Circuit Court for Baltimore County
Case No. C-03-CV-22-004872

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 499

September Term, 2024

IN THE MATTER OF ANDREW AND SARAH SEGAL

Friedman,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: September 2, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a zoning petition, in which the owner and the contract purchaser of residentially-zoned property sought approval to use the existing dwelling on the property as a synagogue. The petition was opposed by neighboring property owners, including Andrew and Sarah Segal, the appellants in this action. Following a public hearing, the administrative law judge ("ALJ") granted the petition, subject to certain conditions. Appellants noted an appeal to the Board of Appeals for Baltimore County ("Board").

Before the Board, appellants filed a motion to dismiss the petition on grounds that the zoning relief requested was prohibited as a matter of law. The Board deferred a ruling on the motion to dismiss until after the presentation of evidence. Following the hearing, the Board denied appellants' motion and approved the site plan for the property, subject to certain conditions.

Appellants filed a petition for judicial review in the Circuit Court for Baltimore County, which affirmed the decision of the Board. On appeal to this Court, appellants present the following question:

> Did the Board of Appeals err in denying [a]ppellants' motion to dismiss?

For the following reasons, we shall reverse the judgment of the circuit court.

BACKGROUND

Dr. Saman Radparvar is the legal owner of real property located at 3009 Northbrook Road in Baltimore ("the Property"). The Property is zoned Density Residential ("D.R.")

3.5, with the exception of a four-foot-wide "sliver" at the rear property line, which is zoned D.R.5.5.[1]

Section 1B01.1.A. of the Baltimore County Zoning Regulations ("BCZR") enumerates twenty-one uses permitted as of right in D.R. zones of all classifications.[2] § 1B01.1.A.[3] Such uses include single-family detached, semidetached or duplex dwellings; trailers or mobile homes; schools; child-care facilities; hospitals; farms; community garages; and, relevant to this appeal, "[c]hurches, other buildings for religious worship or other religious institutions." § 1B01.1.A.(1)-(21).

Uses permitted as of right are subject to dwelling-type and use restrictions based on the characteristics of existing subdivisions and existing developments. Such restrictions are set forth in § 1B01.1.B., which is divided into three subsections: (1) "residential transition areas," (2) "existing developments," and (3) "existing subdivision tracts." § 1B01.1.B.1.-3. This case involves the first two categories.

[1] In the D.R.3.5 zone, the density is 3.5 dwellings per acre. Baltimore County Zoning Regulations § 100.1. In the D.R.5.5 zone, the density is 5.5 dwellings per acre. *Id.*

[2] "A use permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed." *Hayfields, Inc. v. Valleys Plan. Council, Inc*., 122 Md. App. 616, 639 (1998) (citing *Schultz v. Pritts*, 291 Md. 1, 21 (1981)). "For example, churches and schools generally are designated as permitted uses" and "may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect." *Schultz*, 291 Md. at 21.

[3] Unless otherwise indicated, all statutory references are to the Baltimore County Zoning Regulations ("BCZR").

The proposed conversion of the dwelling on the Property for use as a synagogue (also referred to in the record as a "shul") creates a residential transition area ("RTA"), which is defined as "a 100-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed."[4] § 1B01.1.B.1.a.(1). Development within an RTA is subject to dwelling-type restrictions; setback and buffer requirements; and restrictions on the height, location, and intensity of exterior lighting. § 1B01.1.B.1.e. RTA restrictions do not apply, however, to "[a] new church or other building for religious worship," where (1) a site plan for such use is approved after a public hearing; (2) "the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained"; and (3) the planned improvements "can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." § 1B01.1.B.1.g.(6).

Petition for Special Hearing/Variances and Decision of Administrative Law Judge

In December of 2020, Dr. Radparvar and Ahavat Shalom Congregation, Inc. ("Ahavat Shalom"), the contract purchaser/lessee of the Property (collectively, appellees), filed a petition for a zoning hearing with the Baltimore County Department of Permits, Approvals and Inspections. Appellees requested (1) approval of a site plan for the conversion of the existing single-family dwelling on the Property to a synagogue, and (2) the findings required to invoke the exception to RTA requirements pursuant to

[4] "The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types." § 1B01.B.1.a.(2).

§ 1B01.1.B.1.g.(6), *supra*. In the alternative, appellees requested a variance from RTA buffer and setback requirements. Appellees also requested variances to general setback and parking requirements for non-residential buildings.[5]

The petition was reviewed by several county and state agencies, including the Baltimore County Department of Planning ("Department"). The Department advised it had no objection to the site plan and change in use, conditioned upon review and approval of any proposed lighting, a restriction on signage, and limited on-street parking for use by the synagogue. The Baltimore County Bureau of Development Plans Review commented: "This is a residential neighborhood and there is a school close by. Allowing the requests may cause undue hardship to the neighborhood and the traffic. The site should be redesigned to allow all parking required on site."

A public hearing was held before the Office of Administrative Hearings for Baltimore County. Following the hearing, the ALJ found that the proposed use for a synagogue was exempt from RTA restrictions pursuant to the exception in § 1B01.1.B.1.g.(6). The ALJ further found that denying the requested relief would violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which prohibits land use regulations that "impose[] a substantial burden" on religious exercise unless the regulation is the "least restrictive means of furthering" a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). The ALJ granted appellees' request for a modified parking plan, stating that, while the neighbors had voiced understandable concern

[5] The zoning petition was twice amended, to correct typographical errors and incorrect citations to the zoning code, but the request for relief remained unchanged.

about the lack of parking, the testimony showed that the members of the congregation would either be walking to services or would utilize the nearby elementary school parking lot, per an arrangement between the school and Ahavat Shalom. The ALJ placed several conditions on the grant of relief, which included a requirement that appellees obtain a change of occupancy permit before any further use of the premises; a prohibition on exterior additions or modifications to the dwelling, except as approved by Baltimore County; and a ban on use or occupancy of the Property after 10:00 p.m., except on high holidays.

Appellants appealed the decision of the ALJ to the Board.

Proceedings Before the Board

Prior to the hearing before the Board, appellants filed a motion to dismiss the matter, asserting that use of the Property as a synagogue was prohibited as a matter of law. In support of the motion, appellants cited § 1B01.1.B.2., which places restrictions on land use in "existing developments"[6]:

> In existing developments . . . uses shall be limited to those now lawfully established or to those indicated in the subdivision plans on file with the Department of Permits, Approvals and Inspections, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504.

Appellants argued that it was undisputed that a synagogue was never "lawfully established" on the Property, and therefore, such a use was prohibited as a matter of law. The Board deferred its ruling until the conclusion of the hearing.

[6] The parties agree that the Property is an "existing development" for purposes of § 1B01.1.B.2.

Appellees' witnesses included Stephen Warfield and Mitchell Kellman, both of whom were accepted by the Board as experts in Baltimore County zoning and development regulations. Mr. Warfield testified that the proposed conversion of the existing dwelling on the Property for use as a synagogue would generate an RTA, however, the exception in § 1B01.1.B.1.g.(6) was applicable. According to Mr. Warfield, the proposed improvements were planned in such a way that compliance with RTA requirements for building setbacks and buffer areas would be maintained, to the extent possible.[7] Mr. Kellman opined that the proposed improvements would be compatible with the character and general welfare of the surrounding residential premises because there would be no change in the lot setbacks, the exterior building materials would match existing materials, and the synagogue would serve area residents.

Yaakov Attar, the president of Ahavat Shalom, testified that Ahavat Shalom is a Sephardic congregation that was started in 2013. Mr. Attar explained the difference between Sephardic and Ashkenazic congregations as follows:

> Sephardic Jews mostly come from the Middle East and some countries in Latin America, as opposed to Ashkenazic Jews, which mostly immigrated here from Europe. . . . [B]etween Sephardic and Ashkenazic, we have kind of different customs, our prayers are different, . . . the way we pronounce words are different, our culture is different. So, there's a lot of different things that come with being a Sephardic Jew as opposed to an Ashkenazic Jew.

[7] Mr. Warfield stated that no lighting had been planned at that point, therefore, his opinion did not address RTA restrictions on height, design, placement, and intensity of lighting fixtures in an RTA buffer area. *See* § 1B01.1.B.1.e.(4).

Mr. Attar stated that there were no Sephardic schools in the area, so children of Sephardic Jews attended Ashkenazic schools. He continued: "But our shul is where we . . . are able to give over [Sephardic] heritage . . . to our kids and to future generations. So, it's very important for us to be able to continue that and have a place that we can give that over."

From its inception in 2013, to the end of 2020, Ahavat Shalom held Sabbath services in an art studio of a local senior center. The room accommodated a maximum of forty-nine chairs. For high holiday services, when attendance increased beyond that capacity, Ahavat Shalom rented temporary space from local Ashkenazic shuls.

Ahavat Shalom did not renew its lease with the senior center at the end of 2020 because it had outgrown the art studio and there was no other available space that would accommodate its members. At the time of the hearing in March of 2022, sixty to sixty-five people attended Sabbath services.

Ahavat Shalom first used the dwelling on the Property for high holiday services in September of 2020. At that time, other synagogues did not have extra space available for short-term rental. Dr. Radparvar, one of the founding members of Ahavat Shalom, had purchased the Property in 2017, as a potential location for a synagogue.

Mr. Attar explained that Orthodox Judaism laws prohibit driving from sunset to sunset on the Sabbath and major holidays, so a synagogue must be centrally located and within walking distance of its members. He testified that the location of the Property was the "most suitable" place for Ahavat Shalom to hold services because it was "walkable for all or [a] majority of [its] members[.]" To address lack of parking for services and other functions at times when driving was permitted, Ahavat Shalom had an arrangement with a

nearby elementary school that allowed members to park on school grounds from 7:00 p.m. to 10:00 p.m. Sunday through Thursday; and from 5:00 p.m. on Friday to 10:00 p.m. on Saturday.

On cross-examination, counsel for appellants questioned Mr. Attar at length about Ahavat Shalom's efforts to locate suitable space elsewhere. Counsel showed Mr. Attar a printout from the website for the senior center that purported to demonstrate that event space was available. Mr. Attar testified that one of the rooms was already being used by another shul for Sabbath services but may have been available at other times during the week. According to Mr. Attar, other rooms advertised for rent on the center's website were either too small or were outfitted with television screens or decor that rendered them ill-suited for Sabbath services.

Mr. Attar was also cross-examined about the location of other Sephardic synagogues in the area. According to Mr. Attar, the only synagogues within a fifteen-minute walk from the Property are Ashkenazic. There are three other Sephardic synagogues in the area, one of which is approximately a twenty-minute walk from the Property.

Several neighbors, including Dr. Segal, testified in opposition to the petition. Most of the opposition's concerns focused on traffic safety and availability of street parking. Two of the witnesses who testified in opposition claimed that there were other Sephardic shuls that were easily accessible to area residents.

Following the conclusion of the evidentiary portion of the hearing, the parties submitted post-hearing memoranda. In support of their motion to dismiss, appellants reiterated their argument that § 1B01.1.B.2. precluded use of the Property for a synagogue:

> [t]his Board need not address the relief requested, and should dismiss the [p]etition outright, because the use of the subject property for a synagogue is not permitted, as a matter of law, under [§ 1B01.1.B.2.] That provision, clearly and unambiguously, limits the uses allowed in this [existing] subdivision . . . to only those that are either indicated in the recorded subdivision plan or lawfully established at the time of the provision's enactment . . . . A synagogue is neither of these uses. The facts necessary for the Board to reach this conclusion are not in dispute.

Appellants further maintained that the issue before the Board did not invoke RLUIPA, which applies where a substantial burden on religious exercise is imposed "in the implementation of a land use regulation . . . under which a government makes . . . *individualized assessments of the proposed uses for the property involved*." 42 U.S.C. § 2000cc(a)(2)(C) (emphasis added). Appellants argued:

> Here, the issue for the Board's consideration – whether the use of the [Property] for a religious institution is allowed under [§ 1B01.1.B.2] – is one that does not require any review or assessment of the nature of the proposed use or any of its details, or even that the use is a synagogue as opposed to some other use. The issue simply requires an objective determination of whether this category of use is one that is reflected in the subdivision plan or one that has been lawfully established. Under these circumstances, [RLUIPA] is not implicated.

The Decision of the Board

The Board issued a twenty-one-page written opinion denying appellants' motion to dismiss and approving appellees' petition for special hearing and variances, subject to conditions. With respect to the motion to dismiss, the Board concluded that the phrase "now lawfully established" in § 1B01.1.B.2. did not operate to prohibit any use that was permitted as of right. The Board reasoned that, although appellants' interpretation of § 1B01.1.B.2. was "justified by the literal words," it "would lead to the conclusion that any

alternative development is forever barred." The Board determined that such a result would be "illogical."

Alternatively, the Board concluded that RLUIPA would "override strict compliance" with any applicable zoning restrictions. As a threshold matter, the Board found that Ahavat Shalom's efforts to establish a synagogue on the Property were reasonable. The Board noted that a building for religious worship was permitted as of right in the D.R.3.5 zoning district; there were "many" small- and moderate-sized congregations in the surrounding area that were operating from buildings that were originally residential dwellings; and, therefore, the Property was purchased with the reasonable expectation that it could be used as a synagogue. The Board further found that Ahavat Shalom had no other place to hold services, and that the "absence of an adequate facility is a 'burden' under RLUIPA[.]"

The Board then granted appellees' petition for special hearing and variances subject to the following conditions: (1) the exterior of the dwelling cannot be modified in any way that alters the residential style of the building; (2) no services or events can be held after 10:00 p.m., except for the Sabbath and High Holy Days; and (3) Ahavat Shalom must make good faith efforts to maintain adequate off-street parking.

Petition for Judicial Review

Appellants filed a petition for judicial review of the Board's decision. The circuit court held that the Board properly denied appellants' motion to dismiss. The court then affirmed the Board's decision on the merits. This appeal followed.

PARTIES' CONTENTIONS

Appellants claim that a synagogue is not permitted on the Property because the Property was not used for religious worship, nor was it designated for that use on the subdivision plan, at the time of the enactment of § 1B01.1.B.2. Appellants further maintain RLUIPA was inapplicable because the Board's ruling on that issue did not require an "individualized assessment" of the details of the proposed use. Therefore, according to appellants, the court erred as a matter of law in denying their motion to dismiss.

Appellees maintain that appellants' interpretation of § 1B01.1.B.2. is "overly restrictive" and "would lead to absurd results." Appellees further contend that such an interpretation would "run[] afoul of RLUIPA[.]"

STANDARD OF REVIEW

In reviewing the final decision of an administrative agency such as a county board of appeals, the appellate court "looks through the circuit court's . . . decision[], although applying the same standards of review, and evaluates the decision of the agency." *People's Couns. for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007). Generally, "[a] court's 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." *United Parcel Serv., Inc. v. People's Couns. for Balt. Cnty.*, 336 Md. 569, 577 (1994). "In reviewing for legal error, we 'must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.'" *Cinque v. Montgomery Cnty. Plan. Bd.*, 173 Md. App. 349, 360 (2007) (cleaned up)

(quoting *E. Outdoor Advert. Co. v. Mayor & City Council of Balt.*, 128 Md. App. 494, 514 (1999)). The appellate court may reverse an agency decision "where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *Surina*, 400 Md. at 682.

The only issue before this Court is whether the Board committed legal error in denying appellants' motion to dismiss. Because the Board deferred ruling on the motion until after the presentation of evidence, it is treated as a motion for summary judgment. *See Reed v. Balt. Life Ins. Co.*, 127 Md. App. 536, 570-71 (1999). *See also* Md. Rule 2-322(c) (stating that a motion to dismiss shall be treated as a motion for summary judgment if matters outside the pleading are presented to and not excluded by the court).

Summary judgment is appropriate only where (1) the material facts are not subject to genuine dispute, and (2) the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court reviews a ruling on a motion for summary judgment without deference, "examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). "Evidentiary matters, credibility issues, and material facts which are in dispute cannot properly be disposed of by summary judgment." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 174 (2001).

DISCUSSION

I.

A.

"When we interpret a local ordinance," such as § 1B01.1.B.2., "we apply the same canons of construction to the local ordinance as we apply to the interpretation of state statutes." *Anne Arundel Cnty. v. 808 Bestgate Realty, LLC*, 479 Md. 404, 420 (2022) (citing *Howard Rsch. & Dev. Corp. v. Concerned Citizens for Columbia Concept*, 297 Md. 357, 364 (1983)). "'The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the [legislative body].'" *Id.* (quoting *Lockshin v. Semsker*, 412 Md. 257, 274 (2010)). "[W]e look first at 'the statute's plain language as ordinarily understood' because that is '[t]he most reliable indicator of the [legislative] intent.'" *Bd. of Liquor License Comm'rs for Balt. City v. Austin*, 232 Md. App. 361, 368 (2017) (quoting *Thanner Enters., LLC v. Balt. Cnty.*, 414 Md. 265, 277 (2010)). "If the [legislative body's] intentions are evident from the text of the statute, our inquiry normally will cease and the plain meaning of the statute will govern." *Comm. for Responsible Dev. on 25th St. v. Mayor & City Council of Balt.*, 137 Md. App. 60, 77 (2001) (citing *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 251 (2000)).

"[A] provision within an integrated statutory scheme must be understood in its broader context and, to the extent possible, harmonized with the other provisions." *Austin*, 232 Md. App. at 369 (citing *Balt. Gas & Elec. Co. v. Pub. Serv. Comm'n of Md.*, 305 Md. 145, 157 (1986)). Accordingly, "[w]e construe the statute 'as a whole so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.'"

808 Bestgate Realty, 479 Md. at 420 (quoting *Koste v. Town of Oxford*, 431 Md. 14, 25-26 (2013)). To the extent possible, we "avoid construing a statute in a manner that would produce farfetched, absurd, or illogical results which would not likely have been intended by the enacting body." *Kilmon v. State*, 394 Md. 168, 177 (2006).

B.

Zoning was first introduced in Baltimore County in 1945. *See Mueller v. People's Couns. for Balt. Cnty*., 177 Md. App. 43, 69 (2007). Comprehensive rezoning regulations were enacted in 1955. *Id.* The 1955 zoning code divided the county into twelve zoning districts, including six residential zoning districts. BCZR § 100.1 (1955).[8] Permitted uses in all six residential zoning districts as of 1955, other than various types of dwellings, included, *inter alia*, churches and other buildings for religious worship.[9] As stated previously, the current zoning code permits "[c]hurches, other buildings for religious worship or other religious institutions" in all D.R. zones, subject to certain restrictions. § 1B01.1.A.3.

The provision at issue here, § 1B01.1.B.2., was first enacted by the Baltimore County Council ("County Council") in 1970, as Bill 100.[10] *See* 1970 Laws of Balt. Cnty., at 149. To reiterate, it provides:

[8] The 1955 Baltimore County Zoning Code is available in the "Scanned Collections" database of the Thurgood Marshall State Law Library, and can be found here: https://perma.cc/F5KX-QKCS (last visited August 11, 2025).

[9] *See* BCZR §§ 200.3, 203.1, 206.1, 209.1, 212.1, 215.1 (1955).

[10] Appellants claim that § 1B01.1.B.2. was first enacted on December 6, 2010, as Bill. No. 122-10. They are mistaken. That bill merely amended § 1B01.1.B.2. to change the name

> Use regulations in existing developments. In existing developments as described in Subsection A.1 of Section 1B02.3, *uses shall be limited to those now lawfully established* or to those indicated in the subdivision plans on file with the Department of Permits, Approvals and Inspections, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504.

§ 1B01.1.B.2. (emphasis added).[11]

We agree with appellants that a use "now lawfully established" means a permitted use established on a particular parcel of land at the time § 1B01.1.B.2. was enacted, and not (as appellees suggest) a use permitted as of right. Appellees' interpretation renders § 1B01.1.B.2. superfluous and meaningless, as it places no limitations on, nor otherwise affects, uses permitted as of right in § 1B01.1.A., *supra.* Moreover, appellees' interpretation of "lawfully established" use is incompatible with common sense. We perceive no reason for the County Council to qualify its own actions in permitting a particular use of land as "lawful[.]"

Had the County Council intended the provision to allow all land in existing developments in D.R. zones to be used, indefinitely, for any of the purposes permitted as of the date the regulation was enacted, whether or not such use was ever established on a

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of the department where subdivision plans are filed from "Department of Permits and Development Management" to "Department of Permits, Inspections, and Approvals." 2010 Laws of Balt. Cnty., at 378.

[11] As enacted in 1970, § 1B01.1.B.2. is virtually identical to the current provision, except that it referred to "subdivision plans on file with the *Office of Planning and Zoning*[.]" 1970 Laws of Balt. Cnty., at 149 (emphasis added). The current version refers to "subdivision plans on file with the *Department of Permits, Approvals and Inspections*[.]" § 1B01.1.B.2. (emphasis added).

particular parcel of land, we presume it would have used language to that effect. Indeed, the County employed such language in the following provision, which was enacted at the same time as § 1B01.1.B.2.:

> Use regulations for existing subdivision tracts. On subdivision tracts for which tentatively approved plans remain in effect as described in Subsection A.2 of Section 1B02.3, the uses permitted shall be those indicated in the plan or, where the use is not indicated and if not inconsistent with the plan, the *uses shall be those permitted under zoning regulations in effect at the time* the tentative approval was granted.

§ 1B01.1.B.3. (emphasis added).

Applying the rules of statutory construction, we conclude that § 1B01.1.B.2. restricts use of land in existing developments to uses lawfully established on a particular parcel of land as of August 5, 1970, when § 1B01.1.B.2. went into effect. It was undisputed that there was no synagogue or other religious use lawfully established on the Property at that time. Because no variance from § 1B01.1.B.2. was requested, the Board lacked discretion to approve the proposed site plan. Therefore, appellants were entitled to judgment as a matter of law. The Board erred in denying the motion to dismiss/motion for summary judgment.

II.

The Board provided an alternative rationale for its decision as a whole, stating, in the event its interpretation of "technical zoning matters" was incorrect, the provisions of RLUIPA would "override strict compliance" with any zoning restrictions. Appellees rely on the Board's alternative conclusion as alternative grounds upon which to affirm the ruling

at issue. Appellees' reliance is misplaced. We agree with appellants that, under the facts of this case, RLUIPA was not applicable.

In the context of land use law, and as it pertains to this appeal, "RLUIPA prohibits governments from imposing or implementing land use regulations in a manner that imposes a substantial burden on religious exercise."[12] *Redeemed Christian Church of God (Victory Temple) Bowie, Md. v. Prince George's Cnty., Md.*, 17 F.4th 497, 506 (4th Cir. 2021) (citing 42 U.S.C. § 2000cc(a)(1)(A), (B)). "[A] land use regulation, or a zoning authority's application of it, imposes a substantial burden on religious exercise only if it leaves the aggrieved religious institution without a reasonable means to observe a particular religious precept." *Trinity Assembly of God of Balt. City, Inc. v. People's Couns. for Balt. Cnty.*, 407 Md. 53, 96 (2008). Such a law does not violate RLUIPA, however, if the government demonstrates that the imposition of the burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

[12] At oral argument, counsel for appellees referred in passing to a different subsection of RLUIPA that prohibits governments from imposing or implementing a land use regulation (1) "in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution[,]" or (2) "that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc(b). We decline to consider theories regarding the applicability of RLUIPA that were not briefed on appeal. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 435 n.15 (2018) (declining to consider an argument raised for the first time at oral argument); *Uninsured Emps.' Fund v. Danner*, 388 Md. 649, 664 n.15 (2005) (stating that the Court need not address arguments raised at oral argument that were not briefed on appeal).

Significantly, the "substantial burden" provision of RLUIPA is not implicated in every case involving religious use of land. Relevant here, a "substantial burden" analysis under RLUIPA is triggered where:

> the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, *individualized assessments of the proposed uses* for the property involved.

42 U.S.C. § 2000cc(a)(2)(C) (emphasis added).[13]

"[A] governmental entity makes an individualized assessment – thus triggering RLUIPA – 'when [it] may take into account the particular details of an applicant's proposed use of land when deciding to permit or deny that use.'" *Victory Temple*, 17 F.4th at 507 (quoting *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 986 (9th Cir. 2006)). *Accord Trinity Assembly*, 407 Md. at 90. "[W]hile the mere application of a neutral and generally applicable zoning law likely would not trigger RLUIPA . . . , application of a zoning law that permits a governmental entity to consider the applicant's intended use of a property, applying at least partly subjective criteria on a case-by-case basis, likely would." *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 193 (2d Cir. 2014) (citing *Guru Nanak Sikh Soc'y*, 456 F.3d at 987).

[13] Although not relevant here, the "substantial burden" provision of RLUIPA also applies where (A) "the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;" or (B) "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability[.]" 42 U.S.C. § 2000cc(a)(2)(A)-(B).

Appellants maintain that RLUIPA was not applicable to the Board's decision on their motion because the issue of whether the proposed use of the Property is allowed under § 1B01.1.B.2. did not require the Board to consider any particular details of the proposed use. Rather, according to appellants, a ruling on the motion "simply required an objective, mechanical determination" of whether the proposed use was reflected in the subdivision plan or was lawfully established when § 1B01.1.B.2. was enacted. We agree.

As counsel for appellants clarified at oral argument, appellants do not challenge the Board's decision on the merits. Consequently, the narrow issue before this Court is whether the Board erred in denying appellants' motion to dismiss/motion for summary judgment, which was based solely on § 1B01.1.B.2. In deciding whether, as a matter of law, § 1B01.1.B.2. prohibited use of the Property for a synagogue, the Board was not required to evaluate any subjective factors or particular details of the proposed use. The only question before the Board was whether the category of use proposed was lawfully established on the Property or indicated in the subdivision plans at the time § 1B01.1.B.2. was enacted.[14] Therefore, RLUIPA does not apply. *Compare Trinity Assembly*, 407 Md. at 90-91 (stating that a request for a variance "necessarily entails an individualized assessment" of whether the property is unique and whether strict compliance with zoning

[14] As appellants point out, it is immaterial that the Board, after denying the motion to dismiss/motion for summary judgment, proceeded to make an individualized assessment of the Property for purposes of deciding whether RTA restrictions applied and whether requested variances to general parking and setback regulations should be granted. As we have already concluded, § 1B01.1.B.2. prohibits any use not lawfully established or indicated on subdivision plans as of 1970. Absent a request for a variance from § 1B01.1.B.2., it was unnecessary for the Board to consider particular details of the proposed use.

law would result in practical difficulty or unnecessary hardship); *Victory Temple*, 17 F.4th at 507 (holding that RLUIPA was applicable to county's denial of church's request for water and sewer category change because decision required assessment of features of proposed development, including size of new church and parking lot, condition of nearby roadways, and compliance of the property with other regulations); *Guru Nanuk Sikh Soc'y*, 456 F.3d at 986-87 (holding that county's denial of conditional use permit for church was subject to RLUIPA because decision required consideration of any potential negative impact to adjoining properties and uses).

CONCLUSION

By deferring a ruling on the motion to dismiss until after the presentation of evidence, the motion is treated as a motion for summary judgment. The material facts relevant to appellants' motion were not in dispute. There was no evidence that a religious use was established on the Property or indicated on the subdivision plans at the time § 1B01.1.B.2. was enacted. The Board was without authority to approve appellees' request to approve the proposed site plan absent a request for a variance from § 1B01.1.B.2. The Board's decision on appellants' motion did not require an individualized assessment of particular details of the proposed development, therefore RLUIPA was not implicated. On the facts of this case, appellants were entitled to judgment as a matter of law. The Board erred in denying appellants' motion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. COSTS TO BE PAID BY APPELLEES.