because of the uniqueness of the property. *Dan's Mountain Wind Force, LLC*, 236 Md. App. 483, 494 (2018). BCZR § 502.1 sets forth the criteria for granting a special exception. BCZR § 502.1 *et seq.* and BCZO § 32-8-703 sets forth the criteria for granting a variance.

> a. That the demand or impact of the development proposed will be less than that assumed by the *district standard* that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and
>
> * * *
>
> 2. The Department of Planning *shall give a report* on the petition to the Zoning Commissioner prior to his consideration of the petition.

BCZR §§ 4A02.4.D, 4A02.4.G (emphasis added).

As described, Article 4A of the BCZR purports that it is Baltimore County's intention to assess and remedy service deficiencies. Article 4A requires the ALJ to find that any grant of a special variance will not violate the "provision's purpose." *See* BCZR § 4A02.4.G.1 above. The "provision's purpose" is a reference to the "Intent" provision contained in BCZR § 4A02.4.D.1, which pertains to the regulation of nonindustrial development and the determination of intersection capacity. The overarching purpose is to identify public infrastructure in need of improvement and promote the advancement of Baltimore County, State, or private resources toward the necessary improvements.

4. The BOA's Grant of the Special Variance was Proper

The record reflects that the Falls Road/Seminary Avenue intersection has been "failing" for many years. There was no evidence of any investments by either Baltimore County or the State to correct this condition.[26] The area also has not seen a change in the

[26] With respect to level F intersections, when asked whether the "the goal was for the County to make improvements to resolve [the] inadequacies," Ms. Daniel replied, "[y]es, if it falls within our jurisdiction." ALJ Murphy attempted to confirm that there

underlying zoning classification pursuant to BCZR § 4A02.3.F. Instead, the Falls Road/Seminary Avenue intersection continues to be failing, exacerbated by the neighboring failing intersections of Falls Road/Joppa Road and Falls Road/Greenspring Valley Road. The traffic issues have left the Baltimore County community frustrated and feeling powerless.

Baltimore County has, however, continually reported the level of service at these intersections an F, inhibiting future development. As such, Mr. Krongard was required to jump over the additional administrative hurdle and seek a Special Variance under BCZR § 4A02.4.G. Sufficient evidence in the record supports the BOA's conclusion that Mr. Krongard complied with all applicable provisions of the BCZR in doing so, including the overarching purpose.

We do not read the "district standard" of BCZR § 4A02.4.G.a to require the use of the LCM when conducting a TIA. Instead, we accept ALJ Murphy's and the BOA's findings that the "district standard" simply requires that the proposed development plan not make the intersection any worse than it currently is. In other words, the proposed development must have a "net zero" effect on the intersection. Our plain language reading of the applicable regulations support ALJ Murphy's and the BOA's interpretation, namely,

would likely then be no initiative on behalf of Baltimore County to improve the conditions of the failing intersection at Fall Road/Seminary Avenue, but did not receive a clear answer. Ultimately, Ms. Daniel explained that, "if it's a State road, State intersection, State signal, SHA handles the improvements through the development process. Developers are asked to mitigate the traffic so as not to increase congestion at the intersection." Accordingly, we do not fault Baltimore County for failing to improve the conditions of Falls Road/Seminary Avenue intersection, as it falls outside Baltimore County's jurisdiction.

that BCZR § 4A02.4 does not affirmatively require the developer to improve the level of service to a passing grade nor evaluate future conditions via the LCM.

The State's inaction in correcting the failing intersection should not hinder Mr. Krongard's Petition for Special Variance, especially when he intends to ameliorate existing traffic conditions. Mr. Krongard has offered to invest in the intersection by extending the left-turn lane by 190 ft., in conjunction with the Torch Hill Development Plan. As the record demonstrates, not only will the proposed improvement offset the new traffic generated by Torch Hill, but it will also reduce queuing times, mitigating delays experienced today. Certainly, this proposal promotes the purpose of Article 4A.

Mr. Krongard's Petition for Special Variance should similarly not be denied due to DOP's failure to comply with BCZR § 4A02.4.G.2 by not explicitly providing Mr. Krongard with a written report of approval, when they were unable to obtain one from DPWT. The record reflects that DOP deferred the request to DPWT given its expertise on traffic matters and attempted to contact Mr. Nebre but was unsuccessful. Mr. Krongard reasonably relied on Mr. Nebre's lack of further commentary, as an operative approval by DPWT. Mr. Nebre's testimony before the ALJ and the BOA, particularly that the proposed left-turn lane extension will not make the Falls Road/Seminary Avenue intersection any worse with the traffic generated by Torch Hill, supports such an interpretation.

We also note that in a letter dated October 19, 2021, SHA stated it has "completed [its] review of the [TIA] for the [Torch Hill Development Plan] listed below, finds it acceptable, and will not require the submission of any additional traffic analyses." Given

that the record reflects sufficient evidence of approval by Baltimore County and the State, our review elucidates Mr. Krongard's compliance with all laws, rules and regulations. We agree with the BOA that Mr. Krongard's Petition for Special Variance should be granted.

We now review the BOA's Combined Opinion to ensure that the BOA reached its conclusion and articulated its findings and reasoning appropriately. We observe that we "may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers*, 298 Md. at 679. In the Combined Opinion, the BOA identified the correct standard of review under BCC § 3-6-303,[27] *Eller Media Co.*, *Columbia Road Citizens' Ass'n*, and *United Parcel Serv., Inc.*, *supra* Section III. In reaching its decision, the BOA recited ALJ Murphy's findings and conclusions of law.

The BOA then made its own findings of fact and conclusions of law with respect to the Special Variance including, (1) that the TIA revealed that the additional homes would have an "extremely small impact" on the total traffic at the Falls Road/Seminary Avenue intersection, (2) if the impact from the proposed development is net zero, then a variance can be granted, (3) the net zero interpretation is entirely consistent with the testimony of Mr. Cornelius and Mr. Nebre, (4) SHA approved the TIA with no additional analyses required, (4) the left turn lane extension will reduce delays at the intersection, and thus, (5)

[27] During a hearing on the record, the BOA hearing shall be limited to the record created before the Hearing Officer, which shall include: (1) the recording of the testimony presented to the Hearing Officer; (2) all exhibits and other papers filed with the Hearing Officer; and (3) the written findings and final order of the Hearing Officer. BCC § 3-6-303.

the demand or impact from Torch Hill will be less than presumed by the district standard under BCZR § 4A02.4.G.1.a. In light of these findings and conclusions of law, the BOA granted the Petition for Special Variance.

Although we find the testimony of community witnesses to has raised valid concerns, we do not fault the BOA for giving more weight to the expert witness testimony. *See Anderson v. Sawyer*, 23 Md. App. 612, 618–19 (1974) (lay witness testimony about "traffic congestion" concerns did not rebut qualified traffic expert's testimony that street was capable of absorbing traffic increase created by proposal).

On this basis, we affirm the BOA's grant of the Special Variance. The judgment of the circuit court is affirmed.

C. Development Plan

1. Factual Background – Sewer Capacity

As mentioned above, there was competing testimony between FRCA's expert witness, Mr. Grachek, and Mr. Krongard's expert witness, Mr. Motsco. In Appellants' reply brief, they referred to this phenomenon as a "battle of the experts." While it is not within our purview to weigh the credibility of the experts or critique ALJ Murphy's credibility assessment, we note that the experts' testimony was not as polarized as Appellants characterize it. While Mr. Grachek and Mr. Motsco's testimony greatly differed, they did indeed reach the same conclusion: the existing sewer system can accommodate the Torch Hill Development Plan. We now provide an overview of each expert's testimony in more detail.

a. Mr. Grachek's Testimony

Mr. Grachek explained that Baltimore County has a gravity-fed sewer system with three main trunk lines (Jones Falls; Roland-Run; Towson Run) which flow into the interceptor line under Lake Roland and then out to Baltimore City wastewater treatment plants. Upon Mr. Grachek's review of the sewer maps provided by Baltimore County, the sewage from Torch Hill will end up in the Lake Roland interceptor.

Mr. Grachek was an expert witness in the *Bluestem* case, which concerned a 2019 development on Falls Road. As in *Bluestem*, Mr. Grachek referred to a 2005 complaint filed against Baltimore County in the United States District Court for the District of Maryland[28] regarding the discharge of tens of millions of gallons of untreated wastewater containing raw sewage into United States navigable waters and waters of the State beginning in 1997. Those waters included Towson Run, Lake Roland and Jones Falls. The lawsuit resulted in a Consent Decree ("CD") dated September 21, 2005 in which Baltimore County was provided a legal framework and direction to eliminate SSO.[29] Mr. Grachek explained that, under the CD, Baltimore County was charged with conducting a full evaluation of the system, inspecting it to determine the condition of the pipes, and modeling it with different weather events to determine whether the pipes were at overcapacity.

[28] *See* Compl., *United States & State of Maryland v. Baltimore County*, No.: 1:05-cv-02028-AMD, (D. Md. July 26, 2005).

[29] Mr. Grachek explained that SSO, or sanitary sewer overflows, occur when the pipe is over capacity and the sewage flows out of the piping system onto the ground and into the waters. According to Mr. Grachek, SSO cause "massive pollution to the environment."

Following the CD, Baltimore County hired consulting engineering firm Rummel, Klepper & Kahl, LLP ("RK&K") to perform an evaluation. RK&K evaluated, inspected and modeled the system to show where the pipes were at capacity during both dry and wet weather events. Specifically, RK&K studied five storm events: (1) 2-year, 6-hour storm; (2) 2-year, 24-hour storm; (3) 10-year, 6-hour storm; (4) 10-year, 24-hour storm; and (5) 20-year, 24-hour storm. In November 2012, RK&K prepared the LTC Report.

Mr. Grachek emphasized that the LTC Report recommended that Baltimore County take corrective action, depending on the storm event. Particularly, Mr. Grachek interpreted the LTC Report to *require* the installation of relief sewers.[30] For the 10-year, 6-hour storm, the 10-year, 24-hour storm, and the 20-year, 24-hour storm, he stated that the LTC Report specifically required that a relief sewer be installed between manholes 6950 and 22009 of various lengths in linear feet, depending on the storm. Mr. Grachek explained that the LTC Report also recommended upsizing sewer pipes. Finally, Mr. Grachek opined that Table 6.1 of the LTC Report recommended that, in conjunction with installation of the relief sewer, certain manholes be sealed.[31]

[30] Mr. Grachek explained that a relief sewer is a storage unit which may include an underground vault or additional parallel piping designed to manage water temporarily during these storm events.

[31] Mr. Grachek noted that the sealing of manholes that have experienced SSO, is merely a temporary fix. The advice to seal certain manholes "assumes that you're going to build the relief sewer, so you don't have a problem with it." Mr. Grachek explained that if "you seal the manholes and you don't build the relief sewer, then the model will show problems upstream," resulting from pressure buildup.

Mr. Grachek researched "My Neighborhood GIS"[32] to determine whether the relief sewer proposed in the LTC Report had been installed and discovered that it had not. He reviewed an email dated April 29, 2022 from the Chief of Sewer Design of DPWT, which also confirmed that the relief sewer had not been installed. Mr. Grachek acknowledged that he was unaware whether Baltimore County had performed any other improvements pursuant to the CD. Mr. Grachek did not review any Certificates of Completion for work performed by Baltimore County.

Mr. Grachek also reviewed a 2019 evaluation of the sewer pipes and opined that Baltimore County failed to consider the degradation of each pipe in evaluating their capacity, as shown by the fact that the "Manning coefficient"[33] on the chart remained at 0.013 for each pipe. With this data, Mr. Grachek opined that Baltimore County did not evaluate the pipes for wet weather events. Mr. Grachek further opined that this data shows that the Lake Roland interceptor pipe is not a good design, is dramatically at overcapacity, will always leak, and must be replaced.

[32] "My Neighborhood GIS" refers to a Geographic Information System (GIS) tool provided by a local city or county government that allows residents to view detailed information about properties, zoning, public services, and infrastructure in their neighborhood. *See Geographic Information Systems (GIS)*, Baltimore County Government, https://www.baltimorecountymd.gov/departments/information-technology/gis (last accessed Dec. 10, 2025). Mr. Grachek is referencing Baltimore County's GIS tool.

[33] Mr. Grachek explained that the "Manning coefficient" is the industry standard for measuring the roughness of the pipe. He explained that as pipes age, they degrade from sulfuric acid and normal wear and tear. As a result, the inside of the pipe becomes rougher, causing more friction, inhibiting water flow, and more readily causing backups. Mr. Grachek explained that the "Manning coefficient" for brand new reenforced concrete pipes is 0.013, which is why Baltimore County's analysis is problematic.

Mr. Grachek also reviewed Baltimore County's water sampling results from Lake Roland and noted that the sampling from May 23, 2022 indicated that e. coli levels were greater than 2,420, which is significantly higher than the allowable geometric mean standard of 126, under Maryland regulations. Mr. Grachek opined that the 2,420 result on May 23, 2012, suggests that "whenever it rains, you get significant surcharges and Lake Roland gets hit with a lot of combined sewage, or a lot of sanitary sewage, which creates an E. coli problem, in the lake." He believed these levels prompted Baltimore County to erect recreational warning signs at Lake Roland in 2019, which demonstrates Baltimore County's knowledge of SSO.

For the Torch Hill Development Plan, he stated that for the thirty-two proposed units, the sewage system could be designed using one of two methods: (1) 90 gallons/per day per resident; or (2) 150 gallons per bedroom per day. He calculated that a normal flow from the Torch Hill Development Plan would be 12,000–14,000 gallons per day. *Mr. Grachek then conceded that if the sewage flow from the Torch Hill Development Plan was the only additional flow into the existing sewer system, if evaluated under dry conditions, it would not make a marked change.* However, he added that if there were many developments over time, and no improvements were made, it would overburden the system which is already surcharging. Accordingly, in Mr. Grachek's expert opinion, based on industry standards, he would not add flow to this system.

b. Mr. Motsco's Rebuttal

Mr. Motsco testified in rebuttal to Mr. Grachek's testimony concerning the capacity of the Baltimore County sewer system. To put it simply, Mr. Motsco believed Mr. Grachek misinterpreted the LTC Report. Specifically, Mr. Motsco explained that the LTC Report contains a list of suggested—as opposed to required—repairs to be performed by Baltimore County and was only the second step of the CD process. Mr. Motsco intimated that the repairs based on extreme weather events were mere suggestions. Mr. Motsco explained that the actual required repairs approved by both the Environmental Protection Agency and Maryland Department of the Environment are contained in the SRRR Plan from December 2012. Additionally, the PAR dated May 26, 2021 was prepared by RJN Group, Inc. ("RJN") and details the SRRR work actually performed by Baltimore County.

Referring to Map 6-1 entitled Sewer, Manhole and Hydraulic Corrective Action Recommendations attached to the SRRR Plan, Mr. Motsco described how the map shows the required sewer repairs and shows the direction of sewage flow from manhole 59915 to which Torch Hill would connect, as it travels south through the sewer system. Mr. Motsco identified on Map 6-1 specific areas reported in the LTC Report to exhibit excessive I&I[34] as a result of storm water entering the sewer system. He further acknowledged that one valve in particular was found to be leaking several hundred gallons per day of raw sewage into Jones Falls. The repairs for that sub-sewer shed area include relining sewer pipes and

[34] Mr. Motsco defined I&I as water runoff entering the system, not sewage. I&I stands for inflow and infiltration. Inflow is water running into the system from, for example, a storm event. Infiltration is groundwater seeping into the system.

reconstructing/relining manholes. He explained that the sewage from Torch Hill will not go through these areas and purported that all of the required improvements (that would affect sewer capacity for Torch Hill) have been performed as confirmed by the Certificates of Substantial Completion.

Mr. Motsco opined that the improvements as required by the SRRR Plan would result in increased sewer system capacity downstream during wet weather events, ultimately reducing the potential for SSO. He stated that no relief sewers or upsizing of pipes were required to be performed within the Torch Hill sewage path. Given that the maximum peak sewage flow would only be 10,000–15,000 gallons per day, Mr. Motsco opined that the sewer system has adequate capacity to accommodate the sewage flow from Torch Hill. In forming this opinion, Mr. Motsco relied on a confirmation email from Mr. Bayer on behalf of DPWT dated September 2, 2021, where Mr. Bayer stated that the connection to manhole 59915 has adequate capacity to service the thirty-two proposed homes.

Mr. Motsco explained that portions of the PAR monitored and analyzed the performance of the SRRR Plan's required improvements to determine if they were successful. The PAR stated that the work was performed and that the overall system capacity has been improved.

Mr. Motsco expressly rejected two exhibits propounded by FRCA. First, Mr. Motsco described a recent photo of manhole 6888, which had subsequently been sealed. Mr. Motsco then countered Mr. Grachek's 2019 photograph of the warning signs erected

at Lake Roland with his own testimony that he did not see any signs when he visited "yesterday" (August 21, 2022). Mr. Motsco further opined that e. coli contamination stems from many sources, including humans and animals, and that e. coli levels from Lake Roland cannot be directly attributed to SSO. In fact, Mr. Motsco noted that a frequented dog park is located near Lake Roland where sampling occurs, which Mr. Motsco noted may be a contributing factor.

Ultimately, with regard to the sewage capacity issue, Mr. Motsco opined that the Torch Hill Development Plan complies with all rules, laws, and regulations, and did not find any noncompliance warranting disapproval.

2. Parties' Contentions

Appellants contend that uncontradicted and overwhelming evidence supports that the public sewer lines impacted by the Development Plan are at overcapacity. Appellants rely on findings by RK&K and RJN, Baltimore County's consultants, who recommended improvements and concluded that the rehabilitation work as completed has not resolved the issue. Appellants' expert, Mr. Grachek, explained that it would be inconsistent with industry standards and sound engineering principles to add more sewage to lines that are already at overcapacity. Appellants stress the importance of *Greenspring Manor*[35] and

[35] *See* Case Nos.: 08-922 and 2021-0250-ASA, *In re: Development Plan Hearing & Petition for Special Hearing (Greenspring Manor/Greenspring Joppa Falls, LLC)* ("*Greenspring Manor*"). Although we note that *Greenspring Manor* is included in the Appellate Record Extract, as did the BOA, we note that the relevance of the *Greenspring Manor* case is limited. In the BOA's Public Deliberation, Chairman Belt noted that it was "[his] understanding that when [the BOA] had [its] oral arguments, that decision

Bluestem,[36] given that the ALJs in each case (one of which being ALJ Murphy herself) found that this part of the sewer system was at overcapacity, in reliance on much of the same evidence as in the present case, including the CD, evaluations by Baltimore County consultants, and Mr. Grachek's testimony. Appellants argue that ALJ Murphy made "clear and obvious errors" in the Opinion and Order, including: (1) misreading the CD, SRRR Plan and LTC Report; (2) misunderstanding a Corrective Action Recommendation Plan included in the SRRR Plan; (3) failing to recognize important assumptions in RK&K's and RJN's modeling; and (4) misreading Map 3 of the SRRR Plan.

Mr. Krongard contends that the circuit court properly affirmed ALJ Murphy's decision approving the Development Plan. First, Mr. Krongard argues that the Development Plan is presumed to be compliant because Baltimore County's reviewing agencies unanimously recommended approval and Appellants failed to rebut this presumption. Critically, Mr. Krongard explains, Mr. Patel (on behalf of DPR) relayed the comments of DPWT and testified that there was "adequate sewer capacity" to

(*Greenspring Manor*) had not been issued as of yet." The BOA was correct in noting that they "don't give that type of deference to Board opinions or to ALJ opinions." Chairman Belt continued: "Though they can be instructive to us, they are not binding precedent." We agree with the BOA and conclude that *Greenspring Manor* need not be stricken from the record, as requested by Mr. Krongard, and concur that we shall not include the *Greenspring Manor* decision in our consideration of this matter, given that it was not before ALJ Murphy at the time of her decision. In reviewing an agency's decision, a court ordinarily is "confined to the record" made before the administrative agency, which does not include decisions issued after. *See Campbell*, 364 Md. at 123 (2001); *see also Mehrling*, 371 Md. at 60.

[36] *See supra* note 9.

accommodate Torch Hill. Mr. Krongard further maintains that expert testimony by Mr. Motsco, DPWT's analysis and RJN's report provided ample evidence for ALJ Murphy's decision. Mr. Krongard disagrees with Appellants' contentions regarding the importance of either *Bluestem* and *Greenspring Manor* and instead argues that this Court should not consider either decision. Given that ALJ Murphy "weighed the probative value of the evidence and the credibility of the witnesses, and she resolved competing expert testimony and conflicting evidence through rigorous analysis," Mr. Krongard avers that ALJ Murphy's approval of the Development Plan is supported by strong and substantial evidence.

3. Applicable Law – Development Plan Approval

Whether a development plan is approved turns on a few key provisions of the BCC and BCZR, and this Court's jurisprudence.

The BCC provides that the "Hearing Officer *shall* grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations." BCC § 32-4-229 (emphasis added). In *People's Counsel v. Elm Street Development, Inc.*, this Court held that if the county agencies recommend approval of a development plan, it is then "up to [protestants] to provide evidence rebutting the Director's recommendations." 172 Md. App. 690, 703 (2007) ("*Elm Street*"). As follows, *Elm Street* establishes a rebuttable presumption in favor of the proposed development, so long as all relevant county agencies approve.

Furthermore, BCC § 32-4-410(b) states as follows: "Proposed public or private sewage facilities shall be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies."

Zoning regulations also specifically address sewer capacity requirements for proposed development.: BCZR § 4A02.4 states as follows:

> C. Sewerage standards.
>
> a. Intent. The sewerage standards and maps are intended to regulate nonindustrial development where it has been determined that *the county's share of public sewerage capacity is substantially less than the capacity necessary both to serve already established uses and to serve new uses likely to be established* pursuant to this legislation.

Together, BCC and BCZR require adequate sewer capacity so as not to cause harm, prior to the approval of nonindustrial development.

4. ALJ Murphy's Approval of the Torch Hill Development Plan was Proper

Since the BOA merely conducted an on-the-record review of ALJ Murphy's approval of the Torch Hill Development Plan, we look through the circuit court's Memorandum Opinion and Order and the BOA's Combined Opinion and instead review ALJ Murphy's Opinion and Order to see whether it is sustainable on the findings or reasons stated by ALJ Murphy. *See Hayden*, 242 Md. App. at 520.

We begin our analysis with the *Elm Street* rebuttable presumption. 172 Md. App. at 703. As noted above, all of the Baltimore County agency representatives testified in favor

of Torch Hill.[37] While Appellants presented evidence (via Mr. Grachek) rebutting DPWT's determination that sewer capacity existed to accommodate Torch Hill, Mr. Krongard presented substantial competing evidence (via Mr. Motsco) demonstrating that the relevant provisions of BCZR § 4A02.4, BCC §§ 32-4-229 and 32-4-410(b) will be met.

Significantly, Mr. Krongard presented evidence illustrating that (1) the Torch Hill Development Plan will satisfy all laws, rules and regulations; (2) Mr. Bayer indicated there is adequate sewer capacity to accommodate proposed demand resulting from the Torch Hill Development Plan; and (3) Baltimore County has performed the requisite remedial work pursuant to the CD. Mr. Krongard, therefore, satisfied his burden under BCC § 32-4-410(b) in showing that Torch Hill will "be designed and located to function safely and without danger of contaminating groundwater, surface water, or public or private water supplies." Accordingly, ALJ Murphy was presented with sufficient evidence that demonstrates that the Development Plan should be approved.

ALJ Murphy also comprehensively reviewed all of the evidence and approved the Development Plan in a thoughtful and thorough written decision. ALJ Murphy began with a lengthy recitation of all of the evidence received during the hearing. First, ALJ Murphy described the unanimous Baltimore County agency testimony in support of the Development Plan. ALJ Murphy continued with a careful explanation of the substantial evidence offered by Mr. Krongard's expert witnesses, Ms. McArthur and Mr. Cornelius.

[37] *See supra* Section II.A.1; *see also* Baltimore County Exhibits 1A–11F.

Next, ALJ Murphy summarized the testimony from FRCA's two witnesses: Ms. Miller and Mr. Grachek. She then detailed the rebuttal evidence presented through Mr. Krongard's expert, Mr. Motsco. The ALJ spent the remaining pages of her Opinion and Order sorting through the evidence, making findings, and reaching her conclusion that the Development Plan should be approved.

In doing so, ALJ Murphy properly outlined the legal test that is applicable in the review of development plans. As do we, ALJ Murphy noted how BCC § 32-4-229 requires the ALJ to approve "a development plan that complies with these development regulations and applicable policies, rules and regulations." ALJ Murphy bolstered her conclusions by citing *Elm Street*, explaining the effect of unanimous agency approval. From there, ALJ Murphy comprehensively examined various aspects of the Torch Hill Development Plan that were subject to scrutiny during the hearing. ALJ Murphy extensively evaluated the sewer issues raised by FRCA. ALJ Murphy directly covered: (1) the relevance and application of the *Bluestem* case; (2) the import of the CD; (3) whether Baltimore County met their obligations under the CD; (4) the workings of the SRRR Plan; (5) an analysis of the PAR; and (6) the significance of e. coli readings in Lake Roland. While we note Appellants' interpretation of Map 3 is correct, we do not view ALJ Murphy's misreading as fatal. Apart from the reading of Map 3, there was still plenty of evidence upon which ALJ Murphy based her findings.

Since reasoning minds could reasonably—and easily—reach the conclusion reached by ALJ Murphy from the facts in the record, the findings are therefore based on substantial

evidence. Consequently, neither the BOA, circuit court, nor this Court has the power to reject ALJ Murphy's conclusions. *See Columbia Rd. Citizens' Ass'n*, 98 Md. App. at 698. On this basis, we affirm ALJ Murphy's approval of the Torch Hill Development Plan. The judgment of the circuit court is affirmed.

V. CONCLUSION

For the reasons stated above, we hold that the circuit court erred in denying Appellants standing, in light of Mr. Sachse's "almost *prima facie* aggrieved" status. We reverse the judgment of the circuit court on this basis. Notwithstanding the circuit court's error in regard to standing, we hold that both the approval of the Torch Hill Development Plan by ALJ Murphy and the grant of the Special Variance by the BOA were proper. We conclude that both ALJ Murphy's and the BOA's decisions were supported by substantial evidence in the record. In their roles as factfinders, ALJ Murphy (concerning the approval of Torch Hill) and the BOA (concerning the grant of the Special Variance) were responsible for assessing and weighing the clashing evidence presented by Appellants and Mr. Krongard. Determining the credibility of the expert witnesses and choosing to rely on the opinions of Mr. Cornelius and Mr. Motsco was exclusively the function of the agency officials and we may not substitute our judgment for that of the agency when, as in the instant case, there was substantial evidence supporting its decisions. We affirm the judgment of the circuit court on the merits.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED IN PART AND AFFIRMED IN

PART. COSTS TO BE PAID BY APPELLANTS.