Circuit Court for Carroll County

Case No. 06-C-16-70651

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1615

September Term, 2016

FREEDOM VILLAGE SHOPPING CENTER, LLC

v.

ELDERS LUERS, L.P., ET AL.

Wright,
Arthur,
Friedman,

JJ.

Opinion by Wright, J.

Filed: October 23, 2017

This appeal arises from a Petition for Judicial Review of the Board of County Commissioners of Carroll County's (the "County Commissioners") decision in Rezoning Case Number 224 dated January 14, 2016, in the Circuit Court for Carroll County. Elders Luers, L.P., NJJ LLC, and Luers Lane, LLC (collectively, the "appellees")[1] filed a Petition with the County Commissioners to rezone eleven contiguous parcels of land they owned, totaling 15.568 acres from Neighborhood Retail Business ("B-NR") to General Business ("B-G"). The Carroll County Planning Commission ("Planning Commission") recommended that the land be rezoned, and the County Commissioners granted the request to rezone the land. Freedom Village Shopping Center, LLC ("appellant"), filed a petition for judicial review with the circuit court. The circuit court reversed and vacated the County Commissioners' rezoning action and remanded the matter back to the County Commissioners.

On appeal, appellant agrees with the circuit court's core holding and does not ask this Court to reverse that decision. Rather, appellant, the party that won in the lower court, asks this Court to opine on ancillary findings from the circuit court as to whether: (1) the rezoning met the statutory requirements for consistency with the master plan; and (2) whether the rezoning was supported by substantial evidence. [2]

[1] The appellees are not participants in this appeal.

[2] Appellant presented its questions as follows:

I. Did the circuit court err when it held that the rezoning sought was consistent with the master plan?

For the following reasons, we dismiss this appeal and let stand the judgment of the circuit court to vacate the County Commissioners' rezoning action and remand to the County Commissioners for further proceedings.

BACKGROUND

The appellees own eleven contiguous parcels of land, totaling 15.568 acres. Ten of the parcels are less than one acre and one parcel is 11.55 acres. Six of the smaller parcels are improved by residential dwellings, and the rest of the parcels are unimproved. The parcels are located on the south side of Md. Route 26 ("Liberty Road") between Luers Avenue and Homeland Drive in the Freedom designated growth area ("Neighborhood"), which is generally along both sides of Liberty Road from Ridge Road/Oklahoma Road to Johnsville Road with parts of the Neighborhood on the north and south sides of Liberty Road. The 385-acre neighborhood's primary use is commercial, although there are older residences scattered throughout the neighborhood.

In 1965, Carroll County ("the County") zoned the eleven parcels as either B-G or R-10,000, which allows one home per 1/4 acres. In 1990, the County amended the zoning plan, which changed the zoning of the parcels to Neighborhood Business land use. In 2001, the County Commissioners adopted the Freedom Community Comprehensive Plan ("Comprehensive Plan"), which was intended to provide a legal framework for growth and development of the community. Under the Comprehensive Plan, the parcels

II. Did the circuit court err and act prematurely when it held that the rezoning sought was based on substantial evidence?

were zoned Local Business ("B-L"). Thereafter, in 2006, the County Commissioners adopted a text amendment, codified as Ordinance 06-08 (the "2006 Amendment"), which changed all B-L properties to B-NR properties. The 2006 Amendment also prohibited construction of buildings larger than 10,000 square feet on parcels zoned B-NR.

On November 17, 2015, the Planning Commission produced a report regarding rezoning the parcels. In the report, the Planning Commission made a recommendation for rezoning. The Planning Commission concluded that the 2006 Amendment was done without a comprehensive rezoning process. They also recommended that appellees' parcels should be zoned B-G and found that such zoning would be consistent with the Comprehensive Plan.

On December 17, 2015, the County Commissioners convened to conduct an evidentiary hearing to consider appellees' petition to rezone the parcels from B-NR to B-G, a classification that allows for larger development.[3] Appellees sought the rezoning to build a grocery store and retail shops. During the hearing, several residents in homes adjacent to the parcels expressed concerns about the rezoning. The appellees argued that a mistake occurred when the parcels were zoned from B-L to B-NR in the 2006 Amendment. They further argued that there was a substantial change in the character of the neighborhood. After the evidentiary hearing, and based on the Planning Commission's report, the County Commissioners granted the requested rezoning by oral vote on January 14, 2016. That same day, the County Commissioners reduced their

[3] The B-NR classification has a 10,000 square foot restriction.

findings and vote to writing whereupon they explained the rezoning decision. The finding noted that in 2006, a zoning amendment changed the parcels zoning classification from B-L to B-NR.

Finally, on March 24, 2016, the County Commissioners signed and dated a Resolution to Authorize Change to County Zoning Map to change the parcels zoning from B-NR to B-G. They further noted that most B-NR parcels are less than five acres, whereas one of appellees' parcels was 11.55 acres. Based on this finding, the 2006 Amendment and evidence of previous zoning mistakes corrected for other parcels, the County Commissioners concluded it was a mistake to classify the appellees' parcels as B-NR, instead of B-G.

On February 10, 2016, following the County Commissioner's resolution, appellant filed a Petition for Judicial Review with the circuit court to review the County Commissioners' rezoning decision. A hearing was held on August 17, 2016.

At the conclusion of the hearing, the circuit court vacated the County Commissioners' zoning decision and remanded the matter back to the County Commissioners. The circuit court found that the County Commissioners improperly relied on the 2006 Amendment as a comprehensive rezoning plan for the purposes of piecemeal rezoning. The circuit court also noted that there was substantial evidence in the record from expert witnesses and written reports upon which the County Commissioners relied to determine that the piecemeal rezoning of appellees' parcels would be consistent with the Comprehensive Plan.

Additional facts will be included as they become relevant to our discussion, below.

STANDARD OF REVIEW

"Judicial review of an administrative decision generally is a 'narrow and highly deferential inquiry.'" *Geier v. Maryland State Bd. of Physicians*, 223 Md. App. 404, 430 (2015) (citation omitted). "When reviewing administrative decisions, we look through the circuit court, although applying the same standard of review, and evaluate the decision of the agency." *Rojas v. Bd. of Liquor License Comm'rs. for Baltimore City*, 230 Md. App. 472, 481 (2016) (citing *Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 553 (2015)). In so doing, this Court is:

> limited to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. Stated differently, [o]ur primary goal is to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious. In applying the substantial evidence test, we must decide whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.

Id. (quoting *Matthews v. Hous. Auth. of Baltimore City*, 216 Md. App. 572, 582 (2014)). "With regard to fact-based decisions, the court may not substitute its own judgment for that of the agency." *Cty. Council of Prince George's Cty. v. Curtis Regency Serv. Corp.*, 121 Md. App. 123, 133 (1998) (citation omitted).

"When deciding issues of law . . . our review is expansive, and we may substitute our judgment for that of the agency if there are erroneous conclusions of law, employing a *de novo* standard of review." *Rojas,* 230 Md. App. at 481 (citation and quotations omitted). Finally, "[w]e review the agency's decision in the light most favorable to the

agency because it is *prima facie* correct and entitled to a presumption of validity." *McClure v. Montgomery Cty. Planning Bd. of Maryland-Nat. Capital Park & Planning Comm'n.*, 220 Md. App. 369, 379 (2014) (citation and internal quotation marks omitted).

Generally, only the party aggrieved by a judgment may take an appeal, and one may not appeal from a judgment wholly in its favor. *Offutt v. Montgomery Cty. Bd. of Educ.,* 285 Md. 557, 564 n.4 (1979) (citation omitted); *Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989). An appellate court generally may not affirm an administrative agency on grounds on which the agency itself did not rely in making its decision. *People's Counsel for Baltimore Cty. v. Svrina*, 400 Md. 662, 687 n.26 (2007) (citation omitted).

DISCUSSION

After the County Commissioners made their decision to rezone appellees' parcels, appellant filed a petition to have the circuit court review the decision. The petition noted, "[Appellant] is a person aggrieved by the decision or action of the Board of County Commissioners of Carroll County, Maryland [County Commissioners] under [Md. Code, (2012), Land Use Article ("LU") § 4-401(a)(1)]."

At present, the appellant comes before this Court as the prevailing party below on the issue decided by the County Commissioners. Appellant does not oppose the circuit court's order to vacate and remand the matter back to the County Commissioners reversing that order. What the appellant asks us to do is to reverse several of the circuit court's contemplations, but not the circuit court's final conclusion. The two ancillary

issues as addressed by the circuit court were not the basis of the administrative agency's finding. Because the appellant won below when the circuit court vacated the rezoning decision, we will decline to address the merits of these questions raised because they come before us from a party with no right to appeal, and we, accordingly, must dismiss their appeal. We explain.

The "mistake-change rule," codified in LU § 4-204, allows for rezoning upon showing of either: (a) mistake in the original zoning or the prior comprehensive zoning; or, (b) substantial change in the character of the neighborhood where the property is located. LU § 4-204(b)(2). The mistake prong mandates that the "underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect." *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 538-39 (2002). In *Rylyns,* the Court of Appeals explained that a comprehensive plan must: "(1) cover a substantial area; (2) be the product of careful study and consideration; (3) control and direct the use of land and development according to present and planned future conditions, consistent with the public interest; and, (4) set forth and regulate all permitted land uses in all or substantially all of a given political subdivision, though it need not zone or rezone all of the land in the jurisdiction." *Id*. at 535 (citations omitted).

During the hearing, appellant averred that the 2006 Amendment was not a comprehensive plan, but rather an addition to the Comprehensive Plan adopted in 2001. Appellees contended that the 2006 Amendment was a comprehensive plan citing other

instances where courts found that a plan was comprehensive even if it was an amendment to an established plan. The circuit court sided with the appellant and found that the 2006 Amendment constituted neither original zoning nor a comprehensive zoning, making it impermissible to use the 2006 Amendment to apply the change-mistake rule of piecemeal zoning. The circuit court found in favor of the appellant because the Planning Commission stated in the report submitted to the County Commissioners that the 2006 Amendment "was implemented without a comprehensive process that included the appropriate levels of planning analysis." Furthermore, the appellees submitted no evidence about the third or fourth requirements set out in *Rylyns*.

The circuit court found that the County Commissioners erred in relying on the 2006 Amendment to determine there was a mistake that justified rezoning appellees' parcels. Once the circuit court determined that the County Commissioners erred as a matter of law, the court's only option was to vacate the decision and remand the matter back to the County Commissioners. *See O'Donnell v. Bassler*, 289 Md. 501, 509 (1981). When reviewing an administrative decision, the court can only make rulings on matters of law. "[I]f an administrative function remains to be performed, a reviewing court may not modify the administrative agency's action[.]" *Id*. at 510-11 (citations omitted).

What may have led to this appeal is that the circuit court did not just restrain its ruling to vacating the decision of the agency and remanding the matter back to the County Commissioners, but added its view on how to apply the law on remand based on its view of the administrative record. The decision that mattered was wholly in favor of

the appellant, making the appeal before this Court improper. As mentioned above, an appellate court may not uphold the final decision of an administrative agency on grounds other than those the agency itself relied upon in making its decision.

In sum, the appellant takes issue with certain language in the circuit court's opinion. Appellant avers that the circuit court's ancillary findings that the rezoning decision was supported by substantial evidence and met the statutory requirements for consistency with the Comprehensive Plan would improperly guide and restrict the proceeding on remand. Appellant's anticipated concerns with the language in the circuit court's memorandum opinion are not appealable. Therefore, we decline to issue what would be an advisory opinion and dismiss this appeal as the appellant has received a final judgment wholly in his favor.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.