Circuit Court for Baltimore County
Case No. 03-C-15-009114

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1485

September Term, 2016

KARL KIESLING ET AL.

v.

ROBERT LONG

Eyler, Deborah S.,
Kehoe,
Arthur,

JJ.

Opinion by Kehoe, J.

File: October 24, 2017

— Unreported Opinion —

Karl Kiesling, Kevin Kauders, and Anne Franey appeal from a judgment of the Circuit Court for Baltimore County, the Honorable Paul J. Hanley presiding, which affirmed a decision of the Baltimore County Board of Appeals. The Board granted permission to Jean Marie Jones and Robert Long to build a house on a lot (the "Property") with a street address of 3505 Beach Road, Baltimore, Maryland.[1]

Background

A. The Property

The Property is located in the Middle River area of Baltimore County. The front and rear boundaries of the Property are Beach Road and Seneca Creek, respectively. Beach Road is a dead-end street which extends in a southeasterly direction from Seneca Park Road and terminates at a small park on the waters of Seneca Creek. In addition to the Property, there are four waterfront residential parcels on the southerly side of Beach Road. The northerly side of Beach Road abuts the side lot line of a single property that fronts on Seneca Park Road.

Mr. Kiesling, on one side, and Mr. Kauders and Ms. Franey, on the other, own the parcels immediately adjacent to the Property. The Property is 50 feet wide, approximately 175 feet deep, and has an area of 9,750 square feet. It is located within a residential

[1] The zoning petition that eventually resulted in the Board's decision under review in this appeal was filed in February, 2014 by Jean Marie Jones. At the time the application was filed, Mr. Long was the contract purchaser. He acquired title while this case was pending.

subdivision known as "Seneca Beach Park," which was established by a plat recorded in the Baltimore County land records in 1926. For many years, the Property was improved by a house. This structure, along with many others located in the Seneca Beach Park neighborhood, was badly damaged by Hurricane Isabel in 2003. At that time, the Property was owned by Roy E. Jones and Jean Marie Jones. They were unable or unwilling to rebuild and what was left of the structure was demolished in 2005. At the time of the hearing before the Board, the Property was vacant except for two small storage sheds.

B. The Relevant Provisions of the BCZR

The Property is located in the County's "Rural Residential" (RC 5) zoning district. The Baltimore County Zoning Regulations ("BCZR") provide that: (1) the minimum size for lots within the RC-5 district is 1.5 acres, (2) the maximum permitted lot coverage is 15%, (3) the minimum front setback is 75 feet, and (4) the minimum side and rear setbacks are 50 feet. BCZR § 1A04.3B.2.b. Obviously, it is impossible to build a house on the Property while strictly complying to these regulations. The BCZR provides several at least arguably relevant avenues by which a property owner can seek this relief from the strict application of these regulations.

First, the BCZR permits property owners to carry on non-conforming uses and to maintain non-conforming structures. The prior house on the Property was a non-conforming structure. BCZR § 104.2 provides that, if a non-conforming structure is damaged or destroyed "by fire or other casualty," the structure can be rebuilt on the same

footprint within two years of the date of damage or destruction. If a property owner wishes to have a larger building, BCR § 104.3 authorizes a County administrative law judge and the Board to grant a variance to allow a property owner to increase the floor area of such a structure by no more than 25% when the building is repaired or replaced.

Second, BCZR § 1A04.3.B.4 states:

> Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Department of Planning on or before the effective date of these zoning regulations and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the standards prescribed in force at the time of the lot recordation.

Although this statute probably won't be inducted into the Punctuation Hall of Fame, its meaning is clear enough. Section 1A04.3.B.4 is a grandfathering law. It provides that a property in the RC 5 District does not have to comply with the current setback and lot coverage provisions of the BCZR if: (1) the lot had been conveyed by a deed recorded in the Baltimore County Land Records prior to the effective date of the RC 5 regulations, (2) the lot cannot be developed in conformance with the BCZR's minimum requirements for the zoning district within which the lot is located, and (3) the lot is not part of an approved subdivision.

There is another "grandfathering" provision in the RC 5 regulations. BCZR § 1A04.3.B.1.b states:

> The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the [RC 5] setback requirement[s], may apply for a

> special hearing under Article 5 to alter the minimum lot size requirement. However, the provisions of Section 1A04.4[2] may not be varied.

Section § 1A04.3.B.1.b refers to a "special hearing." BCZR § 500.7 states in pertinent part (emphasis added):

> [A County ALJ] shall have the power to conduct such other hearings and pass such *orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations*, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the [County's Office of Administrative Hearings] for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

Finally, the BCZR provides property owners in any zoning district with the ability to seek variances from the strict application of the BCZR's development regulations.

Section 500.7 states in pertinent part (emphasis added):

> The [County's administrative law judges and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only 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 for Baltimore County would result in *practical difficulty or unreasonable hardship*.

[2] BCZR § 1A04 sets out design standards for residential developments in the RC 5 District.

C. The Application

Mr. Jones passed away in 2008. In 2014, Ms. Jones, as owner, and Mr. Long, as contract purchaser, filed a zoning petition seeking a variance from the minimum lot size, lot coverage and setback provisions of the BCZR that we have previously summarized, as well as a variance from the strict application of CBRZ § 301.1[3] The petition described the requested relief as:

> Section 1A04.3 and 301.1 BCZR
>
> 1. To allow an area of 9,750 sq. ft. in lieu of the required 1 1/2 acres.
>
> 2. To allow an open projection deck with a setback of 13 ft. in lieu of the required 37 11/2 ft.
>
> 3. To allow a replacement dwelling with a rear yard setback of 33 ft. and 9 ft. on both sides in lieu of the required 75 ft. from the centerline of the road and 50 ft. from any lot line, respectively.
>
> 4. To allow a building coverage of 20% in lieu of the maximum required 15%.
>
> 5. To allow any variances deemed necessary by the administrative Law Judge.

This language was incorporated into the public notice of the hearing on the application. The zoning petition is a preprinted form available from the County's

[3] Section 301.1 provides in pertinent part:

A. If attached to the main building, a carport or a one-story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard. Any carport or open porch so extended must be open on three sides.

. . .

Department of Permits, Approvals, and Inspections. It is a "check-the-box" form and contains a box—unchecked in this case—for a request for a special hearing.

Prior to any hearings, the application was reviewed by several County agencies, including the Department of Environmental Protection and Sustainability. None of these agencies voiced misgivings about the proposal. [4]

The application was subject to a public hearing before a County administrative law judge. In a written decision dated April 23, 2014, the ALJ granted the application but with some modifications. First, the ALJ imposed a 10 foot side setback instead of the 9 foot setback requested by the applicants. Second, the ALJ limited the size of the new structure to not more than 125% of the footprint of the residence that existed before Hurricane Isabel. The ALJ imposed these modifications out of a concern that the size of the proposed structure would "'dwarf' a neighboring dwelling" and "severely restrict that owner's view of Seneca Creek."

Appellants appealed the ALJ's decision to the Board. After two postponements for procedural reasons, the Board held a de novo hearing on the application on January 5, 2015. At the hearing, appellee's counsel suggested to the Board that, as an alternative to

[4] The Property is in the Chesapeake Bay Critical Area and is therefore subject to the County's Critical Area Program. The County Department of Environmental Protection and Sustainability ("DEPS") reviewed the application and concluded that, although off-site mitigation would be required, the project would comply with the County's Program as long as the total lot coverage did not exceed 31.25%. The proposed building will occupy 20% of the Property. Appellants do not argue that the proposed development violates the County's Critical Area program.

seeking a variance, appellee was entitled to relief pursuant through the BCZR's special hearing procedure. Appellants' counsel objected to this. After the evidentiary phase of the hearing was concluded, the Board permitted counsel for the parties to submit post-hearing memoranda.

After considering the testimony and legal argument by counsel, the Board decided to grant the request described in the application and filed a written decision to that effect on July 23, 2015. We will discuss portions of the Board's opinion later; for the present, it is sufficient to note that the Board decided that it was not necessary for appellee to obtain a variance from the RC 5 District's minimum lot size requirement of 1.5 acres. Additionally, the Board reasoned that appellee was entitled to relief either through application of the RC 5 grandfathering regulations or by a variance. The Board analyzed the evidence under both approaches and concluded that appellee was entitled to the relief he sought under each of them.

Appellants filed a timely petition for judicial review. The circuit court affirmed the Board's decision. This appeal followed.

Appellants present the following contentions, which we have reworded and reordered:

> 1. Did the Board err by permitting appellee to seek relief on grounds that were not set forth in the zoning petition?
>
> 2. Did the Board err by deciding that appellee did not require a variance?
>
> 3. Did the Board err by permitting appellee to build a non-conforming structure on the Property more than two years after the destruction of the prior structure?

4. Did the Board err in finding that the appellee met the criteria for relief under the BCZR's special hearing provision?

5. Did the Board err in finding that appellee met the criteria for a variance?

The Standard of Review

In a judicial review proceeding, the issue before an appellate court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (citations, internal quotation marks, and brackets omitted). For that reason, we "look through" the circuit court's decision, in order to "evaluate the decision of the agency" itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

In quasi-judicial proceedings, administrative agencies like the Board typically perform three functions: (1) making findings of fact; (2) identifying and interpreting the relevant legal standards; and (3) applying the law to the facts. Courts accept an agency's factual findings if they are supported by substantial evidence, that is, if there is relevant evidence in the record that logically supports the agency's factual conclusions. *Bayly Crossing*, 417 Md. at 139. An agency's application of the law to the evidence presents a mixed question of law and fact. If the agency has correctly identified the applicable legal standard, courts of review defer to the agency's application of the law to the facts before it, as long as the findings are supported by substantial evidence. *See Baltimore Lutheran High School Assoc. v. Employment Security Administration*, 302 Md. 649, 662 (1985). Although a reviewing court is not bound by the agency's legal conclusions, we

"frequently give weight to an agency's experience in interpretation of a statute that it administers." *Schwartz v. Maryland Department of Natural Resources*, 385 Md. 534, 554 (2005). Finally, "[a]n agency's decision is to be reviewed in the light most favorable to it and is presumed to be valid." *Assateague Coastal Trust v. Schwalbach*, 448 Md. 112, 124 (2016) (citation and quotation marks omitted).

Analysis

1. Was the Public Notice Legally Adequate?

As we have related, at the hearing before the Board, appellee's counsel suggested that appellee was entitled to relief through the grandfathering provisions of the BCZR by means of a special hearing as well as by a variance. Over the objection of appellants' counsel, the Board considered this argument and eventually granted appellee the relief he sought on both grounds. Appellants contend that the Board erred in doing so. They point out that appellee's petition requested only a variance. They argue that they were prejudiced at the hearing because they were not prepared to present evidence as to the compatibility of appellees' proposal, and that the Board violated appellants' right to due process and a fair hearing by permitting appellee to present a basis for relief that was not identified in the zoning petition and the public notice,

This argument is not persuasive. The petition and the Board's notice of the hearing contained the same substantive information. Public notice of an administrative hearing is sufficient if it informs the public "clearly of the character of the action proposed and enough of the basis upon which it rest[s] to enable them to intelligently prepare for the

hearing." *Cassidy v. Board of Appeals of Baltimore County*, 218 Md. 418, 425 (1958) (citation and quotation marks omitted). This standard has been reaffirmed in more recent cases. *See Baltimore St. Parking Co., LLC v. Mayor & City Council of Baltimore,* 194 Md. App. 569, 593–94 (2010); and *O'Donnell v. Basslers*, 56 Md. App. 507, 519 (1983).

The Board's public notice reiterated the information that was set out in the zoning petition, namely, that appellee sought variances from the minimum lot size, lot coverage, and front, side and rear setbacks "to allow a replacement dwelling." In our view, this clearly informed the appellants and other members of the public that appellee was seeking permission to build a house on the Property. This was sufficient for them to "intelligently prepare for the hearing."

In this context, the Court's analysis in *Cassidy* is instructive. In that case, the property owner filed an application to rezone property from residential to heavy manufacturing. 218 Md. at 422. After the public hearing, the Board granted a special exception for the use intended by the applicant (a power plant), in lieu of rezoning the property. In response to a challenge to the Board's decision very similar to the one presented by appellants, the Court noted that the applicant had applied for "the least restricted, category of zoning in Baltimore County. . . . Anyone who attended the hearing prepared to defeat the above request would likewise have been prepared to defeat the grant of a special exception[.]" *Id.* at 425–26.

Finally, any error on the Board's part was harmless because the Board also granted appellee a variance from the relevant BCZR regulations.

2. Was Appellee Required to Obtain a Variance from the Minimum Lot Size Requirements of the RC 5 District?

As we have noted, the BCZR establishes a minimum lot size in the RC 5 District of 1.5 acres. *See* BCZR § 1A04.03B.1.a. In his petition, and among other relief, appellee requested a variance from the strict application of that regulation. In its decision, the Board concluded that he did not require such a variance. The Board's reasoning was based on its interpretation of BCZR § 1A04.3.B.1.4, which, as we have explained, permits residential development of a nonconforming lot in the RC 5 District if (1) the lot had been conveyed by a deed recorded in the Baltimore County Land Records prior to the effective date of the RC 5 regulations, (2) the lot cannot be developed in conformance with the RC 5 District's minimum requirements, and (3) the lot is not part of an approved subdivision.

The record before the Board indicates that the Property was first conveyed in 1934. In its opinion, the Board stated that this conveyance predated the County's first zoning ordinance. The Board was correct; the County was not authorized to exercise zoning powers until 1941, when the General Assembly enacted the Baltimore County Zoning Enabling Act. *See Temmink v. Board of Zoning Appeals*, 205 Md. 489, 493 (1954). Appellants do not contest that strict application of the current RC 5 regulations render development of the Property impossible. Appellants assert, however, that the Property does not satisfy the third requirement. Therefore, according to them, § 1A04.3.B.4 is inapplicable. In their brief, they assert:

> The preparation and recording of the Plat of Seneca Park Beach represents precisely the act described in BCZR § 101.1. Specifically, the original parcel of land was divided into multiple lots for building development, which process included the extensive modification of street and lot lines. Moreover, at a minimum, the plat was accepted for recording among the Land Records of Baltimore County, meaning the subdivision was "approved" to the fullest extent possible and necessary at the time of the subdivision.

We do not agree for two reasons. First, there is no documentation in the record that suggests that any government agency reviewed and approved the subdivision plat prior to its recordation. Appellants hypothesize that the Clerk of the Circuit Court must have reviewed the plat prior to accepting it for recordation but they do not identify any law that imposed such an obligation upon the clerk in 1926. Second, in this case, it is appropriate for us to consider the Board's construction of the statute, which was that the term "approved" refers to subdivision approval by a County agency. We are not bound by the Board's interpretation but we may give it weight. We agree with the Board. We hold that the phrase "approved subdivision" in § 1A04.3.B.4 means that lots which otherwise meet the statute's criteria do not fall within the § 1A04.3.B.4's remedial ambit if they were established by a plat that had been approved through the County's subdivision review process, which is currently found in Article 32, Title 4 of the Baltimore County Code. Because the Seneca Park Beach plat was not approved in this fashion, the statute applies to the Property. The Board was correct when it decided that appellee did not need a variance from the minimum lot size standard for the RC 5 District.

3. Did the Prior Owner's Failure to Rebuild Within Two Years Affect Appellee's Ability to Seek Relief?

BCZR § 104.2 provides that a non-conforming structure can be rebuilt within two years after it is damaged or destroyed by a fire or similar catastrophe. Appellants concede that § 104.2 provides a two-year window to the Joneses to rebuild their home and further concede that the two year period began when the house on the Property was demolished in 2005. However, they note that the variance petition was not filed until 2014. From this premise, they contend:

> By electing to allow that amount of time to pass, the Appellee's predecessors in title forfeited their right to the benefit of BCZR § 1A04.2 and must abide by the consequences. Furthermore, the consequences of that election bind the Appellee as the successor to Mr. and Mrs. Jones.
>
> The actions of the Appellee and his predecessors in title have created a status quo in which the Property has remained unimproved and vacant for nearly ten years, without placing undue burden on the community and the Chesapeake Bay and its tributaries. Strict compliance with the applicable regulations would merely maintain that status, which result should have been encouraged by the Board. Instead, the Board and the Circuit Court ignored that reality and imposed a significant burden on the community and the adjacent waters.

Appellants point to no legal authority to support their contention and it is otherwise not persuasive. Without belaboring the point, non-conforming use statutes such as § 104.2 permit property owners to rebuild the destroyed or damaged structure as a matter of right. If an owner fails to rebuild within the statutory window, then he or she forfeits the *right* to rebuild and must obtain a variance or other administrative relief before doing so. This is what happened in the present case.

4. Did the Board misapply the standards for granting relief through the special hearing process?

In its opinion, the Board read the two grandfathering provisions of the RC 5 regulations in conjunction with one another. The Board concluded that the Property was grandfathered pursuant to BCZR § 1A.0.3.B.4, and that § 1A04.3.B.1.b requires review of appellee's requested relief through the special hearing process. Further, the Board decided it did not have the authority to waive compliance with the relevant RC 5 development standards set out in BCZR § 1A04.4.

The statute that establishes the special hearing remedy, BCZR § 500.7, does not contain specific standards for granting relief. The Board stated that "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." The Board then turned to BCZR § 502.1[5] and, applying those standards, concluded that:

[5] BCZR § 502.1 states:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other danger;
>
> D. Tend to overcrowd land and cause undue concentration of population;

> the requested relief does not adversely impact the health safety and welfare of the community and is consistent with the intent of the RC 5 regulations.

Appellants do not question the logic which led to the Board's conclusion that the appropriate test was whether appellee's proposal was compatible with neighboring properties. They do challenge, however, the Board's finding that the house proposed by appellee would be compatible. Specifically, appellants argue that their testimony at the hearing established that (1) construction of appellee's house would pose a fire hazard to Mr. Kiesling's home because the two homes would only be 11 feet apart; (2) appellee's home "would be inconsistent with the rest of the neighborhood because it would be built on a substantially larger footprint than the prior dwelling"; (3) appellee's proposed house "would effectively create a wall of houses along Beach Road, with a minimal gap between houses," with the result that the community would resemble a townhouse development"; (4) construction of the house would limit appellants' views of Seneca

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> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F. Interfere with adequate light and air;
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
>
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Creek from their residence; (5) the Property was subject to flooding and any attempts at remediation would negatively affect appellants and the waters of Seneca Creek by increasing run-off and pollution from fertilizers; and (6) construction of the proposed house would create traffic and parking problems on Beach Road.

The Board was not required to credit this testimony. For example, Mr. Kiesling, who raised the traffic and parking concerns, also testified that there were currently no parking or traffic problems on Beach Road. {E. 167} His concern about a fire hazard was expressed as a "possibility," without further explanation. Both Mr. Kiesling and Mr. Kauder have unobstructed views of Seneca Creek over the Property but, as the Board noted in its opinion, absent an express easement, "there is no right to a water view across another's property."[6] The Board also observed that appellants did not offer any expert testimony to support their traffic and environmental concerns. Appellee's proposed house is smaller than Mr. Kiesling's existing home and would be set further back from the street than either of the Kiesling and Kauder residences.

Bernadette Moskunas, appellee's expert witness, testified that the proposed house would not adversely affect the health, safety, and welfare of the surrounding properties. None of the reports from the various County agencies that reviewed the project identified any negative impacts that would occur if appellee's project was approved. Ms.

[6] The appellants, of course, have views of the creek over their own properties.

Moskunas's testimony and the agency reports constituted a sufficient evidentiary basis to support the Board's finding.

5. Did the Board misapply the standards for granting a variance?

BCZR § 307.1 authorizes the Board to grant variances from height and area regulations when the applicant demonstrates that there are "special circumstances or conditions peculiar to the land . . .which is the subject of the variance request", and that strict compliance with the regulations would result in "practical difficulty or unreasonable hardship" to the applicant. Further, any variance actually granted must be "in strict harmony with the spirit and intent" of the regulations at issue and the specific relief must not injure the public health, safety and general welfare.

As an alternative basis for its decision, the Board granted a variance to appellee. It found that the Property was "different from other properties in the vicinity." Additionally, the Board found that strict application of the County zoning regulations imposed a practical difficulty upon appellee because "there is no location on the property where a residence could be constructed in compliance with the BCZR."

Appellants contend that the Board erred. They assert that (1) any practical difficulty is not related to the Property's dimensions and location; (2) granting the variance would be inconsistent with the spirit and intent of the BCZR; (3) a variance was inappropriate because any hardship was self-imposed; and (4) the variance imposes a substantial harm upon other residents in the community.

As this Court has explained, an administrative decision to grant a variance is a three-step process

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Cromwell v. Ward, 102 Md. App. 691, 694–95 (1995) (footnote deleted).

Appellee certainly satisfied the first two criteria. Although the Property is approximately the same size as appellants' lots, all three are significantly smaller than most of the other properties in the Seneca Park Beach subdivision.[7] This fact satisfies the "unique, unusual, or different" criterion. Imposition of the County's setback requirements

[7] Although most of the lots in the Seneca Park Beach subdivision are 50 feet wide, they vary widely in depth. A copy of the 1928 subdivision plat was introduced by appellee at the Board's hearing. According to that plat, the side boundary lines of the Property were 170 and 180 feet long—about the same as they were at the time of the Board's hearing. In contrast, other waterfront lots were larger. For example, Lots 15 through 50 extended from 300 to 480 feet back from Seneca Park Road to the water. The same is true of inland lots. For example, Lots 117 through 148 were depicted on the 1928 plat as being approximately 400 feet deep. The discrepancy in lot sizes is confirmed by a contemporary aerial photograph of a portion of the community introduced into evidence by appellee.

renders it impossible for appellee to locate a structure on the Property. This is certainly a practical difficulty "resulting from the disproportionate impact of the ordinance caused by the property's uniqueness[.]"

Moving to the third step, there is no doubt that one of the purposes of the RC 5 regulations is to further the goals of the State's Critical Area laws. *See* BCZR §§ 1A00.2 E; 1A04.1.B.3. The County's Critical Area program recognizes the necessity of permitting in-fill development as long as the effects of that development are mitigated. As we previously noted, the County's Department of Environmental Protection and Sustainability reviewed the application and concluded that, although off-site mitigation would be required, the project would comply with the County's Program as long as the total lot coverage did not exceed 31.25%. The proposed building will occupy 20% of the Property. The variance in this case is consistent with the critical—no pun intended—legislative purpose of the BCZR.

Appellants' argument that the hardship is self-imposed is based on the premise that the Joneses were required to rebuild within two years after demolition. As we have explained, this premise is incorrect. Equally unpersuasive is appellants' contention that the variance imposes a hardship on the community. The reality is quite to the contrary. The Board's decision will allow appellee to build a home on the Property, which is nothing more than what appellants and many other property owners in Seneca Beach Park have already done.

In conclusion, the Board was legally correct when it decided that the grandfathering provisions of the RC 5 regulations applied to the Property, that the appellee could obtain relief from the strict application of the RC 5 setback and lot coverage rules either through a special hearing or a variance, and that compatibility with the neighborhood was the operative standard for relief through a special hearing. The Board's factual findings were consistent with the applicable law and supported by substantial evidence. We affirm the Board's decision.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.