Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 262

September Term, 2021

IN THE MATTER OF JOHN HOMICK, ET AL.

Berger,
Reed,
Shaw

JJ.

Opinion by Shaw, J.

Filed: June 14, 2022

This is an appeal from a decision by the Circuit Court for Anne Arundel County, affirming in part and remanding in part, a decision of the Annapolis City Board of Appeals. Appellant, Noreast Holdings, LLC, was granted a zoning district boundary adjustment and a special exception[1] for redevelopment of a split zoned property by the Board of Appeals and denied its application for zoning variances. Appellees, John Homick, *et al.*, as concerned citizens, then filed a petition for judicial review in the Circuit Court. Following a hearing, the court affirmed the Board's denial of the variances and the approval of the zoning district boundary adjustment. Appellants timely appealed and present the following questions:

1. Whether the Board's ZDBA Opinion satisfied the minimum requirements for articulating the facts found, the law applied, and the relationship between the two?
2. Whether the Board premised its decision to approve the ZDBA on an erroneous conclusion of law when it held that the ZDBA requires a less stringent showing of uniqueness and practical difficulty than is required for a variance?
3. Whether the administrative record includes substantial evidence to support the Board's decision to approve the ZDBA?
4. Whether the Board's decision to approve the ZDBA was arbitrary or capricious when it denied the variance on substantially similar grounds?

For reasons set forth below, we affirm.

BACKGROUND

424-428 Fourth Street is a split-zoned property in the City of Annapolis. The front is commercially zoned and the rear is residentially zoned. The property has two structures with separate addresses, 424 Fourth Street and 428 Fourth Street, with a parking lot in

[1] The special exception is undisputed in this appeal.

between. Noreast Holdings, LLC, owns the property and proposed redeveloping the 424 Fourth Street building into a new building with a restaurant, bar, and residential units, and converting the 428 Fourth Street building into residential units and office space.

On September 14, 2018, Noreast applied for a zoning district boundary adjustment ("ZDBA") to extend the property's commercial zone into the residential zone to increase commercial parking, as only residential parking was allowed in the rear. Later in 2019, Noreast applied for zoning variances and a special exception. The City of Annapolis Department of Planning and Zoning evaluated Noreast's applications and submitted a Staff Report to the Board of Appeals in 2019. The report incorporated Noreast's analysis regarding the ZDBA and included staff's additional data and conclusions.

The Board of Appeals held four hearings on Noreast's applications in 2019: May 15, July 2, October 1, and December 18. On March 3, 2020, the Board of Appeals issued its Opinion and Order. The Board approved the ZDBA, denied the variances, and granted the special exception with specified limitations.

On April 1, 2020, appellants petitioned for judicial review in the Circuit Court for Anne Arundel County. Following a hearing on February 22, 2021, the court issued a Memorandum Opinion and Order, remanding on the issue of the special exception and affirming the approval of the ZDBA and the denial of the variances. Appellants timely appealed.

STANDARD OF REVIEW

As an appellate court, we evaluate the agency's decision, not the circuit court's. *Bayly Crossing, LLC v. Consumer Prot. Div., Off. of Atty. Gen.*, 417 Md. 128, 136 (2010).

Our role "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Montgomery v. E. Corr. Inst.*, 377 Md. 615, 625 (2003) (citations and internal quotation marks omitted). The substantial evidence test "requires us to affirm an agency decision, if, after reviewing the evidence in a light most favorable to the agency, we find 'a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Montgomery Cnty. v. Rotwein*, 169 Md. App. 716, 727 (2006) (citations omitted). And "'[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency.' . . . We, therefore, ordinarily give considerable weight to the administrative agency's interpretation and application of the statute that the agency administers." *Montgomery v. E. Corr. Inst.*, 377 Md. at 625–26 (citations omitted).

When reviewing agency decisions, "a reviewing court applies the 'arbitrary and capricious' standard of review, which is 'extremely deferential' to the agency. . . . This standard is highly contextual, but generally the question is whether the agency exercised its discretion 'unreasonably or without a rational basis.'" *Maryland Dep't of the Env't v. Cnty. Commissioners of Carroll Cnty.*, 465 Md. 169, 202 (2019) (citations omitted). "'Arbitrary or capricious' decision-making, rather, occurs when decisions are made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms." *Harvey v. Marshall*, 389 Md. 243, 299 (2005).

DISCUSSION

1. The Board's ZDBA Opinion articulated the Board's findings of fact, the law applied, and the relationship between the two.

The criteria for a zoning district boundary adjustment is governed by Annapolis City Code § 21.20.030. A ZDBA may be granted when:

> **A. Unique Conditions.** Owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty as specified in the zoning law.[2]
>
> **B. Public Welfare and Safety.** The granting of the district boundary adjustment will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
>
> **C. Surrounding Properties.** If a specific use is proposed, the applicant shall demonstrate that the proposed use will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood. If a specific use is not proposed, the applicant shall demonstrate the suitability of the property in question to the uses permitted under the proposed zoning classification.
>
> **D. Property Size.** The granting of a zoning district boundary adjustment shall be limited to parcels of one acre or less in size.

[2] In early 2017, § 21.20.030(A) stated: "Unique Conditions. The conditions upon which an application for a zoning district boundary adjustment are unique to the property and are not applicable, generally, to other property within the same zoning classification."

Section 21.20.030(A) was amended October 2017 to read as it is stated *supra*. Noreast's 2018 ZDBA application referred to and was analyzed in the 2019 Staff Report under this later version.

On November 19, 2018, another amendment was adopted, and currently § 21.20.030(A) says "Unique Conditions. Owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in practical difficulty as specified in the zoning law."

> **E. Location.** The zoning district boundary adjustment is for a property located in Ward 8.[3]

Appellants argue the Board's opinion does not adequately articulate the relationship between "the facts found, the law applied, and the relationship between the two." They contend the opinion incorporated, without independent analysis, the staff report, which incorporated Noreast's Application, without independent analysis and made conclusory statements. Appellants argue because the report was deficient, the Board's decision was deficient.[4] They further argue any prior decisions of the Board with respect to other properties are irrelevant, noting the ZDBA for another property 418 Fourth Street, was, *inter alia*, uncontested.

Noreast argues the Board's Opinion properly articulated the relationship between its findings of fact and the law applied. Noreast asserts the Board is allowed to incorporate a staff report and the report adequately included findings of fact. Noreast points out that the Board discussed whether the ZDBA complied with § 21.20.030, with each member being persuaded that the standards were met. The Board voted to approve the Chairman's motion, and as a result, Board members voted on the specific requirements needed for compliance with the ordinance. Noreast contends it would have been inconsistent with prior Board actions to deny an application for a similar use. The City of Annapolis, in its

[3] The application of subsections D and E are undisputed.

[4] Appellants assert that the Board failed to explain its decision in writing, citing City of Annapolis Board of Appeals Rules of Procedure Article 13(b), which states "[t]he Board shall adopt a written decision within 60 days after a vote of the Board, unless the Chair determines that cause exists to extend. Any Board member may write or join in a dissenting opinion." The Board here issued its decision in writing.

brief, argues that the "41-page detailed Staff Report . . . accounted for and explained how the decision criteria listed in City Code § 21.20.030 (A-E) were satisfied . . . ."

To be sure, agency decisions, at a minimum, must articulate "the facts found, the law applied, and the relationship between the two." *Forman v. Motor Vehicle Admin.*, 332 Md. 201, 221 (1993). "Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail, LLC v. Cnty. Council of Talbot Cnty.*, 352 Md. 530, 553 (1999) (citations omitted). "Where the agency's factual findings are inadequate, the necessary facts may not be supplied by the parties, and neither we nor the circuit court will scour the record in search of evidence to support the agency's conclusion." *Relay Imp. Ass'n v. Sycamore Realty Co.*, 105 Md. App. 701, 714 (1995) (citation omitted).

Agencies are encouraged to make specific findings themselves, rather than issue an opinion that merely adopts the findings of a report relied upon. *Montgomery v. Bd. of Cnty. Comm'rs for Prince George's Cnty.*, 256 Md. 597, 603 (1970). In *Montgomery*, the Court of Appeals noted that an agency may comply with a statutory requirement to make written findings of basic facts and conclusions by incorporating through reference specific findings of basic facts and conclusions of other reports. *Id.* But the *Montgomery* Court held the agency erred in relying on the findings of the Planning Board and Technical Staff, as neither the Board recommendation nor Staff report made any relevant findings of fact or conclusions. *Id.* at 601. As a result, the Court remanded to the agency. *Id.*

In *Maryland-Nat. Cap. Park & Plan. Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 82 (2009), we held that because the agency "verbatim recit[ed]" a staff

report in its decision and "agree[d] with everything in the [report]" and went no further, the agency erred. *Id.* at 82. The Court of Appeals agreed with us, in part, holding that the agency's error was in omitting in its findings a required consideration - the County's General Plan's numeric growth objective. *Id.* at n.9, 107. The Court characterized the agency's conclusion that the application was "not inconsistent with the 2002 General Plan Development Pattern policies for the Rural Tier" as a "half-baked conclusion." *Id.* at 109 (citation omitted). The Court held that the agency's adoption of a substantial portion of the staff report did not necessarily mean the agency did not exercise independent judgment. *Id.* at n.9. But the agency's approval of the Preliminary Plan lacked meaningful fact-finding because it did not consider the required numeric residential growth objective. *Id.* at 110. The Court noted that as a matter of principle, an agency could rely on a Staff Report. *Id.*

In *Anselmo v. Mayor*, 196 Md. App. 115 (2010), we acknowledged the Court of Appeals' stance that an agency can adopt the findings of another report if the report is "thorough, well conceived, and contains adequate findings of fact," *id.* at 127 (quoting *Greater Baden–Aquasco Citizens Ass'n.*, 412 Md. at 110). We held, however, that the agency erred because it had not made factual findings regarding projected school demand due to the proposed project, as required by the City ordinance. *Id.* at 126. The Staff Report the agency relied upon was deficient in its analysis and used an incorrect standard. *Id.* at 127. The agency incorporated these inadequate findings and made no independent assessment on the record of the Staff's analysis. *Id.*

In the present case, the Staff Report concluded that Noreast satisfied all statutory requirements. Under §21.20.030(A) the requirements were met because the property was "unique." It was among a limited number of properties that were split-zoned in 1970. The report stated that the current configuration of the property made it difficult to utilize the entire lot because the minimum lot size for a single-family dwelling required 5,400 square feet and the residential zone on the property was 4,500 square feet. The report concluded that without the ZDBA, Noreast would be denied the only reasonable permitted use for this portion of the property, causing an unnecessary hardship.

The report concluded that Noreast's application also complied with § 21.20.030(B). It stated that the two existing structures on the property already extended about fifteen feet into the residential zone and were previously deemed conforming uses. The report noted that most of the property was zoned for commercial uses and the ZDBA concerned only 4,500 square feet. The main purpose of the ZDBA was to utilize the rear zone for parking. In 1990, the parking areas did not legally exist and, therefore, they could not have been classified as conforming uses. The approval of the ZDBA would legitimize and reconfigure the parking spaces that existed at the rear. The reconfigured spaces would further conform to code criteria. There would be a ten-foot buffer between the relocated spaces and the rear property line. The abutting properties adjacent to the requested commercial adjustment area would be used for parking.

The report detailed two prior decisions of the Board of similar nature. The Board had previously approved 418 Fourth Street for a ZDBA and variances to the buffer requirements to build a parking lot at the rear of its site, determining that the variances

would not be detrimental to public welfare or injurious to other property or improvements in the neighborhood. The Board had also approved 400-406 Chesapeake Avenue for redevelopment, with a parking lot at the rear of the project providing a landscape buffer along the property line abutting 428 Fourth Street and along the property line abutting 414 Chesapeake Avenue. The Board found the other project complied with § 21.24.090, which was similar to § 21.20.030(B). The staff report concluded, in light of previous decisions, it would be inconsistent for the Board to determine that the ZDBA would be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.

The report also found that Noreast's application complied with § 21.20.030(C), because a new ten foot rear buffer and two proposed parking spaces abutting both the Eastport Sail Loft and 418 Fourth Street would be constructed. As a result, "the supply of light and air to those adjacent properties will not be changed or impaired." The ZDBA would provide a turn-around area for vehicles to decrease congestion and reduce the possibility of public danger. The proposed ten foot rear yard buffer would increase the value of the properties and the ZDBA would not increase the danger of fire in the vicinity. The ZDBA was for a parking lot and the report noted the existing parking lot was already being used for commercial uses. It was proposed to be reconfigured from 33 to 26 spaces, with a 10-foot buffer for the rear property line. Four spaces at the rear of the property would be for designated residents.

The Board held hearings on three separate days. During those hearings, members were engaged and asked questions regarding whether the application complied with the requirements of the ordinance. The members then discussed the requirements and whether

there was a unique condition, hardship, detriment to the public welfare, injury to other property or improvements, congestion, and diminishment of property values. It is clear that there was a meaningful analysis of the facts and law. At the conclusion, the Chairman stated:

> [CHAIRMAN]: So let's start with the [ZDBA] since I think we're all there. So let me suggest a motion to approve the [ZDBA] for the reasons that we find that they have satisfied the conditions of 21.20.030 for the reasons summarized in the staff report, and based on the evidence offered in three nights of hearings, they have satisfied the property size and location requirements. They have satisfied their requirement (c) relating to light/air congestion, property values, et cetera. They have satisfied the public welfare and safety requirement and the unique conditions requirement. . . .

The Board ultimately voted in favor of the Chair's motion. Thereafter, the decision of the Board was finalized in a written opinion that embodied that analysis. We hold the Staff conducted its own analysis and made detailed relevant findings of fact. The Report was not a mere recitation of the application. The Board's decision, likewise, was made with adequate deliberation and consideration. It was not the result of boilerplate language or conclusory statements without a basis. The Opinion was ten pages and detailed its findings with a clear articulation of "the facts found, the law applied, and the relationship between the two." The Opinion specifically references the Board's discussion of the review criteria for granting a ZDBA under § 21.20.030 at the December 18, 2019 special meeting. The Opinion notes the Board's unanimous conclusion that the criteria were satisfied for the reasons mentioned in the Staff Report and that the Board "adopts those findings based on the evidence presented at the hearings."

2. The Board did not premise its decision to approve the ZDBA on an erroneous conclusion of law when it held that the ZDBA requires a less stringent showing of uniqueness and practical difficulty than is required for a variance.

Appellants argue the Board erred in failing to apply the uniqueness standard as defined under Md. Code Ann., Land Use, §4-206(b)(2). Appellants argue, in amending § 21.20.030(A) in 2017 by adopting verbatim portions of § 4-206(b)(2), the legislative intent was to require the same standard for ZBDA applications. Because uniqueness, under variance analysis, pertains to "conditions peculiar to the property," and not the improvements, the Board erred. *North v. St. Mary's Cnty.*, 99 Md. App. 502, 514 (1994). Appellants contend that uniqueness means that the property "in and of itself" is different from surrounding properties such that zoning provisions would impact that property disproportionately. *Rotwein*, 169 Md. App. at 727-28. Appellants further contend that because § 21.20.030(A) adopted language from §4-206(b)(2), it is not a locally adopted standard and Maryland's common law on variances prevails, citing *Dan's Mountain Wind Force, LLC v. Allegany Cnty. Bd. of Zoning Appeals*, 236 Md. App. 483, 491 (2018).

Noreast argues the legislature did not intend to apply variance jurisprudence to § 21.20.030(A), which controls ZBDAs, as § 21.28.050(B) specifically governs variances. Noreast asserts § 21.20.030(A) was amended to be less restrictive, by changing the unique criterion from "conditions . . . unique to the property" to "conditions peculiar to the property." The amendment also removed the requirement that an applicant show that the same conditions are not generally applicable "to other property within the same zoning classification." That requirement remains in the variance statute. As a result, Noreast

contends it was required to establish that "owing to conditions peculiar" to its property, enforcement of the zoning law would result in unnecessary hardship or practical difficulty.

In evaluating whether the Board made an erroneous conclusion of law, "ordinarily give considerable weight to the administrative agency's interpretation and application of the statute that the agency administers." *Montgomery v. E. Corr. Inst.*, 377 Md. at 625–26 (citations omitted). Here, the Board determined compliance with the statute based on its review of the plain statutory language and found that the "uniqueness condition" requirement for a ZDBA was less restrictive. The Board found that the split zoning of the property satisfied that condition.

We note, on review, in examining whether a statute is clear and unambiguous, we look directly at the language. *Heartwood 88, Inc. v. Montgomery Cnty.*, 156 Md. App. 333, 359 (2004). If the language is clear, we need not look beyond the statute. *Id.* While we agree that in the absence of locally adopted standards, Maryland's common law regarding variances would control, we note that here there is a specific ordinance. We note further that the ordinance language clearly outlines the requirements for both a ZDBA and a variance and they are different. As such, our analysis ends.

Assuming, *arguendo*, there is no clear language, we examine the legislative intent. Here, we find the 2017 Staff Report supportive of a legislative intent to require a less restrictive "uniqueness" criterion. The Report submitted to the Commission noted that property owners could not commercially develop their properties because all the properties in this block of Fourth Street were split-zoned and it was difficult for a ZDBA applicant to

distinguish unique conditions that were not applicable to the other properties. The Report recommended amending § 21.20.030(A), and the finalized amendment stated:

> The Board of Appeals may grant a zoning district boundary adjustment based upon the following findings: A. Unique Conditions. Owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty as specified in the zoning law.

As stated in the report, the intent was to adopt a less restrictive criteria. While there was a reference to variances, there is no indication that there was an intent to apply a variance standard to the ZDBA process. Such an interpretation would have been contrary to the report and legislative intent. We hold the Board did not err in its conclusions regarding the necessary criterion for compliance with the statute.

3. The administrative record contains substantial evidence to support the Board's approval of the ZDBA.

Unique Conditions

Appellants argue the record lacked substantial evidence to support the Board's determination because Noreast did not provide evidence that satisfied the unique conditions criteria. They assert there were no "conditions peculiar" to the real property, only evidence related to the improvements thereon. They contend the size and location of the existing buildings are irrelevant and Noreast was inaccurate about the narrowness and size of the lot. They contend that many property owners abutting Fourth Streets have issues with narrowness and that the 2019 Staff Report stated that all of the properties in the Fourth Street commercial area were similarly split-zoned. The City asserts "[m]erely attacking the Board's consideration and application of the elements of the relevant code section by

disagreement and holding an alternative view of the importance of certain elements, is an insufficient basis for overcoming what is seen by the Courts as virtually sacrosanct – the factual conclusions of an administrative agency based on substantial evidence."

The "conditions peculiar" aspect of the uniqueness criterion has been examined by appellate courts in Maryland in several opinions and none of those opinions has taken the limited view espoused by appellants. We further find no requirement in the ordinance that an examination be undertaken only of the real property. Generally, uniqueness requires "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 . . . ." *Rotwein*, 169 Md. App. at 726 (quoting *North*, 99 Md. App. at 514). In *Dan's Mountain*, 236 Md. App. at 494, this Court held that the uniqueness analysis examines the difficulties in strict zoning enforcement where "exceptional narrowness, shallowness, or unusual shape of a specific property, or by reason of exceptional topographic conditions or other extraordinary situations or special conditions" exist (citing *North*, 99 Md. App. at 514–15).

Mr. Arason, the former Director of the Department of Planning and Zoning, testified that the property at issue is the largest of the Fourth Street split-zoned lots, hence it is disproportionately impacted by the 2016 zoning line change which left 4,500 square feet in the residential zone, below the minimum single-family lot size. This condition is not shared by neighboring properties and is a condition peculiar to the property. The property, specifically the 428 Fourth Street building, is also a "contributing structure in the Historic

Cultural Resources report for Eastport." As such, it meets the unusual architectural aspects and practical restrictions imposed by abutting properties.

Appellants next contend that the record lacked evidence that Noreast would be deprived of any reasonable use of the property if the ZDBA was denied and thus, no "practical difficulty" was established. We note, contained in the record, also, is testimony from Mr. Arason, that "[w]ithout having parking, commercial parking, in the [residential] area, what is on the lot now couldn't be rebuilt." He further testified that without the ZDBA, "what's there now couldn't be replaced. It would not have adequate parking to support the buildings and uses that are there now because it would lose enough spaces that they would have to begin truncating uses or doing other things." He stated that the existing buildings are deemed conforming but without the 28 parking spaces the 424 Fourth Street building could not be rebuilt to its deemed conforming past use and size. The split-zoning and the prior owners who developed the existing buildings caused the conditions peculiar to the property. Further, the availability of parking elsewhere is not determinative of whether a ZDBA should be granted.

Public Welfare and Safety

Appellants argue there was no substantial evidence that Noreast satisfied the public welfare and safety requirement. However, according to the record, Noreast, in its application, agreed to construct a ten foot buffer between the relocated spaces and the rear property line. Noreast further noted in its application that the abutting properties adjacent to the requested commercial adjustment area will be used for parking spaces. These

residential spaces cannot be utilized for commercial parking. In addition, each of the residences were more than 60 feet from the rear property line and separated by garages.

Surrounding Properties

Appellants also argue there was no substantial evidence that Noreast satisfied the surrounding properties criterion. We observe that the record contains a Traffic Impact Study that concluded that the existing roadways in the project area can accommodate trips generated by the proposed restaurant. In addition, the City of Annapolis Department of Transportation certified that the net trip generation from the proposed restaurant will not have a significant adverse impact on the roadway network. Because most of the roadway network in Eastport, including Fourth Street, allows parking on both sides of the street, the study's approval of that road network refutes concerns regarding parking congestion.

Appellants contend Noreast did not establish that the proposed use will not have a substantial impact on property values in the neighborhood. Noreast argues the specific use of the portion of the property which is the subject of the ZDBA will continue to be for parking and will not impact parking congestion or property values in the neighborhood. Mr. Arason testified regarding buffering from adjacent properties. Deborah Schwab, a landscape architect, testified regarding proposed vegetation buffering from residential property. Leo Wilson, another architect, testified regarding the proposed location of the kitchen and installation of equipment so as to dimmish noise and odor to neighboring properties.

To be sure, the substantial evidence test "requires us to affirm an agency decision, if, after reviewing the evidence in a light most favorable to the agency, we find 'a reasoning

mind reasonably could have reached the factual conclusion the agency reached.'" *Rotwein*, 169 Md. App. at 727 (citations omitted). In the present case, the record contains an abundance of both testimonial and documentary evidence regarding each statutory factor. We therefore hold there was sufficient evidence.

4. The Board's decision to approve the ZDBA was not arbitrary or capricious when it denied the variance on substantially similar grounds.

Appellants argue that the Board reached contradicting conclusions based on the same set of facts and under similar evaluation criteria when it decided that Noreast failed the variance criteria but satisfied the ZDBA criteria. In considering the variance application, the Board found that the hardship asserted by Noreast does not result from the physical surroundings, shape, or topographical conditions of the property, but from the intended uses and how those uses related to the proposed and existing structures on the property.

In its opinion, the Board determined that any difficulty Noreast faced was due to their own action. Appellants argue it was arbitrary and capricious for the Board to determine Noreast caused the difficulties it faced for a variance while simultaneously determining that Noreast satisfied the ZDBA Unique Conditions criterion which requires that difficulties not be caused by the applicant. The Board determined that the narrowness of the property is common to many property owners abutting Fourth street and that, according to the Department of Planning and Zoning, the property is similar to other parcels on Fourth Street. Even if "conditions peculiar to the property" is not as stringent as

uniqueness, the Board had already found that the conditions provided by Noreast in support of peculiarity are conditions shared by other properties on Fourth Street.

We hold the Board's decision was not arbitrary or capricious. The evidence presented required the Board to base its decision on two distinct codes with two distinct criteria. The Board was not required to wholly accept the facts for one singular determination when two separate ordinance considerations were required.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.