Circuit Court for Baltimore City
Case No. 24-C-22-000299

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1774

September Term, 2022

IN THE MATTER OF THE PETITION OF MOUNT VERNON BELVEDERE IMPROVEMENT ASSOCIATIONS, INC., et al.

Berger,
Beachley,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 20, 2023

Appellants Mount Vernon Belvedere Improvement Associations, Inc. ("MVBA"), Katie Baldonieri, Anita Crawford, Carly Dean, Holly Taylor, Greg Baranoski, Lucio Gama, and Carroll House Condominium Association appeal the judgment of the Circuit Court for Baltimore City, which affirmed a subdivision approval by the Baltimore City Planning Commission ("Commission"). Specifically, the Commission approved the application of Aria Legacy Group, LLC ("Aria," or collectively with the Mayor and City Council of Baltimore City, "appellees") for a subdivision of 2 East Mount Vernon Place. Appellants present the following questions for our review:

1. Whether the [c]ircuit [c]ourt erred when it held that no [a]ppellant, including adjoining property owners and a specially aggrieved organization, had standing to challenge the approval of a non-compliance subdivision?

2. Whether the Planning Commission's inadequate findings of fact and conclusions of law constitute an error of law and render the decision arbitrary and capricious?

3. Whether the Planning Commission erred in approving the [a]pplication without the mandatory justification statement required under Subdivision Regulation 2.4.b.?

We shall only address the first question, as we conclude that the circuit court did not err in concluding that none of the appellants had legal standing to maintain this appeal. Accordingly, we affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

This case arises from an application to subdivide the real property at 2 East Mount Vernon Place. The property contains two structures, Mount Vernon Place Methodist Church ("Church") and Asbury House. The Church was completed in 1872 and stands on

the northeast corner of Charles Street in Mount Vernon Place, Baltimore, Maryland. A single-family home, constructed in 1855, sits immediately east of the Church. In 1957, the Church bought the house "to serve as the church offices" and named it Asbury House. Although the Church and Asbury House were originally separate properties, in 1961 the two lots were consolidated into one lot "in order to create an interconnection between the buildings."

Aria entered into a contract with the Church to purchase the property known as 2 East Mount Vernon Place, which includes the Church and Asbury House. On April 13, 2020, Aria and the Church filed a request for a minor subdivision. After numerous emails raised objections to the subdivision, the Planning Director determined that the proposed subdivision should be treated as a "major subdivision."[1] As a courtesy to interested parties, on September 9, 2020, the Commission held a virtual community forum on Zoom. On October 22, 2020, the Commission held a record hearing and ultimately approved the application. On November 13, 2020, the Commission issued a letter approving the subdivision.

MVBA thereafter filed a Writ of Administrative Mandamus in the Circuit Court for

[1] As stated by a city planner at the hearing, "typically minor subdivisions are placed on the planning commission as consent agenda items. So, for instance, there's a lot split. Any lot split where the end result is three lots or fewer is classified as a minor subdivision. . . . There is, however, a provision in the subdivision rules and regulations which allow for the director, at the request of community members or city agencies to elevate a minor subdivision off the consent item and to the regular agenda. So a number of requests were submitted by neighborhood residents as well as by [MVBA]." Accordingly, the Commission scheduled a hearing to consider the proposed subdivision.

Baltimore City. On August 19, 2021, the court remanded the matter to the Commission to "render findings of fact and conclusions of law with regards to its October 22, 2020 hearing and subsequent decision." The Commission reconvened on October 28, 2021, pursuant to the court's remand. The Commission again approved the subdivision, memorializing its decision on December 16, 2021, by issuing written findings of fact and conclusions of law. On January 18, 2022, appellants filed a Writ of Administrative Mandamus in the circuit court.

After extensive briefing by the parties, the court convened a hearing on October 28, 2022. On November 3, 2022, the court rendered its bench opinion. The court ruled that the appellants did not have standing, stating:

> Specifically, the [c]ourt finds that [appellants] individually and collectively and the two named associations failed to demonstrate that they are aggrieved by the Planning Commission's decision to approve the subdivision and therefore they lack standing.

The court proceeded to address the merits, ruling that, "the decision below was based upon substantial evidence and was legally correct." Appellants timely appealed. We shall provide additional facts as necessary for our analysis.

DISCUSSION

"A party's standing to appeal either to this Court or to a circuit court from the decision of a zoning board is a question of law, which we decide *de novo*." *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 494 (2003). "A petitioner's establishment of standing demonstrates 'the right of the individual to assert the claim in the judicial forum.'" *Greater Towson Council of Cmty. Ass'ns v. DMS Dev., LLC*, 234

Md. App. 388, 408-09 (2017) (quoting *State Ctr., LLC v. Lexington Charles Ltd.*, 438 Md. 451, 517-18 (2014)). "[T]he requirements for administrative standing are generally more lenient than the requirements for judicial standing[.]" *Turner v. Md. Dep't of Health*, 245 Md. App. 248, 265 (2020). Thus, "a proper party in an administrative action may not have standing to file a petition for judicial review in the circuit court." *Id.* at 265-66. "It is well established in Maryland that, in order to have standing to petition for judicial review, a party must meet 'two conditions precedent.'" *Greater Towson*, 234 Md. App. at 409 (quoting *Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 143 (1967)). "First, a petitioner 'must have been a party to the proceeding before the Board.'" *Id.* (quoting *Bryniarski*, 247 Md. at 143). "If he or she participated in the case before the Board, the court's next inquiry is whether the party is 'aggrieved' by the decision of the Board." *Id.* (quoting *Bryniarski*, 247 Md. at 144). "With regard to land use and zoning decisions, we define an 'aggrieved party' as 'one whose personal or property rights are adversely affected by the decision of the Board.'" *Id.* (quoting *Bryniarski*, 247 Md. at 144). "Specifically, the consequences of the Board's decision must affect the petitioner specifically, 'in a way different from that suffered by the public generally.'" *Id.* (quoting *Bryniarski*, 247 Md. at 144).

I. THE INDIVIDUAL PROPERTY OWNERS DO NOT HAVE STANDING

Invoking the established principle that "adjoining property owners are *prima facie* aggrieved and have standing under Maryland law," the individual appellants, Greg Baranoski, Lucio Gama, and Holly Taylor (collectively, "Individual Property Owners")

assert that they have standing as nearby property owners of 12 East Mount Vernon Place.[2] Appellees respond that the "presumption of *prima facie* evidence of aggrievement that certain of the [i]ndividual [a]ppellants [ ] enjoy by virtue of ownership of nearby property . . . was rebutted by the obvious lack of actual harm they have suffered as compared to the public at large." Appellants retort that "[a]ppellees introduced no evidence to rebut [a]ppellants' *prima facie* aggrievement."

Although appellees do not challenge on appeal the Individual Property Owners' claim that they are adjoining property owners who are entitled to a rebuttable presumption of aggrievement,[3] we shall review the applicable law to facilitate our analysis. "Depending on the circumstances, we typically examine the proximity of a person's property to the site for which the zoning decision was made in determining whether an individual is 'aggrieved.'" *Id.* at 410. "Indeed, the weight attributed to a petitioner's 'aggrievement' is most often evaluated by 'how close the affected property is to the re-zoned property.'" *Id.* (quoting *Ray v. Mayor of Balt.*, 430 Md. 74, 83 (2013)). A party is *prima facie* aggrieved, "if the petitioner owns property that is 'adjoining, confronting, or nearby' the rezoned

[2] Katie Baldonieri, Anita Crawford, and Carly Dean are also appellants to this appeal and assert that they are nearby property owners. Appellees argue that Ms. Baldonieri, Ms. Crawford, and Ms. Dean did not participate in the Commission's proceedings. At oral argument, appellants' counsel conceded that these individuals did not participate in the proceedings below. Accordingly, they cannot satisfy the first condition precedent for judicial standing.

[3] Appellees argued below that there was no evidence that these individuals owned nearby property. On appeal, appellees do not challenge the individual appellants' status as nearby property owners entitled to a presumption of aggrievement.

property." *Id.* (quoting *Ray*, 430 Md. at 85). A "'*prima facie* case' refers to 'the establishment of a legally mandatory, rebuttable presumption[.]'" *Mejia v. State*, 328 Md. 522, 533 (1992) (quoting *Stanley v. State*, 313 Md. 50, 60 (1988)). Accordingly, nearby property owners enjoy a rebuttable presumption that they are specially aggrieved by a zoning decision, but this presumption can be overcome if an opposing party presents sufficient evidence to rebut that presumption. *See Bryniarski*, 247 Md. at 145 ("The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved."). Finally, the *Ray* Court noted that "we have not articulated what it means to be 'specially affected' or how one proves that his harm is different from the public harm. Rather, the standard is flexible in the sense that it is based on a fact-intensive, case-by-case analysis." 430 Md. at 81.

Here, for the purposes of standing, the Individual Property Owners participated in the proceedings below and are *prima facie* aggrieved, and appellees do not argue otherwise.[4] The principal question, then, is whether the circuit court was correct in

[4] Appellants argue that Carroll House Condo Association is also an adjoining property owner and therefore *prima facie* aggrieved. Appellees counter that Carroll House Condo Association "own[s] no property that could possibly be affected by [the Commission's] decision, because [it] own[s] no property at all." Appellants cite to an email that provides addresses of the unit owners of Carroll House Condo Association to argue that Carroll House Condo Association is an adjoining property owner. But an "association lacks standing to sue where it has no property interest of its own—separate and apart from that of its members." *Greater Towson*, 234 Md. App. at 412 (quoting *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 658 (2012)). See Part II., *infra*.

determining that Aria adequately rebutted the presumption of aggrievement enjoyed by the Individual Property Owners. In its opposition to the writ of administrative mandamus filed in the circuit court, Aria set forth its position to rebut the Individual Property Owners' *prima facie* aggrievement:

> The subdivision, or rather re-subdivision, of the Church Lot and Asbury House was for disposition purposes only—meaning it had no effect at all on its current structures or uses and was only a change in the legal description of the [p]roperty. It was, quite literally, simply drawing a new line on a plat, and nothing more. This *de minimis* legal action cannot credibly be said to have harmed or aggrieved the [Individual Property Owners] in any special way different from the general public.

(Footnote omitted). Aria further argued that

> Here, only four[5] of the [i]ndividual [p]etitioners participated in the Planning Commission's proceedings, and only by way of sending emails to Commission Staff stating their objections. Mr. Baranoski, Ms. Gama, Ms. Taylor, and the Carroll House Condo Association sent emails objecting to the subdivision. Those emails, however, demonstrate that the Individual [Property Owners] have not suffered any legally cognizable aggrievement as a result of the mere subdivision of this lot. Indeed, when the objections raised by all of the [p]etitioners are examined, it becomes apparent that none of them credibly allege that they have been aggrieved by the subdivision of the Church and Asbury House. Their objections and claims of aggrievement are instead focused on their fears about what *may* happen[] in the future with the two lots, and how the lots' later development *could* theoretically create zoning issues or practical concerns for the historic nature of the community, depending on their future uses.

(Footnotes omitted).

In their reply to Aria's opposition, appellants reiterated their contention that appellees failed to rebut the Individual Property Owners' presumption of aggrievement.

[5] As noted in note 2 above, there are only three Individual Property Owners as appellants in this appeal.

At the October 28, 2022 hearing, Aria again argued that the Individual Property Owners failed to explain how they were aggrieved by the proposed subdivision, and that "a subdivision for disposition purposes only" cannot aggrieve them. The court specifically asked appellants' counsel how the Individual Property Owners were aggrieved, resulting in the following colloquy:

> [APPELLANTS' COUNSEL]: What aggrieves them, Your Honor, is how the subdivision impacts the neighborhood. At the end of the day, this church, this historical, cultural and architectural property exists as it stands now with the large church and its commercially viable building attached to it through a currently existing internal corridor.
>
> The concern is once this is severed, *this church is just going to fall into disarray* and --
>
> THE COURT: How do we know that?
>
> [APPELLANTS' COUNSEL]: -- *then the neighborhood* – pardon me, Your Honor?
>
> THE COURT: Isn't that just -- *aren't you just speculating?*
>
> [APPELLANTS' COUNSEL]: Your Honor, we're doing this from neighbors coming in and *concerned that a developer is coming in and purchasing this home, chopping off the economically viable components of this property and moving forward and if we're going to do that, these neighbors want to be sure that it's done in compliance with the subdivision regulations.*

(Emphasis added).

In its bench opinion, after acknowledging the Individual Property Owners' claim of *prima facia* aggrievement, the court implicitly accepted Aria's contention that the Individual Property owners "have not and cannot be damaged by the mere redrawing of a new plat line and nothing more, particularly where the new line reverts the [C]hurch and Asbury House to their original and separate lots." As a result, the court found that the appellees sufficiently rebutted the presumption of aggrievement:

> The [c]ourt is satisfied that Aria sufficiently met its burden as the party challenging the presumption of aggrievement to demonstrate that the individually named [p]etitioners are not, in fact, aggrieved. . . . [T]he [p]etitioners have failed to assert additional or sufficient facts demonstrating how the individually named [p]etitioners are harmed by the subdivision.

The court found that the only argument appellants made was "speculation regarding potential future harms," and concluded that appellants "fail[ed] to demonstrate that the [p]etitioners are personally and specifically affected in a way different from that suffered by the public generally."

We agree with the circuit court that appellees sufficiently rebutted the presumption of *prima facie* aggrievement. At the Commission's hearing, a city planner for Baltimore City stated that the subdivision request merely sought to restore the Church and Asbury House back "to how both properties were originally developed" and that "no development is proposed." The Commission's Staff Report confirmed that Aria's subdivision request did not seek any "variances or conditional use approvals." Further, the city planner testified that the impact of the subdivision was so minimal that, under the agency's interpretation, it did not need further regulatory approval. *See Cremins v. Cnty. Comm'rs*

of Washington Cnty., 164 Md. App. 426, 438 (2005) ("'[T]he agency's interpretations and applications of [the] statutory or regulatory provisions' that it administers should be afforded considerable weight, and 'the expertise of the agency in its own field should be respected.'" (alteration in original) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 573-74 n.3 (2005))). In light of that evidence, the court did not err in concluding that the actual effect of the proposed subdivision will be minimal. In essence, approval of the requested subdivision can be accomplished by preparing a new deed that will substantially return the properties to their pre-1961 status, *i.e.* two separate lots. Moreover, the evidence clearly established that the proposed subdivision would not change the use or appearance of the properties. In its analysis, the court properly recognized the applicability of *prima facie* aggrievement, but simply concluded that Aria sufficiently rebutted that presumption. We see no error in that determination.

After finding that Aria had rebutted the Individual Property Owners' presumption of aggrievement, the court correctly proceeded to consider the entire administrative record to determine whether other evidence might show that the Individual Property Owners were "aggrieved" for purposes of standing.[6] The court noted that an email from appellants Greg Baranoski and Lucio Gama asserted that the subdivision would be a "spectacularly bad idea" for the neighborhood. The only other evidence from an Individual Property Owner

[6] If a party is not *prima facie* aggrieved, that party can attempt to prove special aggrievement by offering competent evidence that the party's "personal or property rights are specially and adversely affected" by the administrative decision. *Bryniarski*, 247 Md. at 144-45.

was appellant Holly Taylor's email in which she expressed concerns about "adding disruption to the block in what seems to be a never ending renovation." The court further recognized Ms. Taylor's concern about "limited parking options available to current residents."[7] We discern no error in the court's conclusion that the Individual Property Owners' concerns were "based on mere speculation regarding potential future harms," and thus "they fail[ed] to demonstrate that the [Individual Property Owners] are personally and specifically affected in a way different from that suffered by the public generally."[8] In short, the court found no nexus between the proposed subdivision and any cognizable damage or harm to the Individual Property Owners. We therefore affirm the circuit court's determination that Aria rebutted the Individual Property Owners' presumption of aggrievement, and that the Individual Property Owners did not produce sufficient evidence to show that they were "aggrieved parties" to grant them standing to challenge the Commission's decision.[9] *See* Robert A. Hendel, *The "Aggrieved Person" Requirement in Zoning*, 8 Wm. & Mary L. Rev. 294, 296 (1967). ("[M]ost courts hold that mere

[7] We note that the purpose of the Baranoski/Gama and Taylor emails was to request a hearing, which the Commission granted.

[8] Ms. Taylor's email mentioned that this subdivision would "limit[] parking options available to current residents." But the subdivision will not change the fact that the Church and Asbury House share five parking spaces—it merely reallocates those five existing parking spaces. Moreover, Ms. Taylor's email does not assert that her personal or property rights in parking will be adversely affected by the subdivision.

[9] Appellants argue that this subdivision violates the zoning code, but "standing to challenge governmental action, and the merits of the challenge, are separate and distinct issues." *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 295 (1996).

generalizations and fears are not sufficient to entitle one to appeal.").

II. MVBA DOES NOT HAVE STANDING

MVBA does not own property in close proximity to the Church and therefore does not claim to be *prima facie* aggrieved. Instead, MVBA argues that it "has standing as it is specially aggrieved" because it "holds a unique interest different from the general public's in Mount Vernon because its purpose and charge is the preservation of Mount Vernon's historical, architectural, and cultural heritage and character." Appellees acknowledge that MVBA participated in the proceedings before the Planning Commission, but assert that MVBA "did not and cannot establish the second element of standing, because no property right of MVBA . . . has been, or will be prejudiced by the Planning Commission's decision to grant the subdivision of the [p]roperty. Indeed, MVBA . . . own[s] no property that could possibly be affected by that decision, because [it] own[s] no property at all."

"[A] person aggrieved by the decision of a board of zoning appeals is one whose *personal or property rights* are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a *specific interest or property right* but his interest therein must be such that he is *personally and specially affected* in a way different from that suffered by the public generally." *Chesapeake Bay Found., Inc. v. Clickner*, 192 Md. App. 172, 188-89 (2010) (quoting *Bryniarski*, 247 Md. at 144). Although "property ownership is not a prerequisite to aggrievement," *id.* at 189, "[w]ithout having any property ownership of its own, [a party], [is] required to overcome

the difficult burden alleging and proving how the Board's decision . . . harmed [the party] differently than others in the community." *Greater Towson*, 234 Md. App. at 415-16.

MVBA is an association that seeks to preserve and improve Mount Vernon but does not own any property near the Church and Asbury House. Appellants argue that MVBA would be specially aggrieved because it has "invested incalculable time and money into the areas surrounding" the Church and thus would be uniquely harmed if the Church was "left to decay."

In evaluating MVBA's standing, this Court's decision in *Cylburn Arboretum Ass'n, Inc. v. Mayor of Balt.*, 106 Md. App. 183 (1995), is instructive. There, Cylburn Arboretum Association held a revocable license to occupy and preserve the Cylburn Mansion and "maintain[] the park's grounds and gardens." *Id.* at 186. After the City of Baltimore enacted an ordinance approving a zoning change to permit development of property abutting the park, the association filed a petition for judicial review. *Id.* On appeal from summary judgment for lack of standing, the association, recognizing that it did not have a property interest, "contend[ed] that its revocable license, coupled with the vast amounts of money and labor that it has donated to the park over the years, establish[ed] the *personal* interest contemplated in *Bryniaski*." *Id.* at 189. This Court agreed with the circuit court that without property rights, the association could not prevail under traditional standing analysis. *Id.* We further concluded that the association lacked a personal interest because the development of the area "will not impose any duty to act on the [a]ssociation. Nor will it impose any monetary cost upon the [a]ssociation." *Id.* at 190. The Court noted that

"[a]ppellant has not cited, nor have we found, any decisions of the Maryland courts supporting its claim that it has a personal interest under the facts of the present case." *Id.* Furthermore, even if the association were able to establish a personal interest, the association was not able to "satisfy its burden of proving that such personal interest will be harmed by the zoning act in a manner distinct from the harm that the general public will suffer." *Id.* at 192. We found appellant's argument based on claimed aesthetic damage unpersuasive because any aesthetic damage "will be experienced in the same manner by anyone who visits the park, regardless of whether the visitor is a member of the [a]ssociation or simply a member of the general public." *Id.* at 193.

Applying these principles, we conclude that MVBA has not established a "personal interest" based on the time and money it has invested in the Mount Vernon area. There is no evidence that this subdivision will impose any duty on MVBA to act or require MVBA to incur any monetary costs. Indeed, the association in *Cylburn Arboretum Ass'n* had a stronger case for standing than MVBA because the association there had a revocable license to preserve the mansion house and maintain the park's grounds and gardens. Moreover, as in *Cylburn Arboretum Ass'n*, appellants here have not cited any legal authority that would support MVBA's contention that it has a personal interest that will be adversely affected by the proposed subdivision in a manner different from the general public. *Id.* at 190, 192. MVBA's argument that it will be specially aggrieved because the subdivision may lead to the Church's decay is unpersuasive because not only is such aesthetic damage speculative, but it "will be experienced in the same manner by anyone

who visits the" area around the Church. *Id.* at 193. "While we sympathize with [MVBA's] wish to preserve the historic character and aesthetics of [this] neighborhood, we do not find that [its] interests in the matter are any different than the interests of a member of the general public." *Comm. for Responsible Dev. of 25th St. v. Mayor of Balt.*, 137 Md. App. 60, 89 (2001). Therefore, MVBA lacks standing.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.