UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2654

September Term, 2014

VALLEYS PLANNING COUNCIL, INC. *et al.*
v.

BOYS' SCHOOL OF ST. PAUL'S PARISH, INC.

Woodward,
Kehoe,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: January 3, 2017

Appellee/Cross-Appellant, the Boys' School of St. Paul's Parish, Inc., ("St. Paul's"), located in the Green Spring Valley of Baltimore County, has an historic pedigree of educating boys, dating back to 1853. The school property is located in the Resource Conservation 2 (Agricultural) Zone, ("RC2"), which permits private schools only by special exception.[1] In 2013, St. Paul's sought approval from the County to construct a new maintenance building on recently acquired land ("Tract A"), in an area where the school already kept maintenance vehicles and supplies. The Valleys Planning Council ("VPC") appeared at the zoning hearing in opposition, arguing that the proposed construction was outside a previously established maximum building envelope ("MBE") and, therefore, could not be approved. Nevertheless, the zoning commissioner approved the plans for the construction of the maintenance building, and the county Board of Appeals upheld that decision on July 16, 2014.

The VPC, and local property owners Douglas Carroll and Justin Batoff, (collectively "Appellants"), filed a petition for judicial review in the Circuit Court for Baltimore County. St. Paul's promptly filed a motion to dismiss, arguing that neither VPC nor Messrs. Carroll or Batoff had standing to petition for judicial review. The circuit court found that St. Paul's had waived the standing argument by not raising it before the Board, but determined that there was substantial evidence to uphold the Board's decision.

[1] As established by Baltimore County Zoning Regulations, Article 1A § 1A01.1, the purpose of an RC2 zone is "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses."

The Appellants noted an appeal to this Court, raising the following issues for review:

I. "Does the proposed maintenance building violate the Zoning Commissioner's 1989 order because it is outside the Maximum Building Envelope and thus barred by principles of *res judicata*?"

II. "Does the proposed maintenance building violate the agreement between St. Paul's and the VPC incorporated into the Zoning Commissioner's 1989 order?"

III. "Is Tract A, although acquired after the 1989 order, nevertheless subject to the limitations and conditions imposed in the 1989 order, including the Maximum Building Envelope?"

St. Paul's noted a cross-appeal, adding the following issues for this Court's review:

I. "Did the Circuit Court err by holding that St. Paul's waived the issue of Appellants' standing to seek judicial review because that issue had not been raised before the Board?"

II. "Did the Circuit Court err by holding that Appellants have standing to seek judicial review of the Board's decision?"

We hold that St. Paul's did not waive their challenge to Appellants' standing by raising the issue for the first time in the circuit court. We also conclude that Appellants did not have standing to file for judicial review of the Board's decision, because they are not aggrieved property owners as required under Maryland decisional law insofar as their properties are not close enough to Tract A to be considered *prima facie* aggrieved or almost *prima facie* aggrieved. Therefore, we vacate the judgment of the circuit court.

BACKGROUND

The Boys' School of St. Paul's Parish provides private education for boys in the Green Spring Valley area. The school sits on a 125-acre campus west of Falls Road and

north of Greenspring Valley Road. The campus includes the St. Paul's School for Girls ("Girls' School"), located on a parcel of land south of the main campus and north of Tract A—the parcel that is the subject of this case.

St. Paul's is located within an RC2 zone, which permits private schools only by special exception. The property, including Tract A, is also located within the Greenspring Valley National Historic District. Before 1989, St. Paul's operated as a nonconforming use.

In 1988, during the County's quadrennial Comprehensive Zoning Map Process, the two schools filed requests for rezoning from RC2 to RC5. In the RC5 zone, private schools are a permitted use, and St. Paul's sought the zoning change to provide flexibility with the "siting and design" of the schools. However, the community and county planning staff expressed concern that such a reclassification might serve as precedent for other rezoning requests in the Green Spring Valley, and opposed the rezoning. By way of compromise, St. Paul's agreed, instead, to seek a special exception under Section 502.1 of the Baltimore County Zoning Regulations (BCZR), and the community and staff agreed not to oppose.

1989 Special Exception Case (89-101-SPHX)

On July 12, 1988, the Boys' School of St. Paul's Parish, Inc., and the Girls' School[2] filed petitions for special exceptions to use their property for a private preparatory school

[2] The Girls School received a special exception for a private school in 1983, and joined in the 1988 petition to seek approval of an amended site plan for expansion of its facilities. According to SDAT, the Girls School was incorporated on September 23, 1958. http://sdat.dat.maryland.gov/ucc-charter/Pages/CharterSearch/default.aspx (last visited March 9, 2016).

and to expand the facilities of the school. On July 19, 1988, counsel for the Schools wrote to the zoning commissioner in furtherance of the petitions:

> The St. Paul's petitions have been submitted as a compromise alternative to the Schools' Request for Change as a part of the 1988 Comprehensive Zoning Map process. Indeed, the Schools have worked diligently with the Valleys Planning Council and other neighborhood groups to successfully fashion a land use approach that everyone can and does support. While the Schools feel confident that they can achieve an acceptable degree of flexibility to accommodate their future development plans through the requested new special exception for the Boys' School and the requested modifications to the existing Girls' School special exception, they do not feel that they can abandon their map request until they are assured of favorable action on their petitions and that there will be no appeal from such action.

The Zoning Commissioner held a hearing on September 12, 1988. Lisa Keir, the executive director of the VPC spoke in favor of St. Paul's special exception request on behalf of VPC and Falls Road Community Association. After finding that the proposed plans were "in the public interest and [would] not create any of the adverse conditions" set forth in the BZCR, the Zoning Commissioner ordered, on September 14, 1988, that

> the use of the property involved in this case for private boys' and girls' schools, and the modification and expansion of the Schools' facilities in conformity with the concept plan introduced as Petitioners' Exhibit 1, as modified to show more general building envelopes, are hereby approved for the buildings shown and, as such, the Petition for Special Hearing for an amendment of the site plan approved in case numbers 84-139-X and 87-347-SPH, as more particularly described on Petitioner's Exhibit 1, is hereby granted; additionally, the Petition for Special Exception for a private preparatory school is hereby granted from and after the date of this order, subject however to the following restrictions which are conditions precedent to the relief herein granted:
>
> 1. In implementing the modified concept plan, the Schools shall have *flexibility to make changes in the designs and/or locations of the facilities depicted on the site plan, Petitioners' Exhibit 1, without the need for further hearings before the Zoning Commissioner*, as

> long as the development remains within the indicated building envelopes and complies with all applicable requirements of the Building Code, Development Regulations, and other portions of the Baltimore County Code.

(Emphasis added).

Exhibit 1 was the site plan for the Boys' and Girls' Schools that showed 17 potential future improvements to the campus delineated in cross-hatching within the MBE. The Zoning Commissioner approved St. Paul's petition to build the 17 potential future improvements without the need for further hearings before the Zoning Commissioner.

1993 Modification of the Special Exception Granted in 89-101-SPHX

In 1992, St. Paul's filed a petition for a modification to the special exception and site plan approved in 1989, "to allow a revised [MBE] to reflect final location and building footprint of proposed chapel . . . ." The VPC appeared through representatives as an interested party at the hearing, in support of the petition. The Zoning Commissioner provided background to the request, stating in his written opinion:

> As to the present case, an understanding of the special exception approved in case No. 89-101-SPHX is appropriate. That special exception approved use of the property for a boy's school for so long as any building was confined within a clearly delineated building envelope area.

The 1992 plans proposed construction of a chapel—one of the 17 delineated potential future improvements contained in the approved site plans in case No. 89-101-SPHX—and proposed locating a portion of the chapel outside of the MBE established in 1989. However, the Zoning Commissioner, noting that the revised MBE would actually be smaller than the original, approved the modification of the special exception:

> It is clear that the special hearing should be granted. The alteration to the site plan proposed is minor both in scope and effect. Indeed, it is unfortunate that the Petitioner is even required to expend the necessary sums and make the necessary efforts to have this minor amendment approved. Although I cannot adjudge future modifications, the Petitioner should be given flexibility to make certain changes in design or locations of the facilities within the building envelope for so long as that development remains within the spirit and intent of the plan and is in compliance with the appropriate County regulations.

2004 Addition of Tracts A and B to the Special Exception Area (Case No. 04-553-X)

Around 2003, Tract A—a property contiguous to St. Paul's, located south of Seminary Avenue, west of Falls Road and Tony Drive, and bordered by Greenspring Valley Road to the south—was donated to the school. In May 2004, St. Paul's filed a petition for a special exception to use Tract A and 7.753 acres of Tract B (another property acquired by the school) for school purposes. Both tracts were zoned RC2 and required a special exception for St. Paul's to use them as a school. St. Paul's submitted a site plan depicting Tracts A and B, both south of St. Paul's original campus, with future ball fields and parking lots on Tract B and no changes to Tract A. Tract A contained existing historical buildings that the school intended to continue using as residential dwellings. Notably, the site plan did not denote the MBE established in 1989, and both Tracts A and B sit outside that MBE.

Mr. Jack Dillon testified at the hearing before the Zoning Commissioner on behalf of VPC, stating that VPC approved the use restrictions delineated in the site plan and had no objection to the requested special exception relief. The nine use restrictions included a prohibition against using amplifying equipment for the ball fields on Tract B, discussed

maintaining a stone wall along Greenspring Valley Road, and required that "*any future use of the common area located north of the existing historic structures on Tract A . . . shall require a Petition for Special Hearing.*" (Emphasis added). The Zoning Commissioner approved the petition "for Special Exception for 'a school in the R.C.2 zone for Tract A and 7.753 acres of Tract B,' in accordance with Petitioner's Exhibit 1." (Some internal quotation marks omitted). The site plan included construction of new sports fields and parking lots that were never within the MBE. Additionally, a notification on the site plan, under the list of use restrictions, stated:

> With regard to "Tract A," there are no plans to utilize this property other than for the current residential and maintenance/storage use. Should any future use be considered for the area north of the existing buildings, a petition for special hearing must be filed. Any future use may also be subject to review by the Baltimore County Landmarks Commission.

The Underlying Petition for Special Hearing

On August 1, 2013, St. Paul's filed a petition for a special hearing under section 500.7 of the BZCR, requesting an amendment to the Special Exception and accompanying site plan approved in 2004 and amended in 2008. St. Paul's sought an amendment to construct an 8,000 square foot maintenance building on Tract A. The proposed building was designed to look like a barn and was set off from Greenspring Valley Road, behind a number of trees and bushes. At the same time, St. Paul's filed a request with the Development Review Committee ("DRC") for a "limited exception under Baltimore County Code § 32-4-106(A)(1)(6) from the development review and approval process for a 'minor commercial structure.'"

The Office of Administrative Hearings ("OAH") held a hearing on September 26, 2013. On October 1, 2013, the OAH issued an order granting St. Paul's petition for a special hearing to amend the site plan. VPC was represented at the hearing, and although it did not "take[] a formal position on the case," it identified four concerns: (1) change in the building envelope, (2) changes proposed in a historic setting, (3) the size of the proposed building and need for office facilities, and (4) the extension of public water and sewer to site.

In granting the special hearing, the ALJ noted that the MBE could be amended through a special hearing procedure as it was in 1993, but determined that the MBE did not apply to Tract A because Tract A was acquired after the MBE was established in 1989. Because St. Paul's did not seek to make changes to the historic residential buildings on Tract A, the ALJ held that review and approval by the Landmarks Preservation Commission was not required. Furthermore, the ALJ found that the size of the maintenance building was appropriate for its function and would not at all overcrowd Tract A, which is seven acres. Additionally, the ALJ noted that the building, designed by an architect, will be attractive and "not be visible in any event from the adjoining roadway." The ALJ concluded that the issue of access to the public sewer was for the County Council and the State of Maryland to decide, not the OAH.

On November 4, 2013, the DRC issued an administrative order approving St. Paul's request for a limited exception for construction of the maintenance building as a "minor commercial structure."

VPC appealed the final decision of the ALJ and the grant by DRC of a limited exception for the construction of the maintenance building.

The Hearing Before the Board of Appeals of Baltimore County

On March 6, 2014, a *de novo* public hearing was held before the Board of Appeals of Baltimore County (the "Board") to address both the final decision on the special exception by the ALJ and the grant of the limited exception by the DRC. During the hearing, Mr. Francis Smyth, a board member of St. Paul's, testified on behalf of the school. Mr. Smyth was the C.E.O. and President of Century Engineering and prepared the site plans at issue. He testified that the current maintenance building was in a congested area of the main campus, and the reason for relocating the building was two-fold:

> Number one, safety. We have kids that are around - - and in and around all those trucks and, and activities that are happening. It just does not make sense to keep that - - those trucks backing in and aggregating where all - - every car that comes through the campus during the day is here. The second reason is simply for efficiency. There's no room up here for us to operate and, and so, there's an area down here that was, that was given to the school many years after the upper campus had its, you know, operations going on. And that's the [Tract A] property down here. As [ ] from the very beginnings of when this property was owned, there was maintenance use down here, storage, outside storage and so forth to support the upper campus, and so it made sense to kind of combine the two activities into one location.

Mr. Smyth also testified that the maintenance building would have a barn façade, "to give it greater appeal . . . if it was seen by anybody." However, Mr. Smyth testified that they had conducted several surveys of the area, and the building would be invisible to almost everyone. Mr. Smyth stated, "you cannot see [the building], whether it's summertime or wintertime, due to both, the deciduous foliage in the summer and the

evergreen foliage throughout the year. . . . [I]t's virtually impossible to see this building." Even if someone could see the area where St. Paul's planed to construct the building, Mr. Smyth testified that he thought "if anyone [did] have sight of the area, it [would] clean up the area because many of the outside storage items will go inside and it won't be a [ ] bunch of [ ] mower equipment and [ ] snow plows out in the yard."

When asked about the traffic around the maintenance building, Mr. Smyth testified that the traffic would be confined to interior roads, and, therefore, moving the building to Tract A would not add any traffic to the surrounding neighborhood. Additionally, St. Paul's expert witness, Mr. Michael Pieranunzi—admitted as an expert in interpretation and application of the BCZR and development regulations, and as a registered landscaper—also testified that he did not believe that the proposed maintenance building would create congestion on the roads, because it would not front on a public road and the most efficient route for getting to campus is through a private drive located within the campus.

Mr. Pieranunzi also testified as to the visibility of the proposed building, stating that, as shown in photos contained in Petitioner's Exhibit #7, "it's very evident that . . this site is basically 90 to 95% screened by evergreen vegetation." Mr. Pieranunzi explained that Petitioner's Exhibits #8A-8C, are cross-section diagrams of the sight lines from the same angles as the photos in Exhibit #7, which also show that an individual would not be able to see the building from Greenspring Valley Road.

In Mr. Pieranunzi's opinion, the maintenance building would meet all of the required factors listed in Section 502.1 of the BCZR for a special exception, including that

it would not be detrimental to the public health, nor to the environment and natural resources of the site. Furthermore, Mr. Pieranunzi testified that the maintenance building would meet the additional use requirements of Section 1A01.2.C., as required for a special exceptions in an RC2 zone.

Teresa Moore, Director of the VPC, testified on behalf of the Council. Over objection, Ms. Moore testified as to her understanding of the alleged agreement that existed between St. Paul's and VPC at the time of the 1988 special exception hearing. She stated that St. Paul's should be held to the agreement reached by the parties back in 1988 when VPC supported St. Paul's special exception based on certain limitations, namely, the MBE that appears on the site plan in the 1988 case, with the 17 delineated items within the MBE.

The Opinion of the Board of Appeals

On July 16, 2014, the Board issued its opinion, granting both the amendment to the Special Exception and accompanying site plan approved in Case No. 04-553-X for the construction of the maintenance building,[3] and the request for a limited exception from the

[3] Pursuant to BCZR § 500.7, a hearing to request special zoning relief is proper as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

development regulations under BCC 32-4-106. In coming to this decision, the Board found, preliminarily, that there was an agreement between VPC and St. Paul's "as to the extent of the [MBE] on 17 facilities and buildings shown and listed on the site plan." However, based on the plain language of the 1989 opinion, the Board determined that the MBE applies only to the buildings shown on that 1989 plan. The Board quoted the following from the 1989 Order:

> Therefore, IT IS ORDERED by the zoning Commissioner of Baltimore County, this 13th day of September, 1988, that the use of the property involved in this case for private boys' and girls' schools, and the modification and expansion of the Schools' facilities in conformity with the concept plan introduced as Petitioners' Exhibit 1, as modified to show more general building envelopes, **are hereby approved *for the buildings shown*** and, as such, the Petition for Special Hearing for an amendment of the site plan approved in case numbers 84-139-X and 87-347-SPH, as more particularly described on Petitioners' Exhibit 1, is hereby granted; additionally, the Petition for Special Exception for a private preparatory school is hereby granted from and after the date of this order, subject however to the **following restrictions which are conditions precedent** to the relief herein granted:
>
> 1. In implementing the modified concept plan, the Schools shall have flexibility to make changes in the designs and/or locations ***of the facilities depicted on the site plan,*** Petitioners' Exhibit 1, without the need for further hearings before the Zoning Commissioner, **as long as the development remains within the indicated building envelopes** and complies with all applicable requirements of the Building Code, Development Regulations, and other portions of the Baltimore County Code.

(Emphasis in original).

The Board pointed out that the VPC and St. Paul's *could have* agreed to apply the MBE to all future acquired property, based on the fact that the agreement applied to proposed buildings, and, therefore, the lack of such agreement was "indicative that parcels

later acquired or donated to the school . . . were not intended to be restricted by the [MBE]." Moreover, the Board noted that the "1989 Opinion indicated that the site plan represented 'the School's best current thinking as to what they may want to accomplish in the near-to-intermediate-range future.'"

Furthermore, the Board rejected VPC's argument that St. Paul's should have sought to amend the special exception granted in the 1989 case, not the 2004 case. The Board found that the 2004 case, the first to mention Tract A and B, sought a *new* special exception for those tracts, and, therefore, it was appropriate to seek an amendment from that order in this case. Additionally, the Board pointed out that the site plan in the 2004 case did not contain the MBE and that VPC agreed to nine "use restrictions" and express language regarding the future use of Tract A, none of which mention the restriction of the MBE.

The Board disagreed with VPC's argument that, because the 2004 case added Tracts A and B to the Special Exception Area, those tracts were subject to the MBE. The Board found that the Special Exception Area granted in the 1989 case applied to the entire property owned by St. Paul's, "while the [MBE] was a smaller area contained within the Special Exception Area." The Board determined that the MBE applied only to the buildings and facilities on the 1989 site plan, located on the main campus, not to Tracts A and B.

After determining that the MBE did not apply to limit construction on Tract A, the Board examined whether St. Paul's met its burden of proof regarding the factors set forth

in BCZR § 502.1 to obtain a special exception.[4] The Board concluded that St. Paul's met its burden as to all of the factors in § 502.1. The Board found, *inter alia*, that the proposed construction would not be detrimental to the health, safety, or general welfare of the locality and would actually reduce safety concerns for students by moving the maintenance

[4] The regulation states:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other danger;
>
> D. Tend to overcrowd land and cause undue concentration of population;
>
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F. Interfere with adequate light and air;
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
>
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

BCZR § 502.1.

building off of the main campus. Furthermore, the Board noted that there would not be any increase in traffic because the proposed maintenance building can be accessed by an interior road. The Board noted that the proposed building will not be visible from Greenspring Valley Road because it will be "in a secluded area, surrounded by trees on all sides."

Petition for Judicial Review in the Circuit Court for Baltimore County

On August 14, 2014, the VPC, joined by Douglas Carroll and Justin Batoff—property owners in the Green Spring Valley—filled a petition for judicial review in the Circuit Court for Baltimore County. On December 19, 2014, St. Paul's filed a motion to dismiss, arguing that neither VPC nor Messrs. Carroll or Batoff had standing to petition for judicial review. In response, VPC argued that there was no requirement that VPC, Mr. Carroll, or Mr. Batoff prove they have standing in their petition for judicial review and, additionally, that St. Paul's misconstrued property owner standing as having a requirement of being within 1,000 ft. of the subject property. VPC additionally submitted affidavits from Mr. Carroll and Mr. Batoff to support their contention that they are aggrieved as property owners.

Mr. Carroll averred, in relevant part:

> 5. Given the importance and sensitivity of the property, and the location and proximity of my property to the site, I will be specially and adversely affected by the Board of Appeals' decision in this case.
>
> 6. I travel the scenic roads along the property on a daily basis, more than members of the public who do not reside in proximity to the property, and will be specially and adversely affected by the siting of this building and other buildings. As a nearby resident and frequent and regular traveler of

> Greenspring Valley Road, I can see the existing maintenance building that is being used in the vicinity of the proposed building and the operations at the building, including the numerous trucks and equipment. I see and hear the existing structure and the operations and activities that take place at that building on a nearly daily basis. I anticipate seeing and hearing the proposed maintenance building, which will be larger and whose operations will be more intense and more frequent.
>
> 7. I will also be specially and adversely [effected] because the proposed development of the site and the extension of water to the maintenance building will potentially impact the groundwater and water supply to my property as well as surrounding properties. The extension of the sewer to the site will likewise potentially impact my property and surrounding properties, and the ability of these properties to adequately handle and treat sewerage.

Mr. Batoff affirmed in his affidavit:

> 5. Given the importance and sensitivity of the property, and the location and proximity of my property to the site, I will be specially and adversely affected by the Board of Appeals' decision in this case.
>
> 6. I travel the scenic roads along the property on a daily basis, more often than members of the public who do not reside in proximity to the property, and will be specially and adversely affected by proposed building and its operations. As a nearby resident and frequent and regular traveler of Greenspring Valley Road, I can see the existing maintenance building that is being used in the vicinity of the proposed building and the operations at the building, including the numerous trucks and equipment kept there. I see and hear the existing structure and the operations and activities that take place at that building on nearly a daily basis. I anticipate seeing and hearing the proposed maintenance building, which will be larger and whose operations will be more intense and more frequent.
>
> 7. My farm is a licensed stable with approximately ten horses. My family and I regularly ride in the fields that boarder Greenspring Valley Road and in the fields across the road that are owned by our neighbors. The proposed building, its operations, and the additional traffic that will be generated, will specially and adversely impact our ability to ride horses in these fields and our enjoyment in doing so.
>
> 8. I will also be specially and adversely [affected] because the proposed development of the site and the extension of water to the maintenance

> building will potentially impact he groundwater and water supply to my property as well as surrounding properties. The extension of the sewer to the site will likewise potentially impact my property and surrounding properties, and the ability of these properties to adequately handle and treat sewerage.

On January 20, 2015, the circuit court held a hearing on St. Paul's motion to dismiss and VPC's petition for judicial review. After hearing argument, the court orally found that St. Paul's had waived its standing argument by not raising it before the Board. The court went on to say that, even if it were wrong about the waiver, Mr. Carroll and Mr. Batoff had standing, stating:

> I will find that they did have standing due to their proximity. I agree with [VPC's Counsel] that the thousand feet is not set in stone. It is an individual case-by-case basis. Obviously rural jurisdictions, rural areas are much different than highly populated, metropolitan or urban areas. Each case will stand and fall.
>
> I think the Court of Appeals is trying to give us some direction, but in this case I think their proximity to the location would give them standing. So I am going to deny the Motion to Dismiss.

The circuit court went on to address the merits and denied VPC's petition and affirmed the Board's decision. The court found that there was substantial evidence to support the decision of the Board, specifically that Tract A was not acquired until sometime after the 1988-89 case that implemented the MBE and, therefore, was not bound by the MBE restriction.

On February 19, 2015, the VPC, Mr. Carroll and Mr. Batoff noted an appeal in this Court. On February 24, 2015, St. Paul's noted a cross-appeal.

DISCUSSION

Appellants present a number of questions, but the dispositive issues in this appeal are raised in St. Paul's cross-appeal, which is where we begin our analysis.

I. Motion to Dismiss for Lack of Standing

A. Standing in Zoning Challenges

We review the legal question of whether a party has standing in this Court or had standing to appeal to a circuit court from the decision of a zoning board *de novo. Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 494 (2003) (citing *Lucas v. People's Counsel*, 147 Md. App. 209, 224–25(2002); *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 83 (2001); *E. Outdoor Adver. Co. v. Mayor & City Council*, 128 Md. App. 494, 514 (1999)).

In *Bryniarski v. Montgomery County*, the Court of Appeals set out the two conditions precedent that a person must meet to establish standing in land use appeals: "(1) [s/]he must have been a party to the proceeding before the Board; (2)[s/]he must be aggrieved by the decision of the Board." 247 Md. 137, 143 (1967). As Judge Kehoe pointed out in *Chesapeake Bay Foundation v. Clickner*, "*Bryniarski* is the landmark case in Maryland on 'aggrievement' as a requirement for standing in land use appeals." 192 Md. App. 172, 185 (2010). The Court of Appeals in *Bryniarski* explained:

> The requirement that a person must be 'aggrieved' in order to appeal to the Board and from the Board to a court of record was originally included in the Standard State Zoning Enabling Statute and generally appears in State Zoning Enabling Acts and in municipal zoning ordinances throughout the United States. . . . This requirement is contained in the Maryland Zoning Enabling Act, Code (1957), Article 66B, sections 7(d) and 7(j).

Bryniarski, 247 Md. at 143 (internal citations omitted). Article 66B has been recodified to what is now Title 4 (Zoning) of Md. Code Ann. (2012), Land Use Article ("LU"). Section 4-401(a) and (b) provide:[5]

> (a) Who may file. – Any of the following persons may file a request for judicial review of a decision of a board of appeals or a zoning action of a legislative body by the circuit court of the county:
> (1) a person aggrieved by the decision or action;
> (2) a taxpayer; or
> (3) an officer or unit of the local jurisdiction.
> (b) Manner. – The judicial review shall be in accordance with Title 7, Chapter 200 of the Maryland.

In *Sugarloaf Citizen's Association v. Department of Environment*, the Court of Appeals addressed the issue of administrative standing as compared to standing to maintain judicial review, and the "appropriate roles of an administrative agency and a reviewing court with regard to each type of standing." 344 Md. 271, 285 (1996) (*superseded by statute on other grounds, as recognized by Patuxent Riverkeeper v. Maryland Dept. of Env't*, 422 Md. 294 (2011)). The Court recognized that, because of the distinction in standing made in Maryland case law and under the Administrative Procedure Act, SG § 10-222(a)(1), "a person may properly be a party at an agency hearing under Maryland's 'relatively lenient standards' for administrative standing but may not have standing in court to challenge an adverse agency decision." *Id.* at 285-86 (citing *Maryland-Nat'l Capital Park & Planning Comm'n v. Smith*, 333 Md. 3, 11 (1993)).

[5] Appeal to this Court from a judgment of the circuit court under Title 4 is authorized pursuant to § 4-405(b).

In the absence of a statute stating otherwise, standing in the administrative arena is easily obtained. *Id.* at 286. In *Morris v. Howard Research and Development Corporation*, the Court of Appeals held that an individual had standing who was "present at the hearing . . testified as a witness and made statements or arguments as to why the amendments to the zoning regulations should not be approved." 278 Md. 417, 423 (1976). The Court noted that "[t]his [was] far greater participation than that previously determined sufficient to establish one as a party before an administrative agency." *Id.* (citations omitted). The Court went on to say, "anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceeding." *Id.*; *see also Maryland-Nat'l v. Smith*, 333 Md. at 10 (stating that "personal appearance and testimony at the hearing are not required" for administrative standing, and that it is sufficient that the hearing examiner considered the person to be a party or the person's name was submitted to the agency as an aggrieved party).

In contrast, as explained above, to obtain judicial review of an agency decision, a party must have been a party to the administrative decision *and* be aggrieved by the final decision of the agency. SG § 10-222(a)(1); *Bryniarski,* 247 Md. at 143; *see also Sugarloaf Citizen's Ass'n*, 344 Md. at 287-88 (citations omitted). The Court of Appeals in *Sugarloaf Citizen's Ass'n* explained that to be "aggrieved" for the purposes of judicial review, "a person ordinarily must have an interest such that he is personally and specifically affected in a way different from . . . the public generally." 344 Md. at 288 (internal quotations and

citations omitted). This mirrors "general common law standing principles." *Id.* (citations omitted).

Determining whether a party to an administrative proceeding is aggrieved as to properly seek judicial review of an agency decision is a determination held exclusively by the courts. *Id.* at 289-90. In *Sugarloaf*, the Court of Appeals stated:

> If . . . the ALJ was rendering findings and conclusions on the plaintiff's entitlement to maintain a judicial review action . . . , then the ALJ went beyond her proper role . . . .
>
> [I]t is not the proper function of an administrative official or agency in the executive branch of government to decide whether a plaintiff or potential plaintiff has standing to maintain an action in court.
>
> * * *
>
> [T]he determination of whether a person has standing to maintain an action in court is exclusively a judicial function.

Id. at 289-90.

B. Waiver

On cross-appeal, St. Paul's challenges the circuit court's ruling that St. Paul's waived its standing argument because St. Paul's did not raise the issue of standing before the Board. St. Paul's maintains that, under Maryland law, the question of standing is properly determined by the courts, not an administrative agency. Furthermore, because of the "relatively lenient standards" for administrative standing, an individual may have

standing before an agency, but not in the courts. Therefore, St. Paul's argues that the issue of standing was not ripe before Appellants filed their petition for judicial review.[6]

We think it is clear that, under prevailing Maryland law, St. Paul's did not waive its argument that the Appellants do not have standing to request judicial review of the Board's decision by not raising this issue before the Board. Standing for judicial review is not an issue that can be properly resolved by the Board, and a challenge to the Appellants' administrative standing was "simply a non-issue" based on the low standard required to be a party to an administrative proceeding. *Sugarloaf Citizen's Ass'n*, 344 Md. at *Id.* at 289. Standing for judicial review is properly determined by the circuit court, "through a motion or other pleading filed by [an adverse party] to dismiss [the appellant] as a party." *Morris*, 278 Md. at 424.

C. Aggrieved Party

Each Appellant in this case was a party to the administrative proceeding before the Board. Having established the first condition precedent that must be met for standing, we turn to the central concern in this case—whether Appellants were "aggrieved" by the decision of the Board. SG § 10-222(a)(1); *Bryniarski*, 247 Md. at 143.

St. Paul's argues on appeal that the Appellants lack standing to seek judicial review because they do not own property "close enough to Tract A to be aggrieved, and they have not otherwise proven that they will be specially harmed by the Maintenance Building." St.

[6] The Appellants did not offer an argument in their briefing on appeal on the issue of waiver.

Paul's asserts that, under Maryland law, for a property owner to have standing, the owner must be "*prima facie* aggrieved," or "almost *prima facie* aggrieved" and specially harmed by the agency decision. St. Paul's relies on the fact that the distance between the proposed maintenance building and the properties owned by VPC, Mr. Carroll, and Mr. Batoff, is over 1,000 feet, which it argues is the cut-off point for even almost *prima facie* aggrievement. Furthermore, St. Paul's contends that the Appellants failed to establish that they would be specially harmed in a way distinct from the general public.

The Appellants urge that nothing in Maryland law has established an inflexible 1,000 foot cut-off for "almost *prima facie*" aggrievement and the fact that the lots at issue are large rural lots should be taken into consideration. They point out that at least one of the Appellants, Batoff, is specially harmed by the agency decision because he rides his horses on a neighbor's property that is adjacent to Tract A. And, they argue, that both Mr. Carroll and Mr. Batoff will be specially harmed by the "impact of the groundwater and water supply to their properties as a result of the proposed development and the extension of water to the maintenance building." In their final argument, presented in a footnote, Appellants contend that the VPC, as an organization, is also specially harmed as VPC "is dedicated to protecting the valleys of northern Baltimore County, including the area in which the subject property is located," and that the VPC and its members, including Mr. Carroll and Mr. Batoff, also have standing by virtue of the agreement reached with St. Paul's.

St. Paul's relies heavily on *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74 (2013) ("*Ray II*") and *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451 (2014). In *Ray II*, the Court of Appeals affirmed this Court's holding that the petitioners did not have standing where their properties, 2,212.39 and 2,002.18 feet away from the Planned Unit Development, were not in close proximity to the subject property of the rezoning and where petitioners failed to demonstrate that they were harmed in a way distinct from the general public. 430 Md. at 78-80. In reaching its decision, the Court of Appeals reviewed Maryland case law discussing a property owner has standing to challenge a rezoning decision by a county board of zoning.

The *Ray II* Court instructed that proximity is the most important factor in determining standing to challenge a zoning decision:

> A review of our cases, where standing to challenge a rezoning action was at issue, reveals one critical point: proximity is the most important factor to be considered. The relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property. There is, however, no bright-line rule for exactly how close a property must be in order to show special aggrievement. Instead, this Court has maintained a flexible standard, finding standing in cases that do not quite satisfy the "adjoining, confronting or nearby" standard of *prima facie* aggrievement, but are nudging up against that line. Protestants in such cases will be considered to pass the standing threshold if they allege specific facts of their injury. In other words, once sufficient proximity is shown, some typical allegations of harm acquire legal significance that would otherwise be discounted. **But in the absence of proximity, much more is needed**.

Id. at 82-83 (emphasis added) (footnote omitted). The Court determined that there are three ways a property owner can achieve standing sufficient to seek judicial review of a board's zoning decision. *Id.* at 82-86.

First, a property owner may be *prima facie* aggrieved where s/he owns property adjoining, confronting, or nearby the property subject to the zoning change. *Id.* at 85. Second, a property owner may be specially aggrieved where the property owner is further away than an adjoining, confronting or nearby property owner so that they are almost *prima facie* aggrieved, if, they meet the burden of alleging and proving a "plus factor"—that their personal or property rights are specially and adversely affected by the Board's decision. *Id.* at 81, 85; *accord Bryniarski,* 247 Md. at 145. "Plus factors" sufficient to find standing have included "an owner's lay opinion of decreasing property values and increasing traffic . . . ." *Ray II*, 430 Md. at 83-84 (citations omitted). Third, "a . . . poorly-defined category" *might* provide standing to protestants 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.'" *Id.* at 85-86.

i. *Prima Facie* Aggrieved

In determining whether a party is *prima facie* aggrieved, proximity of the protestant's property to the rezoned property is the "only relevant factor." *Id.* at 83 n.6 (quoting *Bryniarski*, 247 Md. at 145). And, although proximity is the determinative factor, the Court of Appeals has found *prima facie* aggrievement in a number of cases in which the property was not contigious, but near enough to be within 'sight or sound' range. *See, e.g.*, *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."); *Bryniarski*, 247 Md. at 146-48 (petitioners were *prima facie* aggrieved where they owned property immediately contiguous or in close proximity to the subject property, and were required to receive, by statute, notice of the proposed development); *Sugarloaf*, *supra*, 344 Md. at 297-301 (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). However, "[g]enerally, to be considered an aggrieved party, the complaining property owner must be in 'sight or sound' range of the property that is the subject of his complaint." *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore*, 137 Md. App. 60, 86 (2001) (citations omitted).

The Appellants argue that the properties owned by Mr. Carroll and Mr. Batoff are sufficiently "nearby" Tract A to entitle them to *prima facie* aggrievement status.[7] St. Paul's disputes Appellants' claim that their properties are "nearby," citing *Ray v. Mayor of Balt.* 203 Md. App. 15, 34-36 (2012) ("*Ray I*"),[8] in which this Court held that the property owners were not *prima facie* aggrieved because the closest property was .40 miles (2,112 feet) away from the rezoned property. Also, St. Paul's points to the Court of Appeals's

[7] The property owned by VPC is 20,472 feet (or 3.88 miles) from Tract A, which is clearly not close enough to Tract A to be *prima facie* aggrieved. Appropriately, the Appellants offer no argument that VPC has standing as a *prima facie* aggrieved property owner in this case.

[8] On appeal from this Court, in *Ray II* the petitioners conceded that they were not *prima facia* aggrieved.

observation in *Ray II*, that "protestants who lived more than 1000 feet from the resoning site have repeatedly been denied standing." *Ray II*, 430 Md. at 92.

Mr. Carroll's property is 2,327 feet (or .44 miles) from Tract A, and Mr. Batoff's property is 1,873 feet (or .35 miles) from Tract A. Although it is clear from the maps provided that Mr. Carroll and Mr. Batoff's properties are not "adjoining" or "confronting" Tract A,[9] whether their properties are close enough to be considered "nearby" for the purposes of *prima facie* aggrievement is not as easily determined. In *Ray I*, Judge Moylan writing for this Court explained:

> The wild card in the [ ] deck of "adjoining, confronting, or nearby property owner[s]" is the tetherless adjective "nearby." In terms of entitlement to "prima facie" aggrievement, notions like "touching," "contiguous," "adjoining," "bounding," "confronting," and "abutting" are warm and comforting geometric certainties. The status of being "nearby," by unnerving contrast, is a will o' the wisp. Nearbyness, like beauty, is in the eye of the beholder. It frustratingly eludes the butterfly net of rectilinear thinking. By zoning developers, it is something conceded only grudgingly by inches. By would-be protestants, it is something dispensed bounteously by furlongs. By what folly did a word so evanescent ever make it into the caselaw? It is more than a word; it is a minefield . . . .
>
> Being "nearby" is a notion that shares the basic concerns of proximity with the "contiguous," the "confronting," the "bounding" and the "abutting." It cannot be reduced to mathematical measurement, but it is a "close-in" thing and not a "distant" thing. It is a neighborly thing and not a mere technical qualification. One can sense it even when one cannot define it. In this case, one does not sense that either [of the Appellants] are truly "nearby."

[9] A map provided in the record shows that Mr. Batoff's property is on the opposite side of Greenspring Valley Road and three lots down from Tract A and that Mr. Carroll's property is on the opposite side of Greenspring Valley Road and down four lots from Tract A. Neither of these properties are confronting or adjoining Tract A.

Ray I, 203 Md. App. at 33-34 (footnote omitted). For reasons explained below, the record clearly establishes that none of the Appellants in this case are "truly 'nearby.'"

The Appellants urge this Court to consider the rural nature of the properties at issue when determining the "nearbyness" of Mr. Carroll and Mr. Batoff's properties to Tract A. They argue that the properties are "nearby" Tract A because "this area of Baltimore County is characterized by large rural lots. Indeed, Mr. Carroll's and Mr. Batoff's lots are large and separated from the subject property by only 2 or 3 lots." Although this Court has acknowledged, in dicta, that the topography of the subject property may influence whether the property is "nearby," *Holland v. Woodhaven Bldg. & Dev., Inc.*, 113 Md. App. 274, 281 n.3 (1996) *abrogated on other grounds by Layton v. Howard Cnty Board of Appeals*, 399 Md. 36 (2007), we reject Appellants' argument that the rural nature of the property should weigh in their favor in this case. Unlike flat, open, rural land where properties farther from the subject property may be affected by zoning changes, the record shows that the properties at issue in this case, while large rural lots, are also verdant and sylvan, which prevents the Appellants from viewing Tract A from their properties. Among the many maps, drawings, testimony and affidavits in the voluminous record on appeal, there is nothing that demonstrates why the impact of the proposed maintenance building would be "wider reaching" because of the rural nature of these particular properties. *Committee for Responsible Dev.*, 137 Md. App. at 87 n.11, (recognizing that "neighborhoods in rural areas may extend farther, because the damage from a particular decision may be much wider

reaching, than in an urban or suburban setting" (citing *Pattey v. Bd. of County Comm'rs for Worcester Cnty.*, 271 Md. 352, 363 (1974)).[10]

Furthermore, an additional consideration to determine *prima facie* as well as "almost *prima facie*" aggrievement is whether the protestants can view the subject property from their property. *See Ray I*, 203 Md. App. at 36. In *Ray I*, this Court stated:

> Superimposed upon linear distance, however, there is also visibility, as a modifying factor. If the project being developed is in the clear sight of the property owner, that visual factor enhances nearness. If, on the other hand, the project cannot be seen from the would-be protestant's property, that visual shielding diminishes the impact of nearness. As the Court of Appeals noted in *Wilkinson v. Atkinson*, 242 Md. [231, 235 (1966)], "Visibility is one of the elements of proximity."

[10] The petitioners in *Ray II*, made an argument similar to the one the Appellants make here, that the nature of the urban property should be taken into consideration when determining whether petitioners are almost *prima facie* aggrieved. 430 Md. at 92. In *Ray II*, the Court of Appeals dismissed such a consideration, stating:

> [N]owhere in any of Petitioners' briefs do they explain the significance, for standing purposes, of the urban PUD, as compared with suburban or rural locales. We can only suppose that Petitioners posit that an urban PUD expands the proximity factor so that individuals challenging a large urban development are permitted to reside farther away from the PUD than non-urban protestants. We find no support in our earlier decisions, and Petitioners have offered none, for the proposition that the urban nature of the PUD affects the proximity analysis for special aggrievement purposes. Nor do we see how the size of the PUD renders standing requirements more lenient in analyzing proximity.

Id. Similarly, here, the Appellants do not explain why this Court should consider the fact that Baltimore County is "characterized by large rural lots," when determining if Mr. Carroll and Mr. Batoff's lots, which are "large and separated from the subject property by only 2 or 3 lots," are close enough to the subject property to be considered almost *prima facie* aggrieved.

Id. In the instant case, it is clear that neither Mr. Carroll nor Mr. Batoff can see Tract A from their respective properties. Mr. Pieranunzi, a registered landscape architect and St. Paul's expert witness, submitted an affidavit to the circuit court with pictures taken from the Cross-Appellee's property. The pictures show a roadway, surrounded by trees, and no evidence of Tract A or the current maintenance storage on that land. Mr. Pieranunzi submitted an affidavit containing his opinion that neither Mr. Carroll nor Mr. Batoff can view Tract A from their properties. Neither Mr. Carroll nor Mr. Batoff dispute this fact in their affidavits.

Although the record demonstrated that Tract A is not readily visible from their properties, both Mr. Carroll and Mr. Batoff claim in their affidavits that while traveling down Greenspring Valley Road, they can "see the existing maintenance building" and "anticipate seeing and hearing the proposed maintenance building. . . ." However, even if it were true that the Appellants can see the building from Greenspring Valley Road, which is not supported by the record,[11] this Court addressed and rejected a similar contention in *Ray I*, stating:

> We hold that, as a factor in the nearness equation, the ability to view the site of the zoning project must be measured from one's property. It is not

[11] At the hearing before the Board, Mr. Pieranunzi testified as to the visibility of the proposed building, stating that, as shown in photos contained in Petitioner's Exhibit #7, "it's very evident that you can see that this site is basically 90 to 95% screened by evergreen vegetation." Mr. Pieranunzi explained that Petitioner's Exhibits #8A-8C, are cross-section diagrams of the sight lines from the same angles as the photos in Exhibit #7, which also show that an individual would not be able to see the building from Greenspring Valley Road. The Appellants have not offered any evidence to contradict this fact other than statements in Mr. Carroll and Mr. Bantoff's affidavits.

> measured from one's place of employment. It is not measured from the route one regularly travels to work. It is not measured from the evening itinerary in walking the dog. It is not measured from the restaurant where one regularly has lunch.

Id. at 39. We similarly determine here that nearness is not measured by one's ability to view the construction when driving by the subject property on a public road.

We hold that the record demonstrates that none of the Appellants are *prima facie* aggrieved because none of the properties owned by the Appellants is "adjacent, confronting, or nearby" Tract A.

ii. Almost *Prima Facie* Aggrieved

"Almost *prima facie*" aggrievement is reserved for "those who are 'farther away than an adjoining, confronting, or nearby property owner, but still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, **and** [who also offer] 'plus factors' supporting injury.'" *State Center*, *supra*, 438 Md. at 533 (emphasis supplied) (citing *Ray II*, 430 Md. at 85). Although we agree with the Appellants that there is no bright-line rule for almost *prima facie* aggrievement, the record demonstrates that neither Mr. Carroll or Mr. Batoff are in close enough proximity to Tract A to qualify as almost *prima facie* aggrieved.

In *Ray II*, the Court of Appeals, while acknowledging that there was no bright-line rule for finding that a property owner is almost *prima facie* aggrieved, stated, "we have found no cases, in which a person living over 2000 feet away, has been considered specially aggrieved. Rather, **as we discussed above, this category has been found applicable only with respect to protestants who lived 200 to 1000 feet away from the subject**

property." 430 Md. at 91 (emphasis added) (citing *Habliston,* 258 Md. at 352; *Chatham*, 252 Md. at 579–80).

For example, in *Marcus v. Montgomery County Council*, the Court of Appeals concluded that appellants who owned property three-quarters of a mile and one-quarter of a mile from the subject property were not aggrieved where the record lacked evidence that those properties were within sight of the subject property. 235 Md. 535, 538 (1964). In coming to this conclusion, the Court of Appeals relied on *Pattison v. Corby*, 226 Md. 97, 103 (1961), which stated:

> [W]e think that the position of his property in a residentially zoned area[—]remotely located as it is at **a considerable distance from and out of sight** of the area rezoned for apartment use[—]was not enough to show that the appellant had such an interest in the subject matter as bestowed on him standing to attack the validity of the decision of the council.

(Emphasis added). In contrast, the Court in *Marcus* determined that the third appellant, a property owner within one block of the subject property, was aggrieved and had standing to challenge the rezoning. 235 Md. at 538-39.

In *DuBay v. Crane*, the Court of Appeals held that three appellant property owners, the closest of whom owned property 1,500 feet from the subject property, were not aggrieved for standing purposes. 240 Md. 180, 183-86 (1965). The Court stated:

> The appellant DuBay is the nearest (a distance of 1500 feet) to the reclassified property, but his property is on the opposite side of the Beltway, which, if not a complete shield against the apartments to be constructed, will serve as an adequate barrier. The appellants Aiken and Rice both reside a considerable distance (more than four-tenths of a mile) and possibly out of sight of the proposed apartments.

Id. at 185-86. *See also White v. Major Realty, Inc.*, 251 Md. 63, 64 (1968) (appellants, who owned property one-half mile from the subject property were not aggrieved); *Committee for Responsible Dev.*, 137 Md. App. at 86-87 (appellant was not aggrieved where he lived five blocks from the subject property and could not see or hear the activity from his house).

Here, the closest property owner, Mr. Batoff, is 1,873 feet from Tract A, almost double the greatest distance Maryland courts have found property owner standing. *See Ray II*, 430 Md. at 91. Much like the appellants in the cases discussed *supra*, neither Mr. Batoff nor Mr. Carroll can see Tract A from their properties.

Appellants are not, based on the record and using applicable case law as a guide, close enough to Tract A to be considered *prima facie* or almost *prima facie* aggrieved. Nevertheless, recognizing that there is "no bright-line rule for exactly how close a property must be in order to show special aggrievement," we turn to the "plus factors" alleged by Appellants. *Id*. 430 Md. at 83.

Mr. Batoff's contention that he is specially aggrieved simply because he rides his horses on his neighbor's "fields across the road" from his own property is insufficient under applicable law. As this Court stated in *Ray I*, aggrievement is not "measured from the evening itinerary in walking the dog." 203 Md. App. at 39. Similarly, it is not measured from one horseback riding on a neighbor's property.[12]

[12] Notably, the affidavit does not indicate which neighbor's property Batoff rides on, or if that property is actually adjoining or confronting Tract A.

Mr. Batoff and Mr. Carroll together contend that the extension of water and sewer to the proposed maintenance building on Tract A would adversely affect the groundwater available to their properties and sewers on their properties and surrounding properties. However, the Appellants admit in their brief that, "during the course of this case, an extension of the public water supply was approved for Tract A," and that "the properties of Messrs. Batoff and Carroll are not served by public water." Furthermore, at the hearing before this Court, counsel for St. Paul's informed the Court that public sewer had also been approved for Tract A. Consequently, Mr. Batoff and Mr. Carroll's contention that their properties be adversely affected by Tract A has become moot.[13] And, VPC did not submit an affidavit or other evidence to attempt to demonstrate standing for their property located more than 3 miles away from the proposed maintenance building. And finally, VPC's argument that it would be specially aggrieved because of its role in "protecting the valleys of northern Baltimore County" and because the alleged breach of the 1988 agreement finds no support in the law. Appellants have cited no authority for these arguments, and we need not adddress contentions in a party's brief that are "completely devoid of legal authority." *See Andseron v. Litzenberg*, 115 Md. App. 549, 578 (1997) (footnote omitted). "It is not our function to seek out the law in support of a party's appellate contentions." *Id.* (citation omitted).

[13] Additionally, the Board found that the proposed construction will not interfere with adequate provisions for water and sewage. The Appellants have not challenged this finding on appeal and do not offer evidence or argument other than speculation to contradict this finding.

For the reasons stated above, we hold that the circuit court erred in finding that St. Paul's had waived its standing argument, and in not granting St. Paul's motion to dismiss.

Conclusion

Because we conclude that the Appellants are not aggrieved and, therefore, did not have standing to file a petition for judicial review of the Board's opinion, we need not reach the merits of the Appellants' argument. However, we feel compelled to note that the Appellants' argument on the merits is not persuasive. The Appellants argue that, in 2004, Tract A was *added* to the special exception area granted in 1989 and, therefore, is subject to the MBE contained in the 1989 site plan. However, the Board found that Tract A was granted a *new* special exception in 2004, evidenced by the fact that St. Paul's filed for a new special exception for Tract A and the site plan provided use restrictions for the new special exception area.

Even if Tract A was added to the original special exception area granted in 1989, the Board found that the special exception area encompassed all of St. Paul's property, while the MBE covered a much smaller area within the special exception and did not extend to Tract A, which was not owned by St. Paul's at the time of the 1989 Order. We agree with the Board. In *Bernui v. Tantallon Control Committee*, this Court determined that after-acquired property was not subject to the restrictions placed on a subdivision where there was no evidence that the developer intended to restrict after-acquired property. 62 Md. App. 9, 17-18 (1985). There is no evidence in the 1989 Order that the parties intended

to bind future acquired property to the restrictions of the MBE. Therefore, were the issue before us, we would conclude that Tract A is not bound by the MBE.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT, WITH DIRECTIONS TO DISMISS APPELLANTS' PETITION FOR JUDICIAL REVIEW WITH PREJUDICE. COSTS TO BE PAID BY APPELLANTS.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2654

September Term, 2014

VALLEYS PLANNING COUNCIL, INC. *et al.*
v.

BOYS' SCHOOL OF ST. PAUL'S PARISH, INC.

Woodward,
Kehoe,
Leahy,

JJ.

Concurring Opinion by Kehoe, J.

Filed: January 3, 2017

I respectfully disagree with part of the Majority's reasoning.

Maryland's law of aggrievement and standing in land use cases has developed, no pun intended, largely through appeals arising out of urban and suburban settings. However, as Judge Kenney noted for this Court in *25th Street v. Baltimore,* 137 Md. App. 60, 87 n.11 (2001), "The Court of Appeals has long recognized the impact of zoning decisions in rural and semi-rural areas can be different than in urban and suburban areas."

St. Paul's School is located in a semi-rural area. Mr. Batoff's claim of aggrievement presents a very close question under the test for aggrievement as I believe that test should be applied in rural and semi-rural areas. I would give him the benefit of the doubt. However, because I wholeheartedly agree with the Majority's conclusion that "Tract A is not bound by the MBE," I believe that the Majority has reached the correct result.