

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1169

September Term, 2016

PRINCE GEORGE'S COUNTY,
MARYLAND

v.

JOSEPH SKILLMAN, ET AL.

Wright,
Berger,
Leahy,

JJ.

Opinion by Berger, J.
Concurring Opinion by Leahy, J.

Filed: July 13, 2017

*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 case involves an administrative appeal from the Prince George’s County Board of Appeals relating to the denial of a use and occupancy (“U&O”) permit that Joseph and Cynthia Skillman (“the Skillmans”), appellees, sought in order to operate an adult entertainment business. The Prince George’s County Department of Permitting, Inspections, and Enforcement (“DPIE”) denied the Skillmans’ permit application on the basis of insufficient vehicular access. After exhausting their administrative remedies, the Skillmans sought judicial review in the Circuit Court for Prince George’s County. The circuit court reversed the determination of the Prince George’s County Board of Appeals (“the Board”) and entered judgment in favor of the Skillmans.

Prince George’s County (“the County”) noted a timely appeal to this Court, presenting two questions for our review,¹ which we have consolidated and rephrased as a single issue as follows:

¹ The questions, as presented by the County, are:

- I. Did the Circuit Court err when it relied on information outside of the record of the Administrative Hearing Board and found that the Board’s factual determination related to direct vehicular access was arbitrary and capricious?
- II. Did the Circuit Court err when it found that the Board of Appeals’ legal interpretation of the “connectivity” requirement under section 27-466.01 was erroneous and then further erred when it failed to remand to the Board to make necessary factual determinations?

As we shall explain, our review in this administrative appeal is of the Board of Appeals’ determination, not of the circuit court. As such, we have framed the issue presented on appeal in a manner that reflects the scope of our review.

Whether the Board of Appeals erred in affirming the denial of the Skillmans' U&O permit application.

The Skillmans moved to dismiss the County's appeal. For the reasons explained herein, we shall deny the Skillmans' motion to dismiss the appeal and affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The Skillmans own a parcel of land located at 11407 Frederick Road, Beltsville, Maryland ("the Property"). The Property consists of 8,119 square feet and is improved with a warehouse structure.

The Property has a zoning classification of heavy industrial (I-2) and has been used as a roofing business since 1995.² The Property fronts a section of Frederick Avenue that the Skillmans assert is a public street. This section of Frederick Avenue, however, is allegedly bordered by private property and does not directly connect to a public street.³ In order to access the Property to reach their roofing business, the Skillmans drive from a public street, across a portion of property that is allegedly owned by Philip Gottfried, and onto the portion of Frederick Avenue which is in front of the Property. The County

² The County has continually issued a U&O permit for the roofing business on the Property for over twenty years and the access requirements for a roofing business are identical to the access requirements for an adult entertainment business. The fact that the County had previously issued a U&O permit for the roofing business is not relevant to our consideration of the issues on appeal.

³ There is also an alley connecting the portion of Frederick Avenue in front of the Property to a public road, but the status of the alley is not at issue in this appeal.

characterizes the portion of Frederick Avenue in front of the Property as “an island” and argues that it is not connected to any public streets.

On November 7, 2014, the Skillmans applied for a U&O permit to operate an adult entertainment business at the Property. The Maryland–National Capital Park and Planning Commission (“MNCPPC”), a state agency responsible for planning functions in most of Montgomery and Prince George’s Counties, initially recommended approval of the Skillmans’ application, but the MNCPPC later revoked their recommended approval. Ms. Michelle Hughes of the Prince George’s County Planning Department of the MNCPPC explained that the MNCPPC would not approve the Skillmans’ U&O permit application because “the site plan submitted does not demonstrate the direct vehicular access on Frederick Ave from a public street for this property.”

On May 5, 2015, the Prince George’s County Department of Permitting, Inspections, and Enforcement (“DPIE”) denied the Skillmans’ U&O permit application. DPIE explained that it agreed with the MNCPPC recommendation and reiterated that the reason for the denial was that the site plan did not “demonstrate direct vehicular access onto Frederick Ave from a public street as defined by Section 27-421.01 of the Prince George’s County Code.”

The Skillmans appealed the DPIE decision to the Prince George’s County Board of Appeals (“The Board”), sitting as the Board of Zoning Appeals for the Maryland–Washington Regional District, on May 18, 2015. A hearing was held on October 14, 2015. Philip Gottfried, a neighboring landowner who owns numerous properties on Frederick Avenue, including the property located at the south end of Frederick Avenue, testified at

the hearing in favor of the denial of the Skillmans' U&O application. Mr. Gottfried asserted that he owned the portion of Frederick Avenue south of the Property and that he had the right to block anyone's access across his property. Mr. Gottfried further testified that a right-of-way does not exist granting the Skillmans access across his property.

The parties dispute whether Mr. Gottfried actually owns the portion of Frederick Avenue south of the Property and/or whether Mr. Gottfried can legally block access across the portion of Frederick Avenue he allegedly owns. A civil action between the Skillmans and Mr. Gottfried, in which the Skillmans seek a declaratory judgment and injunctive relief, is currently pending in the Circuit Court for Prince George's County. The Skillmans have asserted that a right-of-way exists across Mr. Gottfried's property. *Skillman v. Gottfried*, Circuit Court for Prince George's County Case No. CAE15-28998. In the present case, neither the Board nor the Circuit Court addressed the status of the portion of Frederick Avenue claimed to be owned and controlled by Mr. Gottfried.

At the hearing, the County acknowledged that "nobody disagrees that there is a chunk of Frederick Avenue that exists in space" in front of the Property. The County argued, however, that the portion of Frederick Avenue abutting the Property did not "look like any County maintained public road" and was not "up to any County standards or anything that is remotely acceptable as a County road." The County characterized the portion of Frederick Avenue as "sitting there in isolation" and emphasized that "the County does not maintain that road." The County further argued that the portion of road abutting the Property was an "island" and therefore did not satisfy the direct vehicular access requirement.

At the conclusion of the hearing, the Board issued its ruling against the Skillmans in a verbal resolution. Thereafter, the Skillmans filed a petition for judicial review in the circuit court on October 26, 2015. The Board, however, did not issue a written resolution. On March 4, 2016, the circuit court ordered that “the Board of Appeals shall adopt a resolution complying with Md. Land Use Code 22-311(e)(2) and Prince George’s County Code 27-231(e)(4), FORTHWITH.” The circuit court further ordered that the Board transmit the resolution within ten days of the circuit court’s order and ordered that “the Board of Appeals shall be fined the sum of Five Hundred Dollars (\$500.00) for each and every day that the resolution is late.”

The Board of Appeals ultimately issued a written resolution on March 14, 2016. The Board found that it was “not in dispute” that the Property “fronts on and is accessible to Frederick Avenue.” Nonetheless, the Board found that “to give meaningful application to the [Code section] . . . connectivity must exist for the island street of Frederick Avenue to some [other] public street.”

The circuit court held a hearing on the Skillmans’ petition for judicial review on June 24, 2016. The circuit court found that “the Board of Appeals’ legal interpretation in grafting a ‘connectivity’ requirement onto section 27-466.01 [of the Prince George’s County Code] was legally erroneous and that its factual determination that the Skillmans do not have direct vehicular access to a public street was arbitrary and capricious.” The circuit court reversed the decision of the Board of Appeals and remanded the matter for further proceedings. This timely appeal followed.

STANDARD OF REVIEW

When reviewing “the decision of an administrative agency, this Court reviews the agency’s decision, not the circuit court’s decision.” *Long Green Valley Ass’n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012) (quoting *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008)); *Ware v. People’s Counsel for Balt. Cnty.*, 223 Md. App. 669, 680 (2015) (“In an appeal from a judgment entered on judicial review of a final agency decision, we look ‘through’ the decision of the circuit court to review the agency decision itself.”).

Although we generally defer to the factual findings of an administrative agency, “[w]e review an agency’s decisions as to matters of law *de novo* for correctness.” *Wallace H. Campbell & Co. v. Maryland Comm’n on Human Relations*, 202 Md. App. 650, 663, (2011). “We are under no constraint . . . ‘to affirm an agency decision premised solely upon an erroneous conclusion of law.’” *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 204 (2009) (quoting *Ins. Comm’r v. Engelman*, 345 Md. 402, 411 (1997)). No deference is owed to an administrative construction of a statute “when a statutory provision is entirely clear” and unambiguous. *Kane v. Bd. of Appeals of Prince George’s Cty.*, 390 Md. 145, 160 n. 11 (2005) (internal quotation omitted).

DISCUSSION

I.

We first address the motion to dismiss filed by the Skillmans. The Skillmans moved to dismiss the County’s appeal, arguing that Prince George’s County was not a participant in or party to the judicial review in the circuit court, and therefore was not a proper party

to appeal to this Court. The Skillmans assert that only the Skillmans and DPIE were parties to the judicial review process.⁴

Pursuant to Md. Code (2013), § 9-201(b) of the Local Government Article (“LG”), “[a] charter county . . . may sue and be sued.” Prince George’s County is a charter county, and pursuant to the Prince George’s County Charter, the County “constitutes a body corporate and politic.” Prince George’s County Charter, Art. I § 101. The County Charter further provides that “[t]he corporate name shall be ‘Prince George's County, Maryland,’ and it shall thus be designated in all actions and proceedings touching its rights, powers, properties, liabilities, and duties.” Prince George’s County Charter, Art. I § 103.

There is no separate legal entity known as the Prince George’s County Department of Permitting, Inspection, and Enforcement. DPIE is an agency of the County. Indeed, the County Charter establishes DPIE and assigns its functions as follows:

There shall be a Department of Permitting, Inspections, and Enforcement headed by a Director of Permitting, Inspections, and Enforcement. The Director of Permitting, Inspections, and Enforcement shall be responsible for the administration of County laws relating to business licensing and the processing of complaints against such businesses. The Director shall study and report on any planning and zoning matters related to permitting, inspections, and enforcement. The Director shall also be responsible for the administration and enforcement of the County's permitting functions as assigned by law. These functions shall include, but need not be limited to:

(1) Housing regulations and inspections;

⁴ The Skillmans raised the same issue in a motion to correct the record filed November 18, 2017. This Court denied that motion on December 20, 2016.

(2) Construction standards, including plans review and inspections, and enforcement of building and fire codes related to building permits;

(3) Zoning enforcement; and

(4) Property standards.

Additional responsibilities relating to permit granting and inspectional authority may be assigned by law.

Prince George’s County Charter, Schedule of Legislation § 18. The Skillmans cite to no authority to support their theory that DPIE is a separate legal entity which can independently participate in a judicial review process.

The record reflects that the County, on behalf of DPIE, participated in the judicial review before the circuit court. Deputy County Attorney Jared McCarthy represented the County and entered a response from the County on behalf of DPIE. Pursuant to the County Charter, “the County shall have all powers necessary for the conduct of its affairs.” Prince George’s County Charter, Art. 10 § 1014. In *Howard Cty. v. JJM, Inc.*, 301 Md. 256, 262 (1984), the Court of Appeals held that an identical catchall provision of the Howard County Charter “obviously should include the power to defend its subdivision regulations.” The Court of Appeals explained, while rejecting a similar motion to dismiss, that “if the [c]ounty is authorized to be a party and if the solicitor is authorized to represent the County in suits of this nature, then the appeal in this case was properly brought.” *Id.* Accordingly, we reject the assertion by the Skillmans that the County is not a proper party to this appeal and, accordingly, deny the motion to dismiss the appeal.

II.

We now turn to the merits of this appeal. In its brief, the County focuses on two allegations of error on the part of the circuit court. First, the County argues that the circuit court erred by relying upon information outside of the administrative record. Second, the County argues that the circuit court erred by finding that the Board of Appeals' interpretation of the governing statute was erroneous.

As we explained *supra*, our review in this appeal is of the Board of Appeals' determination, not of the circuit court's determination. *Long Green Valley Ass'n, supra*, 206 Md. App. at 273. As such, we frame the issues on appeal somewhat differently, focusing on the specific legal arguments raised by the County rather than on specific alleged errors by the circuit court. First, we shall examine whether the Board's interpretation of the governing statute was erroneous. Second, we shall apply the governing statute to the facts of the present case, and consider whether the Board erred by concluding that the Skillmans were not entitled to a U&O because the Property lacked "direct vehicular access to a public street."

A. *The County Code's "Direct Vehicular Access" Requirement*

Pursuant to County Code § 27-466.01, in order to qualify for the U&O permit, the Property is required to have "frontage on, and direct vehicular access to, a public street, except lots for which private streets or other access or rights-of-way have been authorized pursuant to subtitle 24 of this Code." The parties agree that the Property fronts on and is

accessible to Frederick Avenue, but the County contends that the portion of Frederick Avenue adjacent to the Property is not a “public street” pursuant to the Code.⁵

The Board did not expressly rule on the status of the relevant portion of Frederick Avenue. Rather, the Board concluded that the Property did not satisfy County Code § 27-466.01 because the relevant portion of Frederick Avenue is “an island unto itself,” in that it does not connect to any other public roads.⁶ The Board found that in order to “give meaningful application” to the statute, “connectivity must exist for the island street of Frederick Avenue to some public street.”

The plain language of County Code § 27-466.01 includes no language referencing a connectivity requirement. All that the Code provision requires is that a property have “frontage on, and direct vehicular access to, a public street.” The County defends the Board’s addition of a connectivity requirement by arguing that agency interpretations are entitled to deference. As we set forth in our standard of review, however, we owe no deference to an administration construction of a statute when the statute is clear and unambiguous. *Kane, supra*, 390 Md. at 160 n.11. Furthermore, we give weight to agency interpretations of statutes administered by the agency. *Cleanwater Linganore, Inc. v. Frederick Cty.*, 231 Md. App. 373, 382 (2016). The Board is not the administrative agency

⁵ We shall address this issue *infra*, Part II.B.

⁶ The Board’s resolution repeatedly references County Code § 27-421.01, rather than § 27-466.01. The two sections contain identical language, but the parties agree that § 27-466.01 is the appropriate section applicable to this application.

responsible for administering the County’s zoning code. Indeed, the County itself acknowledges that the MNCPPC serves as the zoning and planning “experts.”

Furthermore, even in circumstances when we give substantial weight to an agency’s interpretation, the agency’s interpretation must be reasonable. In our view, the circuit court presented a cogent analysis, explaining why, in this case, the agency’s interpretation should be given little deference. We have previously explained that we may adopt the analysis set forth in an unreported circuit court opinion in an appropriate case. We commented that even when “our review of [a] circuit court’s judgment is *de novo*,” it “does not necessarily mean we must ‘indulg[e] [in] the conceit that we could somehow say it better’ than did the circuit court.” *Friends of Frederick Cty. v. Town of New Mkt.*, 224 Md. App. 185, 205 (2015) (quoting *Sturdivant v. Maryland Dep’t of Health & Mental Hygiene*, 436 Md. 584, 588 (2014)). In that case, we adopted a relevant portion of a circuit court’s “well-reasoned and well-researched opinion as our own and attach[ed] it as an appendix” to our opinion. *Id.* at 186. In this case, we similarly see no reason to reinvent the wheel, as it were, and we quote from portions of the circuit court’s memorandum opinion.

The circuit court observed that the case of *Harford County People’s Counsel v. Bel Air Realty Associates*, 148 Md. App. 244 (2002) demonstrates why we should not give deference to the Board’s interpretation of County Code § 27-466.01, explaining:

The opinion points to a number of factors that should inform review of administrative interpretations.

The weight given an agency’s construction of a statute depends on several factors — the duration and consistency of the administrative practice, the degree to which the agency’s construction

was made known to the public, and the degree to which the legislature was aware of the administrative construction when it reenacted the relevant statutory language Other important considerations include “the extent to which the agency engaged in a process of reasoned elaboration in formulating its interpretation” and “the nature of the process through which the agency arrived at its interpretation,” with greater weight placed on those agency interpretations that are the product of adversarial proceedings or formal rules promulgation.

Id. at 267 (citations omitted).

Here there is no evidence that the County’s interpretation of section 27-466.01 is either consistent or longstanding. Exhibit 4 and exhibit 22 indicate that a prior permit (40024-2002-U) for adult entertainment at this location was approved on June 17, 2013 but then “pulled back” on September 3, 2013. The only reason given is “Per our legal department.” In addition this interpretation seems not to have been consistent, since the Skillmans have operated a roofing business at this location for over 20 years without objection from the County, even though section 27-466.01 applies to that use as well. This administrative interpretation was not somehow promulgated to the public, nor was it implicitly approved by a legislative reenactment of the ordinance. It was not the result of reasoned elaboration or a formal promulgation; it merely appears to be direction from “our legal department” in connection with this application. That is not the type of administrative interpretation to which the [c]ourt should afford deference.

Having adopted the analysis set forth above, we agree with the circuit court that this is not the type of interpretation deserving of deference.

Critically, there is simply nothing in the statute that requires any connectivity between the public street on which a subject property is situated and a different public street. The County points to no authority that would support such an interpretation. We

reject the County’s attempt to add an additional requirement to County Code § 27-466.01 and cast that additional requirement as an agency interpretation deserving of deference. Accordingly, we hold that County Code § 26-466.01 requires precisely what it provides: that a property have “frontage on” and “direct vehicular access to” a public street. As a result, we hold that the Board erred, in its March 16, 2016 Resolution, in finding that “connectivity” is required to give “meaningful application” to Section 27-466.01 of the County Code.

B. Whether the Property Has Frontage On and Direct Vehicular Access to a Public Street

Having established that the relevant County Code provision means what it says, we next consider whether the Property in fact has frontage on and direct vehicular access to a public street pursuant to County Code § 26-466.01. The Board, having concluded that the status of the portion of Frederick Avenue upon which the Property fronts was irrelevant to their determination, did not explicitly rule upon this issue. Nevertheless, the Board did touch upon this when describing that the portion of Frederick Avenue was an “island street.” As we shall explain, the uncontested evidence submitted by the Skillmans establishes that the Property fronts Frederick Avenue and that Frederick Avenue is a public street.

The Prince George’s County Code defines “street” as:

- (i) A public or dedicated right-of-way at least thirty (30) feet in width; or a private road, right-of-way, or easement along which development is authorized pursuant to Subtitle 24, except for easements created under Section 24-128(b)(9), to avoid potentially hazardous or dangerous traffic situations, for easements utilized pursuant to Section 24-128(b)(10) for

opportunity housing, or for right-of-way easements in an integrated shopping center pursuant to Section 24-128(b)(15); or

(ii) A proposed “Street” right-of-way or widening shown on the applicable “General Plan,” “Master Plan,” or “Functional Master Plan”; or in the current Capital Improvement Program or Maryland State Consolidated Transportation Program; or on a “Record Plat.”

County Code § § 27-107.01(225)(A). The County Code further provides that the term “Road” “shall embrace all ways designated as roads, streets, alleys, lanes, paths, highways, avenues, or terms of similar meaning.” County Code § 23-102(17). “Public Road” is further defined as:

A road which has been accepted for maintenance by a public agency, political subdivision, or incorporated municipality; also,] any road which lies within a right-of-way owned by, or under the jurisdiction of, the County or dedicated to public use by a recorded deed or recorded plat of subdivision; also, any road which has become recognized as public under Maryland law through long use by the general public.

County Code Section 23-102(17)(G).

The Board, in its opinion referred to “exhibit 21 as evidence of a subdivision development plan (dated in the 1890s) that shows that Frederick Avenue constitutes a dedicated public street.”⁷ The record also includes maps from the PGAtlas mapping database maintained by the County and all show the portion of Frederick Avenue directly adjacent to the Property as a public street. Indeed, the County conceded to the authenticity of the documents before the Board. Although the County argues in this appeal that PGAtlas

⁷ We note, however, that the Board made this reference in the context of stating the purpose for which Exhibit 21 was offered by the Skillmans.

“was not the controlling document[],” it did not contest the admissibility of the PGAtlas below.

The County responds to the PGAtlas evidence by arguing that the portion of Frederick Avenue adjacent to the Property does not “look like any County maintained public road” nor is it “up to any county standards or anything that is remotely acceptable as a County Road.” The County acknowledges that it did not put forth any evidence with respect to the status of Frederick Avenue, but asserts that it “did not have to put on any factual evidence especially since the [Skillmans] failed to meet their burden.” The County further asserts that the Skillmans “had the opportunity to subpoena a representative from” the Prince George’s County Department of Public Works and Transportation (“DPWT”), which the County contends is the controlling authority on the status of public roads. The County further refers to hearsay evidence to establish a “permissible inference” that the relevant portion of Frederick Avenue is not a public road.⁸

In our view, the subdivision plat dedicating Frederick Avenue as a public street and the PGAtlas maps are dispositive of this issue. The plat was admitted without objection⁹

⁸ The County argues that “[e]xhibit 22 from the hearing board indicated that the Permit Reviewer from Park and Planning was in a meeting where it was determined that Frederick Avenue was not maintained by the County and ‘not deemed a public street per DPWT.’” The County provides no authority to explain why we should credit this unattributed hearsay evidence. Furthermore, even if we were to consider this hearsay evidence, a DPWT employee’s opinion as to whether a street is or is not maintained as a public street is not dispositive as to the legal determination of whether a street satisfies the statutory definition of “public street” found in the County Code.

⁹ When counsel for the Skillmans’ offered the subdivision plan before the Board, the following exchange occurred:

and demonstrates that Frederick Avenue was “dedicated to public use by a recorded deed or recorded plat of subdivision,” rendering Frederick Avenue a public road pursuant to County Code § 23-102(g).¹⁰ We hold, therefore, that the Property has “frontage on and direct vehicular access to” Frederick Avenue and, therefore, satisfies the requirements of County Code § 27-466.01, regardless of whether the relevant portion of Frederick Avenue connects to other public streets.¹¹ Accordingly, we affirm the judgment of the Circuit Court for Prince George’s County.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

[COUNSEL FOR THE COUNTY]: This should be [Exhibit] 21.

[MEMBER OF THE BOARD]: Can we agree this is a subdivision plat?

[COUNSEL FOR THE COUNTY]: Yes, yes, that will come in uncontested.

¹⁰ On appeal, the County asserts that there is no proof that the County ever “accepted” the plat. First, we observe that this issue was not argued below. Md. Rule 8-131 (providing that this Court will not consider issues not raised in or decided by the trial court); *Zakwieia v. Baltimore Cty., Bd. of Educ.*, 231 Md. App. 644, 649 (2017) (“Our preservation requirement is equally applicable to administrative appeals.”). Second, the County’s argument is unavailing. The County argues that other portions of Frederick Avenue were abandoned, namely, the portions which Mr. Gottfried claims to own and control. Abandonment would have been unnecessary if the street were not public.

¹¹ The circuit court separately addressed the status of the portion of Frederick Avenue south of the Property, which Mr. Gottfried claims to own and control. The circuit court concluded that Mr. Gottfried does not, in fact, own the southern portion of Frederick Avenue. In light of our determination that the Property has “frontage on and direct vehicular access to” a public street under the County Code regardless of the status of the southern portion of Frederick Avenue, we shall not address this issue on appeal.

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The majority’s well-reasoned opinion is that the Prince George’s County Board of Appeals (“Board”) erred in denying the Skillmans’ U&O permit by reading a “connectivity requirement” into Prince George’s County Code Section 27-466.1, which requires only that “[e]ach lot shall have frontage on, *and* direct vehicular access to, a public street[.]” *Id.* (emphasis added). I agree. The plain language of Section 27-466.1 clearly contemplates direct vehicular access to a single public road and not connectivity to a second, adjacent public road. Additionally, there was not substantial evidence to support the Board’s conclusion that Franklin Avenue was an “island street” and not a public street that satisfies the “frontage on, and direct vehicular access to” requirement. *Id.*

I write separately because I do not regard the circa 1891 subdivision plat along with the PGAtlas maps as “dispositive” on the issue of whether Frederick Avenue is a public road. *Ante*, slip op. at 16. It is my view that the PGAtlas maps confuse the issue rather than dispose of it. The 1891 subdivision plat shows Frederick Avenue extending and connecting directly to Baltimore-Washington Ave (U.S. Rt. 1), with numerous subdivided lots, including the Property at issue, abutting Frederick Avenue. The more recent PGAtlas maps show very different lot configurations, and represent Frederick Avenue as a strip that does not connect to another road. There was accompanying testimony in the record that the County does not maintain the strip of road. Thus, the County relies on these maps to support its argument that Frederick Avenue is not a public street, and the Appellees rely on these maps to show that it is.

As the majority notes, the County’s abandonment argument concedes implicitly that Frederick Avenue was, at least at one point, a public road. The record, however, does not contain evidence to support a finding of abandonment. *See Peck v. Baltimore Cty.*, 286 Md. 368, 377 (1979) (“This Court has held that two elements are necessary to show an abandonment, namely, an intention to abandon, and an overt act, or an omission to act, by which such intention is carried into effect; and mere nonuser, of itself, is not any evidence of abandonment, unless it continues for the period of limitations of actions to recover the right or property.” (quoting *Cooper v. Sanford Land Co.*, 224 Md. 263, 266–67 (1961))). Moreover, the record does not support a conclusion that Frederick Avenue is no longer a “road which has become recognized as public under Maryland law through long use by the general public.” Prince George’s County Code, Section 23-102(17). Rather, the record establishes the Skillmans have operated a roofing business on the Property for the twenty years prior to the hearing before the Board, and by all accounts, Frederick Avenue is still used by the general public. The evidence required to demonstrate that Frederick Avenue is no longer a public road is missing from the record. Therefore, in my view, the significance of the PGAtlas maps is not essential to the majority’s firm holding that the Board’s finding that Frederick Avenue is not a public road was not supported by substantial evidence, and that the Board’s conclusion that Section 27-466.1 contemplates direct vehicular access to a secondary adjacent public road was in error.