Circuit Court for Anne Arundel County
Case Nos. C-02-CV-19-000170 and C-03-CV-19-000167

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1574

September Term, 2019

CALVARY TEMPLE OF BALTIMORE, INC., ET AL.

v.

ANNE ARUNDEL COUNTY, MARYLAND, ET AL.

Nazarian,
Leahy,
Friedman

JJ.

Opinion by Leahy, J.

Filed: June 28, 2021

Appellee Lumenary Memory Care at St. Stephens Church, LLC ("Lumenary") applied for a special exception and two variances in 2017 in order to construct an assisted living facility for individuals suffering from memory-related illnesses in a Residential Low-Density Zoning District ("RLD"). At the public hearing conducted on Lumenary's application, Pastor James F. LaRock, Sr. ("Pastor LaRock"), representing both himself and his employer, Calvary Temple of Baltimore, Inc. ("Calvary") (collectively, "Appellants"), voiced his opposition to the facility. On September 29, 2017, the Administrative Hearing Officer ("AHO") filed a memorandum granting the special exception and variances requested by Lumenary.

In response to the AHO's decision, Pastor LaRock and several others filed a timely Notice of Appeal (the "Notice") to the Anne Arundel County Board of Appeals (the "Board") on October 26, 2017. The Notice claimed that Lumenary's proposed project would alter the essential character of the neighborhood and be detrimental to the public welfare. Notably, Calvary was not included on the Notice.

In February 2018, the Board held hearings on Lumenary's motion to dismiss. At the hearings, Lumenary argued that the protestants lacked standing to bring the appeal. Pastor LaRock claimed to represent both himself and Calvary, despite the omission of Calvary's name from the Notice. The Board agreed with Lumenary and refused to allow Pastor LaRock to amend the Notice to include Calvary because the Anne Arundel County Code (the "AA Code") requires that an appeal be taken within 30 days from the AHO's decision. Pastor LaRock, however, was granted individual administrative standing to file the appeal, along with the other protestants.

The Board then proceeded to hold hearings on the merits of the appeal over four days between April 3 and August 1, 2018. In its "Memorandum of Opinion" dated December 17, 2018, the Board agreed with the AHO's decision and unanimously granted, subject to two conditions, Lumenary's request for a special exception and variances.

On January 15, 2019, Pastor LaRock, Calvary, and four others petitioned for judicial review of the Board's decision, including its decision to deny Calvary standing, in the Circuit Court for Anne Arundel County. Lumenary filed a cross-petition and motion to dismiss challenging the standing of all protestants. Lumenary argued, among other things, that the Board erred by granting Pastor LaRock standing because, as an employee of Calvary rather than a property owner, Pastor LaRock was not "aggrieved" by the decision of the AHO.

Following a hearing on September 9, 2019, the circuit court announced its ruling granting Lumenary's cross-petition. The court found that the Board erred in granting Pastor LaRock standing because he did not own the parsonage, and therefore, he was not prima facie aggrieved by the decision of the AHO, and he had not offered sufficient evidence to show how he was specially aggrieved. The court also found that the Board did not act arbitrarily, illegally or capriciously when it denied standing to Calvary and the other two remaining petitioners.[1] The court memorialized its judgment in an opinion and order signed on September 25, 2019 and entered on October 1, 2019.

[1] Before the hearing, two of the four other petitioners dropped their individual petitions for judicial review.

Appellants note this timely appeal and present three questions for our review, which we have consolidated as follows:[2]

1. Did the Board err by denying administrative standing to appeal to Calvary?

2. Was the Board's decision to grant administrative standing to appeal to Pastor LaRock both fairly debatable and supported by substantial evidence, and if so, did the circuit court err in reversing that decision?

We hold that the Board did not commit reversible error in denying administrative standing to Calvary because substantial evidence supported its determination that Calvary did not appeal the AHO's decision according to the AA Code and the Rules of Practice and Procedure of the Anne Arundel County Board of Appeals (the "AA Board Rules"). We also hold that the Board's decision to grant standing to Pastor LaRock was supported by substantial evidence and not legally erroneous. Although Pastor LaRock is not prima facie

[2] Appellants' questions were originally presented as follows:

I. "Did the Anne Arundel County Board of Appeals commit reversible error by denying administrative standing to Calvary Temple of Baltimore, Inc., a confronting property owner and prima facie aggrieved by the zoning decision of the Anne Arundel County Administrative Hearing Officer, to appeal that zoning decision to the Board of Appeals?"

II. "Was the decision of the Anne Arundel County Board of Appeals to grant administrative standing to Pastor James F. LaRock, Sr. as a party aggrieved by the decision of the Anne Arundel County Administrative Hearing Officer "fairly debatable" and supported by substantial evidence?"

III. "Did the Circuit Court for Anne Arundel County, rejecting deference to the decision of the Anne Arundel County Board of Appeals to grant administrative standing to pastor James F. LaRock, Sr. as a party aggrieved by the decision of the Anne Arundel County Administrative Hearing Officer, commit reversible error by reversing that decision and denying administrative standing to James LaRock, Sr.?"

aggrieved by the decision of the AHO, we agree with the Board that he is specially aggrieved by the decision because he possesses a significant, long-term interest in the Calvary property and lives in close proximity to the site of Lumenary's project. Accordingly, the circuit court erred in reversing the Board's decision and denying standing to Pastor LaRock.

BACKGROUND

Lumenary is a collection of five partners wishing to construct an assisted living facility along "the northeast side of St. Stephens Church Road, northwest of Brandy Farms Lane" in Millersville, Maryland. Lumenary aims to provide "specialized services to individuals suffering from memory-related illnesses," including "personalized health care management; assistance with bathing, dressing, grooming, and medications; nursing care; meals and snacks; activities and entertainment; housekeeping; laundry and transportation." The subject property consists of approximately 8.709 acres, is undeveloped and is on a historic road ("the Property").[3] In 2017, Lumenary applied for a special exception to construct an assisted living facility in the RLD zone, along with an area variance to permit the facility on a lot under 10 acres, and a time variance of an additional 18 months to obtain a building permit under the applicable AA Code provisions.

Proceedings before the Office of Administrative Hearings

On September 12, 2017, the requisite public hearing on Lumenary's application was

[3] The Property is identified as "Lot 1 of Parcel 71 in Block 8 on Tax Map 37 with a street address of St. Stephens Church Road, Millersville, Maryland 21108." It is part of a larger 16.04 acre development.

held before the Office of Administrative Hearings.[4] Pastor LaRock, Senior Pastor for Calvary, was present at the hearing and testified in opposition to Lumenary's application.[5]

Calvary owns the land at 933 St. Stephens Church Road, "which is virtually across the street from [the Property]."[6] Pastor LaRock testified that he lives at 933 St. Stephens Church Road and opposed the application, explaining that he "treasure[s] his peace and quiet and believe[s] that the facility would alter the character of the neighborhood."

Pastor LaRock claimed to represent both himself and his employer, Calvary. When asked whether Lumenary's application was discussed at the church, Pastor LaRock responded that they did not conduct "an official business meeting" regarding the application, but added that "if that were appropriate," they "certainly could [have such a meeting]."

On September 29, 2017, the AHO filed a memorandum opinion and order granting the variances and special exception requested by Lumenary. The AHO determined that granting the variances would not

[4] The Anne Arundel County Code provides that "[t]he Administrative Hearing Officer shall conduct a public hearing on an application, which shall be recorded." AA Code § 18-16-301 (2005). The Code defines "application" to mean any "request to change or remove a critical area classification, to change a zoning district, for a special exception or variance, or for a modification of a special exception." AA Code § 18-16-101(a).

[5] Associate Pastor James LaRock, Jr. was also present before the AHO but did not testify.

[6] Pastor LaRock signed the Administrative Hearing sign-in sheet using his personal address, 933 St. Stephens Church Road, which is also the mailing address on record for Calvary at the Maryland State Department of Assessments & Taxation ("SDAT"). The address of the Calvary church building, however, is 821 Brandy Farms Lane.

> alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to public welfare.

In regard to the area variance, the AHO decided that "[t]he property is 87% of the 10-acre lot size required by the [AA] Code. Given that the application meets all other requirements, the area variance will be granted." The AHO also determined that the second variance for an extension of time would be granted because "[i]t is well known that a project of this complexity can take far longer than 18 months to move through the permitting stage." The AHO then addressed AA Code § 18-11-104 governing the requirements for such a facility in the RLD zone, and concluded that Lumenary's application for special exception should be granted because it complied with all requirements, with the exception of the 10-acre lot requirement, for which a variance would be granted.

Appeal to Anne Arundel County Board of Appeals

A. Notice of Appeal and Motion to Dismiss

Pastor LaRock and eight other individuals timely filed a Notice of Appeal[7] to the Board, stamped as received on October 26, 2017.[8] The Notice stated that the listed parties

[7] This appeal was taken pursuant to section 3-1-104 of the AA Code, which provides that "[a] person aggrieved by a decision of the Administrative Hearing Officer who was a party to the proceedings may appeal the decision to the Board of Appeals[.]" AA Code § 3-1-104 (2005).

[8] The parties listed on the Notice are: Pastor LaRock, Oliver Bell, MaryAnn Hinchley, James LaRock, Jr., Henry Powell, Mary Ann LaRock, Linda Andrus and Steve and Regina Smith. Calvary is not listed by name anywhere on the Notice.

took "exception to the judgment that has been made whereby a variance . . . and special exception . . . to the Anne Arundel County Code have been granted." They alleged that the grant of the variances and special exception would "alter the essential character of the neighborhood or district in which [the Property] is located, substantially impair the appropriate use or development of adjacent property and be detrimental to the public welfare[.]"

In response to the Notice, on November 13, 2017, Lumenary moved to dismiss the appeal.[9] It argued that the parties listed on the Notice "lack[ed] standing to maintain this appeal under [AA] County Code . . . § 18-16-402." Specifically, Lumenary alleged that "[Pastor] LaRock, James LaRock Jr. and Henry Powell are not 'aggrieved' by the decision of the AHO . . . and, as such, they [] do not have standing to maintain an appeal under the [AA] Code." It also pointed out that, although Calvary is the owner of the land on which Pastor LaRock lives, "Calvary Temple is not listed on the Notice of Appeal and is thus not a party to the proceeding before the Board."

B. Hearings

1. Calvary's Standing

Several months later, the parties appeared before the Board on February 15 and February 22, 2018 to address the standing issues raised in the motion to dismiss. Lumenary

[9] Lumenary's motion was served on the protestants present before the AHO: Pastor LaRock, James LaRock, Jr., Mary Ann LaRock and Henry Powell.

and Anne Arundel County (the "County") were present and represented by counsel.[10] A wide variety of protestants were also present, including Pastor LaRock and his son, James LaRock, Jr. At the start of the first hearing, Lumenary's counsel asked for clarity regarding the capacity in which Pastor LaRock and James LaRock, Jr. were present before the Board and asked to confirm that the LaRocks were "sitting there on behalf of themselves and not representing anyone."

Pastor LaRock testified that he "plan[ned] to represent [Calvary], the owner of the [land] adjoining [the Property]" as an "officer of Calvary Temple of Baltimore, Incorporated." He averred that the AA Board Rules allowed him, as an authorized representative of an organization, to come before the Board on Calvary's behalf. James LaRock, Jr. also claimed to be representing both Calvary and himself before the Board. Lumenary's counsel objected, stating that Calvary "is not a party to this proceeding . . . [because] [t]hey did not appeal the decision that is under review by this Board." When Board Counsel confirmed that Calvary was not listed on the Notice, Pastor LaRock explained that, while he may not have indicated "plainly and clearly [on the Notice] that [he] was a representative of [Calvary]," he had testified "to that effect" before the AHO.

Over Lumenary's objections, the Board allowed Pastor LaRock to explain his claim to represent both himself and Calvary. Pastor LaRock testified that he was clear about his dual role during the AHO proceedings. He admitted that he committed an oversight by failing to include Calvary's name on the Notice, but claimed that this was a "technicality"

[10] Although the County participated at the Board level, the County did not participate at the judicial review stage and is not a party in the current appeal.

and asked for leniency. Calvary, he averred, was an "adjoining property owner [with] a legitimate interest in being heard in this matter." Pastor LaRock then moved to amend the Notice to add Calvary as a party to the appeal, characterizing this amendment as "minor amendment for purposes of clarification." Lumenary and the County objected.

The Board considered Pastor LaRock's motion. Member Middlebrooks and Chairman Forgo both expressed concern about the precedent that would be set if they allowed an entirely separate entity to join the appeal outside of the AA Board Rules. Ultimately, the Board voted 5 to 1, with Mr. Devlin opposing, to "deny Calvary Temple admission as a [p]rotestant in this case." [11]

At the second hearing, held on February 22, 2018, James LaRock, Jr. also attempted to persuade the Board to grant Calvary standing, explaining that, at meetings both before and after the September proceedings before the AHO, he was "authorized [by the Calvary governing body] to represent the interests of [Calvary]." Lumenary objected, and the Board sustained the objection. James LaRock, Jr. then attempted to enter into evidence copies of the meeting notes allegedly authorizing him to represent the interests of Calvary before the Board. Lumenary objected again, arguing that the meeting notes were "not

[11] Board member Mr. Devlin expressed concern about denying Pastor LaRock's motion, explaining that, because of the church's proximity to the Property, Calvary might have the "best case for standing in this case." Mr. Devlin acknowledged that Pastor LaRock and James LaRock, Jr. might not personally own any land near the Property, but that "removing their association with the church next door to this assisted living center is quite possibly ending this entire group's interest in this case and sending them packing without a hearing—without them getting their day in court." Mr. Devlin argued that leniency should be offered to Pastor LaRock and Calvary, because Pastor LaRock is not a lawyer and made a small error when filling out the Notice.

relevant because [Calvary] is not a party to this proceeding." The Board refused to allow the admission of the meeting minutes into evidence because the "church, itself, is not listed as a [p]rotestant or a [p]etitioner in this case."

2. Pastor LaRock's Standing

The Board also considered the standing of each individual protestant identified in the Notice alongside Lumenary's 2017 Motion to Dismiss. At the first hearing, Lumenary addressed Pastor LaRock's individual standing before the Board, arguing that, although Pastor LaRock was both a party to the proceedings before the AHO and appealed within the requisite 30 days, he was not prima facie aggrieved because he is not an adjacent property owner. As a person who "does not have a property interest," argued Lumenary, Pastor LaRock does not have an interest "that could be specially damaged or aggrieved by the decision [of the AHO]." Lumenary offered witness testimony and documentary evidence showing that Pastor LaRock "is not on the deed" for the property at 933 St. Stephens Church Road, which is owned by Calvary.

At the second hearing, Pastor LaRock was given the opportunity to respond to the evidence and explain why he had standing before the Board. Pastor LaRock explained that his appeal to the Board was "on behalf of [himself] and of [Calvary] for protection before this Board for our rights . . . under the [AA] Code." Lumenary objected that "aggrievement for [Calvary] is not relevant" because the Board "already voted that [Calvary] is not a party to the proceeding." The Board chairman sustained Lumenary's objection and asked that Pastor LaRock speak only to how he personally was aggrieved by the decision of the AHO.

Pastor LaRock continued to conflate his interests with Calvary's interests throughout his testimony. Eventually, Pastor LaRock explained that he believed he had standing before the Board "as a citizen of Anne Arundel County" and "because of the proximity of [his] residence" to the Property. He testified that, although he does not "physically own" the property on which he lives, he "liquidated [his] life savings years ago when [he] moved from Virginia and [] poured them into the property that is now owned by [Calvary]," where he has served his congregation for over twenty years. He related that the Calvary property "is very much a part and parcel of our lives" and opined that "it would be an egregious miscarriage of justice to deny us the right to even contest the decision to grant . . . the variances and the special exception[]."

Upon questioning by Lumenary, Pastor LaRock testified that the parsonage at 933 St. Stephens Church Road is "provided as a part of [his] compensation," but that he has no written employment contract or lease for his residence. He explained that Calvary is managed by a Board of Trustees, which he chairs. When asked whether the Board of Trustees would hypothetically have the power to hire a new pastor and require him to vacate the parsonage, Pastor LaRock responded that he "wouldn't let them make that decision." Pastor LaRock also testified that, from where he lives, he can see, hear and smell the Property, describing it as "just a hop, skip and a jump" from his residence.

After hearing from each individual protestant, the Board voted to "dismiss all Protestants who did not appear before the Administrative Hearing Officer." They also voted to dismiss Henry Powell and James LaRock, Jr., because "they live too far away from [the Property]" to be considered aggrieved. The Board did not, however, dismiss

Pastor LaRock. Board member Middlebrooks explained that, even though Pastor LaRock is not a property owner, he believed Pastor LaRock to have a "vested interest" in the proceedings, because the parsonage is part of his compensation, he has lived there for 18 years, and he is a Trustee and Chairman of the Board of Calvary. Board member Hare agreed that, because Pastor LaRock lives in the parsonage, he will be "aggrieved by whatever happens there." Ultimately, the Board voted 5 to 1 to grant standing to Pastor LaRock.

Beginning on April 3, 2018, the Board held four hearings on the merits of Lumenary's application.[12] During the hearings, the Board heard from Pastor LaRock in addition to several Calvary congregation members who testified during the public testimony portion of the hearing. In its December 17, 2018 Memorandum of Opinion, the Board unanimously granted, subject to two conditions (not relevant to this appeal), Lumenary's request for a special exception and variances to "allow an assisted living facility in an RLD district on property located at the corner of Brandy Farms Lane and St. Stephens Church Road in Millersville."

Petition for Judicial Review in the Circuit Court

On January 15, 2019, Pastor LaRock, Calvary,[13] and four others ("Petitioners")

[12] The hearings were held on April 3, July 5, July 12, and August 1, 2018.

[13] In this first petition, Pastor LaRock listed himself twice; once as "James LaRock, Sr., Pastor" of Calvary Temple of Baltimore, Inc., 821 Gambrills, MD 21054, and once as "James LaRock, Sr." of 933 St. Stephens Church Road, Gambrills, MD, 21054.

petitioned for judicial review in the Circuit Court for Anne Arundel County.[14] The parties petitioned the court to review the

> decisions of the Anne Arundel County Board of Appeals, to grant a motion to dismiss [for lack of standing], to grant a special exception, to grant two variances and/or grant related relief to Lumenary Memory Care at St. Stephens Church, LLC for construction and occupancy of an assisted living facility in a [RLD], on lot with less area than required by County law[.]

They stated that the "rulings appealed from and for which judicial review is sought is the decision by which [the Board] granted the aforementioned motion to dismiss Appellants James LaRock, Jr., Henry Powell, Timothy Gaughenbaugh and Carla Drawbaugh," as well as the "decision dated December 17, 2018, by which [the Board] granted the aforementioned special exception, two variances, and related relief."

The next day, Calvary, Pastor LaRock, and the same four others filed a second petition for judicial review which included the same statements contained in the prior petition but clarified that the rulings appealed from included the motion to dismiss "Appellant[] Calvary Temple of Baltimore, Inc., as represented by [Pastor LaRock] and as represented by James LaRock, Jr. [.]" These two petitions were later consolidated on March 8, 2019.

On February 15, 2019, Lumenary filed a Cross-Petition for Judicial Review, arguing that the Board erroneously granted standing to Pastor LaRock when, as a resident and employee of Calvary rather than a property owner, Pastor LaRock was not "aggrieved"

[14] Henry Powell, James LaRock, Jr., Timothy Gaughenbaugh and Carla Drawbaugh joined Pastor LaRock and Calvary in the petitions for judicial review.

by the decision of the AHO.[15] On March 7, 2019, it also filed a motion to dismiss, claiming that, for the purposes of judicial review, none of the Petitioners were aggrieved under the AA Code because they "do not own property and have no personal and specific interests (outside of those shared by the general public) that would be harmed by the [Board]'s special exception and variance approval." Lumenary again specifically argued that an "aggrieved person" with standing to seek judicial review of the decision of the Board is only one who is a "property owner," meaning that Pastor LaRock "is not aggrieved because he does not own *any* property anywhere near the proposed assisted living facility."

On April 5, 2019, the Petitioners filed an opposition to Lumenary's motion to dismiss. On May 26, 2019, the Petitioners followed this motion with a Supplemental Opposition to Respondent's Motion to Dismiss. The Supplemental Opposition included declarations from Pastor LaRock and James LaRock, Jr. claiming that "prior to the commencement of the administrative hearing," both were authorized by Calvary's Board of Trustees to represent Calvary's interest before the AHO. James LaRock, Jr. noted that the Board "refused to allow the introduction of his authorization to appear both before the [AHO] and before the [Board]." The parties appended two sets of notarized Calvary Temple meeting minutes to the Supplemental Opposition, allegedly from September 5, 2017 and October 10, 2017. The meeting minutes appear to give Pastor LaRock and James

[15] Lumenary also maintained that the Board correctly concluded that the remaining protestants/petitioners lacked standing because they either were not aggrieved or were not a party to the AHO proceeding.

LaRock, Jr. the authority to represent Calvary's interests before the AHO and the Board respectively.

On September 9, 2019, a hearing took place in the circuit court.[16] The court first heard argument and testimony on Lumenary's motion to dismiss and cross-petition for judicial review. The court later heard argument and testimony regarding Calvary's standing before the Board.

At the conclusion of the hearing, the circuit court announced its rulings, beginning with its determination that Pastor LaRock was "improperly granted standing before the [Board]." The court found that Pastor LaRock was not prima facie aggrieved by the decision of the AHO because "[Pastor LaRock] is not a property owner." The court also found that the record did not show that Pastor LaRock was specially aggrieved, because most of the arguments Pastor LaRock made before the Board related to Calvary and why it should have standing. In order to "go forward with the petition as it exists and as it pertains to [Pastor LaRock]," the court explained, it would have to "find some special

[16] Several months prior, a hearing was held on May 29, 2019, in response to a series of motions regarding failures to transmit the record and extensions of time. After the hearing, Lumenary and the Petitioners entered into a consent order docketed on June 5, 2019. In the consent order, James LaRock, Jr. and Henry Powell agreed to withdraw their individual petitions for judicial review. Lumenary and the Petitioners also agreed that Lumenary's motion to dismiss "as to James LaRock, Sr., and the opposition thereto, are continued to be heard at the same time as argument is heard on the Petitions and Cross-Petitions for judicial review." The remaining parties, therefore, were Pastor LaRock for himself and on behalf of Calvary, James LaRock, Jr. on behalf of Calvary, Calvary itself, and Mr. Gaughenbaugh and Ms. Drawbaugh. The parties maintained, among other things, that the Board incorrectly denied standing to Calvary and Mr. Gaugenbaugh, incorrectly granted the special exception to Lumenary, and incorrectly granted the requested variance to the lot size.

aggrievement, some unique circumstances that show that [Pastor LaRock] is the one that is uniquely peculiarly impacted by the proposed development and construction if it, indeed, comes to pass adjacent to the church." Here, the court found, the arguments advanced by Pastor LaRock—such as his nineteen year tenancy in the parsonage and his enjoyment of the natural setting—simply did not rise to the level of "special aggrievement," because Pastor LaRock did not show "some personal interests different from all of the world." For these reasons, the court granted Lumenary's cross-petition challenging Pastor LaRock's standing.

The court then turned to the question of Calvary's standing and found that the Board did not act arbitrarily, illegally or capriciously when it denied Calvary standing. The court reasoned that "at no point in time did either the [Calvary] deacons or the Board [of Trustees], or [Pastor LaRock] on behalf of those persons, timely file his Notice of Appeal before the Board with regard to his effort to challenge on behalf of [Calvary] a decision of an [AHO]." Finally, the court found no error in the Board's denial of standing to James LaRock, Jr. on behalf of Calvary, Mr. Gaughenbaugh or Ms. Drawbaugh. Therefore, in light of the foregoing and the grant of Lumenary's cross-petition, the court determined that Lumenary's motion to dismiss was moot.

On September 25, 2019, the court memorialized its oral rulings in a written Memorandum Opinion and Order that: (1) granted Lumenary's cross petition (thereby reversing the Board's decision to grant standing to Pastor LaRock); (2) affirmed the Board's decision to deny standing to Calvary, LaRock, Jr. on behalf of Calvary, Mr.

Gaughenbaugh and Ms. Drawbaugh; and (3) denied Petitioners' petition for judicial review.

Pastor LaRock and Calvary then noted this timely appeal.

STANDARD OF REVIEW

When we review the "final decision of an administrative agency, 'we look 'through the circuit court's . . . decision[], . . . and evaluate[] the decision of the agency.'" *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Prop.*, 453 Md. 516, 532 (2017). The Court of Appeals recently explained the limited review of an administrative agency's decision by an appellate court (which includes the circuit court on petition for judicial review):

> . . . . For factual findings, judicial review is limited to the application of the "substantial evidence test," which 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 and City Council of Baltimore*, 224 Md. 443, 448 (1961)). As we have routinely emphasized, 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). 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). 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 Counsel v. Maryland Marine Mfg. Co.*, 316 Md. 491, 497 (1989).
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> In *United Steelworkers v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984), we explained a key distinction between judicial review of an administrative decision as opposed to appellate review of a trial court judgment. 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." *United Steelworkers*, 298 Md. at 679. 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.*

Mayor of Balt. v. ProVen Mgmt., Inc., __ Md.__, __, No. 8, September Term 2020, slip op. at 23-24 (filed March 1, 2021).

Whether we accord any deference to an agency's legal conclusions depends upon whether those legal conclusions involve the interpretation and application of a statute which the agency administers. *W. Montgomery Cnty. Citizens Ass'n v. Montgomery Cnty. Planning Bd. of the Md.-Nat'l Cap. Park and Plan. Comm'n,* 248 Md. App. 314, 333 (2020); *cert. denied,* __ Md. __, No. 400, September Term 2020 (filed Mar. 1, 2021). If we are reviewing a statute that the agency administers, then the agency's "legal conclusions based on interpretations of the statutes and regulations it administers are afforded 'great weight.'" *Blue Buffalo Co., Ltd. v. Comptroller of Treasury*, 243 Md. App. 693, 702 (2019) (quoting *Gore Enter. Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 505 (2014)). And, finally, "our review of mixed law and fact asks 'whether a reasoning mind could reasonably have reached the conclusion reached by the agency, consistent with a proper application of the controlling legal principles.'" *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 44 (2018) (quoting *State Comm'n on Human Rels. v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 692 (2003)).

DISCUSSION

I.

Calvary's Standing before the Board of Appeals

A. Parties' Contentions

Appellants argue that the requirements to obtain administrative standing, absent a statute or regulation offering a more formal method of becoming a party, are not strict. According to Appellants, the AA Code only requires that a person be aggrieved by a decision of the AHO; have been a party to the administrative proceedings; and appeal within 30 days after the date on which the AHO's decision was filed.

Appellants contend that Calvary was denied standing merely because its name did not appear on the Notice. Calvary, they urge, met the substantive and legal thresholds to appeal the decision of the [AHO] to the Board of Appeals. First, they point out that Calvary was a party at the administrative hearing level. Second, citing *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137 (1967), Appellants argue that Calvary is *prima facie* aggrieved because it is a confronting property owner.

Appellants also argue that Pastor LaRock was authorized by Calvary's Board of Trustees to file the appeal on Calvary's behalf; that he included the legal address of Calvary on the appeal form; and that the filing fee was paid by Calvary. Appellants assert that there was no place on the appeal form for "delineating the representative capacity of Pastor LaRock." They also note that Pastor LaRock was allowed to represent Calvary and himself at the administrative hearing. They point out that AA Board Rule 2-105 allows a bona fide officer or representative of a corporation to represent the corporation, but does not specify

any formalities for communicating such a representation. Finally, Appellants aver that the Board abused its discretion and erred as a matter of law when it denied Pastor LaRock the right to orally amend the Notice to add Calvary as a party to the appeal.

Lumenary responds that the Board properly denied Calvary standing because Calvary did not file a notice of appeal within the 30-day period required under the AA Code. Furthermore, because Calvary was not included on the Notice, Lumenary claims it was not aware of its inclusion in the matter and did not prepare to address Calvary's standing. Lumenary asserts that Pastor LaRock's claim that he was authorized by the Board of Trustees to represent Calvary directly contradicts his testimony before the AHO, where he testified that there had been no official business meeting discussing his representation of Calvary at the AHO meeting.

Lumenary also avers that Appellants misconstrue AA Board Rule 2-105. Lumenary contends that Rule 2-105 does not allow a person or entity that did not correctly file an appeal to "bootstrap" standing by "*post facto* submission of a representation authorization." Relying on *Shore Acres Improvement Ass'n v. Anne Arundel County Board of Appeals*, 251 Md. 310 (1968), Lumenary purports that Calvary and Pastor LaRock are legally distinct and that allowing Calvary to be added as an appellant before the Board would set a dangerous precedent that would "allow any parties to be added so long as one party had filed an appeal." In any case, argues Lumenary, even though Calvary was not a formal party to the Board proceeding, members of the church were nonetheless permitted to testify during the public participation portion of the Board hearing on the merits.

Finally, Lumenary avers that Calvary was not a party before the AHO and that, "even had Calvary properly noted an appeal to the Board, it would have been subject to dismissal for lack of standing."

B. Analysis

The provisions of the AA County Code that govern the question of Calvary's standing in this case provide, initially, that any person "aggrieved by a decision of the Administrative Hearing Officer who was a party to the proceedings may appeal the decision to the Board of Appeals[.]" AA Code § 3-1-104(a). And, any person "aggrieved by a decision of the Administrative Hearing Officer who was a party to the proceedings may appeal to the Board of Appeals within 30 days after the date upon which the memorandum was filed[.]" AA Code § 18-16-402. The AA Board Rules also provide that "all appeals from orders or decisions from which an appeal is authorized by law shall be taken within 30 days of the date of such order or decision[.]" AA Code, Appendix B, Rules of Prac. and Proc. of the Bd. of App., Rule 2-101(a).

Notice of the hearing of an appeal must usually be given by mailing a notice at least 30 days before the date of the hearing to:[17]

[17] The AA Board Rules state that notices of appeal from an AHO "shall include the following information:"

> (1) the title of the proceedings;
> (2) the name of the applicant;
> (3) the application or case number;
> (4) the date of the public hearing before the Administrative Hearing Officer;
> (5) the date of the decision;

(Continued)

(1) the appellant or the appellant's attorney if the appellant is represented by an attorney, at the address stated in the notice of appeal;
(2) the Administrative Hearing Officer or other official whose order or decision is being appealed;
(3) the County Attorney;
(4) the original applicant or the original applicant's attorney; and
(5) other interested parties as the Board may deem appropriate.

AA Board Rule 2-104(a)(1)-(5). Finally, the Rules specify that an

> individual may appear [before the Board] in the individual's own behalf; a member of a partnership may represent the partnership; a bona fide officer or representative of a corporation, trust or association may represent same; and an officer or employee of a political subdivision or body or department may represent same in any proceeding.

AA Board Rule 2-105(a).

As we explain below, Calvary was a party before the AHO. However, because Calvary did not file an appeal from the AHO's decision according to the requirements of AA Code §18-16-402 and AA Board Rule 2-101, the Board's decision to deny Calvary standing was not reversible error.

Calvary was a party before the AHO

In *Sugarloaf Citizens' Ass'n v. Department of Environment*, the Court of Appeals explained that the "requirements for administrative standing under Maryland law are not very strict." 344 Md. 271, 286 (1996), *partially abrogated by statute*, Maryland Code (1982, 2013 Repl. Vol.), Environment Article, § 5-204(f), *as recognized in Chesapeake Bay Found., Inc. v. DCW Dutchship Island*, LLC, 439 Md. 588 (2014). "Absent a statute

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(6) a copy of the decision; and
(7) a general statement of the basis for the appeal

AA Board Rule 2-101(b).

or a reasonable regulation specifying criteria for administrative standing," the Court explained, "one may become a party to an administrative proceeding rather easily." *Id.*; *see also Turner v. Md. Dep't of Health*, 245 Md. App. 248, 264-65 (2020) ("the threshold to establish party status before an administrative agency is generally low."). In fact, the Court of Appeals has held that "anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceedings." *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976).

When an application is made to the Anne Arundel Office of Planning and Zoning and the AHO conducts the requisite public hearing, "[t]he applicant, the County, and any other person deemed qualified by the Administrative Hearing Officer may introduce evidence and testify" at this hearing. AA Code § 18-16-301(b). "Person" is defined in the AA Code as an "individual, receiver, trustee, guardian, personal representative, partnership, firm, association, corporation, or other entity." AA Code § 1-1-101(7). Additionally, the Anne Arundel County Office of Administrative Hearings has issued forms for "representatives of community associations or other entities such as corporations, partnerships, and trusts, as well as individual owners unable to attend a hearing, to authorize a representative to testify before the [AHO]." *Forms Needed by People Appearing for Property Owners, Community Organizations, and Others*, Anne Arundel County, Maryland, https://www.aacounty.org/departments/admin-hearings/forms-and-publications/AppearingforPropOwners.pdf (last visited May 14, 2021). The office states that "[a] person may be represented before the [AHO] only" in prescribed ways but allows

that "an officer of a corporation, trust, or association may represent the corporation, trust or association" without specific formalities. *Id.*

Based on the above liberal standards, then, it seems clear that Calvary was a party to the proceedings before the AHO. Although Pastor LaRock signed the sign-in sheet in what appears to be his personal capacity only, when asked whether he represented Calvary or himself, Pastor LaRock replied "I would say both." He also testified at length regarding his and Calvary's concerns about the variances and special exception and gave his reasons why they should not be granted. Because the Office of Administrative Hearings provides that "an officer of a corporation, trust, or association may represent the corporation, trust or association," *Forms Needed by People Appearing for Property Owners, Community Organizations, and Others*, and because Pastor LaRock clearly identified both himself and Calvary as parties having an interest in the outcome of the application being considered, we hold that there was substantial evidence in the record to indicate that both Pastor LaRock and Calvary were parties at the proceedings before the AHO.

Calvary was not a party before the Board

Now we turn to the question of whether Calvary was a proper party in the proceedings before the Board, which, in this case, turns on whether Calvary filed a notice of appeal. In support of their claim that the Board erred in its determination that Calvary was not a party to the appeal, Appellants mistakenly focus on the proceedings before the AHO. They assert that the AHO allowed Pastor LaRock to introduce evidence and testify on behalf of Calvary. They also insist that Calvary is *prima facie* aggrieved by the decision of the AHO, and point out that AA Board Rule 2-105(a) specifies that "a bona fide officer

or representative of a corporation, trust or association may represent same[.]" While we do not disagree with these contentions, they are beside the point that a party is required to meet the requirements for filing a proper appeal.

The AA Code and the Rules are clear that any appeal to the Board must be filed within thirty days of the filing of the AHO's memorandum. *See* AA Code § 18-16-402; AA Board Rule 2-101(a). Calvary does not contest the Board's finding that Calvary's name was not included on the timely-filed Notice. Additionally, no argument has been made that Calvary offered a separate timely appeal.[18] Accordingly, we hold that it is clear from the record, including the Notice itself and the testimony presented at the first hearing before the Board, that the Board's finding that Calvary did not file an appeal was reasonable and supported by substantial evidence. *See Mayor of Balt. v. ProVen Mgmt., Inc*., __ Md.__, __, No. 8, September Term 2020, slip op. at 23-24 (filed March 1, 2021) (Substantial evidence for a factual finding exists if there is "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" (citation omitted)).

Finally, we turn to whether the Board erred in refusing to grant Pastor LaRock's oral motion to amend the Notice and add Calvary as a party. "A court is faced with a mixed question of law and fact 'when a party challenges how an agency applied, as opposed to

[18] It is also evident that Pastor LaRock, James LaRock, Jr., and Calvary had ample notice that Lumenary did not consider Calvary to be a party to the proceedings before the Board. Lumenary's November 13, 2017 motion to dismiss clearly states that "Calvary Temple is not listed on the Notice of Appeal and is thus not a party to the proceeding before the Board." Had Calvary wished to contest Lumenary's contention that they were not a party to the Board, they had considerable opportunity to do so prior to the Board proceedings, held approximately three months *after* Lumenary's motion to dismiss.

interpreted, a statute[.]'" *Montgomery Cnty. v. Butler*, 417 Md. 271, 284 (2010). Here, the Board relied on the fact that Calvary's name was not included on the Notice when it decided that, under AA Code § 18-16-402 and AA Board Rule 2-101, Calvary did not appeal as required by the rules and could not simply be added as a party at the hearing. Appellants do not dispute the fact that Calvary's name was not on the Notice. And, the record is clear that the Board did not consider the omission of Calvary—an entirely separate "person"—from the Notice to be a mere technicality. Rather, most Board members expressed concern about the precedent that might be set if they allowed anyone to join an appeal "just because they forgot, ran out of time, [or] for whatever reason they didn't sign up to be an Appellant in [a] case." We hold, therefore, that substantial evidence supports the Board's refusal to amend the Notice to allow Calvary to become a party without filing a notice of appeal, as required under AA Code § 18-16-402 and AA Board Rule 2-101(a), and that "a reasoning mind could reasonably have reached the conclusion reached by the [Board.]" *Belfiore*, 236 Md. App. at 44.

Based on the foregoing analysis, we affirm the circuit court's decision affirming the Board's determination to deny Calvary standing before the Board and hold that there was substantial evidence in the record to support its decision.

II.

Pastor LaRock's Standing before the Board of Appeals and on Petition for Judicial Review

A. Parties' Contentions

Appellants argue that the circuit court erred in reversing the Board's decision to grant Pastor LaRock standing on the basis that he was not aggrieved by the ruling of the AHO, and therefore, not a proper party before the Board. Relying on *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137 (1967), for the proposition that a person is "aggrieved" if his or her personal or property rights are specifically or adversely affected by the administrative agency's actions, Appellants insist that Pastor LaRock was aggrieved by the decision of the AHO. They argue that Pastor LaRock is a long-time tenant on confronting property, and that, as a tenant, his right to quiet enjoyment will be affected by Lumenary's project. Appellants also distinguish *Ray v. Mayor of Baltimore*, 203 Md. App. 15 (2012), relied on by Appellee for the proposition that, as a tenant, Pastor LaRock is not prima facie aggrieved, and contend that *Ray* states that ownership is not a prerequisite to aggrievement.

Appellants further distinguish *Ray* by pointing out that that case concerned an appeal *from* the Board, not *to* the Board, as here. They highlight that the criteria for standing in an appeal *to* the Board is very liberal—anyone with an interest in the outcome of the matter can be a party. Appellants insist Pastor LaRock has an interest in the outcome of the present matter because he and his family have lived in the parsonage across from the Property for nineteen years; they enjoy the property's bucolic setting; the construction

would change the character of the neighborhood and, accordingly, he would suffer special damage different from that suffered by the public in general. Thus, argue Appellants, the grant of administrative standing to Pastor LaRock was both fairly debatable and clearly supported by evidence in the record.

Lumenary answers that the Board's decision to grant standing to Pastor LaRock was legally erroneous and properly overturned by the circuit court because Pastor LaRock was not specially aggrieved by the grant of the special exception and variances to Lumenary. Lumenary argues that the Board conflated LaRock and Calvary and allowed Pastor LaRock to "bootstrap" his aggrievement onto that of Calvary. Calvary's property ownership, insists Lumenary, is irrelevant to LaRock's individual standing, which must "stand on its own."

Lumenary argues that a non-owner of property cannot be prima facie aggrieved, citing *Ray*, 203 Md. App. at 24-27. Lumenary admits that the Court of Special Appeals in *Ray* stated that a non-owner, such as a tenant, can be aggrieved, but only if that non-owner can show special aggrievement in the form of (1) certain personal or property rights; and (2) competent evidence that those rights are specifically and adversely affected by the agency's decision. Lumenary avers that there is no Maryland precedent supporting the extension of standing to Pastor LaRock simply because he is currently employed by Calvary as a pastor.

Finally, Lumenary contends that many of Pastor LaRock's allegations of aggrievement—the fact that he enjoys the quiet nature of the neighborhood and lack of traffic, and that he and his family enjoy wildlife sightings on the Lumenary property—are not interests specific to Pastor LaRock and are shared by many others living in and around

the area. Therefore, Lumenary concludes, Pastor LaRock has not articulated any personal or property interests that are unique to him, nor has he shown that his interests would be adversely impacted by a residential assisted living facility built near him.

B. Analysis

1. Standing: Administrative vs. Judicial Review

The Court of Appeals has observed that, usually, there is "a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision." *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 285 (1996), *partially abrogated by statute*, Maryland Code (1982, 2013 Rel. Vol.), Environment Article, § 5-204(f), *as recognized in Chesapeake Bay Found., Inc. v. DCW Dutchship Island*, LLC, 439 Md. 588 (2014). Generally, the Court explained, the "requirements for administrative standing under Maryland law are not very strict[,]" and, "[a]bsent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily." *Id*. at 286. The Court has instructed:

> Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings.

Med. Waste Assocs., Inc. v. Md. Waste Coal., Inc., 327 Md. 596, 611-612 (1992) (quoting *Morris v. Howard Res. & Dev. Corp*., 278 Md. 417, 423 (1976)).

The threshold to establish standing to seek judicial review, on the other hand, is generally higher, and, as this Court observed in *Turner v. Maryland Department of Health*, "[o]ur decisional law teaches that a proper party in an administrative action may not have standing to file a petition for judicial review in the circuit court." 245 Md. App. 248, 264 (2020) (noting that, to have standing to petition for judicial review, a party must have been both a party to the administrative proceedings and be aggrieved by the agency's decision).

We also pointed out, however, that "[w]hile the requirements for administrative standing are generally more lenient than the requirements for judicial standing, 'this leniency only exists [a]bsent a statute or a reasonable regulation specifying criteria for administrative standing[.]'" *Id*. (quoting *Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 599 (2014)). In this case, we are presented with statutes—sections 3-1-104 and 18-16-402 of the Anne Arundel County Code—that provide that to have standing to appeal an AHO decision *to the* Board, a party must: (1) have been a party to the AHO proceedings; (2) be aggrieved by the decision of the AHO; and (3) appeal to the Board within 30 days after the date upon which the AHO's memorandum was filed.[19] These requirements are almost identical to the AA Code's requirements to seek judicial review of decisions *from* the Board:

> Within thirty days after any decision by the County Board of Appeals is rendered, any person aggrieved by the decision of the Board and a party to the proceedings before it may appeal such decision to the Circuit Court of

[19] Section 3-1-104 was determined by the Court of Appeals to contain "reasonable conditions precedent to access to [the] Board of Appeals" and an appropriate "exercise of its Home Rule." *Chesapeake Bay Found.*, 439 Md. at 604.

> Anne Arundel 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 Special Appeals. The review proceedings provided by this section shall be exclusive.

AA Code Charter § 604.

Accordingly, because they are nearly identical, we read the AA Code's requirements for standing before the Board to be coterminous with the requirements for standing to bring an action in court for judicial review of the Board's decision. *See Chesapeake Bay Found., Inc., v. Clickner*, 192 Md. App. 172, 186-87 (2010).

2. Aggrievement and Property "Owner" Standing

In this case, it is undisputed that Pastor LaRock was a party to the proceedings before the AHO and the Board and that he filed a timely appeal to the Board and for judicial review to the circuit court. The single point of contention is whether Pastor LaRock was "aggrieved" by the decisions of the AHO and the Board.

a. Aggrievement Generally

The AA Code does not define "aggrieved." We have applied long-held Maryland precedent to construe what "aggrieved" means under sections 3-1-104 and 18-16-402 of the AA Code. *See Clickner*, 192 Md. App. at 184-191; *T & R Joint Venture v. Off. Of Plan. and Zoning of Anne Arundel Cty*., 47 Md. App. 395, 400-401 (1980) (applying the *Bryniarski* definition of "aggrieved" to the former version of the AA Code), *abrogated on other grounds by Layton v. Howard Cty. Bd. Of Appeals*, 399 Md. 36 (2007). In Maryland, the seminal case defining "aggrievement" in the context of land use appeals is *Bryniarski*

v. Montgomery County Board of Appeals, 247 Md. 137 (1967). In that case, the Court stated that, "[g]enerally speaking, . . . a person aggrieved by the decision of a board of zoning appeals is one whose *personal or property rights* are adversely affected by the decision of the board." *Bryniarski*, 247 Md. at 144 (emphasis added). Any decision must "not only affect a matter in which the protestant has a *specific interest or property right* but his interest therein must be such that he is *personally and specially affected in a way different from that suffered by the public generally*." *Id*. (emphasis added). "The circumstances under which this occurs have been determined by the courts on a case by case basis, and the decision in each case rests upon the facts and circumstances of the particular case under review." *Id*.

The Court explained that there are, however, "[c]ertain principles" that have evolved over time to offer guidance in a determination of what constitutes "aggrievement." *Id*. "In cases involving appeals under the provisions of a zoning ordinance":

> . . . An adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved.

Id. at 144-145. Subsequent case law has usually held that prima facie aggrieved protestants are property owners who live less than 200 feet away from the subject property. *See Greater Towson Council of Cmty Ass'n v. DMS Dev*., *LLC*, 234 Md. App. 388, 411 (2017). If a party is not prima facie aggrieved, that party can still prove "special aggrievement," by offering competent evidence of: (1) "personal or property rights" that would be "adversely affected by the decision of the board"; as well as, (2) how a decision "personally and

specially" affects that party in a "way different from that suffered by the public generally." *Bryniarski*, 247 Md. at 144-45; *see also Ray v. Mayor of Balt.*, 203 Md. App. 15, 27 (2012) *aff'd*, 430 Md. 74 (2013). The Court of Appeals explained that this category includes a "person whose property is far removed from the subject property" who ordinarily would not be considered aggrieved, but "will be considered a person aggrieved if he meets the burden of alleging and proving by competent evidence—either before the board or in the court on appeal if his standing is challenged—the fact that his personal or property rights are specially and adversely affected by the board's action." *Bryniarski*, 247 Md. at 145.

b. Personal or Property Rights: Property Owners Only?

To have standing in zoning and land use cases, one must typically qualify as a property owner who is either prima facie or specially aggrieved, or qualify for "taxpayer standing" under the appropriate circumstances.[20] This Court observed in *Ray v. Mayor of Baltimore* that both pre- and post- *Bryniarski* opinions dealing with "individual citizen protestant[s]" have dealt "expressly with property owners."[21] 203 Md. App. at 30; *see also*

[20] As the Court of Appeals has observed, "property owner standing is reserved for challenges to land use decisions reached through quasi-judicial or administrative/executive processes, and taxpayer standing is the appropriate doctrine applied to available modalities of judicial challenges to land use actions reached via a purely legislative process, such as comprehensive zoning actions." *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 556 (2015). Taxpayer standing, which is not relevant to this appeal, "'permits taxpayers to seek the aid of courts, exercising equity powers, to enjoin illegal and ultra vires acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.'" *Id*. at 576 (quoting *State Ctr., LLC v. Lexington Charles P'ship*, 438 Md. 451, 538 (2014)).

[21] We observed that

(Continued)

State Ctr., LLC v. Lexington Charles P'ship, 438 Md. 451, 519-22 (2014) (stating that the "property *owner* standing doctrine recognizes that *owners* of real property may be 'specially harmed' by a decision or action (usually related to land use) in a manner different from the general public") (emphasis added); *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 551 (2015) (referring to the standard required to show aggrievement as "property owner standing").

Under a closer examination of the property owner standing doctrine, however, and despite its moniker, it is not necessarily the case that a party can never show aggrievement unless that party is the fee simple owner of the property. *Ray*, 203 Md. App. at 26. This

> The pre-Bryniarski opinions all dealt expressly with property owners. *Marcus v. Montgomery County Council*, 235 Md. 535, 538, 201 A.2d 777 (1964) ("Mr. Marcus owns and resides at ... Mr. Vrataris owns and resides at ... M. Molyneaux owns and resides at...."); *DuBay v. Crane*, 240 Md. 180, 213 A.2d 487 (1965); *Wilkinson v. Atkinson*, 242 Md. 231, 218 A.2d 503 (1966); *White v. Major Realty, Inc*., 251 Md. 63, 64, 246 A.2d 249 (1968) ("the appellants ... who own and reside at...."); *Wier v. Witney Land Co*., 257 Md. 600, 608, 263 A.2d 833 (1970) (three separate "property owners"); *Maryland–National Capital Park and Planning Commission v. Rockville*, 269 Md. 240, 248, 305 A.2d 122 (1973) ("Neither the Commission nor the County owns any property located within sight or sound of the subject property and have no special interest or damage to give either of them the status of an 'aggrieved party,' necessary to present an appeal.") (emphasis supplied). The post-Bryniarski opinions, except for the *Clickner* case, do not break stride. *120 West Fayette Street v. Mayor and City Council of Baltimore*, 407 Md. 253, 270, 964 A.2d 662 (2009) ("120 West Fayette's allegations that it owned property affected by the redevelopment ... constitutes sufficient standing to maintain their action in court."); *Committee For Responsible Development on 25th Street v. Baltimore*, 137 Md. App. 60, 86, 767 A.2d 906 (2001) ("Generally, to be an aggrieved party, the complaining property owner must be in 'sight or sound' range of the property that is the subject of his complaint.") (emphasis supplied).

Ray, 203 Md. App. at 30-31.

Court has acknowledged that a non-property owner could conceivably show aggrievement. In *T & R Joint Venture v. Office of Planning & Zoning of Anne Arundel County*, we considered whether the Anne Arundel Office of Planning and Zoning (which, at the time, did not have an explicit right of appeal to the Board) was aggrieved by a decision of the Zoning Hearing Officer. 47 Md. App. at 396. We determined that the Office of Planning and Zoning neither owned "any property in sufficient proximity to the land in question to meet the more common and traditional test of aggrievement" nor had "the type of special interest, or personal property right, required under the cases," because the Office merely complained that the Zoning Hearing Officer's decision would require them to make "major revisions in the various master plans for which it is responsible." *Id.* at 403. Nonetheless, we pointed out that

> Appellant suggests that under *Bryniarski* it is necessary for the protestant to be a nearby property owner in order to have standing as an "aggrieved" person, and that such requirement applies equally to county agencies as it does to private individuals. Certainly, the basic equation is correct; as the statutes and ordinance . . . are worded, county officials and agencies have no better or different inherent standing than do private individuals. But the underlying test is not so stringent. *Bryniarski does not require the ownership of nearby property as the exclusive prerequisite. It also speaks of alternative 'personal or property rights' that may provide an adequate interest in the proceeding*.

Id. at 402 (emphasis added).

Additionally, in *Chesapeake Bay Foundation, Inc., v. Clickner*, this Court reversed and remanded the decision of the Anne Arundel County Board of Appeals after it used an incorrect definition of aggrievement. 192 Md. App. 172, 190 (2010). In that case, the Chesapeake Bay Foundation, Inc. ("CBF") and the Magothy River Association, Inc.

("MRA") opposed two zoning variance applications made by Mr. and Ms. Clickner. *Id*. at 174. When the variances were conditionally granted by the Office of Administrative Hearings, CBF and MRA appealed the decision to the Board, contending that, although they were not nearby property owners, they were specially aggrieved by the grant of the variances. *Id*. at 176. In support of this claim, CBF and MRA adduced evidence and testimony of extensive "oyster bed and [aquatic] grass planting activities on the Magothy [River]." *Id*. at 180. The Board granted the Clickners' motion to dismiss, finding that CBF and MRA were not "aggrieved" because the Magothy River is a state-owned river to which all individuals have equal rights; CBF and MRA's choice to raise and release oysters into it, reasoned the Board, did not constitute an ownership interest that makes them specially aggrieved. *Id*.

After the circuit court affirmed the Board's decision, this Court reversed the Board on appeal. *Id*. 183-91. While we agreed that, because CBF and MRA do not own "real property in close proximity to the Island, neither was *prima facie* aggrieved," we disagreed with the conclusion that this meant that neither corporation could show any aggrievement. *Id*. at 187. Rather, we held that "property ownership is not a prerequisite to aggrievement," and that CBF and MRA could show aggrievement if they could demonstrate: (1) "that they have 'a specific interest . . . ' that will be affected 'personally and specially[']"; and, (2) that the interest will be affected "[']in a way different from . . . the public generally' by the proposed development." *Id*. at 188-90 (citations omitted).

We reasoned that the Board did not make sufficient findings for us to determine whether CBF and MRA had any personal or property interests that would be affected

"personally and specially in a way distinct from the general public." *Id*. at 190. On remand, we instructed the Board to consider the evidence and testimony presented by CBF and MRA in support of a finding of such personal or property interests, including "that they have invested substantial amounts of volunteer time, as well as money, on various submerged aquatic vegetation and oyster reef restoration projects in the Magothy River;" that they "obtained permits from the State of Maryland in order to further their objectives;" that "CBF has a scientific collection permit from the State of Maryland Department of Natural Resources" allowing them "to go back, inspect and retrieve some oysters and reefs in the Magothy River;" and that MRA has a unique, rare scientific license from Maryland that permits them "to take oyster samples, seed the reefs and dive off the reefs in the Magothy River as part of a monitoring program." *Id*.

Several years later, in dicta in *Ray v. Mayor of Baltimore*, we opined that an individual who rents property "may not, *ipso facto*, be disqualif[ied]" from aggrievement. 203 Md. App. at 23. We observed, however, that allowing a tenant to prove aggrievement would be "highly unusual." *Id*. We explained:

> The basic requirement for standing remains aggrievement. Conceivably, one could establish that without being a property owner. There is, however, a gaping procedural and evidentiary chasm between special aggrievement and *prima facie* aggrievement. It is the latter variety of aggrievement that . . . a non-property-owner [] is denied. He is, of course, free to try to establish special aggrievement with its attendant allocation of a stern burden of proof. What he lacks as a non-property owner is the easy *prima facie* comfort of presumptive aggrievement and standing. What non-ownership may deny [a non-property owner] is not a chance ultimately to establish aggrieved status, but the benefit of the short and easy route to such status.

Id. at 26. We opined, albeit it in dicta, that "[p]roperty ownership is not an absolute prerequisite to being specially aggrieved and is not even an important factor in the relatively rarer cases where the complainant is a governmental agency rather than a private citizen." *Id*. at 28.

The foregoing cases clarify that property ownership is not an absolute requirement for a showing of aggrievement. Rather, the test for aggrievement asks whether a party can demonstrate that it has enough interest in a property such that the party will be personally and specially affected by the decision of an administrative body in a manner that is different from the public generally. And, as was made clear in *Bryniarski v. Montgomery County Board of Appeals*, whether a party has enough interest in a property to be considered "aggrieved" is determined by the courts "on a case by case basis, and the decision in each case rests upon the facts and circumstances of the particular case under review." 247 Md. at 144.

Although our courts have not had much opportunity to consider this issue, courts in other jurisdictions have. Many states confer standing on parties who can demonstrate interests in property other than ownership, such as leasehold interests, *see Active Amusement Co. v. Zoning Bd. of Adjustment*, 479 A.2d 697, 701 (Pa. Commw. Ct. 1984) (holding that the interest of a zoning applicant need not be based upon legal title to property; lease or occupancy of a parcel may give rise to an interest); purchase options, *see LePage Homes, Inc. v. Plan. and Zoning Comm'n of Town of Southington*, 812 A.2d 156, 161-62 (Conn. App. Ct. 2002) (holding that the plaintiff's option to purchase a property gave it standing to appeal the decision of the planning and zoning commission); and even

easements and rights of way, *see Price v. Plan. Bd. City of Keene*, 417 A.2d 997, 999-1000 (N.H. 1980) (holding that a party who owned a right of way across a proposed subdivision had standing to challenge a board's grant of approval of the subdivision).

For instance, the Supreme Court of Connecticut determined in *Primerica v. Planning & Zoning Commission of the Town of Greenwich* that "the required interest a nonowner must possess in order to become an aggrieved party under [Connecticut planning and zoning legislation]" is not precise, but instead "depends upon the circumstances of each case, because the concept of standing is a practical and functional one designed to ensure that only those parties with a substantial and legitimate interest can appeal an order." 558 A.2d 646, 650 (Conn. 1989).[22] In that case, the Connecticut Supreme Court found that the plaintiff, a lessee who rented approximately 55% of a commercial building, had standing to challenge certain zoning regulations. *Id.* at 651. In determining that the plaintiff had a specific and personal property interest sufficient to confer standing, the

[22] The term "aggrieved" is interpreted similarly under both Maryland and Connecticut planning and zoning legislation. The Supreme Court of Connecticut has explained that

> compliance with the aggrievement requirement encompasses a twofold test. "First, the party claiming aggrievement must demonstrate a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must establish that this specific, personal and legal interest has been specially and injuriously affected by the decision." *Hall v. Planning Commission*, 181 Conn. 442, 444, 435 A.2d 975 (1980). The question of aggrievement is one of fact to be determined by the trial court on appeal.

Primerica, 558 A.2d at 650.

Supreme Court pointed to the fact that the plaintiff had a 10 year lease of its portion of the building with the right to extend for a further 15 years; that it had a right of first refusal to purchase some of the building; that it acted as a rent guarantor for the portion of the property it did not lease; and that it held a mortgage on the property worth $15.1 million. *Id*. at 650-51. Based on these facts, the Supreme Court agreed that the challenged rezoning decisions "directly affect the very use of the premises the [plaintiff] now occupies and its legal obligations and interests as to the whole property." *Id*. at 651.

Additionally, in *Golden v. Steam Heat, Inc*, the Supreme Court, Appellate Division, Second Department of New York, determined that plaintiffs, a group of tenants, had standing to commence an action for an injunction after the defendant violated a zoning resolution prohibiting the opening of new adult entertainment establishments. 216 A.D.2d 440, 441-442 (N.Y. App. Div. 1995). In that case, the Court explained that the tenants had standing to pursue the action, because they could allege both an injury different from that of the public at large, and their interest was "within the zone . . . sought to be promoted or protected by the statute." *Id*. at 441. This was so, explained the Court, because the tenants rented spaces directly across the street from the defendant's adult entertainment establishment and because evidence in the record indicated that "the presence of adult entertainment establishments in any district, whether residential or commercial, has an adverse effect upon the surrounding area," meaning that the nearby tenants were "within the zone of interests" that the resolution was designed to protect. *Id*. at 442.

In accordance with the precedent established in *T & R Joint Venture* and *Clickner*, our observations in *Ray*, and the cases cited above from our sister states, we hold that, a

party who is not a property owner may show sufficient personal or property rights to establish aggrievement if the party can show enough interest in a property adversely impacted by the decision of the administrative body such that the party will be personally and specially affected in a manner that is different from the public generally.

c. Personal and Special Effect

We next examine what it means to show that one is "*personally and specially affected in a way different from that suffered by the public generally*." *Bryniarski*, 247 Md. at 144 (emphasis added). As we have already noted, an "adjoining, confronting or nearby property *owner* is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved." *Id*. Others, however, may prove that they are "specially affected" according to a "flexible . . . fact-intensive, case-by-case analysis." *Ray v. Mayor of Balt.*, 430 Md. 74, 81 (2013).

Case law indicates that "proximity is the most important factor to be considered." *Id*. at 82-83. "The relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property." *Id*. at 83. "In other words, once sufficient proximity is shown, some typical allegations of harm acquire legal significance that would otherwise be discounted." *Id*. These allegations might include an owner's lay opinion of decreasing property values or increasing traffic. *Id*.

No matter the proximity of a party to a subject property, however, "every petitioner . . . must demonstrate that he or she is 'specially affected in a way different from that suffered by the public generally.'" *Greater Towson Council of Cmty Ass'n,* 234 Md. App. at 411 (citations omitted). In other words, all petitioners who are not prima facie aggrieved

"have the burden—which varies in degree based on proximity—to articulate what sets them apart from the general public." *Id*. at 412.

For petitioners living in close proximity to a proposed development site, appropriate considerations might include increased traffic, *Bryniarski*, 247 Md. at 147-148; change to the character of the neighborhood, *Wier v. Witney Land Co*., 257 Md. 600, 612-613 (1970); and the visibility of a development from a resident's home, *Ray*, 203 Md. App. at 36.

Other considerations may also be appropriate. For instance, in *Chesapeake Bay Foundation, Inc., v. Clickner*, this Court observed that, when considering whether the CBF and the MRA had interests that would be personally and specially affected in a way different from the general public, the Board should not consider whether they had any ownership interest in the aquatic vegetation or oysters that were the subjects of their projects. 192 Md. App. at 190-91. Rather, we instructed, due to the significant time and money investments made by CBF and MRA into river restoration projects, "the proper question for the Board is whether the appellants would be affected differently than the general public by the grant of the variances." *Id*. at 191. That the "public generally has an interest in minimizing or avoiding sediment or other run-off in the State's waters," we noted, was not dispositive. *Id*. at 191.

3. Pastor LaRock's Aggrievement

Having examined the contours of the property owner standing doctrine, we return to the question of whether the Board correctly determined that Pastor LaRock was a person "aggrieved by a decision of the Administrative Hearing Officer who was a party to the proceedings" under AA Code § 3-1-104(a). We normally to defer to the Board's

interpretation of the statute it is tasked with administering. *Blue Buffalo Co., Ltd. v. Comptroller of Treasury*, 243 Md. App. 693, 702 (2019). Although we review the Board's legal conclusions without deference, courts must give "special weight to an agency's interpretation of its own regulations" because an agency is in the best position to understand its own rules. *Dep't of Health & Mental Hygiene v. Riverview Nursing Ctr., Inc.*, 104 Md. App. 593, 602 (1995).

It is undisputed that Pastor LaRock does not own the parsonage where he and his family have lived for almost two decades. Still, although Pastor LaRock's status as a resident who is not the fee simple owner of the parsonage may preclude him from establishing prima facie aggrievement, it does not preclude him from establishing special aggrievement. In order to show special aggrievement, Pastor LaRock needed to prove by competent evidence: (1) "personal or property rights" that would be "adversely affected by the decision of the board," as well as (2) how the AHO's decision "personally and specially" affects him in a "way different from that suffered by the public generally." *Bryniarski*, 247 Md. at 145; *see also Ray*, 203 Md. App. at 27. We conclude that the Board's finding that Pastor LaRock is aggrieved by the decision of the AHO is fairly debatable, supported by substantial evidence, and not legally erroneous. *See Clickner*, 192 Md. App. at 190. We also hold that the circuit court's reversal of the Board's grant of standing to Pastor LaRock was error. We explain.

First, we determine that substantial evidence supports the Board's findings that Pastor LaRock possesses a specific interest in the parsonage and church land that will be personally and specially affected by Lumenary's project. *Id.* at 189.

In support of his claim of aggrievement, Pastor LaRock stated that he had standing "as a citizen of Anne Arundel County" and "because of the proximity of [his] residence" to the Property. He also stated that, nearly twenty years ago, he "liquidated [his] life savings" and "poured them into the [parsonage] that is now owned by [Calvary]." He testified that the parsonage is "provided as a part of [his] compensation," but that he has no written employment contract or lease for his residence. He also explained that Calvary is managed by a Board of Trustees, of which he is the Chairman.

As Chairman of the Board of Calvary, Pastor LaRock has a unique interest in and control over the parsonage and land. Calvary is a registered religious corporation.[23] It is well settled that churches in Maryland "formally organize as religious corporations and thus, the trustees, not the congregation, constitute the corporation." *Vaughn v. Faith Bible Church of Sudlersville*, 248 Md. App. 477, 487 (2020). In Maryland, "a religious corporation's board [of directors][] has the power to manage '[a]ll business and affairs of a corporation, whether or not in the ordinary course.'" *Id.* at 488.

In his testimony, Pastor LaRock confirmed that Calvary is governed by a Board of Trustees that manages the church's affairs and has the "authority to make decisions with respect to the church," including any decisions about the parsonage and its management. In other words, Pastor LaRock, as Chairman, and the other trustees directly control his interest in the parsonage. *See Vaughn*, 248 Md. App. at 488. Pastor LaRock and the

[23] Maryland Business Express, Calvary Temple of Baltimore, Inc.: D03282209, https://egov.maryland.gov/BusinessExpress/EntitySearch/Business (last visited May 10, 2021).

trustees, in turn, have the exclusive power to manage Calvary's business and affairs, including Calvary's land and the parsonage, which will be affected by Lumenary's project.

The Board found that Pastor LaRock has a "vested interest" in the proceedings because, although he is not the owner of the parsonage, it is part of his compensation; he has lived there for 18-plus years; and he is a Trustee and Chairman of the Board of Calvary. The Board also noted that, because Pastor LaRock lives in the parsonage, he will be "aggrieved by whatever happens there." We agree, and conclude that, although he does not own the parsonage, as a long-term resident and manager of the parsonage, and as Chairman of Calvary's Board of Trustees, Pastor LaRock presented substantial evidence of a significant property interest in the parsonage.[24]

[24] Pastor LaRock *may* be characterized as at least the licensee of the parsonage, where he has lived for more than 19 years. In this case, we know that Pastor LaRock has no written employment contract or lease for the parsonage; instead, his residency at the parsonage is "provided as a part of [his] compensation." A licensee is usually on a property with "a license[, which] is merely a privilege to do some particular act or series of acts on land without possessing any estate or interest therein." *Uthus v. Valley Mill Camp, Inc*., __ Md. __, __, No. 7, September Term 2020, slip op. at 7 (filed March 4, 2021) (quoting *Supervisor of Assessments of Anne Arundel Cnty. v. Hartge Yacht Yard, Inc*., 379 Md. 452, 468 (2004)). A person residing on property under an agreement with the landowner which does not contain the "indicia of a landlord tenant relationship" may be considered a licensee. *Id*.

The Court of Appeals has recognized—outside the zoning context—that license holders are capable of having specific interests that can be specially affected by an administrative decision. In *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, the Baltimore County Department of Permits and Development Management ("DPM") granted a towing license to Jordan Towing ("Jordan"). 369 Md. 439, 440 (2002). Hebbville Auto Repair ("Hebbville") and two others appealed the approval of Jordan's license to the Baltimore County Board of Appeals, who reversed the decision of the DPM. *Id*. Jordan sought judicial review of the Board's decision to the circuit court, which affirmed the decision of the Board. *Id*.

(Continued)

Second, we hold that substantial evidence supports the Board's findings that Pastor LaRock's interests will be affected by Lumenary's project "in a way different than those of the general public." *Clickner*, 192 Md. App. at 190. To begin with, Pastor LaRock is a confronting property resident, even if he is not the owner of the parsonage. As we have already noted, the Court of Appeals has indicated that proximity is the most important factor to consider where standing to challenge a zoning decision is concerned. *Ray*, 430 Md. at 82-83. As a resident who lives a mere forty feet from the Property, then, Pastor LaRock has a strong argument that his interests will be affected in a way different than those of the general public. Pastor LaRock testified that, from where he lives, he can see, hear and smell the Property. He also testified that he treasures his "peace and quiet" and believes that "the facility would change the character of their neighborhood." Due to the proximity of the parsonage to the Property—the fact that Pastor LaRock can see, hear and smell the Property from his parsonage—Pastor LaRock's concerns regarding changes to the character of the neighborhood will be afforded more weight in determining whether he is aggrieved. *See id.*

When the matter reached the Court of Appeals, Jordan argued that Hebbville and its two co-appellees did not have standing to raise their challenge before the Board of Appeals. *Id*. at 441. The Court of Appeals disagreed, holding that Hebbville and its two co-appellees had standing because they were aggrieved, as required by the Baltimore County Code, by the decision of the DPM. *Id*. at 442. The Court explained that the three appellees were aggrieved "because their businesses are directly affected by the issuance of an additional towing license in the geographical area where they alone hold licenses." *Id*. at 442. The Court agreed with the circuit court's decision that this constituted special damage differing from that suffered by the general public because, "[a]s the other licensed towers in the district, the business that is presently divided between them will be reduced or diminished by decisions which affect the ability of other towers to be licensed in their district." *Id*.

Conclusion

In sum, we conclude that the Board's final decision in this case, involving the interpretation and application of a statute which the Board administers, is supported by substantial evidence and not legally erroneous. Accordingly, we affirm the circuit court's judgment affirming the Board's determination to deny Calvary standing; however, we reverse the circuit court's decision granting Lumenary's Cross-Petition denying Pastor LaRock's petition for judicial review based on the court's erroneous determination that the Board improperly granted Pastor LaRock standing because he was not specially aggrieved.[25]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED, IN PART, AND REVERSED, IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID 50% BY APPELLANTS AND 50% BY APPELLEES.

[25] Given Maryland's liberal standing rules, the time costs of this appeal, and the necessary remand, the choice to aggressively fight standing in this case, unfortunately, has resulted in delaying a final decision on the merits.