Circuit Court for Anne Arundel County
Case No.: C-02-CV-23-002189

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 979

September Term, 2024

WCT PROPERTIES

v.

ANNE ARUNDEL COUNTY

Reed,
Zic,
Kenney, James A. III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: February 19, 2026

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

This case began when WCT Properties, LLC, ("WCT" or "appellant") applied to Anne Arundel County's Office of Administrative Hearings for a zoning variance to build a single-family home on an existing substandard lot in the County. The variance was granted, and the County appealed to the County's Board of Appeals (the "Board"). The Board denied the variance, and WCT sought judicial review in the Circuit Court for Anne Arundel County. That court reversed and remanded to the Board. On remand, the Board, in a split decision, again denied the variance, and WCT again sought judicial review in the circuit court. The circuit court affirmed the Board's decision, and WCT now seeks judicial review in this Court. It presents two issues, which we have slightly rephrased as follows:

I. Whether the Board erred in denying WCT's variance application because the Board's findings were not supported by substantial evidence that the variance would alter the essential character of the neighborhood, impair the use of development of adjacent properties, or be detrimental to the public welfare.

II. Whether the Board's ruling must be reversed because the County is equitably estopped from denying the variance.

For the following reasons, we reverse and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

WCT is solely owned by William Trevillian, a Maryland attorney who lives in Anne Arundel County. In July 2019, WCT purchased two contiguous, undeveloped lots on Hansel Drive in Millersville, Maryland, identified as Parcels 26 and 1. The zoning in the area where the lots are located is Residential Low Density ("RLD").

Under the Anne Arundel County Code ("AAC Code"), the minimum lot size for a residential lot in an RLD zone is 40,000 square feet. § 18-4-401.[1] Parcel 26 is 40,013 square feet (.88 acres). Parcel 1 is 39,398 square feet (.87 acres), which is substandard by 602 square feet.

The current lot size requirement has rendered many of the prior existing lots in the County substandard. To address this problem, the AAC Code requires contiguous substandard unimproved lots to be merged to create lots that meet the area requirements or into lots that are less non-conforming under the zoning. *Stansbury v. Jones*, 372 Md. 172, 189-90 (2002). Article 18, § 4-202, titled, "Use and merger of unimproved lots of substandard area or dimensions," provides:

> (b) **When dwelling on substandard lot generally permitted or prohibited**. A dwelling may be constructed on a lot that does not comply with the minimum area or dimensional requirements of the zoning district in which the lot is located if the lot complied with any applicable minimum area and dimensional requirements at the time it was created, except that in the absence of compliance with subsection (c), a dwelling may not be constructed if the lot was contiguous to and under the same ownership as one or more improved lots on January 1, 1987, unless the lot or combination of lots is a minimum of 20,000 square feet and is being developed for one single family-detached dwelling.
>
> (c) **Exception to general prohibition**. A dwelling may be constructed on a lot that was contiguous to and under the same ownership as one or more improved lots on January 1, 1987 if (1) the lot is served by public water and sewer or (2) the lot is merged with contiguous unimproved lot or lots to create a lot that complies with or comes as close as possible to complying with the minimum area requirements of the zoning district in which the lot is located and the owner executes and records a lot merger agreement as a condition precedent to receiving a building permit of the dwelling.

[1] All code references are to the AAC Code, unless otherwise specified.

When the substandard lot cannot be merged with a contiguous substandard unimproved lot, the AAC Code provides requirements for a variance. Article 3, § 2-207 of the AAC Code, governing variances, states:

> (a) **Generally**. The Board of Appeals may vary or modify the provisions of Article 18 of this Code when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only upon an affirmative finding that:
>
> (1) because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with Article 18 of this Code; or
>
> (2) because of exceptional circumstances other than financial consideration, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

See also Md. Code Ann., Land Use § 4-206 (granting general authority to local authorities to grant variances).

The Board may not grant a variance unless it finds that the land is unique or there are exceptional nonfinancial circumstances that cause the owner to face practical difficulties or unnecessary hardship that are not self-imposed. *See Richard Roeser Pro. Builder, Inc. v. Anne Arundel Cnty.*, 368 Md. 294, 314 (2002). Particularly relevant here is subsection (e) of § 3-2-207, which provides that, before granting a variance, the Board must find that:

> (1) the variance is the minimum variance necessary to afford relief;
>
> (2) the granting of the variance will not:

> (i) **alter the essential character of the neighborhood or district in which the lot is located**;
>
> (ii) **substantially impair the appropriate use or development of adjacent property**;
>
> (iii) reduce forest cover in the limited and resource conservation areas of the critical area;
>
> (iv) be contrary to acceptable clearing and replanting practices required for development in the critical area or bog protection area; or
>
> (v) **be detrimental to the public welfare**.

(Emphasis added.) As we will explain, subsections (e)(2)(i), (ii), and (v) are of particular relevance in this case.

Parcels 1 and 26 are contiguous lots that have been under the same ownership since at least 1943. Neither is served by public water or sewer. Both were undeveloped when WCT bought them in 2019. Parcel 1 did not meet the minimum area requirement, but Parcel 26 did. Parcel 26 also had a completed percolation test. WCT obtained a building permit for a house on Parcel 26. In addition to the building permit for developing Parcel 26, the Anne Arundel County Department of Inspection and Permits issued WCT permits to install septic systems on both Parcel 26 and Parcel 1.[2] WCT sold the improved Parcel 26 on December 21, 2020.

[2] Because a conventional septic system would not work for either parcel, WCT engaged an out-of-state company with a special boring rig needed to install the appropriate septic systems to install both systems at the same time. WCT paid $23,000 to install the septic system on Parcel 1.

When WCT applied for a grading permit for Parcel 1, the County indicated that an area variance would be necessary to build a house on that parcel. WCT filed the variance application, and the County's Office of Administrative Hearings ("OAH") conducted a hearing. Mr. Trevillian and an engineer, Danny Boyd, testified in favor of the variance. Sara Anzelmo, a zoning analyst with the Office of Planning and Zoning ("OPZ"), and several homeowners living on Hansel Drive (the "Homeowners") opposed it. OAH granted the variance, finding that WCT would suffer an "unwarranted hardship" if the variance was not granted and that WCT met the requirements of § 3-2-207(a) and § 3-2-207(e).[3]

First Board Decision

The County and the Homeowners appealed OAH's decision to the Board. *See* § 3-2-104(a) ("A person aggrieved by a decision of the Administrative Hearing Officer who was a party to the proceedings may appeal the decision to the Board of Appeals[.]"). On March 10, 2022, the Board held an evidentiary hearing at which the same persons who testified at the OAH hearing testified.

Testifying as both a fact witness and an expert witness on "title real estate," Mr. Trevillian stated that WCT planned to build the same size house on Parcel 1 as it had on Parcel 26. Acknowledging flooding had occurred on Hansel Drive in November 2020, he stated that the storm was the largest "November storm since 1967." As to the seven

[3] The hearing officer noted that neither Parcel 26 nor Parcel 1 met the 150-foot width requirement, but the County had not required WCT to request a variance, and it had granted WCT a building permit for Parcel 26.

residential lots on Hansel Drive, he agreed that Parcel 1 and Parcel 26 were the only lots under an acre.

WCT's need for a variance, in his view, indicated a change in County policy regarding substandard lots. He explained that, thirteen years earlier, when building his personal home in the County, his merger of several substandard lots left one substandard lot for which the County granted a building permit without requiring a variance.

Mr. Boyd, who was accepted as an expert in civil engineering, testified that the house WCT proposed to build on Parcel 1 was in keeping with the other houses in the neighborhood. In addition, he stated that the size of Parcel 1 was "compatible" with the other lots on Hansel Drive and lots in the surrounding subdivisions, which are between .6 of an acre to 1.3 acres.[4]

Victoria Walsh and Brian Runk own Parcel 377, which borders Parcel 1. Ms. Walsh testified at the first Board hearing that she operates a micro-farm on the property and the produce is sold at a farmers market and online. She spoke to the damage to Parcel 377 caused by the November 2020 flood, which occurred when Parcel 26 was being developed. Ryan Miller, who purchased Parcel 26 from WCT, testified that, since moving there, he

[4] Exhibits submitted by WCT at the first Board hearing indicate that Parcels 1 and 26 are narrow, rectangularly shaped lots. Those two lots, along with several others (five of which are improved with houses), border the east side of Hansel Drive. The land to the west of Hansel Drive is primarily used for agriculture, and the land behind the Hansel Drive houses to the east is zoned R1 and is subdivided. RLD and R1 zones have the same minimum lot size requirement of 40,000 square feet, but the required minimum width and setbacks are slightly more in RLD zones. *Compare* § 18-4-401(a) (RLD districts) and § 18-4-501 (R1 districts).

had noticed the failure of water to drain off the property and to accumulate around the house. His concern was that another house could worsen the flooding potential.

Ms. Anzelmo of OPZ testified that, under the AAC Code, Parcel 26 could be developed without merging it with Parcel 1. But by developing Parcel 26 first, WCT risked not being able to later obtain the variance to develop Parcel 1. Thus, she viewed the need for a variance as "self-created." She stated that Parcel 1 was "significantly smaller" than the other RLD-zoned lots "in the immediate area" and that building a home on it would alter the essential character of the neighborhood.[5]

On June 6, 2022, the Board issued its opinion. It found that WCT had failed to show that the parcel was unique or that a variance was necessary to avoid practical difficulties or unnecessary hardship and that the need for the variance was self-created by not merging Parcel 1 into Parcel 26. *See* § 3-2-207(a). The Board rejected Mr. Trevillian's previous substandard-lot experience as a reason for not having to request a variance now. It noted that, as an attorney familiar with land use, Mr. Trevillian knew that developing Parcel 1 would require a variance, and he took a business risk that it would be granted. After finding that WCT had failed to meet the requirements in § 3-2-207(a), the Board addressed the applicable § 3-2-207(e) factors. It found that granting the variance would: (1) alter the essential character of the neighborhood because the lot is "significantly smaller" than the other lots in the neighborhood; (2) substantially impair the use of adjacent properties by

[5] A report prepared by OPZ was admitted into evidence but was not included in the record.

increasing the density of a neighborhood already subject to storm drainage issues; and (3) be detrimental to the public welfare because WCT provided no evidence that it would not be detrimental to the public welfare. *See* § 3-2-207(e)(i), (ii), (v).

The First Circuit Court Decision

WCT appealed the Board's decision to the Circuit Court for Anne Arundel County. *See* AAC Code Charter § 604 (providing that any party aggrieved by a decision of the Board may appeal to the Circuit Court of Anne Arundel County). On March 14, 2023, the circuit court, in its written order, found: that the Board had "misinterpreted the law as it relates to 'self-imposed hardship'" and the lot-merger law, that WCT had satisfied the requirements of § 3-2-207(a), and that WCT was entitled to seek a variance under § 3-2-207(a)(2) of the AAC Code. It remanded to the Board for it to reconsider three particular factors in § 3-2-207(e) in light of its ruling. The circuit court's decision was not appealed.

The Second Board Decision

At the hearing on remand, Jerome Tolodziecki, an expert in civil engineering and land development, and Joseph Rudder, an expert in land planning and development, testified for WCT. Mr. Tolodziecki explained: that granting the variance would not substantially impair the use/development of the adjacent properties because that property was already developed with single-family detached homes; that all setback requirements for Parcel 1 were met; and that the 602 square foot minimum lot size discrepancy of Parcel 1 would not be noticeable. He further testified that, for those reasons, and because the parcel has neither steep slopes nor sensitive environmental features, granting the variance would not be detrimental to the public welfare. It was his opinion that the 2020 flooding

was caused by the inadequacy and blockage of a culvert pipe in front of the Walsh/Runk property and not by the development of Parcel 26, but he acknowledged that his investigation was three years after the flooding. It was his view that changes to WCT's original grading plan would better address any storm water management concerns. He did not consider the different existing sizes of the various parcels on Hansel Drive to be relevant to an area variance request.

Mr. Rudder testified that the properties on Hansel Drive and the surrounding areas were all improved with single-family detached dwellings, with the exception of a county-owned maintenance facility and a church at the top of Hansel Drive. It was his opinion that "[a]n area variance has generally little to no effect on the character of the neighborhood" and that the requested variance in this case would not alter the essential character of the single-family residential neighborhood. Moreover, he stated Parcel 1's missing 602 square feet would "not [be] perceptible[.]" When he was asked whether the proposed house on Parcel 1 would be, in regard to distance between houses, similar to other houses in the neighborhood, he responded that, when considering an area variance, the key factor is whether the proposed dwelling met the required "criteria for setbacks." In regard to what constituted the neighborhood, he testified that it included the parcels on the west side of Hansel Drive (one of which was a commercially zoned lot in a C-2 zone, and a farm in an RLD zone), and those on the east side of Hansel Drive (one of which was a commercial building and others were "single-family detached lots of varying sizes").

Ms. Walsh, owner of Parcel 377, testified that the houses on Hansel Drive and in the surrounding neighborhoods are more spaced out, and that nothing would match the

closeness of the proposed house on Parcel 1 to the one on Parcel 26 because most of the other houses on Hansel Drive are separated from each other by more than an acre. Because the 2023 flooding was worse than the one in November 2020, she opined that it was not in the public interest to keep building houses in an area that keeps flooding. Mr. Runk, the co-owner of Parcel 377, testified that he and others on Hansel Drive moved there because they wanted space and not to live in a suburb.

Mr. Miller and Erin Pollitt, now the owners of Parcel 26, testified that the 2023 flooding filled their basement with two feet of water and came with such force it "burst[]" the basement door off its hinges. The cost exceeded $10,000. Both testified that the larger culvert proposed by WCT "may be" helpful, but in their opinion, it would not have lessened the 2023 flood when the nearby creek overflowed. Ms. Pollitt stated that building another home where there is such flooding would be "terrifying" and "negligent."

Ms. Anzelmo of OPZ again testified that Parcel 1 was substandard in area and width and that a variance was required because it was not merged with Parcel 26. In closing, Lauren Troxell, the attorney representing the County, stated that OPZ's initial report was still before the Board and that nothing had changed since the first hearing. In regard to whether the variance would alter the essential character of the neighborhood, she stated that the State Department of Assessments and Taxation indicates that the average parcel

size on Hansel Drive is 4.29 acres and the average size "of the lots contiguous to Hansel Drive is 3.09 acres."[6]

On October 12, 2023, the Board issued a revised opinion and order denying the variance. It stated that granting the variance would alter the essential character of the neighborhood because the substantial discrepancy in the size of Parcel 1 is "wildly out of character" in the RLD zone, the minimum density requirement of which is one dwelling per five acres. According to the Board, the RLD zone was "specifically created after due consideration by the County Council to preserve the rural heritage of Anne Arundel County" and that parcel density was its "driving consideration[.]" The Board also found that the density increase in a community subject to drainage issues would impair the use of the adjacent properties, and WCT had made no effort to lessen any flooding in the future. According to the Board, WCT's bald allegations failed to meet its burden to prove that granting the variance would not be detrimental to the public welfare.

WTC again sought judicial review in the circuit court. When that court affirmed the Board, WCT appealed to this Court.

ANALYSIS

WCT contends that the Board erred in denying its request for a "very small area variance" on grounds that it would: 1) change the essential character of the neighborhood; 2) substantially impair the use/development of adjacent properties; and 3) be a detriment

[6] It is unclear which parcels she is including. The seven residential lots on the east side of Hansel Drive appear to average less than two acres. Only Parcels 619 and 620 exceed two acres.

to the public welfare. In addition, it contends that the Board is estopped from denying the variance. The County and the Homeowners have not filed an appellate brief in the case.

Standard of Review

When reviewing an administrative agency decision, we look through the decision of the circuit court and review only the decision of the agency. *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96 (2001). "Under settled Maryland law," that review "is limited to those issues and concerns raised before the administrative agency" and whether its decision was legally correct and supported by substantial evidence. *Chesley v. City of Annapolis*, 176 Md. App. 413, 426 n.7 (2007) (quotation marks and citation omitted). "[S]ubstantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Piney Orchard Cmty. Ass'n v. Md. Dep't of Env't*, 231 Md. App. 80, 91-92 (2016) (quotation marks and citations omitted), *cert. denied*, 452 Md. 18 (2017). We only uphold agency decisions that are "sustainable on the agency's findings and for the reasons stated by the agency." *Chesley*, 176 Md. App. at 426 n.7 (quotation marks and citation omitted). To do otherwise "would allow the courts to resolve matters *ab initio* that have been committed to the jurisdiction and expertise of the agency." *Id.* (quotation marks and citation omitted).

In applying the substantial evidence test, we "review the agency's decision in the light most favorable to the agency, since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity." *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210-11 (quotation marks and citation omitted), *cert. denied*, 460 Md. 21 (2018). In other words, the drawing of inferences from the

evidence and resolving conflicting evidence is within the province of the Board. *Prince George's Drs.' Hosp., Inc. v. Health Servs. Cost Rev. Comm'n*, 302 Md. 193, 201 (1985). We will only set aside an agency decision that "is arbitrary, illegal or capricious." *Becker v. Anne Arundel Cnty.*, 174 Md. App. 114, 137 (2007).

Although we defer to an agency's factual findings when they are supported by substantial evidence, on purely legal issues, we are not as deferential and "may substitute [our] judgment for that of the agency." *Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene*, 330 Md. 433, 443 (1993). That said, however, an agency's interpretation and application of a statute it is charged with administering is entitled to substantial deference. *Willow Grove Citizens Ass'n v. Cnty. Council of Prince George's Cnty.*, 235 Md. App. 162, 168 (2017).

Because a zoning variance authorizes that which would otherwise be "prohibited by a zoning ordinance," the burden is on the applicant to show facts warranting the variance. *Mueller v. People's Couns. for Baltimore Cnty*., 177 Md. App. 43, 70 (2007) (cleaned up), *cert. denied*, 403 Md. 307 (2008). *See also Chesley*, 176 Md. App. at 423 ("A variance authorizes the property owner to use his property in a manner forbidden by applicable zoning restrictions." (quotation marks and citation omitted)).

Caselaw indicates that an area variance request is subject to the less stringent "practical difficulties" standard. A use variance, on the other hand, is subject to the more stringent "unnecessary hardship" standard. *See Montgomery Cnty. v. Rotwein*, 169 Md. App. 716, 728-29 (2006). The "unwarranted hardship" standard has been defined as the "denial of reasonable use" or the "denial of a reasonable return" from the property. *Belvoir*

Farms Homeowners Ass'n Inc. v. North, 355 Md. 259, 278, 282 (1999) (holding that the "unwarranted hardship standard" is "equivalent to the denial of reasonable and significant use of the property"). *See also Anderson v. Bd. of Appeals*, 22 Md. App. 28, 38 (1974) (explaining that the "undue hardship" test requires the applicant to show that compliance with the ordinance would result in the inability to secure a reasonable return from or make any reasonable use of his property). The "practical difficulty" standard applies when "compliance with the strict letter of the restrictions . . . would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Id.* at 39 (cleaned up). *See also Belvoir Farms*, 355 Md. at 270.

As previously stated, the subsection (a) requirements are not before us in this appeal because the circuit court previously determined that WCT had satisfied the subsection (a) criteria as a matter of law and neither the County nor the Homeowners have appealed that decision.[7] The remand to the Board was to determine whether WCT had satisfied the subsection (e) requirements, and, in particular, whether granting the variance would: "alter the essential character of the neighborhood or district in which the lot is located"; "substantially impair the appropriate use or development of adjacent property"; or "be detrimental to the public welfare." *See* § 3-2-207(e)(2)(i), (ii), (v).

[7] The circuit court stated: "The case law cited establishes that when the appellant lawfully obtained a building permit for the adjacent property (parcel 26), he has not created a self-imposed hardship and he may seek a variance in order to develop the subject property[.]" Presumably, the court concluded that the size and shape of the lot satisfies the uniqueness of the lot under § 3-2-207(a)(1).

Did the Board properly find that the area variance requested would alter the essential character of the neighborhood, substantially impact the use/development of the adjacent properties, or cause public harm?

i. Essential character of the neighborhood

The Board, focusing on the density of the RLD zone (one dwelling unit per five acres) and the size of the parcel, found that granting the variance would alter the essential character of the neighborhood. The Board stated: "To put [WCT's] request in a clearer context, normal residential development in the RLD zone would require a parcel more than 5 times larger than either of [WCT's] lots" and that it could "find no means of stretching the land to reach either the minimum lot size or, *more importantly*, the dwelling density size." (Emphasis added.)

To be sure, Parcel 1 is in an RLD zone, which permits a density of one dwelling per five acres. On the other hand, it expressly permits building lots of 40,000 square feet, which is less than one acre. Thus, we believe the zone's overall density relates to the number of lots permitted and not the size of the individual lots. In other words, a twenty-five-acre parcel could mathematically permit five 40,000 square foot single-family detached lots that are adjacent or in close proximity to each other. The Board's focus on zone density in its "essential character" of the neighborhood analysis is inappropriate in such an analysis. The issue is whether granting the 602 square foot variance for a single-family detached dwelling on Parcel 1 would "alter the essential character of the neighborhood or district in which the lot is located." *See* § 3-2-207(e)(2)(i).

WCT contends that the Board erred in its character of the neighborhood analysis. First, it argued that area variances, in contrast to a use variances, "generally ha[ve] little to

no effect on the character of the neighborhood[.]" WCT cites *Alviani v. Dixon*, 365 Md. 95 (2001), to support its position. Second, it asserts that the Board's consideration of zoning density in its analysis of whether an area variance alters the essential character of the neighborhood was error because the zone's density requirement does not control the size of the lots within the zoning district. We agree.

In *Alviani*, 365 Md. at 97-98, the Board granted a special exception (sometimes referred to as a conditional use) and three area variances to build an automotive service facility on a 1.2 acre parcel located in Anne Arundel County.[8] The neighborhood in that case included a mix of residential and commercial uses. *Id*. at 119. The Board found that the area variances would not "alter the essential character of the neighborhood or district in which the lot is located." *Id.* (cleaned up).

Petitioners, focusing on the Board's failure to define properly the relevant neighborhood, sought judicial review in the circuit court, this Court, and our Supreme Court. *Id*. at 117. The Supreme Court, noting that the Board's description of the relevant neighborhood was sufficient, and quoting from this Court's opinion, explained:

> The cases cited by appellants [petitioners] in support of their contention that th[e] Board failed to define the surrounding neighborhood with sufficient particularity are inapposite. In those cases, the property owners sought to vary use restrictions imposed by the zoning ordinance through a zoning map amendment. By contrast, appellees seek to vary the Code's area restrictions, not its use restrictions. The standards applied to area variances are more relaxed than those applied to use variances because "the impact of an area variance is viewed as being much less drastic than that of a use variance." *Anderson v. Board of Appeals*, 22 Md. App. 28, 39 (1974); *see also McLean*

[8] The variance requests included variance of the property's front width where the required length was 150 feet. *Alviani*, 365 Md. at 117-18.

> *v. Soley*, 270 Md. 208, 215 (1973); *Cromwell*[*v. Ware*], 102 Md. App. [691,] 695 n. 1 [(1995)].

Id. at 120 (cleaned up). In other words, granting an area variance request involves a more relaxed standard than a use variance because it is less likely to alter the essential character of the neighborhood. For that reason, the neighborhood does not have to be "defined with the same precision" as required when considering a use variance, but it still must be defined sufficiently for the Board to determine and for a reviewing court to understand why the area variance "would alter the essential character of that neighborhood." *Id.*[9]

The Board's definition of the neighborhood that has had its essential character altered is unclear. The attorney for the County spoke in terms of lots on Hansel Drive and lots contiguous to Hansel Drive. Mr. Rutter, who testified as an expert in land planning and development, described "the surrounding community as containing a parcel within the C2 zone, a farm within the RLD zone, a Board of Education maintenance facility and a series of single-family dwellings along Hansel Drive." Mr. Rutter also referred to "an adjoining R1-zoned subdivision with one to two-acre lots with single-family dwelling units." In its distillation of Mr. Rutter's testimony, the Board stated that Mr. Rutter described the "essential character of the community as that of a single-family residential area[.]" Were

[9] We note that the Anne Arundel County, Maryland website sets forth an overview of the zoning districts. For RLD zoning, it states: "This District is generally intended for low-density rural single-family detached residential development at a subdivision density of 1 dwelling unit per 5 acres. Minimum lot size is 40,000 square feet. Maximum lot coverage by structures is 25%. Maximum height is 45 feet." *See Zoning Classifications Guide*, Anne Arundel Cnty., Md., https://www.aacounty.org/planning-and-zoning/zoning-administration/zoning-classifications-guide. The website, which is not law, indicates that zone density relates to the subdivision of property in the zone.

that the neighborhood in the Board's decision, it would seem that, standing alone, a single-family dwelling in a single-family residential neighborhood would not alter its essential character.

Therefore, we shall remand to the Board to better define the neighborhood and the variance's impact on that neighborhood without consideration of zone density in its analysis.

There was testimony from nearby neighbors about the previous storms and resulting damage to their properties. The Board also found that increased density in a neighborhood subject to drainage issues "will substantially impair the use of adjacent properties." Mr. Tolodziecki testified that WCT's County-approved storm water management plan for Parcel 1 exceeded the County's stormwater management requirements. He further explained that the plan involved two dry wells to contain any run off from Parcel 1 to the level of a 100-year storm event, as opposed to the required ten-year storm event, in addition to the placement of a culvert in front of Parcel 1 to convey the drainage water from all the developed lots to the thirteen acres across Hansel Drive. Moreover, Ms. Anzelmo stated that granting the variance would not impair the use or development of the adjacent properties. The Board never addressed WCT's evidence and Ms. Anzelmo's statement related to the impairment of adjacent properties and the stormwater management concerns. In short, the Board's finding that granting the variance "will substantially impair the use of adjacent properties" does not appear to be supported by substantial evidence.

In regard to the public welfare factor, the Board found that "[o]ther than a bald assertion, [WCT] provided no evidence that the granting of the variance will not be

detrimental to [the] public welfare." But as WCT points out, Mr. Tolodziecki expressly explained why granting the variance would not be detrimental to the public welfare. Not only does it comply with the set-back requirements, the adjacent properties are already developed, the proposed use is consistent with the uses of other properties in the area, there are no steep slopes, no clearing of woodlands, wetlands or critical area or other sensitive environmental concerns. In addition, Ms. Anzelmo also stated that granting the variance for Parcel 1 would not be detrimental to the public welfare. In short, and recognizing that credibility and what inferences to draw from the evidence is for the Board to determine, this finding also does not appear to be supported by substantial evidence.

WCT also claims that the Board should be estopped from denying its variance request. This claim is based on the County's prior pattern and practice of interpreting § 18-4-202 to permit building on substandard residential lots without a variance; permitting the building of a house on Parcel 26 that is identical to the house it had intended to build on Parcel 1; and issuing a lawful permit to install the existing septic system on Parcel 1.

At the first Board proceeding, Mr. Trevillian testified about his experience building his home in 2009. WCT, however, did not advance an estoppel argument in either its opening or closing argument, and nothing in the record indicates that the Board may have considered Mr. Trevillian's 2009 experience in the context of estoppel. If it did, it found that WCT had created its hardship, which was reversed in the first court decision.

In WCT's second petition to the circuit court for judicial review, it argued in its memorandum that the County was equitably estopped from denying the variance because: 1) it allowed Mr. Trevillian to put in a septic system on Parcel 1; and 2) the County's

actions were inconsistent with Mr. Trevillian's general experience with the County's prior course of actions on other county development projects. The circuit court in that review rejected WCT's arguments.

Here, we do not review the circuit court's opinion; only the decision of the Board is before us, and the estoppel claim appears not to have been addressed or even considered by the Board. *See Ben Porto & Son, Ltd. v. Montgomery Cnty.*, 262 Md. App. 323, 367 (2024) ("A reviewing court may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency." (quotation marks and citation omitted)); *Cap. Com. Props., Inc. v. Montgomery Cnty. Plan. Bd.*, 158 Md. App. 88, 102, 104 (2004) (holding that party's argument on appeal that "involve[d] the construction of the ordinances administered by the Board, . . . should have been presented for decision by the Board in the first instance" rather than being raised for the first time in an action for judicial review). But, should it choose to do so, WCT, on remand, may advance its estoppel/vested rights claim for consideration by the Board.

Conclusion

We will remand WCT's variance request to the Board for further proceedings consistent with this opinion. In particular, the Board, applying the practical difficulties standard, should clearly define the neighborhood and clarify its findings regarding the variance's alteration of the essential character of the neighborhood or district, its impact on the use or development of adjacent properties, and its detriment to the public welfare.

Whether granting the variance request would alter the essential character of the neighborhood should be determined without emphasis on zoning density in the RLD zone.

JUDGMENT REVERSED AND CASE REMANDED WITH INSTRUCTIONS TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY TO REMAND TO BOARD OF APPEALS FOR ANNE ARUNDEL COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.