Circuit Court for Carroll County
Case No. C-06-CV-19-000374

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 215

September Term, 2020

STEVEN HICKS *ET AL*.

v.

THE ROYER HOUSE, LLC

Kehoe,
Shaw,
Zic,

JJ.

Opinion by Kehoe, J.

Filed: February 1, 2022

The issue in this case is whether the Carroll County Board of Zoning Appeals erred when it affirmed a decision by the director of the County's Bureau of Development Review approving an amended site plan for a country inn. Appellants, Steven and Jacquelyn Hicks, assert that the Board erred. The operator of the country inn, Royer House, LLC ("Royer"), argues to the contrary. The Circuit Court for Carroll County affirmed the Board's decision. Appellants present three issues, which we have reworded:

> 1. Did the Board err by deciding the case without permitting appellants to present evidence?
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> 2. Did the Board err by permitting the Bureau to present portions of the record from a prior Board proceeding while denying appellants' request to move the transcript of the same proceeding into evidence?
>
> 3. Did the Board's evidentiary rulings deprive appellants of their due process rights guaranteed by Article 24 of the Maryland Declaration of Rights?[1]

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[1] In their brief, appellants frame the issues as follows:

> 1. Did the BZA commit reversible legal error in denying Hicks a fair evidentiary hearing in their appeal of the Decision of an Administrative Official?
>
> 2. Did the BZA improperly preemptively exclude Hicks's intended evidence from prior BZA Case No. 5822 after "opening the door" by accepting evidence of the same character and on the same subject matter offered by an adversarial party?
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> 3. Did the BZA's preemptory exclusion of Hicks's intended evidence deprive Hicks of the right to cross examine evidence presented by an adversary and preclude Hicks from offering relevant evidence in their case in chief in violation of Hicks's right to Due Process under Article 24; Maryland Declaration of Rights?

Because the answer to all three questions is yes, we will reverse the decision of the Board and remand this case for a new hearing consistent with the guidance provided in this opinion.

BACKGROUND

In 2015, Royer[2] filed an application for a conditional use to operate a country inn on a parcel located on Fridinger Mill Road near Westminster.[3] Although the transcript of the 2015 hearing is not in the record, the Board's 2015 written decision indicates that Royer was also planning to use the property as a wedding venue and that appellants appeared at the hearing and expressed concerns about noise and visual intrusion. The Board granted the application. Although the Board's decision specifically noted that Royer "would allow day weddings from noon to five pm," the Board did not attach that condition to its approval of the conditional use application.[4]

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[2] In 2015, the Royer House, LLC had four members: Jennifer Snyder, and three of her children, Alexandra Campbell, Brittany Clay, and an unidentified third adult child.

[3] The Royer House property is located in Carroll County's Conservation District. Section 158.071(D)(7) of the County's zoning ordinance imposes several restrictions on country inns in that district and further states that:

> In addition to providing meals as allowed hereunder, the BZA may authorize a country inn to provide facilities and catering for banquets, weddings, receptions, reunions, and similar one-day events. These events shall not be open to the public[.]

[4] The County's zoning ordinance authorizes the Board to adopt rules of procedure "as it shall deem necessary in the conduct of its hearings and the issuance of its decisions or testimony pertaining to its hearings." Carroll County Code ("County Code")

Carroll County requires owners of property to obtain site plan approval for many conditional uses, including country inns. *See* Carroll County Code ("County Code") § 155.059(A)(1). After review by the staff of the County's Bureau of Development Review, site plans are approved or denied either by the Planning Commission or by the director of the Bureau. County Code § 155.059(D).

After obtaining its conditional use approval from the Board in 2015, Royer submitted a site plan, which was approved in 2016. For reasons that are not clear from the very meager record of this case, there was a disconnect between some of the information on the site plan and the provisions of the County's zoning regulations. These problems were brought to the attention of County officials and Royer filed an amended site plan. Clayton Black, the director of the Bureau, approved the amended site plan on April 26, 2019. Appellants filed a timely appeal of Mr. Black's decision to the Board. This is the case before us. We will provide more details later, but the gist of appellants' case was that there were material discrepancies between the information presented to the Board by Royer in the 2015 conditional use hearing and the information on the amended site plan regarding the

§ 158.133(B)(3). The Board has done so. *See* https://www.carrollcountymd.gov/media/9771/bzarulesofprocedureamendment-2012.pdf (last visited December 21, 2021).

Board rule 5(c) authorizes the Board to impose conditions "with respect to granting a . . . conditional use" and further provides that "such condition[s] must be stated in the [Board's] order." *Id.*

operation of the country inn. Appellants asserted that the County's site plan approval process provided a means by which the problems could be corrected.

The Board's hearing took place on July 23, 2019. As the Board's Chair was explaining the order in which the parties would present their testimony and other evidence, he was interrupted by the Bureau's counsel, who raised what she called a "preliminary issue":

> I don't believe that the [appellants] have standing today for this appeal to even be heard. First, what I see that they're trying to appeal is the site plan that was approved on April 26, 2019. It is my understanding what they're really trying to do is put conditions in that site plan. However, in order to do that you would have to go back to the [Board's] opinion from March 27, 2015, and if there was any appeal . . . to be taken of the March 27, 2015 [Board decision], that would have had [to have been filed] within 30 days of that opinion[.]
>
> * * *
>
> The issue is that when you look at your opinion from March 27, 2015, there [were] no conditions placed in that opinion. And just to make it clear, testimony that was cited or discussed in the opinion is just that, testimony. It is not part of . . . the decision. [It does] not then become a condition if this Board did not enter it.

The Bureau's counsel proffered to the Board that her interpretation of the Board's 2015 decision was supported by the record of the 2015 Board decision. She asked the Board to take administrative notice of its own record in the 2015 case. Appellants did not

object to this and the Board admitted into evidence at least part of its file of the 2015 proceeding.[5] What was admitted did not include the transcript of the 2015 hearing.

The Board Chair then asked appellants' counsel to make a proffer of the evidence that his clients were seeking to present to the Board. The substance of counsel's proffer was that (1) he proposed to enter the transcript of the 2015 hearing into evidence; (2) the transcript would show that his clients were present at the hearing; (3) the testimony of Royer's witnesses to the Board in the 2015 proceeding was materially inaccurate as to the nature of the business that Royer intended to conduct on the property; and (4) both the 2016 site plan and the 2019 amended site plan were inconsistent with the representations made by Royer to the Board in the 2015 proceeding. Additionally, counsel made it clear that he anticipated cross-examining witnesses who would testify for Royer and the Bureau. Finally, and relying on County Code § 158.133(D)(7),[6] appellants' counsel argued

[5] In their brief to this Court, appellants assert that, setting aside the transcript problem, the record of the 2015 proceeding accepted into evidence by the Board was incomplete. Royer does not dispute this. We will address this matter in our instructions to the Board for proceedings on remand.

[6] County Code § 158.133 sets out the Board's powers. It states in pertinent part:

> (B) General powers.
> (1) The BZA shall have the following powers:
> (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in regard to the enforcement of this chapter. . .;
>
> * * *
>
> (D) Appeals and applications.

that the Board had the authority to correct the problems presented by what he asserted was the disconnect between the testimony presented to the Board and what was shown on the amended site plan. Counsel stated: "Had [Royer] implemented the use consistent with their testimony, had [Royer] submitted a site plan that was consistent with their testimony we would not be here today."

In response to this, the lawyers for both the Bureau and Royer pointed out that there had been no appeal from the Board's 2015 decision granting Royer's conditional use application. They argued that appellants were attempting to "reopen" that proceeding in order to add additional conditions to the Board's decision in order to restrict Royer's use of the subject property. With one dissenting vote, the Board voted to grant the Bureau's motion.

In its written decision affirming the Bureau's decision, the Board explained:

> It became apparent to the Board that [appellants' lawyer] wanted to use testimony from the 2015 hearing to challenge the amended site plan from 2019. The Board found that there would not be finality for any of its decisions if the testimony from 2015 could be revived four years later as if it

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* * *

> (7) If evidence is offered during the hearing concerning site plans, site or building locations, or any plans of construction which are not included as part of the application for a building permit/zoning certificate, those plans shall be incorporated in the application, and no substantial change shall be made in the plans presented to the BZA without the approval of the BZA. The BZA shall not approve a substantial change in the plans unless a hearing is held.

* * *

> was a condition of the Board. . . . After hearing the testimony in 2015 the Board decided not to place any conditions on the applicants. Testimony at the hearing does not constitute a condition for the site plan.
>
> * * *
>
> The BZA places written restrictions and conditions on land use. It would be wrong to look at testimony provided by the applicant and hold the applicant to that testimony as if it were a condition of the Board. Businesses are not always in place at the point of the BZA approvals. Reality, circumstances on the ground, may require modifications to a plan on paper.
>
> If there is a substantial change in the "site plans, site or building locations, or any plans of construction," [Section 158.133(D)(7)] then there needs to be prior approval of the BZA. [Appellants' counsel] claimed that there was a substantial change between the testimony in 2015 and the amended site plan. The type of substantial change referred to by [appellant's counsel] was not the type of substantial change meant by the language in this paragraph. . . . Cases would never end if parties could wait until the site plan was approved before appealing things that were not liked in the hearing before the Board. . . .
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> Based on the proffer from [appellants' counsel] the Board found that the amended site plan approval in 2019 was consistent with the decision of the Board in 2015.

We will provide additional information as required in our analysis.

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) (cleaned up). For that reason, we "look through" the circuit court's decision in order to review the decision of the agency itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

A reviewing court accepts 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 138-39. A reviewing court pays no deference to an agency's legal conclusions. *Id*. at 137. Additionally, "[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) (citing *Chesapeake Bay Foundation v. DCW Dutchship Island, LLC*, 439 Md. 588, 611 (2014)).

In the present case, however, the Board's ruling was not based on factual findings and conclusions of law made after a hearing in which all parties presented their documentary and testimonial evidence. The only evidence before the Board was either all or part[7] of the Board's file from the 2015 conditional use proceeding, the 2015 Board decision, the 2016 site plan, and the 2019 amended site plan. No one testified at the hearing.[8] Based on that evidence, appellants' proffer, and the legal arguments presented by the parties, the Board concluded that there was no legal basis to grant appellants the relief that they were seeking. In other words, and notwithstanding its failure to use the appropriate

[7] As we have noted, appellants contend that the material proffered by the Bureau's lawyer and accepted into evidence was not complete.

[8] The Board's decision refers to testimony by Clayton Black, the director of the Bureau. But this is not accurate. Mr. Black did make a very brief statement to the Board. This was not testimony because he was not under oath nor were appellants given the opportunity to cross-examine him.

terminology, the Board decided the case by summary disposition, the administrative equivalent of summary judgment in judicial proceedings. "It is well-settled that the propriety of granting a motion for summary disposition is a legal question which [a court] review[s] *de novo*." *Brawner Builders v. State Highway Admin.*, 476 Md. 15, 30–31 (2021). "The legal standard for granting summary disposition is the same as that for granting summary judgment under Maryland Rule 2-501(a). That is, summary disposition is appropriate if 'there is no genuine issue of material fact, and a party is entitled to prevail as a matter of law.'" *Id.* at 31 (cleaned up); *Engineering Management v. State Highway Admin.*, 375 Md. 211, 229 (2003) (same).

THE PARTIES' CONTENTIONS

Appellants assert that the Board erred by deciding the merits of their appeal without considering any of the evidence that they sought to introduce in support of their position. Additionally, they point out that the Board denied them the opportunity to cross-examine the witnesses who would have testified in support of the Bureau's decision to approve the amended site plan. Appellants argue the Board's rulings were particularly unfair because the Board permitted the Bureau to introduce into evidence materials from the Board's file from the 2015 conditional use proceeding but did not consider the transcript of that hearing. Appellants contend that they were not attempting to attack the validity of the 2015 Board decision or to otherwise reopen it. Instead, they "intended to use the evidence from

[the 2015 proceeding] . . . as primary evidence for their case in chief and in cross-examination" to show that the amended site plan contained "substantial change[s]" from the evidence presented in the 2015 proceeding. Appellants assert that the remedy for the problem is to amend the site plan to conform with the evidence presented in the 2015 hearing. They argue that County Code § 158.133(D)(7)[9] requires the Board to do just that.

Appellants also argue that the practical effect of the Board's ruling on the County's motion was to admit into the record all of the evidence that the County wanted the Board to consider while preventing appellants from presenting any evidence. They argue that this was fundamentally unfair and violated principles of both Maryland administrative law as well as Article 24's guarantee of due process of law.

In response, Royer asserts that the Board's reasoning was correct and that it did not "abuse its discretion" when it ruled that appellants "could not utilize the amended site plan process to revise a conditional use approval four years after the thirty-day appeal period for that approval had expired."

[9] The relevant statutory language is set out in footnote 6, *supra*.

ANALYSIS

Article 24 of the Maryland Declaration of Rights guarantees due process to parties to judicial and administrative proceedings. [10] Dan Friedman, THE MARYLAND STATE CONSTITUTION A REFERENCE GUIDE 34 (2006). The "touchstone" of due process is "fundamental fairness." *Simms v. Maryland Dep't of Health*, 240 Md. App. 294, 326 (2019), *aff'd*, 467 Md. 238 (2020). Maryland courts have explained what constitutes fundamental fairness in quasi-judicial administrative proceedings on many occasions. One of the best summaries can be found in *Boehm v. Anne Arundel County*:

> The rights required by due process before an administrative agency typically include the right to:
>
> (1) notice, including an adequate formulation of the subjects and issues involved in the case;
>
> (2) present evidence (both testimonial and documentary) and argument;
>
> (3) rebut adverse evidence, through cross-examination and other appropriate means;
>
> (4) appear with counsel;
>
> (5) have the decision based only upon evidence introduced into the record of the hearing; [and]

[10] Article 24 states:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

> (6) have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding.

54 Md. App. 497, 512–13 (1983) (citing Bernard Schwartz, ADMINISTRATIVE LAW § 67 at 192–93 (1976)).

When we compare this template for procedural fairness with what happened before, during, and after the hearing in this case, we conclude that the Board failed to provide appellants with due process in several respects.

Assuming for the purposes of analysis that the Board had the authority to decide this case by summary disposition,[11] the Board violated appellants' due process right to a fair hearing by failing to provide proper notice to appellants. The Board also erred when it permitted the Bureau to present evidence in the form of part of the Board's record from the 2015 conditional use proceeding while denying appellants' request that the transcript

[11] The validity of this assumption may be open to debate. *State* administrative bodies are authorized by statute to dispose of contested cases by, among other modalities, summary disposition. Md. Code, State Gov't § 10-210. But Maryland's Administrative Procedure Act does not apply to local government agencies such as the Board. *See, e.g., Rogers v. Eastport Yachting Center*, 408 Md. 722, 733 (2009).

The source of Carroll County's authority to enact and enforce zoning regulations is found in Title 4 of the Land Use Article. The powers and duties of local boards of appeal are set out in Land Use §§ 4-301–306. There is nothing in subtitle 3 of the Land Use Article that authorizes boards of appeal to decide cases by summary disposition or the Carroll County Zoning Ordinance that authorizes the Board to decide cases by summary disposition. *Compare* State Gov't § 10-210. And, as we will explain, the Board's rules do not purport to do so.

of that proceeding be admitted. Finally, the Board's failure to make the transcript of the 2015 proceeding part of the record makes it impossible for us to address the substance of the Board's decision.

1. Summary Disposition

As we have explained, the concept of due process includes the requirement that parties to an administrative proceeding have the ability to learn about the procedures to be followed in the hearing and the standards by which their case will be decided. The Board's rules address these concerns.[12] Difficulties can arise, however, when a party or

[12] Article III of the Board Rules sets out the procedure for Board hearings. It states in relevant part:

> 2. Testimony.
> The witness whose testimony may be desired at any hearing before the BZA shall testify orally, under oath, unless the BZA, for good cause shown, deems it proper in special cases that written evidence, under affidavit or otherwise, be submitted.
>
> 3. Order of Hearing.
> Participants in a hearing shall appear in the following order:
> a) Introduction of the case by the Chairman.
> b) Zoning Administrator's statement (in case of appeal from action of Zoning Administrator).
> c) Appellant's or applicant's presentation.
> d) Protestant's presentation.
> e) Appellant's or applicant's rebuttal.
>
> Every person before the rostrum shall abide by the order and direction of the Chairman. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the BZA and shall be dealt with, as the Chairman deems proper.

the agency proposes to resolve the case through novel or unusual procedures. In this context, the Court's analysis in *Calvert County Planning Comm'n v. Howlin Realty Management*, 364 Md. 301, 321–26 (2001), is particularly instructive.

The issue before the court in *Howlin* was whether the Calvert County Planning Commission erred when it rescinded its approval of a subdivision application. Seventeen months after the application was approved, neighboring property owners asked the commission to reconsider its decision. They asserted that the earlier approval was based on a false representation as to a critical issue. 364 Md. at 305–08.

At the time, Md. Code, Art. 66B § 3-303(c)[13] required planning commissions to "adopt rules for transactions of business[.]" *Id*. at 321. The statutory directive notwithstanding, the commission "had not adopted any formal written rules, at least not any dealing with reconsideration of an earlier decision." *Id*. Reasoning by analogy to Md. Rule 2-535(b),[14] the commission's attorney concluded that the Board had the inherent revisory authority to set aside its earlier decision upon a showing of fraud, mistake, or

[13] The statute is now codified as Land Use § 2-105(c).

[14] Md. Rule 2-535(b) states:

> On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

irregularity. At the beginning of the commission's hearing, its attorney outlined the procedure that the agency would follow and the standards that the commission would use to decide the merits of the case.[15]

The Court of Appeals did not approve this approach. It explained:

> In directing planning commissions to "adopt rules for transactions of business," we do not believe that the Legislature anticipated *ad hoc* oral rules determined and announced by counsel to the Commission. **Rules for the transaction of business by public agencies are intended to be normative principles formally adopted by the agency in written form, in accordance with whatever procedural requirements may apply, and, upon request, made available in advance to persons dealing with the agency. Only then can there be some assurance against arbitrary and capricious conduct on the part of the agency.**
>
> The failure of the Commission to have such rules in place *did* constitute a violation of the statutory mandate. That violation, by itself, however, did not constitute a lack of due process or preclude the Commission from proceeding to carry out its public duties. Due process is concerned with fundamental fairness in the proceeding, not with whether the agency has failed in some way to comply with a statutory requirement.

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[15] Specifically, counsel advised the parties that

> because the previous approval was presumed to be valid, the burden would be on the [parties seeking to rescind the earlier decision] to prove otherwise, to show that there was some fraud, mistake, or irregularity in the approval in that required written consents had not been obtained. . . . Counsel told the Commission that "fair play has to be accorded to everyone"—that there was no rule book, but that there were requirements of "fundamental fairness in due process of law." Witnesses, if any, were to be sworn, and would be subject to direct and cross-examination.

364 Md. at 308.

Id. at 322 (italics in original, bold emphasis added).

As to the issue of fundamental fairness, the Court concluded that the explanation made by the Commission's lawyer at the beginning of the hearing was adequate for due process purposes. *Id*. at 322–28.

The Court of Appeals revisited the requirement for notice as to procedural rules in *Engineering Management Services v. State Highway Admin*., 375 Md. 211 (2003). Three aspects of the Court's analysis are pertinent to the case before us:

First, the Court extended *Howlin's* holdings to cases in which the administrative agency decides a case by summary disposition. *Id.* at 236.

Second, the Court characterized *Howlin's* conclusion that the planning commission's failure to promulgate written rules prior to the hearing was harmless because the rules were announced at the beginning of the hearing as "fairly limited to the specific facts" of that case. *Id.* at 233 n. 29. The Court warned that "*Howlin* does not stand for the proposition that an agency can avoid its obligation to promulgate procedural rules by merely announcing them prior to proceeding in a contested case." ***Id.***

Third, the Court noted that, even though the issue of the administrative board's failure to adopt summary disposition had not been raised at the administrative hearing, the Court nonetheless had the authority to address the issue because the failure to promulgate rules "interferes with the ability of the courts to perform their constitutional function of review." *Id*. at 235.

With this in mind, we return to the case before us.

As we have related, as the Chair of the Board was in the process of explaining to the parties, witnesses, and counsel the procedures that would be followed in the hearing, he was interrupted by counsel for the Bureau, who told the Board that appellants lacked "standing . . . for this appeal even to be heard." This was so, asserted counsel, because appellants were attempting to "reopen" the conditional use proceeding to add conditions to the Board's decision that would have the effect of restricting Royer's operations. Instead of doing what it should have done—which was to defer ruling on the Bureau's motion until the parties presented their evidence—the Board effectively treated the motion as one for summary disposition and granted it after considering a proffer from appellants' counsel as to what evidence his clients were intending to present. Although neither counsel for the Bureau, Royer, nor the Board explicitly identified the Bureau's motion as one for summary disposition, this was the substance and effect of the Bureau's motion and the Board's subsequent decision to grant it. We will now explain why the Board erred when it decided this case without permitting the parties to present evidence and to cross-examine witnesses for opposing parties.

Md. Code, Land Use § 4-304 states that boards of appeal "shall adopt rules in accordance with any local law adopted under" Division I of the Land Use Article. The Carroll County Zoning Ordinance constitutes such a local law. County Code § 158.133(B)(3) authorizes the Board "to adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings and the issuance of its decisions or testimony pertaining to its hearings." The Board has done so, and its rules do not address summary

dispositions in any fashion.[16] In *Howlin*, the Court held that the planning commission's failure to adopt a rule setting out procedures and standards relating to requests to revise a decision was cured in that case by the explanation provided to the parties by counsel to the commission at the beginning of the hearing. 364 Md. at 328. In contrast to *Howlin*, the Board's counsel did not explain to the parties how the Board would go about deciding the Bureau's motion either procedurally or substantively.

Appellants did not explicitly object to the Board's failure to articulate the standards that it would use to rule on the Bureau's motion. However, just as in *Engineering Management*, the Board's failure to do so makes it impossible for us to meaningfully review its decision. In this context, one aspect of this case stands out. In his proffer to the Board, appellants' counsel made it clear that a critical part of his clients' case was the transcript of the 2015 conditional use hearing. One of the topics of the Board's on-the-record deliberations was whether the record of that proceeding should include the transcript of the 2015 conditional use hearing. The Board Chair and another member were of the view that

[16] Board Rule III.3 sets out the procedures for hearings. It states in pertinent part:

> Participants in a hearing shall appear in the following order:
> a) Introduction of the case by the Chairman.
> b) Zoning Administrator's statement (in case of appeal from action of Zoning Administrator).
> c) Appellant's or applicant's presentation.
> d) Protestant's presentation.
> e) Appellant's or applicant's rebuttal.

the record should include the 2015 transcript so that a reviewing court would be able to review it. One member disagreed, and the two remaining Board members were silent. Despite the disagreement among the members of the Board and the obvious importance of the issue, the Board's decision was silent on this question. All we know is that the 2015 transcript was not part of the record transmitted to the circuit court by the Board. We have no inkling of who made the decision or the reasons for it. Certainly, because the Bureau persuaded the Board to accept into evidence the record of the 2015 proceeding, the transcript of the 2015 hearing should have been included. Without that information, it is impossible for us to meaningfully review the Board's decision. Additionally, the Board's failure to include the transcript violated appellants' due process rights. *See Boehm*, 54 Md. App. at 192–93 (holding that due process rights include the right to "have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding.").[17] The Board's decision must be reversed and this case remanded for a new hearing.

At that hearing, the parties should be free to make dispositive motions, but the Board should not rule on any of them until the Board has given the parties the opportunity to

[17] Appellants were prejudiced in other ways as well; they were deprived of their right to present evidence as well as the right to cross-examine witnesses for the Bureau and Royer. Finally, it was unfair of the Board to admit all of the documentary evidence proffered by the Bureau while refusing to admit any of the written evidence proffered by appellants. All of these problems are independent bases for reversing the Board's decision.

present testimonial and documentary evidence and to cross-examine witnesses who testify for other parties. Additionally, if a party seeks to admit into evidence any portion of the record of the 2015 conditional use proceeding, the Board should include the entire record of that proceeding including the transcript in the record of the current case. We further remind the Board that in its written decision, the Board must explain its reasoning and the factual bases for its conclusions. A conclusory statement without explanation is legally insufficient. *See, e.g.*, *Bucktail, L.L.C. v. Talbot County*, 352 Md. 530, 553 (1999) ("Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions.").

Finally, we have some comments that we believe might assist the parties and the Board on remand.

First, the Bureau's counsel's use of the term "standing" to characterize her argument was imprecise. Because "[t]he first step to wisdom is calling a thing by its right name," *Roulette v. City of Seattle*, 78 F.3d 1425, 1426 (9th Cir.1996), we will take a moment to straighten out the terminology.

"Standing" is a legal term of art that refers to a person's status to seek "judicial [or administrative] enforcement of a duty or right." *Black's Law Dictionary* 1695 (11th ed. 2019). In the context of the County's zoning regulations, a person has standing to appeal a decision by an administrative official when the person is "aggrieved" by the decision.

Md. Code, Land Use § 4-306(a).[18] A person is "aggrieved" when its personal or property rights are adversely affected by the decision of the administrative board "in a way different from that suffered by the public generally." *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 81 (2013).

Maryland law is clear that adjoining and nearby property owners are presumed "to be specially damaged and, therefore, a person aggrieved." *Ray*, 430 Md. at 81. Although the record transmitted to the circuit court by the Board is woefully deficient, it does contain the amended site plan. That document indicates that appellants' property is located a short distance from the Royer House property. Appellants were therefore presumptively aggrieved. No one suggested otherwise to the Board, to the circuit court, or to this Court.

Although its use of the term "standing" was maladroit, the Bureau's motion did identify an important issue in this case, which is the degree to which the Board's 2015 decision limits the arguments that can be raised in the current proceeding. There are at least three relevant legal principles, all developed in the context of court judgments. Two clearly apply to administrative proceedings in Maryland. The applicability of the third appears to be an open question at this time.

[18] Land Use § 4-306 states in pertinent part:

> (a) An appeal to the board of appeals may be filed by:
> (1) a person aggrieved by a decision of the administrative officer or unit; or
> (2) an officer or unit of the jurisdiction affected by a decision of the administrative officer or unit.

The first two are the doctrines of *res judicata* (also known as *claim preclusion*) and *collateral estoppel* (also known as *issue preclusion*). Although there are many other sources, *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368–83 (2016), and *Smalls v. Maryland Dept. of Education,* 226 Md. App. 224, 228–41 (2015), contain thorough exegeses of the ways that principles of claim and issue preclusion work in the administrative law context.

The third doctrine is *judicial estoppel.* In *Bank of New York Mellon v. Georg*, the Court explained:

> Judicial estoppel has been defined as a principle that precludes a party from taking a position in a subsequent action that is inconsistent with a position taken by him or her in a previous action. Judicial estoppel applies when it becomes necessary to protect the integrity of the judicial system from one party who is attempting to gain an unfair advantage over another party by manipulating the court system.

456 Md. 616, 624–25 (2017) (cleaned up).

In *Abrams v. American Tennis Courts*, 160 Md. App. 213, 224 (2004), this Court held that judicial estoppel applied to prevent a party from taking one position in an administrative proceeding and another in a subsequent judicial action. It is unclear in Maryland whether the doctrine, or something analogous to it, would apply when the second action is also an administrative proceeding.[19]

[19] We are not suggesting whether or how any of these principles might apply to the present case.

Finally, during the previous hearing before the Board, the Bureau repeatedly stated that appellants were attempting to "re-open" the 2015 conditional use case. Again, the Bureau's language was imprecise. An example of "re-opening" occurred in *Howlin* when the lot owners reopened the prior administrative decision by filing a motion *in that proceeding* to revise the decision.[20]

For these reasons, we reverse the judgment of the circuit court and remand this case to it for the court to reverse the Board's decision and remand the case to the Board for a new hearing consistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY IS REVERSED AND THIS CASE IS REMANDED TO IT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

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[20] In *Howlin*, the Court of Appeals addressed whether the planning commission had the authority to reconsider its decision in the absence of a written rule or statutory authority. The Court concluded that:

> An agency, including a planning commission, not otherwise constrained, may reconsider an action previously taken and come to a different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different factual situation exists that justifies the different conclusion. What is *not* permitted is a "mere change of mind" on the part of the agency.

364 Md. at 325 (emphasis in original).

We express no opinion as to whether and, if so, how this holding might apply to the case before us.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0215s20cn.pdf