UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0039

September Term, 2014

ZEKARIAS CHAKA

v.

TOWSON MANOR VILLAGE
COMMUNITY ASSOCIATION, et al.

Krauser, C.J.,
Reed,
*Zarnoch, Robert A.,

JJ.

Opinion by Reed, J.

Filed: March 16, 2016

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

On October 19, 2012, the Board of Appeals of Baltimore County (hereinafter "the Board"), in a *de novo* review of an Administrative Law Judge's decision, denied the appellant, Zekarias Chaka's, request for variance relief for the undersized lot located at 327 Hillen Road, Towson, Maryland 21286 (hereinafter "the Property"). The appellant filed a petition for judicial review with the Circuit Court for Baltimore County, which affirmed the Board of Appeals' decision on February 7, 2014. This timely appeal followed.

The appellant, filing *pro se*, presents a total of four questions for our review.[1] However, the legal standards governing appellate review of administrative board decisions limit our consideration to the following question:

> 1. Whether substantial evidence exists in the record to support the Board's factual determinations and justify its decision to deny the appellant's request for variance relief?

We answer this question in the affirmative and, therefore, affirm the Board's decision.

[1] The questions presented by the appellant in his brief are as follows:

> 1. Did the board correctly deny the appellant's petition for variance according to Baltimore County section 304.1 standards?
>
> 2. Did the Board correctly determine that the lot is not unique even though the lot has six corners that are not shared by the other properties in the subdivision?
>
> 3. Was the Board correct [in] determining that a purchase of [a] non-conforming lot to the zoning rule constitutes self-inflicted hardships? Or does purchasing [a] non-conforming lot to the zoning rule stop the right of variance relief for that lot?
>
> 4. Did the petitioner cause the lot not to conform to the Baltimore County zoning rule?

FACTUAL AND PROCEDURAL BACKGROUND

The appellant acquired the Property, a two thousand six hundred and thirty-five (2,635) square-foot lot consisting entirely of unimproved land, on November 11, 2011, for $6,000.00. The Property occupies the northeast corner of the intersection dividing Faimount Avenue and Aigburth Avenue as well as Hillen Road and E. Towsontown Boulevard. The appellant desires to build a house on the Property measuring twenty-seven and a half (27.5) feet by twenty-six (26) feet and allowing a rear setback of seven (7) feet, which is shorter than the statutorily required fifty (50) feet. Prior to the appellant's purchase of the Property, Baltimore County condemned a portion of the original lot,[2] causing it to become undersized. On March 30, 2012, the appellant filed a petition for a special hearing and for a zoning variance to approve an undersized lot and a rear setback deficiency.

A hearing was held before Administrative Law Judge (hereinafter "ALJ") John Beverungen, who granted the appellant's petition upon the condition subsequent that the appellant receive the positive recommendation of the Baltimore County Design Review Panel. The Towson Manor Village Community Association and the Greater Towson Council of Community Associations (hereinafter "the appellees") appealed the ALJ's decision, citing concerns about the Property's ability to accommodate a "reasonably-sized house" as well as its location on the corner of a busy intersection.

The parties appeared before the Board for a *de novo* hearing on August 15, 2012. The appellant testified that Baltimore County had indicated its willingness to sell him

[2] The condemnation, ordered on December 2, 1985, eliminated seven hundred and nine (709) square feet from the original lot.

additional land so that the Property would be in compliance with the size requirements of the zoning ordinance, but that he chose not to pursue that option because it still would not resolve the setback deficiency. The appellant also testified he was aware the Property was undersized at the time of purchase.

In support of his petition for a variance, the appellant presented to the Board a prior decision of the Deputy Zoning Commissioner to grant a variance for a nineteen (19) foot setback in lieu of the fifty (50) foot requirement for the lot immediately to the east of the Property.[3] In addition, the appellant presented email correspondence in which Stephen E. Weber, Chief of the Baltimore County Division of Traffic Engineering, indicated that his agency would approve the appellant's proposed driveway location.

The appellees presented the recommendation of Andrea Van Arsdale, Director of the Baltimore County Department of Planning, who, citing similar concerns to those of the appellees, opposed the special hearing request and variance.

The Board found in favor of the appellees, agreeing with the Department of Planning's contention that the proposed dwelling would be "uncharacteristically small for the neighborhood" and "over-crowd the property." Additionally, the Board denied the appellant's request for a variance, specifically finding the Property was not unique and therefore not deserving of a variance.

[3] Administrative Law Judges have since replaced the Zoning Commissioner and Deputy Zoning Commissioner in decisions pertaining to, *inter alia*, zoning and variances, as well as "special hearing" cases. *See* BALT. CNTY CODE § 3-12-103-05 (2011).

The Board also found that the appellant failed to establish the practical difficulty prong because his own admission that he knew the lot was undersized prior to purchase rendered any claimed hardship self-imposed.

The appellant petitioned for judicial review by the Circuit Court for Baltimore County, which found substantial evidence supporting the Board's decision and thus affirmed the same.

DISCUSSION

I. Parties' Contentions

The appellant contends the Circuit Court for Baltimore County applied the incorrect regulation. The appellant relies on Baltimore County Zoning Regulation (hereinafter "BCZR") § 304.1, which contains a conjunctive list of requisite criteria for the construction of a dwelling on an undersized lot. The appellant asserts his compliance with each of the criterion in § 304.1 nullifies his need to comply with BCZR § 307.1. The latter section, which the circuit court applied, describes the limited circumstances in which the zoning commissioner–now the ALJ–and the Board may grant variances.

In the alternative, the appellant argues his petition demonstrates the special circumstances and unreasonable hardship necessary for the Board to grant a variance. The appellant suggests the Property is unique in shape compared to the other properties in the neighborhood. Additionally, the appellant contends the Board made an erroneous conclusion of law when determining his hardship was self-imposed.

The appellees counter that substantial evidence supports the decision of the Board, which is presumed to be an expert in the area of zoning issues. The appellees contend the

Board's experience and expertise allowed it to weigh the evidence presented at the hearing, make the appropriate factual determinations, and correctly deny the appellant's petition.

II. Standard of Review

"The scope of judicial review of administrative fact-finding is a narrow and highly deferential one." *Trinity Assembly of God of Balt. City, Inc. v. People's Counsel for Balt. Cnty.*, 407 Md. 53, 78 (2008) (citing *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 66 (2008)). "When reviewing the decision of a local zoning body, such as the Board, we evaluate directly the agency decision, and, in so doing, we apply the same standards of review as the circuit court." *Trinity Assembly*, 407 Md. at 78 (quoting *Loyola Coll.*, 406 Md. at 66). The Court of Appeals has explained the standard as follows:

> In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision.

White v. North, 356 Md. 31, 44 (1999) (citations omitted).

III. Analysis

We shall hold that because the Board applied the zoning statutes correctly, there is no erroneous legal conclusion allowing reversal. We explain.

Pursuant to the BCZR, the Board may not grant a variance unless it finds that the land in question is unique and causes the landowner to face practical difficulty or unreasonable hardship. *See* BCZR § 307.1, *infra*. Furthermore, the difficulty or hardship

must not be self-imposed. *See Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Cnty.*, 368 Md. 294, 314 (2002). In the case *sub judice*, the appellant's claimed hardship is the undersized nature of the Property. We recognize that this type of hardship is not considered to be self-imposed *per se*, even when the owner of the land in question is charged with knowledge of the zoning violation at the time of purchase. *See Id.* (explaining that the rule precluding an individual who purchases land with knowledge of an existing zoning violation from obtaining a variance is "more strictly applied in 'use variance' cases than in cases of 'area variances[.]'") (quoting *McLean v. Soley*, 270 Md. 208, 215 (1973)). However, because the Board denied the appellant's petition for a variance based on its preliminary factual determination that the Property was not unique, we need not determine whether the appellant's claimed hardship was self-imposed. As we proceed with our analysis, we do so recognizing that "the correct test to be applied is whether the issue . . . [of uniqueness] is 'fairly debatable,' that is, whether [the Board's] determination is based upon evidence from which reasonable persons could come to different conclusions." *White*, 356 Md. at 44 (quoting *Sembly v. County Bd. of Appeals*, 269 Md. 177, 182 (1973)).

Lots located in Density Residential Zone 10.5, such as the Property addressed herein, require a minimum net lot area of three thousand (3,000) square feet with a minimum rear yard depth of fifty (50) feet. BCZR § 1B02.3(C)1. There does, however, exist an exception wherein

> a one-family detached or semidetached dwelling *may* be erected on a lot having an area or width at the building line less than that required . . . if:
>
> (A) Such lot shall have been duly recorded . . . prior to March 30, 1955;

> (B) All other requirements of the height and area regulations are complied with; and
> (C) The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained within these regulations.

Id. at § 304.1 (emphasis added). In addition to the requirements of § 1B02.3(C)1, *supra*, the Office of Administrative Hearings and the Board of Appeals are permitted to grant variances

> [o]nly in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations of Baltimore County would result in practical difficulty or unreasonable hardship. . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area . . . regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare.

Id. at § 307.1. However, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Trinity Assembly*, 407 Md. at 79 (quoting *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995)).

Those petitioning for variance relief must first demonstrate the property is unique, that it "ha[s] an inherent characteristic not shared by other properties in the area." *Trinity Assembly*, 407 Md. at 81 (quoting *Lewis v. Dept. of Natural Res.*, 377 Md. 382, 434 (2003)). Once a property's "uniqueness" is established, the petitioner must then show a connection between the unique characteristics and the "manner in which the zoning law hurts the landowner or user." *Trinity Assembly*, 407 Md. at 82.

The appellant's contention that he is entitled to build as he chooses because the Property currently conforms to Section 304.1 is misguided. Section 304.1 states that "a

one-family detached or semidetached dwelling *may* be erected on a[n undersized lot]" if the lot adheres to all the conditions enumerated therein. That section is not, however, the be-all and end-all. Rather, Section 304.1 is the precursor that, if fully complied with, can trigger the discretionary power accorded by Section 307.1, and the latter, as the circuit court correctly noted, "has [been] interpreted . . . to require both . . . special circumstances and practical difficulty to exist prior to the variance being granted." Cir. Ct. Mem. Op. at 6 (citing *Cromwell*, 102 Md. App. at 698). In fact, the appellees do not contend that the appellant is statutorily barred by Section 304.1 from building on the Property. Instead, they express their concerns regarding the aesthetic and other negative impacts the appellant's proposed construction on the Property would have on neighboring properties and the community as a whole. These concerns touch directly upon Section 307.1's mandate that a variance shall be granted "only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare."

As we indicated *supra*, the decision whether to grant a variance under Section 307.1 is a two-step process. First, it must be determined that the lot is unique; and second, there must be a finding that the lot's uniqueness results in practical difficulty and/or unreasonable hardship. *See Cromwell*, 102 Md. App. at 694-95. We have explained that

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.,* its shape, topography, subsurface condition, environmental factors, historical significance, access or non-

> access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

Therefore, the circuit court was correct in finding that "[t]he Board properly held that the Property at issue was not unique merely based upon the size of the lot." Cir. Ct. Mem. Op. at 7.

In determining the necessity of a Special Hearing to construct a dwelling on the undersized lot, the Board weighed the approval of the Division of Traffic Engineering against the opposition by the Department of Planning and agreed with the latter. The Board considered testimony and physical evidence and found the Property is not unique based on its size alone, and therefore not deserving of a variance. *See* BCZR § 307.1. In the hearing before the Board, the appellant failed to establish that the Property contained an inherent characteristic distinguishing it from neighboring lots. *See, e.g., Trinity Assembly*, 407 Md. at 82.

"It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board." *Stansbury v. Jones*, 372 Md. 172, 182 (2001) (quoting *Dorsey Enters., Inc. v. Schpak*, 219 Md. 16, 23 (1959)). Because the issues before the board were "fairly debatable," *see White*, 356 Md. at 44 (1999) (citations omitted), and because substantial evidence supports the Board's finding that the Property is not unique, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.