Circuit Court for Prince George's County
Case No. CAL17-12150

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2518

September Term, 2017

BRUCE PLETSCH, *et al.*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *et al.*

Fader, C.J.,
Gould,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: July 22, 2019

Appellee/Cross-Appellant here, St. John Properties, Inc. (hereinafter " St. John" or "the Applicant"), the owner/developer of a comprehensively-planned, mixed-use development of over 431 acres, known as the Melford Property, applied on 18 October 2016 to The Maryland-National Capital Park and Planning Commission, through its Prince George's County Planning Board (hereinafter "Planning Board" or "the Board") for approval of Preliminary Plan of Subdivision 4-16006 for Melford Village (hereinafter "Preliminary Plan" or "Melford Village"). The Preliminary Plan was comprised of a 129.16-acre portion of the Melford Property.[1] The Planning Board held a public hearing on 9 March 2017, at the end of which the Board voted unanimously to approve the application. The Board, on 6 April 2017, adopted a Resolution embodying its approval of the decision.

Appellants/Cross-Appellees here,[2] who are homeowners in the neighboring Sherwood Manor subdivision and other areas surrounding the Melford Property, challenged in the Circuit Court for Prince George's County the Board's approval. The circuit court, after a hearing, affirmed the Board's action, but rejected St. John's standing challenge to Appellants' prosecution of the judicial review action. Appellants appealed timely. St. John noted a cross-appeal renewing its challenge to Appellants' standing.

[1] A Conceptual Site Plan was approved previously by the Prince George's County Council, sitting as the District Council, for the Melford Property. That approval is also on appeal in this court as *Bruce Pletsch et al. vs. County Council of Prince George's County, Sitting as District Council*, No. 00486, September Term 2016.

[2] Although Bruce Pletsch is the named lead appellant, we refer to the group of appellants generally as "Appellants" or "Appellants/Cross-Appellees" due to St. John's cross-appeal, discussed *infra*.

QUESTIONS PRESENTED

Appellants present three questions for our possible consideration:

1. Did the Planning Board correctly rely on an amendment to Sec. 24-121(a)(5) [of the Prince George's County Subdivision Ordinance] that violated the Annotated Code of Maryland, Land Use Article and is unlawful, null, and void?
2. Even if lawful, was the second sentence of § 21-121(a)(5) correctly applied to the Preliminary Plan by the Planning Board?
3. Was the requirement of Master Plan conformance under Sec. 24-121(a)(5) enforced by the Planning Board?

For reasons to be explained we shall not answer Appellants' questions because we find merit in Appellee's cross-appeal, concluding Appellants/Cross-Appellees lack standing to seek judicial review of the Board's approval of Preliminary Plan 4-16006.

FACTUAL BACKGROUND[3]

The Melford Property

The Melford Property, a partially-developed mixed-use project, is a 431+ acre tract of land located in Prince George's County, in the northeast quadrant of the intersection of Md. Routes 50 and 301. Direct vehicular access to the Melford Property is via Rte. 301 (there is no direct vehicular access to Rte. 50), an access shared by the neighboring Sherwood Manor residents, including several of the Appellants.

The Master Plan

The extant Area Master Plan addressing the development of the Melford Property

[3] We will supply, for contextual purposes, more background than is required strictly as relevant to our holding on the standing question.

is the 2006 Bowie and Vicinity Master Plan. The Master Plan designates the Melford Property as an employment venue, but includes a residential cap of no more than 866 dwelling units.

The Master Plan, adopted by the Prince George's County Council, sitting in its zoning and land use capacity as the District Council, removed expressly the Melford Property from the so-called Bowie Regional Center boundary set forth in the 2002 countywide General Plan. Maryland Code, Land Use Article § 21-103(c)(2)[4] authorizes the district council to "designate a functional master plan, an area master plan, or an amendment to either plan, as an amendment to the general plan."

The Revised 2014 General Plan and the Subdivision Ordinance

The District Council, in 2014, adopted a new countywide General Plan, entitled "Plan 2035 Prince George's." This General Plan established a new planning classification system for "centers." The Bowie Town Center was one of five town centers designated in the new General Plan. The General Plan states that it will map the "core and edge" of the Bowie Town Center and specify the necessary development pattern to meet certain "targets." The "targets" include 6,300 new dwelling units divided among the five town centers.

Section 24-121(a)(5) of the Prince George's County Subdivision Ordinance (sometimes called "Regulations"), at the time the 2014 General Plan was adopted, required

[4] This section was adopted in a 2012 recodification without substantive change from former Art. 28, § 7-108(a)(1) and (5).

for approval of a preliminary plan of subdivision that it conform to the relevant master plan. Bearing on this requirement, the County Council enacted CB-39-2016 in July 2016.[5] The amendment added the following additional language to § 24-121(a)(5): "[n]otwithstanding any other requirement of this Section, a proposed preliminary plan or final plat of subdivision may be designed to conform with the land use policy recommendations for centers, as approved within the current County general plan, unless the District Council has not imposed the recommended zoning."

2016 Preliminary Plan, Hearing, and Opposition

St. John, on 28 October 2016, submitted Preliminary Plan of Subdivision #4-16006, relying on the new language in § 24-121(a)(5) to demonstrate plan conformity. The Preliminary Plan for the approximately 129.15 acres of the Melford Village proposed 1,793 new residential units, as well as new commercial and office space. St. John submitted a written statement of justification with the Preliminary Plan, stating:

> [T]he 2035 General Plan supersedes and amends the 2006 Approved Bowie and Vicinity Master Plan [] by modifying the focus for the future development of Melford to an auto-accessible 'Local Town Center' with an average density for new development ranging from 10 to 60 dwelling units per acre and a target net FAR of 1.0 to 2.5. In furtherance of the recommended land use policies in the 2035 General Plan, CB-39-2016 was approved by the County Council on July 19, 2016 amending the relevant portions of Section 24-121 of the Subdivision Regulations. Specifically, CB-39-2016 authorizes preliminary plans to be designed 'to conform with the land use policy recommendations for centers, as approved within the current County general plan.'

[5] Prior to the amendment, the full text of the relevant Regulation was: "[t]he preliminary plan and final plat shall conform to the area master plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant plan recommendations no longer appropriate or the District Council has not imposed the recommended zoning."

On 28 February 2017, the planning staff of the Maryland-National Capital Park and Planning Commission in Prince George's County issued a Technical Staff Report, recommending approval of the Preliminary Plan, with conditions.

The Board held a public hearing on the Preliminary Plan on 9 March 2017. At that time, two Appellants/Cross-Appellees testified. Martha Ainsworth, a local resident, testified on behalf of the Prince George's Sierra Club.[6] Ms. Ainsworth claimed that the development created by the Preliminary Plan will:

> [C]reate a dense auto-dependent housing development far from mass transit in a cul-de-sac with only convenience retail . . . No schools and adjacent to the Patuxent River and the floodplain. It will displace employment opportunities for surrounding communities, exacerbate congestion, lengthen commutes, raise greenhouse gas emissions, and lead to the trampling and trashing of the Patuxent River floodplain.

Ms. Ainsworth concluded her testimony by expressing doubt whether the higher residential density proposed in the Preliminary Plan conforms with the 2006 Master Plan and the established guidelines for a "center."

The other testifying Appellant/Cross-Appellee was Albert Baumann, also a local resident. Mr. Baumann testified regarding a traffic study completed by a consulting firm for St. John regarding the impact of the Melford Village subdivision proposal. The traffic study concluded that the Melford Village development would not create any safety or road inadequacies. Admitting "I'm not a traffic expert and I admit that I don't understand everything in the report," Mr. Baumann offered nonetheless his opinion on the study. Mr.

[6] According to Ms. Ainsworth's testimony, the Sierra Club is "an environmental organization with thousands of members and supporters" in Prince George's County.

Baumann alleged that the proposed Preliminary Plan "threatens the safety and the quality of life of what's already there. I'm concerned about this project and it[']s size and the impact it[']s going to have on the traffic…"

At the conclusion of the hearing, the Planning Board voted unanimously to approve the Preliminary Plan. On 6 April 2017, the Board issued a Resolution containing detailed findings of fact and conclusions for how the Preliminary Plan met the required findings in the Subdivision Regulations for approval.

Judicial Review

Appellants/Cross-Appellees filed on 10 May 2017 a Petition for Judicial Review in the Circuit Court for Prince George's County. St. John responded by filing a Motion to Dismiss, arguing that the Appellants/Cross-Appellees were not aggrieved, and therefore lacked standing. The circuit court held oral argument on 19 January 2018. The judge, after hearing from all sides, issued an Order affirming the Planning Board's decision to approve the Preliminary Plan and a separate Order denying St. John's Motion to Dismiss.[7] Appellants/Cross-Appellees appealed timely. St. John filed a timely cross-appeal, challenging the Appellants/Cross-Appellees standing to seek judicial review.[8]

[7] The trial judge denied St. John's Motion to Dismiss in open court. He did not offer in-depth reasoning for the denial, stating only: "the Court thinks that it would be an abuse of discretion to deny these Petitioners their day in court. Notwithstanding the legal precedence in *Ray* [*v. Mayor & City Council of Baltimore City*, 430 Md. 74, 59 A.3d 545 (2013)] and so forth. … They've already seen some level of development there and I don't know what – at what level they protested it, but I'm going to deny the motion to dismiss."

[8] St. John asserted, as to Appellants' questions, that:

DISCUSSION

I. Do the Appellants/Cross-Appellees have standing?

Logically, we must consider first the threshold issue, raised by St. John on cross-appeal, of whether the circuit court erred in denying its Motion to Dismiss for Appellants'/Cross-Appellees' lack of standing. A party's standing to seek judicial review of the decision of a local administrative body's decision in a land use matter (where authorized by law) is a question of law, which we decide without deference to the lower court's decision. *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 494, 822 A.2d 478, 487 (2003). For reasons that follow, we conclude that the circuit court erred in denying St John's motion. As such, the Appellants/Cross-Appellees did not have standing to seek judicial review of the Board's approval of Preliminary Plan 4-16006.

Maryland Code, Land Use § 23-401(a), states, in pertinent part:

> (1) Within 30 days after the county planning board takes final action on an application for subdivision approval, judicial review may be requested by:
>
> (i) a person aggrieved by the action;
>
> * * *

The seminal Maryland decision on standing to seek judicial review particularly in

---

1. State law clearly empowers the County Council to adopt subdivision regulations pertaining to the applicability of general and master plans to preliminary plans of subdivision;
2. Pletsch cannot challenge the validity of CB-39-2016 by a judicial review of Preliminary Plan 4-16006 because CB-39-2016 is a legislative act of the County Council;
3. The Planning Board properly interpreted and applied § 24-121(a)(5) of the Subdivision Regulations when it approved Preliminary Plan 4-16006; and,
4. The Planning Board's decision regarding compliance of Preliminary Plan 4-16006 with § 24-121(a)(5) of the subdivision regulations is supported by substantial evidence.

land use cases continues to be *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 230 A.2d 289 (1967). There, the Court of Appeals held that two conditions precedent must be satisfied before a person has standing to seek judicial review: he or she "(1) must have been a party to the proceeding before the Board, and (2) must be aggrieved by the decision of the Board." *Id*. at 143. Appellants/Cross-Appellees here were a party to the proceeding before the Planning Board. Thus, we are left to consider only whether Cross-Appellees/Appellants were aggrieved, as that has been fleshed-out to some extent in the Maryland cases.

Generally, a party is deemed aggrieved if "he, she, or it can demonstrate that the land use decision will adversely affect his, her, or its interest, and that such interest is personal or specific, and not shared by the general public." *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore*, 407 Md. 253, 271, 964 A.2d 662, 672 (2009) (quoting *Bryniarski v. Montgomery Co.*, 247 Md. 137, 144, 230 A.2d 289, 294 (1967)). *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013), is the most important recent case of relevance in determining whether a party is aggrieved.

The genesis of the controversy in *Ray* was the Baltimore City Council passing an ordinance authorizing the development of an 11.5-acre tract of land in its Remington and Charles Village neighborhoods. *Id.* at 78, 59 A.3d at 547. The approved development was expected to bring "approximately 20 national retailers . . . as well as 70-80 market-rate apartment units." *Id.*

Two residents of the surrounding area filed a Petition for Judicial Review regarding the plan's approval. *Id*. Each petitioner lived over 2,000 feet, or approximately .4 miles,

away from the location of the proposed development. *Id*. The first petitioner claimed aggrievement because: (1) he could see the development site from his second-floor bathroom during the winter months; (2) he could hear noise from the PUD site when his second-floor bathroom window is open; and, (3) he asserted that the development would increase dramatically traffic in front of his home. *Id*. The second petitioner challenged specifically a planned Wal-Mart store in the development, claiming it would affect adversely the character of the neighborhood by forcing out many local businesses, resulting in vacant buildings. *Id.* at 79. The Circuit Court for Baltimore City granted the respondent's motion to dismiss the Petition for Judicial Review because the petitioners did not demonstrate *prima facie* aggrieved status, nor did they show any special aggrievement different from members of the general public. *Id*. at 79-80, 59 A.3d at 548. The Court of Special Appeals affirmed.

The Court of Appeals affirmed also, holding that the circuit court was correct in dismissing the Petition for Judicial Review because the petitioners failed to show that they had been aggrieved specially in a manner different than the public generally. *Id.* at 99, 59 A.3d at 560. Pertinent to the present case, the Court identified three methods of demonstrating standing in similar situations: (1) proximity; (2) special aggrievement; or, (3) direct and specific harm. We consider each category in greater detail.

A. Proximity

An assertedly affected property's proximity to the property at issue is the most important factor to be considered when determining standing. There is no bright-line rule that governs how close a property must be to demonstrate presumed aggrievement. What

has been said is that "[a] protestant is *prima facie* aggrieved when his proximity makes him an adjoining, confronting, or nearby property owner." *Ray*, 430 Md. at 85, 59 A.3d at 551.

The Court of Appeals has found *prima facie* aggrievement in cases where the property at issue was either contiguous, "nearby," or within "sight or sound" range of the protestant's property. *See, e.g.*, *Bryniarski*, 247 Md. at 146–48 (petitioners were *prima facie* aggrieved where they owned property contiguous immediately or in close proximity to the subject property); *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 353 (1950) (petitioners had standing where their property was less than 100 feet from the subject property and "within the residential use district in which the property in dispute was originally classified."); *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 297-301, 686 A.2d 605, 618-20 (1996) (petitioners were *prima facie* aggrieved where they owned property "adjacent" and "nearby" to the subject property, and the Court noted that evidence showed that higher levels of toxic substances would fall on petitioner's farm than properties farther from the site).

Terms used commonly to describe *prima facie* aggrievement, including "touching," "contiguous," "adjoining," "bounding," "confronting," "abutting," and synonyms, provide some geographic contours for this requirement. The somewhat nebulous adjective "nearby," however, often found in Maryland jurisprudence on this topic, does not have a clear definition in relation to proximity standing. As Judge James Eyler noted, "[a]s an aside, the issue of what constitutes a 'nearby' property owner is, itself, a question of fact which may turn on such circumstances as the topography of the subject property and its environs and the nature of the proposed development." *Holland v. Woodhaven Bldg. &*

Dev., Inc., 113 Md. App. 274, 281 n.3, 687 A.2d 699, 703 (1996), *abrogated on other grounds by Layton v. Howard Cnty. Bd. of Appeals*, 399 Md. 36, 922 A.2d 576 (2007).

1. Did the Appellants/Cross-Appellees demonstrate standing based on their proximity to Melford Village?

The record reveals that only Appellants/Cross-Appellees Patricia Parker and her husband, Johnathan Williams, own property contiguous literally to the Melford Property. The Melford Village portion of the Melford Property, however, is further to the east and therefor further from the Parker/Williams property. The next closest property owned by other co-appellees is an additional 357 feet or more distant from the closest boundary line of the Melford Property. Appellants/Cross-Appellees urge, nonetheless, that the contiguity of the Parker/Williams land to the Melford Property gives them standing, and, therefore the Petition for Judicial Review advanced correctly to a determination on the merits regardless of whether other Appellants/Cross-Appellees did not meet the aggrievement requirements. *See Bryniarski*, 247 Md. at 145, 230 A.2d at 295 (stating: "If any appellant is a person aggrieved, the court will entertain the appeal even if other appellants are not persons aggrieved.").

St. John maintains that neither Parker/Williams nor any of the other Cross-Appellees are *prima facie* aggrieved by the Planning Board's decision to approve the Preliminary Plan. In taking this position, it focuses on the spatial relativity and distinction between the Melford Property and the component of it that is the only part that is the subject of the Preliminary Plan at issue in this case, Melford Village. St. John points out that the properties of each Appellant/Cross-Appellee are at least 1,000 feet or more from the closest

boundary line of Melford Village, so none are *prima facie* aggrieved. Because no Appellant/Cross-Appellee owns property adjoining Melford Village, they lack standing and their claims are not properly before us.

We agree with St. John. In reaching this decision, we consider what the record reveals about the topography and environs of the Melford Property, Melford Village, and how they relate to the properties between it and that of Appellants/Cross-Appellees. The Melford Property is over 431 acres, with substantial existing development in place. Preliminary Plan 4-16006 involves approximately 129 acres of mostly undeveloped land in the center of the Melford Property. Appellants/Cross-Appellees are maintaining other litigation involving approval of a Conceptual Site Plan for the entire Melford Property, the closest boundary of which is contiguous with at least one of their properties. In the present case, they challenge *only* the Board's approval of the Preliminary Plan related to the Melford Village portion of the Melford Property. The mixed-use development proposed for the Melford Village site, as reflected in Preliminary Plan 4-16006, appears surrounded by existing development within the overall Melford project.

Relatively contemporaneous aerial photography in the record reflects that Melford Village is separated from the closest properties owned by Appellants/Cross-Appellees by dense woodlands, roads, and existing buildings on the Melford Property that are not part of the Melford Village preliminary plan of subdivision. For example, the closest boundary line of Melford Village, as the crow flies, to the property owned by Ms. Parker and Mr. Williams, the closest Appellant/Cross-Appellee, is separated by a dense wooded area, two sets of already-existing buildings, and a public road, Science Drive.

In addition to not meeting the contiguity standard demonstrating *prima facie* aggrievement, the Appellants/Cross-Appellees do not meet the "nearby" threshold to establish *prima facie* aggrievement. As revealed by the record, the closest opponents' property to Melford Village is approximately 1,090 feet away. While it is unclear what constitutes exactly "nearby," the Appellants'/Cross-Appellees' distance from Melford Village exceeds the historical analytical threshold identified in *Ray*.[9] Thus, they do not meet the threshold requirements to demonstrate proximity standing or *prima facie* aggrievement.

B. Special Aggrievement

In the absence of proximity, "much more is needed" to demonstrate standing. *Ray*, 430 Md. at 83, 59 A.3d at 550. A protestant may prove that he or she is aggrieved specially "when [he or] she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough … to be considered almost *prima facie* aggrieved, and offers 'plus factors' supporting injury." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 528, 92 A.3d 400, 445 (2014). The Court of Appeals discussed 'plus factors' in *Ray*:

> an owner's lay opinion of decreasing property values and increasing traffic has been considered sufficient for special aggrievement when combined with proximity that is almost as great as in cases where properties are "adjoining, confronting or nearby." *See Habliston v. Salisbury*, 258 Md. 350, 352, 354–55, 265 A.2d 885, 885–87 (1970) (protestant 200 to 500 feet away from reclassification of 16 acres to residential was specially aggrieved based on close proximity and lay testimony of decreasing property value); *Chatham Corp. v. Beltram*, 252 Md. 578, 579–80, 584, 251 A.2d 1, 2, 4 (1969) (protestants in sight of 6.74 acres reclassified to permit apartments were "specially aggrieved" based on "proximity of their homes within [1000 feet

[9] In part, at least, because the distance does not satisfy the "almost *prima facie* aggrieved" status as discussed in Part B of this opinion.

> of the rezoning] and their feeling that the increased density would depreciate their property values"); *see also Alvey v. Hedin*, 243 Md. 334, 337, 339, 221 A.2d 62, 63–64 (1966) (protestants 250 feet away from rezoning to construct marina on 4.75 acres were specially aggrieved based on close proximity and special problems with lights, noise, and refuse); *Toomey v. Gomeringer*, 235 Md. 456, 460, 201 A.2d 842, 844 (1964) (about two city blocks away and testimony of real estate expert that there was change in residential character and decreasing property values).

Ray, 430 Md. at 83–84, 59 A.3d at 550–51.

Protestants who lived more than 1,000 feet from a contested site have been denied standing repeatedly. Although there is no bright-line rule as to distance, the category of almost *prima facie* aggrieved protestants "has been found in our cases to apply only to those who have lived between 200 to 1000 feet away from the subject property." *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 559, 113 A.3d 639, 651 (2015); *see also*, *e.g.*, *Ray*, 430 Md. at 84-84, 59 A.3d at 550-51 ("without sufficient proximity, similar facts will only support general aggrievement. For example, when the affected properties are not sufficiently close to the site to qualify as almost *prima facie* aggrieved, claims of increasing traffic, change in the character of the neighborhood, lay opinion projecting a decrease in property values … have been held to show only general aggrievement."); *White v. Major Realty, Inc.*, 251 Md. 63, 64, 246 A.2d 249, 250–51 (1968) (protestant 0.5 miles away, who alleged increased traffic, increase use of water system, overcrowded schools, and change in character of community, not aggrieved specially); *DuBay v. Crane*, 240 Md. 180, 182–84, 185–86, 213 A.2d 487, 488–90 (1965) (protestants 1500+ feet away, who claimed increase in sewage disposal, increased traffic, and lay opinion of decreasing property values, not aggrieved specially); *Marcus v. Montgomery Cnty. Council*, 235 Md. 535, 537–

38, 541, 201 A.2d 777, 778–81 (1964) (protestants with claims of increased traffic, increase in school population, 0.25 miles and 0.75 miles away from site only aggrieved generally).

2. Were the Appellants/Cross-Appellees aggrieved specially?

We do not find the Appellants/Cross-Appellees demonstrated special aggrievement. To be sure, the Appellants/Cross-Appellees alleged a litany of "plus factors" supporting special aggrievement. Ms. Ainsworth and Mr. Baumann both alleged, at the Planning Board hearing, that the planned development will increase traffic, congestion, and overall quality of life. Other Appellants/Cross-Appellees submitted affidavits, claiming, among other things: increased noise, increased light pollution, increased traffic, increased litter/dumping, negative impact on wetlands and wildlife, decreased property values, and decreased enjoyment of their properties and surrounding areas.

Fatal to these claims, and inhibiting the Appellants/Cross-Appellees from demonstrating "almost *prima facie*" aggrievement, is the distance of their property from the Melford Village area. As discussed above, the closest property owned by an Appellant/Cross-Appellee to the closest Melford Village boundary is over 1,000 feet away. No reported Maryland appellate opinion has found special aggrievement when a property is more than 1,000 feet away from property that was the subject of the land use approval being challenged. We appreciate that there is no bright-line rule. Dicta seems to suggest that this 1,000-foot threshold may be flexible, depending on the facts specific to each case. Despite this crack in the door, Maryland courts have adhered consistently to a standard that the property be 1,000 feet or less away from the challenged development. We shall follow the precedent set by *Bryniarski* and its progeny. As such, we decline to stretch here the

"almost *prima facie*" aggrievement to include the Appellants/Cross-Appellees. The harms described at the public hearing and in the affidavits by the Appellants/Cross-Appellees, thus, constitute at best only general harms and are not specific sufficiently to grant them standing.

C. Direct and Specific Harm

The third *Ray* category by which to demonstrate standing lurks like a Sasquatch, existing in popular theory, but evading discovery. The "[t]hird, poorly-defined category of protestants with standing who, despite being far removed from the subject property, may nevertheless be able to establish the fact that his personal or property rights are specially and adversely affected by the board's action." *Ray*, 430 Md. at 85–86, 59 A.3d at 552 (internal quotations omitted). According to reported Maryland appellate opinions, no protestant has been found to demonstrate standing under this category.

3. Did the Appellants/Cross-Appellees demonstrate a harm impacting directly and specifically their property?

Appellants/Cross-Appellees likewise do not fit within the third *Ray* standing category. They advance that increased traffic associated with the development of Melford Village will risk blocking ingress or egress to their homes in Sherwood Manor. Appellants/Cross-Appellees cite a traffic study, performed for another project and not taking into account the Melford Village traffic, which would raise the level of service at the intersections of Md. Routes 301 and 450 (there are two different intersections further north) to unacceptable level of service "F" in the morning peak traffic period and level "E" in the afternoon peak. This closest of the two intersections, however, is approximately 1.7

driving miles away from the entrance to the Sherwood Manor development. Determining that traffic at this intersection impacts directly and specifically properties owned by the Appellants/Cross-Appellees would extend the zone of properties impacted and thus able to demonstrate standing successfully to virtually any property that might be accessed by driving through that intersection. We decline to do so.

In a last-ditch contention, Appellants/Cross-Appellees point out that the sole means of ingress and egress to Sherwood Manor is Old Crain Drive (via Oxford Court), a two-lane public road that connects to the south with Science Drive within the Melford Property. Science Drive leads to a traffic circle at Melford Boulevard, which is a feature that all future Melford Village residents, office park workers, and such must use to access Md. Rte. 301. This traffic circle is, in the words of Appellants/Cross-Appellees, "just outside" the Melford Village boundary. The entrance road to Melford will serve both Sherwood Manor and the proposed Melford Village. The argument, however, ends there. Appellants/Cross-Appellees do not allege specially how, other than sharing public roads, that Melford Village traffic may harm directly their properties. Merely sharing a public road does not meet the threshold to prove direct and specific harm, as required by the third *Ray* category.

CONCLUSION

As discussed *supra*, Appellants/Cross-Appellees did not demonstrate proximity standing because they do not own property contiguous with the challenged Melford Village site. They failed additionally to demonstrate standing by either special aggrievement or showing a harm impacting directly and specifically their properties. As such, Appellants/Cross-Appellees do not have the requisite standing to seek judicial review of

the Board's approval of the Preliminary Plan. Because they lack standing, we dismiss the appeal and do not reach the merits of the questions presented by Appellants/Cross-Appellees.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED; CASE REMANDED TO THAT COURT WITH DIRECTIONS TO DISMISS THE PETITION FOR JUDICIAL REVIEW. COSTS TO BE PAID BY APPELLANTS/CROSS-APPELLEES.