

Circuit Court for Baltimore County  
Case No. C-03-CV19-000826

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1863

September Term, 2019

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SECURITY WARDS, LLC

v.

SET THE CAPTIVES FREE  
OUTREACH CENTER, INC.

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Kehoe,  
Berger,  
Shaw,

JJ.

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Opinion by Kehoe, J.

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Filed: September 1, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Baltimore County that affirmed a decision of the Board of Appeals of Baltimore County. The appellants are Howard Brown and Security Wards, LLC (collectively “Security”); the appellee is Set the Captives Free Outreach Center, Inc. (the “Church”). Security presents two issues on appeal, which we have reworded:

1. Did the Board err when it decided that the Church may use parking spaces on its property to satisfy the parking requirements of Baltimore County Zoning Regulations even though the spaces are subject to an agreement with an adjoining movie theater permitting the latter to use parking spaces on the Church parcel on a non-exclusive basis?
2. Did the Board err when it decided that, under the particular circumstances of the case before it, the Church could demonstrate compliance with applicable parking requirements at the time of issuance of an occupancy permit as opposed to the time of subdivision or site plan approval?<sup>1</sup>

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<sup>1</sup> Security articulates the issues as follows:

1. Did the Board of Appeals err as a matter of law in determining that Appellee’s parking area that is subject to the SSH Parking Easement (as discussed herein) may be used to satisfy the parking requirements of BCZR § 409 for the uses on Appellee’s property?
2. Did the Board of Appeals err as a matter of law in waiving the requirement that Appellee’s zoning site plan comply with the parking requirements of the Baltimore County Zoning Regulations at the time of site plan approval, because it found the “adequacy of parking cannot be determined with certainty” and further err as a matter of law in concluding that the uses must only comply with all zoning requirements at the time of issuance of an occupancy permit?

For its part, the Church contends that this case is moot, that Security failed to exhaust its administrative remedies, and that Security is wrong as to the merits.

We will affirm the judgment of the circuit court.

#### BACKGROUND

Although the legal issues presented in this appeal are straightforward, the procedural and factual background is not.

By way of an introductory overview, the parties own adjoining properties which are parts of the Security Square Mall (the “Mall”), located at the intersection of Interstate Highways 695 and 70 in Woodlawn. Originally, the Church’s parcel consisted of about 12 acres. It wanted to subdivide its land into two parcels. The Church proposed to retain one, which consists of approximately 10 acres (“Lot 1”), and to sell the other (“Lot 2”). Security opposed the subdivision. The issue eventually came before the Board of Appeals of Baltimore County. The Board issued a decision granting the application. Security argues that in doing so, the Board erred as a matter of law.

#### *A very brief history of the Mall*

The Mall is an aggregate of separately owned parcels totaling about 93 acres on which are located approximately one million square feet of what was originally intended to be retail, restaurant, and other commercial space together with 5,966 parking spaces. When the mall was originally developed, each lot was subject to a reciprocal easement agreement (the “Construction, Operation and Reciprocal Easement Agreement,” or “COREA”). Relevant to this appeal, the COREA provided that the parking areas on each lot were to be

treated as a common parking area to serve the entire mall, regardless of the boundaries of specific parcels. This arrangement was approved by Baltimore County through a variance proceeding. Additionally, there are references in the record to a site plan approval by County officials but neither the parties' briefs nor the record extract provides any meaningful information as to the terms and conditions of that approval.

In its halcyon days, Security Mall was anchored by what were once iconic department stores such as Hutzler's, Sears, J. C. Penney's, Hecht's, and Woolworth's. But those days are in the past, as one anchor tenant after another left the mall. While this process was ongoing, the COREA terminated according to its terms. As a result, and to quote the opinion of the Board of Appeals in this case, "each parcel [became] discrete and its use, standing alone, must comply with applicable regulations."

*The non-exclusive parking easements*

In 2016, what is now the Church's lot was owned by Blue Ocean Seoul Plaza, LLC ("Blue Ocean"). One of Blue Ocean's tenants was the North American Training School ("NATS"), which trained drivers of tractor/trailer rigs. Blue Ocean and Security entered into reciprocal easement agreements by which Security agreed to permit NATS to use, on a non-exclusive basis, its parking area. In return, Blue Ocean granted a non-exclusive parking easement to Security and one of its tenants, American Multi-Cinema, Inc. to use part of Blue Ocean's parking lots (the "AMC easement"). According to Security, the AMC easement applies to 292 of the parking spaces located on the Church's property. The way

in which the AMC easement burdens the Church's property is the central issue in this appeal.

*The Church's subdivision proposal*

In 2018, the Church acquired Blue Ocean's parcel. At the time, the property was improved by two structures, a former J.C. Penney's department store, and a separate stand-alone building that the parties refer to as the "GEICO building," but which apparently was used as an automotive repair and servicing facility.

The Church intended to convert the former department store into a place of worship and a location for its related pastoral activities. As we have mentioned, the GEICO building did not fit into the Church's plans. A complicating matter was that part of the former Penney's space was leased to one or more tenants whose leases had either expired or were in default. Another complicating matter was that, when the Church acquired the parcel, it was subject to a pending subdivision application filed by the previous owner.<sup>2</sup>

The Church proceeded with the pending application process. In order to obtain subdivision approval, the Church needed to obtain (again quoting the Board of Appeals' opinion) "an amendment to the previous order and site plan in Case No. 1988-0200-A to allow the existing automotive service center/garage to be subdivided and exist on a separate

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<sup>2</sup> Additionally, a portion of the parking lot on the Church's parcel was fenced off and reserved for the exclusive use of NATS. The parties agree that these spaces are not available for other purposes.

lot of record; and to confirm a refinement to the 4th Refined CRG Plan for Security Square Shopping Center[.]”

The procedural mechanism to accomplish this was to file a petition for a “special hearing” pursuant to Baltimore County Zoning Regulations (“BCZR”) § 500.7 which, among other things, authorizes the administrative law judge “to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected” by the provisions of the BCZR.<sup>3</sup> The Church’s request for a special hearing asked for the following relief:

To amend the previous Zoning Order and Site Plan in Case No. 1988-0222-A to allow the existing automobile service garage to be subdivided and exist on a separate lot of record; [and]

To confirm a refinement to the 4th Amended CRG Plan, Security Boulevard, Security Square Shopping Center.<sup>[4]</sup>

A Baltimore County administrative law judge granted the Church’s request.<sup>5</sup> Two neighbors appealed that decision to the Board of Appeals. Security appeared at the Board hearing in opposition to the Church’s requests for relief.

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<sup>3</sup> “A request for special hearing [pursuant to BCZR § 500.7] is, in legal effect, a request for a declaratory judgment.” *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005).

<sup>4</sup> Neither the Zoning Order and Site Plan in Case No. 1988-0222-A nor the 4th Amended CRG Plan is included in the record extract.

<sup>5</sup> The administrative law judge imposed certain conditions upon their approval, but the parties do not discuss them in their briefs.

*The Board's hearing*

The relevant issue before the Board was the degree to which the lots established by the proposed subdivision complied with BCZR § 409, which sets out Baltimore County's off-street parking requirements for residential, commercial, and industrial uses. Each party called one witness, both were civil engineers, and both were admitted as expert witnesses.

Richard Matz, the Church's expert, testified that, after accounting for some spaces reserved for the exclusive use of NATS's truck driver training program, there were 843 available parking spaces on the Church's parcel, 788 located on Lot 1, and 55 on the proposed Lot 2. He told the Board that the current uses on Lot 1 required 650 spaces, that the proposed use on Lot 2 would require 46 spaces,<sup>6</sup> thus resulting in a collective surplus of 147 parking spaces over and above what is required by BCZR § 409. Matz also testified that there were tenants who occupied portions of the building on Lot 1 who were in the process of being evicted.

Security's expert witness was Stephen Warfield, who criticized Matz's analysis on several grounds. The one that is relevant to the current appeal is that Matz failed to take into account the legal effect of the AMC easement. It was Warfield's position that the AMC easement encumbers 292 spaces on the Church's property and so 292 spaces should be

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<sup>6</sup> The record extract does not contain the transcript of Matz's direct testimony and only portions of his testimony on cross-examination. Although we do not know how he came up with his figures, we have no basis to conclude that any of them were inaccurate.

deducted from the total available parking spaces on the Church's property. If the 292 spaces are deducted from the 147 surplus spaces on the Church's lots, the Church does not meet the requirements for off-street parking.<sup>7</sup>

In its decision, and after summarizing the relevant testimony, the Board concluded (emphasis added):

Upon review of the testimony and evidence, the Board [finds] that the creation of the proposed GEICO 2.04 ± acre lot meets applicable regulations as a discrete, stand-alone lot, subject to review by the Development Review Committee. The Board further [finds] that *because the non-church based uses are in a state of flux, with at least one lease having been terminated and subject to ongoing eviction proceedings, the adequacy of parking could not be determined with certainty, but that the church and its associated accessory uses must comply with all zoning requirements at the time of issuance of an occupancy permit.* As to the availability of the parking spaces subject to the easement agreement with the movie theater, the Board determine[s] that such easement is, by its terms, *non-exclusive, and not restricted to a particular use.* As such, there is no prohibition on those spaces being counted to satisfy required parking for the church.

Dissatisfied with this result, Security filed a petition for judicial review. The circuit court affirmed the Board's decision.

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<sup>7</sup> In its brief, Security points to another alleged error by Matz. However, Security did not include all of the relevant pages of the hearing transcript in its extract as required by Md. Rule 8-504(a)(4). We decline to address the issue. *See, e.g., DiPino v. Davis*, 354 Md. 18, 56 (1999).

ANALYSIS

*The Standard of Review*

In a judicial review proceeding, the issue before an appellate court “is not whether the circuit . . . court erred, but rather whether the administrative agency erred.” *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (cleaned up). For that reason, we “look through” the circuit court’s decision in order to review the decision of the agency itself. *People’s Counsel for Balt. County v. Loyola College*, 406 Md. 54, 66 (2008).

A reviewing court accepts an agency’s factual findings if they are supported by substantial evidence, that is, if there is relevant evidence in the record that logically supports the agency’s factual conclusions. *Bayly Crossing*, 417 Md. at 138-39. A reviewing court pays no deference to an agency’s legal conclusions. *Id.* at 137. Additionally, “[a]n agency’s decision is to be reviewed in the light most favorable to it and is presumed to be valid.” *Assateague Coastal Trust v. Schwalbach*, 448 Md. 112, 124 (2016) (citing *Chesapeake Bay Foundation v. DCW Dutchship Island, LLC*, 439 Md. 588, 611 (2014)).

*Security’s Contentions*

Security’s arguments to this Court starts with the premise that the Baltimore County zoning regulations “require that the [Church] provide a certain number of parking spaces on each of the resulting lots to serve the uses on each lot.” Security then points to the easement agreement with the movie theater complex. Security acknowledges that this easement agreement is non-exclusive but argues nonetheless that it restricts the number of parking spaces available to the Church to meet the County’s parking requirements. To

support its position, Security points to BCZR § 409, which sets out Baltimore County’s off-street parking requirements for various institutional, industrial, commercial, and residential uses. Security concedes that § 409 recognizes that parking requirements can be adjusted when parking is provided for multiple uses when stores or businesses have different peak hour parking needs. Security is correct; BCZR § 409.6 sets out various formulas for adjusting the number of required spaces depending upon the actual uses “to reflect that the spaces will not be in demand at the same time.” Section 409.6 also provides that, in situations involving “place[s] of religious assembly,” any adjustment in required parking is made on a case-by-case basis by County officials. However, says Security, the Church “did not seek to avail itself of this provision[.]”

From this basis, Security presents two arguments that we will discuss separately.

*1. The Board’s interpretation of the AMC easement*

Security first asserts that the Board:

erred as a matter of law when it determined that [the Church’s] parking areas that are subject to the [AMC easement] may be used to satisfy the parking requirements of BCZR § 409 for the uses on [the Church’s] property.”

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Specifically, the [AMC easement] for 292 parking spaces (E. 110) in [the Church’s] parking lot must be accounted for, because the practical effect of that parking easement is to reduce the amount of parking actually provided on the [Church’s] Property. Once accounted for, [the Church’s] parking is inadequate to meet the requirements of BCZR § 409.

The fatal problem with this contention is that the AMC easement agreement is explicit that the easement granted therein is *non-exclusive*. Because it is non-exclusive, nothing in

the easement prevents the Church or its tenants from lawfully using those spaces. Contrary to what Security suggests, the AMC easement does not require the Church to reserve 292 spaces for the use of AMC patrons. Instead, the easement agreement allows patrons of the theaters to use the spaces if no one else happens to be parking in them at the time. Another problem with Security's argument is that there is nothing in the record extract to indicate that AMC's patrons do not have other spaces on Security's property. Nor is there anything in the extract to show how frequently AMC patrons actually use the spaces on the Church's property. The Board's decision and its reasoning are presumed to be correct, and we will not conjure up wills o' the wisp to undermine the Board's decision.

*The Board's deferral of the parking issues*

Second, Security argues that the Board erred when it determined that the issues of parking compliance could be resolved when occupancy permits were issued. It states:

[The Church] sought a Petition for Special Hearing in order to show that its amended zoning site plan complies with all requirements of the BCZR, and therefore should be approved. Obviously, in order to approve the amendment of the site plan, the Board must examine the plan in the context of the parking regulations—it is, after all, a request to amend a parking variance site plan (prior parking variance case 1988-0200-A). However, in this case, the Board pushed off the question of adequacy of parking to the time when occupancy permits are issued. The Board's action does not make any sense in the context of this Petition for Special Hearing. In addition, the Board erred by ignoring the requirements of BCZR, §409.2:

At the time of *application for a building permit* for the erection or enlargement of any building for which off-street parking or loading spaces are required, a plan shall be provided at an appropriate level of detail showing such parking or loading spaces, including the

means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

(Emphasis in original omitted; our emphasis added.)

Security argues that because the Church “is seeking to place new uses on its Property, it must update its parking plan which it has sought to do through the Special Hearing procedure of this case.” It continues (emphasis added):

the Board wrongly held that compliance with the parking regulations is not required at this time. Nonetheless, *this is precisely the time when adequacy of parking under the zoning regulations must be determined*. If adequacy of parking was to be determined at the time of issuance of occupancy permit, this provision of law would so state.

This contention is unpersuasive. First, the relevant County zoning regulation makes it clear that the appropriate time for determining adequacy of off-street parking is when an application for a building permit is filed. BCZR § 409.2.<sup>8</sup> The Church’s application for amendments to the site and CRG plans did not, by the plain language of the statute, require an analysis of off-street parking requirements and compliance. Second, the Board did not err when it recognized the obvious, namely, that demand for parking depends upon the type and extent of *uses* and not on the configuration of property lines.

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<sup>8</sup> BCZR § 409.2 states:

At the time of application for a building permit for the erection or enlargement of any building for which off-street parking or loading spaces are required, a plan shall be provided at an appropriate level of detail showing such parking or loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

The Board’s decision to defer the calculation of required parking to the occupancy permit approval stage means that the County’s land use planners and regulators will be assessing parking demand based upon actual uses. This is clearly what § 409 contemplates and Security has pointed to no provision in the Baltimore County Zoning ordinance or in the BCZR that prohibits such an approach. And, as we have explained, the provision on which Security relies, BCZR §409.2, provides no textual support for its argument that parking issues must be resolved before an application for a site plan or CRG plan can be granted. While the approach taken by the Board in this case may not be explicitly set out in § 409, “[w]e must remember that the machinery of government would not work if it were not allowed a little play in its joints.” *Bain Peanut Co. of Texas v. Pinson*, 282 U.S. 499, 501 (1931) (Holmes, J.). In our view, the approach taken by the Board reflects a pragmatic, common-sense approach which is consistent with the relevant provisions of the BCZR and the policy goals that the regulations seek to further.<sup>9</sup>

#### THE CHURCH’S REMAINING CONTENTIONS

In addition to addressing the merits, the Church raises two additional contentions. The first is that Security failed to exhaust its administrative remedies and the second is that this

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<sup>9</sup> One of the policy goals is to reduce redundant and unnecessary parking spaces. BCZR § 409.13 authorizes the Director of Permits, Approvals, and Inspections to reduce parking space requirements by up to 40% for shopping centers with 100,000 square feet or more of gross leasable area “[i]n order to prevent the establishment of a greater number of parking spaces than is actually required to serve the needs” of the center.

appeal is moot. We agree with the Board that Security was a proper party to the proceedings before it. Therefore, Security is a proper party to this judicial review proceeding. Security also argues that the case is not moot. Resolving the parties' mootness contentions requires more information about the existing site plan and CRG plan and Baltimore County's site/CRG plan review and approval process than is contained in the parties' briefs and the extract. We decline to address the mootness argument.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE COUNTY  
IS AFFIRMED. APPELLANT TO PAY  
COSTS.**