Circuit Court for Anne Arundel County
Case No.: C-02-CV-22-000730

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2165

September Term, 2022

IN THE MATTER OF FORREST MAYS, ET AL.

Graeff,
Nazarian,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: September 10, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Laura Townsend, appellant, appeals from an order of the Circuit Court for Anne Arundel County approving the decision of the City of Annapolis Planning Commission ("the Commission") to allow the construction of The Village at Providence Point ("the Village"), a mixed-use retirement community in the City of Annapolis. Specifically, appellant asserts that the Commission erred in deciding that the Village is not subject to the City of Annapolis Moderately Priced Dwelling Unit ("MPDU") ordinance, which requires that a certain number of units in new subdivisions be affordable.[1] As we shall

[1] Appellant's "Questions Presented" are, as stated in her brief:

> 1. Did the Lower Court err in ruling against [a]ppellant's claim [that] the City of Annapolis failed to apply its [MPDU ordinance] (Annapolis City Code 20.30) to the zoning application for the planned residential community development known as [the Village]?
>
> 2. Can the independent living residences ("cottages" and "apartments") of [the Village] be considered part of a [Continuing Care Residential Community ("CCRC")] or are they characterized as such and included with the Assisted Living units and Health Care Center units which are medical in nature to avoid compliance with the [MPDU ordinance]?
>
> 3. Did the Maryland CCRC statute create and define the relationship between residents of CCRC's, as tenants, and CCRC's as landlords?
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> 4. Are residential units under Maryland law that offer shelter and ancillary services in return for periodic payments, such as the apartment and cottages offered by [the Village], still leased residential dwellings, i.e. providing exclusive possession of space in which a person resides for at least a year in return for a periodic payment and security deposit?
>
> 5. Is the City of Annapolis [MPDU] ordinance a housing ordinance as an exercise of the City's police power requiring developers of residential dwellings to offer a percentage of the units at a moderate price?
>
> 6. Did the Lower Court err in relying on the reasoning of the City of Annapolis Office of Law memorandum that ignored the legislative history of the CCRC statute, ignored the plain language of the CCRC statute, made statements, as law, not supported by any Maryland law or regulation, contradicted itself and violated common rules of statutory construction in Maryland?

(Continued)

explain, we hold that appellant does not have standing to bring this appeal. Accordingly, we will dismiss the instant appeal.

BACKGROUND

On July 25, 2017, Katherine Properties, Inc., Katherine Properties, LLC, AIC Forest, LLC, AIC Forest II, LLC, Campus Drive, LLC, EAJ Forest Drive, LLC, 1623 Forest, LLC, and The Village at Providence Point, Inc. (collectively, the "Developers"), filed a Subdivision Application, Adequate Public Facilities Certificate Application, and Forest Conservation Approval Application with the Commission. The applications were for the development of the Village, a mixed-use retirement community to be located on approximately thirty-four acres of a 175-acre parcel to the west/southwest of the intersection of Forest Drive and Spa Road in the vicinity of Crystal Spring Farm Road, in the City of Annapolis. On January 22, 2019, the Developers filed a Planned Development

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Appellant begins the "Argument" section of her brief with the following three paragraphs, set forth by her in italics:

> *Appellant contends the independent living and assisted living cottages and apartments which are being marketed by [the Developers] as "residential", are shelter and have been repeatedly referred to as "residential" even in Memorandums to this Court, are both residential and dwellings as used in the Annapolis City Code governing MPDU's, and the ordinance should apply.*
>
> *The [a]ppellant also contends, in agreement with both Maryland law governing CCRC's and the legislative history of that law, these units are residential dwellings and thus the [a]ppellees should be compelled to comply with the MPDU ordinance.*
>
> *Finally, the [a]ppellant contends the Annapolis Zoning Commission and Planning Department as well as the Lower Court erred as a matter of law in finding the MPDU ordinance does not apply to the Village at Provident Point.*

Application with the Commission. In addition, on June 21, 2021, the Developers filed a request for a significant tree removal variance, seeking a variance to remove sixty-four significant trees to further the development of the Village.

After several revisions of the Village's design, the Commission held a series of six hearings on the Developers' applications beginning on December 16, 2021, and ending on March 31, 2022. At the hearing on January 6, 2022, appellant argued that the development of the Village would irreparably harm the environment, negatively impact the neighboring communities, and that the City of Annapolis MPDU ordinance, which requires that at least fifteen percent of the houses for sale or rent in a new subdivision of ten or more units be sold or rented below the market rate for other units in the same development, applied to the Village.

On March 31, 2022, the Commission issued an opinion and order approving all of the Developers' pending development applications. The Commission found, *inter alia*, that the MPDU ordinance did not apply to the Village. On April 28, 2022, appellant, along with six other individuals and one corporation, filed a Petition for Judicial Review of the Commission's opinion and order in the Circuit Court for Anne Arundel County ("the Petition"). On May 2, 2022, appellant filed a separate Petition for Judicial Review, which was later consolidated with the Petition. At the time of filing the Petition, appellant lived at 1228 Crummell Avenue, Annapolis, MD 21403.

In the petitioners' memorandum in support of the Petition, they argued that (1) the Commission erred when it determined that the Village was exempt from the MPDU

regulations; (2) the Commission failed to satisfy "the minimum requirements for articulating the facts found, the law applied, and the relationship between the two regarding the requested variances to remove priority forest and significant trees[;]" (3) the Commission erred by granting the Developers' requested variance to remove sixty-four significant trees because it misinterpreted the criteria to grant a variance; and (4) the record lacked substantial evidence to support the grant of a variance to the Developers. In a "Complaint" supporting her separate petition for judicial review, appellant asserts that (1) the Commission[2] erred in its decision to approve the zoning application for the Village by failing to require the application of the MPDU ordinance; (2) the Commission erred in approving the zoning variance by not complying with the zoning regulation requiring an analysis of the financial impact on adjacent and surrounding private property; and (3) the Commission "violated the Federal Fair Housing Act by failing to enforce the MPDU."

By order dated December 12, 2022, the circuit court upheld the Commission's determination that the Village was exempt from the MPDU ordinance, but stated that it would hold *sub curia* all questions related to variances from the Forest Conservation Act and tree removal. On January 11, 2022, the court issued an order vacating and remanding the Commission's Opinion and Order pertaining to certain forest conservation elements of the Commission's decision. On February 10, 2023, appellant, proceeding *pro se*, filed the

[2] Appellant erroneously claims error on the part of the Department of Planning and Zoning instead of the Commission. Only the Commission's decision is subject to review by the circuit court.

instant appeal. Appellant was the only party to note an appeal. The appellees are the Developers and the City of Annapolis (the "City").

In this Court, the Developers filed a Motion to Dismiss and Amended Motion to Dismiss asserting, *inter alia*, that appellant lacked standing to maintain the instant appeal. We denied the motions "without prejudice to the appellees to seek that relief in the appellees' brief pursuant to Maryland Rule 8-603(c)." In their briefs before this Court, both the Developers and the City seek dismissal of the instant appeal on the grounds that appellant lacks standing to maintain an appeal.

We shall provide additional facts as necessary to the resolution of the questions presented in this appeal.

STANDARD OF REVIEW

This Court recently described the appellate standard of review for agency decisions in *Matter of Cricket Wireless, LLC*, 259 Md. App. 44, 66–67 (2023):

> " 'In an appeal of the circuit court's review of an agency action, an appellate court reviews the agency's action itself rather than the decision of the circuit court.' " *Maryland Small MS4 Coal. v. Maryland Dep't of the Env't*, 250 Md. App. 388, 411, 250 A.3d 346 (2021) (quoting *Maryland Dep't of the Env't v. Cnty. Comm'rs of Carroll Cnty.*, 465 Md. 169, 201, 214 A.3d 61 (2019) ("*Carroll Cnty.*")), *aff'd*, 479 Md. 1, 276 A.3d 573 (2022).
>
> In reviewing the agency's action, we apply three standards of review. First, we review the agency's pure factual findings and conclusions under the "substantial evidence" standard. *Montgomery Park, LLC v. Maryland Dep't of Gen. Servs.*, 254 Md. App. 73, 98, 270 A.3d 993 (2022), *aff'd*, 482 Md. 706, 290 A.3d 586 (2023). We apply that same standard to mixed questions of law and fact, which many agency decisions represent. A mixed question of law and fact arises "when an agency has correctly stated the law, its fact-finding is supported by the record, and the remaining question is whether the agency has correctly *applied* the law to the facts." *Crawford v. Cnty. Council*

of Prince George's Cnty., 482 Md. 680, 695, 290 A.3d 571 (2023). In that instance, our task is to determine if the evidence before the agency was "fairly debatable." *Id.*

"Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *B&S Mktg. Enters., LLC., v. Consumer Prot. Div.*, 153 Md. App. 130, 151, 835 A.2d 215 (2003) (quoting *Md. State Police v. Warwick Supply & Equip. Co.*, 330 Md. 474, 494, 624 A.2d 1238 (1993)) (further quotation marks and citation omitted). We review the record in a light most favorable to the agency, and, if the record supports the agency's findings, we do not substitute our judgment for that of the agency's, even if we might have reached a different result. *Montgomery Park*, 254 Md. App. at 98-99, 270 A.3d 993. In other words, we give deference to the agency's findings of fact, the inferences it draws from those facts, and its application of the relevant law to those factual findings. *Id.*

Second, we generally review the agency's pure legal conclusions *de novo* without deference to the agency. *Id*. But in doing so, we give careful consideration to the agency's interpretation of a law it has been charged by the legislature to administer. *Maryland Small MS4 Coal.*, 250 Md. App. at 412, 250 A.3d 346.

Third, we review the agency's discretionary decisions under an "arbitrary and capricious" standard. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 574, 120 A.3d 677 (2015). "This standard is highly contextual, but generally the question is whether the agency exercised its discretion 'unreasonably or without a rational basis.' " *Carroll County*, 465 Md. at 202, 214 A.3d 61 (quoting *Harvey v. Marshall*, 389 Md. 243, 297, 884 A.2d 1171 (2005)).

DISCUSSION

I. Standing Generally

Before a case may be heard on the merits, a plaintiff or petitioner must have standing to bring the lawsuit. *See Greater Towson Council of Cmty. Associations v. DMS Dev., LLC*, 234 Md. App. 388, 408-09 (2017). Standing is a doctrine that falls under the broad category of justiciability, a concept that is "'aimed at isolating those circumstances in which courts

should withhold decision, either from deference to the particular authority and competence of another branch of government, or from recognition of the functional limitations of the adversary system.'" *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 498 (2014) (quoting *Reiman Corp. v. City of Cheyanne*, 838 P.2d 1182, 1186 (Wyo. 1992)). "Although the issue of standing may not be jurisdictional in nature, it does go to the very heart of whether the controversy before the court is justiciable[.]" *Sipes v. Bd. of Mun. & Zoning Appeals*, 99 Md. App. 78, 87 (1994) (citations omitted).

In Maryland, whether a complainant has standing turns on "'whether the interest sought to be protected by the complainant is *arguably* within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore*, 407 Md. 253, 270 (2009) (hereinafter, "*Superblock I*") (quoting *News American v. State*, 294 Md. 30, 40 (1982)). Relevant to the instant case, two doctrines of standing have been recognized in our case law: property owner and taxpayer. *State Center*, 438 Md. at 517-18. These doctrines "permit a property owner or tax-paying inhabitant to bring a claim where his, her or its proprietary interests are injured by an alleged *ultra vires* or illegal government act." *Id.* at 517; *see Anne Arundel Cnty. v. Bell*, 442 Md. 539, 556 (2015). As a result, under each doctrine, "the complainant must have a special interest in the subject-matter of the suit distinct from that of the general public." *State Center*, 438 Md. at 519.

When one party has standing, this Court "'shall not ordinarily inquire as to whether another party on the same side also has standing.'" *Long Green Valley Ass'n v. Bellevale*

Farms, Inc., 205 Md. App. 636, 652 (2012), *aff'd*, 432 Md. 292 (2013) (quoting *Board of License Comm'rs v. Haberlin*, 320 Md. 399, 404 (1990)). This doctrine, referred to as "piggy-back" standing, means that, "if either party had judicial standing at the circuit court, then an appellate court would not address the issue of whether *both* parties had standing." *Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 598 (2014) (emphasis added); *accord*, *State Center*, 438 Md. at 550; *Long Green Valley Ass'n*, 205 Md. App. at 652.

The "piggy-back" standing doctrine has been applied to the standing of parties to maintain an appeal of a judgment of the circuit court. In *Haberlin*, 320 Md. at 404, the appellees asserted that the Board of License Commissioners for Montgomery County lacked standing to take an appeal from an adverse judgment of the circuit court, sitting in banc. Our Supreme Court rejected this argument, stating:

> The applicant for the license, Victor K. Der, also took an appeal from the in banc court's judgment, and Mr. Der clearly has standing. Where there exists a party having standing to bring an action or take an appeal, we shall not ordinarily inquire as to whether another party on the same side also has standing.

Id. Similarly, in *People's Couns. for Baltimore Cnty. v. Crown Dev. Corp*., 328 Md. 303, 317 (1992), when the respondent challenged on appeal the standing of the People's Counsel for Baltimore County before the circuit court, our Supreme Court stated that, because another party had standing before the circuit court "and had standing to appeal to the [Appellate Court] and to petition this Court for certiorari[,] . . . the presence of People's Counsel was not required to obtain appellate review at any level in this case."

In the instant case, eight petitioners sought judicial review before the circuit court – seven individuals, including appellant, and one corporation. At the time that the petition was filed, Forrest E. Mays, one of the petitioners, owned property, with the address of 2646 Mas Que Farm Road in the City of Annapolis, that adjoined the land on which the Village is planned to be built. The proximity of Mr. Mays's property to the Village property clearly gave him standing to bring a petition for judicial review, and had he been a party to the instant appeal, appellant would have been able to "piggy-back" onto his standing. *See Long Green Valley Ass'n*, 205 Md. App. at 652. Appellant, however, was the only party to file an appeal from the circuit court's judgment, and thus she cannot rely on the standing of the other petitioners in the circuit court to pursue this appeal. *See Haberlin*, 320 Md. at 404; *Crown Dev. Corp.*, 328 Md. at 317.

II. Property Owner Standing and Taxpayer Standing

Section 21.24.130 of the City of Annapolis Code of Ordinances, regarding planned developments, states that "[a]n appeal from a decision of the Planning Commission under this chapter shall be made to the Circuit Court of Maryland for Anne Arundel County." Such ordinance makes no mention of any standing requirements to make an appeal to the circuit court, and thus we must rely on common law standing principles to see if appellant can bring this appeal. As previously stated, the common law doctrines implicated on the instant case are property owner and taxpayer standing.

A. Property Owner Standing

1. Procedural Issue

Appellant's argument in opposition to appellees' claim that she lacked property owner standing is solely a procedural one. In her opposition to the Developers' Motion/Amended Motion to Dismiss in this Court ("Opposition"),[3] appellant asserts, in essence, that appellees waived the issue of her standing to maintain the instant appeal by not raising such issue in the circuit court. Appellant states:

> The record shows [that] the [a]ppellees did not challenge the [a]ppellant's standing in the lower court, although it could have done so. Nothing in the settled law set forth [in] these cases precluded the [a]ppellees from raising a challenge to the [a]ppellant's standing. The [a]ppellees' counsel should have challenged the [a]ppellant's standing as an element of zealously pursuing his clients' interest but did not. Further, it is contrary to the long-settled law of standing in Maryland. Nothing in the lower courts' and this Court's reasoning with regard to standing on appeal dictates that standing, not dealt with at the lower court level, survives in the Appellate Court.[4]

Appellant concludes that, because appellees and the circuit court accorded appellant standing and did not challenge it, this Court should not entertain such challenge now. We disagree and shall explain.

Maryland Rule 8-131(a) provides: "Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the

[3] Appellant did not file a reply brief opposing the arguments in appellees' briefs that the appeal should be dismissed because of appellant's lack of standing.

[4] Appellant provides no citations to legal authority for her argument quoted here in violation of Md. Rule 8-431(d).

trial court or to avoid the expense and delay of another appeal." There is language in several appellate opinions that any dispute concerning standing should be raised and litigated in the circuit court, not the Appellate Court. *See, e.g., Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 71 (2003); *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 53-54 (2008); *Bowman Group v. Moser*, 112 Md. App. 694, 698 (1996). None of these cases, however, dealt with the factual circumstances in the instant appeal.

Here, there was no question that appellant had property owner standing before the circuit court, because another petitioner, Mr. Mays, had standing by virtue of his ownership of property adjoining the Village, and thus appellant had standing under the "piggy-back" standing doctrine. Indeed, if the Developers or the City had raised the issue of appellant's standing in the circuit court, as appellant claimed should have been done, they could have been subject to the payment of costs and expenses under Maryland Rule 1-341 for maintaining a proceeding in bad faith or without substantial justification. *See* Md. Rule 1-341(a). Unless they were clairvoyant, appellees could not have known that appellant would be the only party to appeal from an adverse judgment of the circuit court. Stated another way, there was no issue concerning appellant's standing to be raised in or decided by the circuit court under Rule 8-131(a). Such issue did not present itself until appellant became the sole party to bring the instant appeal. Because the issue of standing "go[es] to the very heart of whether the controversy before the court is justiciable," *Sipes*, 90 Md. App. at 87, this Court can and will decide whether appellant has property owner standing to prosecute the instant appeal. *See Dorsey*, 375 Md. at 70 (stating that "[u]nder some circumstances,

an appellate court may consider a standing issue even though it was not raised in the trial court"); *Moser*, 112 Md. App. at 698 (stating that "[t]he decision on when to review an issue not raised at trial, however, is within the discretion of the appellate court.").[5]

2. Merits of Property Owner Standing

Property owner standing arises out of Maryland's statutory zoning laws, which "grant an 'aggrieved person' the right to challenge many zoning actions." *State Center*, 438 Md. at 522-23; *see Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 80-81 (2013). Although such doctrine was initially limited to zoning actions, our Supreme Court has expanded this doctrine to "permit eligible plaintiffs to invoke the jurisdiction of the courts to challenge a greater variety of 'land use decisions' and actions than thought to be the case previously." *State Center,* 438 Md. at 523 (citing *Superblock I*, 407 Md. at 270-73). A land use decision is "a decision (typically an ordinance or regulation) enacted or promulgated by a legislative or administrative body for the purpose of directing the development of real estate." *120 W. Fayette St., LLLP v. Mayor of Baltimore*, 426 Md. 14, 30 (2012) (hereinafter, "*Superblock III*").

[5] Appellant cites to *DCW Dutchship Island*, 439 Md. at 598, for the proposition that "if either party had judicial standing at the circuit court [], then an appellate court would not address the issue of whether both parties had standing in a subsequent appeal." Appellant's reliance on *DCW Dutchship Island* is misplaced for at least two reasons. First, as previously stated, there are no longer "both parties" as litigants on one side in the instant appeal; appellant is the sole litigant on her side and thus she must have standing to render the appeal justiciable. *See Sipes*, 90 Md. App. at 87. Second, the issue in *DCW Dutchship Island* was whether the "'piggy-back' standing rule would apply in an administrative proceeding or trial," an issue very different from appellant's standing to pursue the instant appeal. 439 Md. at 597.

In order to have property owner standing to petition for judicial review of a land use decision by an administrative agency, "a person or entity must satisfy two conditions: (1) the person or entity must have been a party to the administrative proceedings; and (2) the party must be 'aggrieved' by the decision of the agency." *Turner v. Maryland Dep't of Health*, 245 Md. App. 248, 266 n.10 (2020). A party to an administrative proceeding is "'anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency[.]'" *DMS Dev., LLC*, 234 Md. App. at 406 (quoting *Med. Waste Assocs., Inc. v. Md. Waste Coal., Inc.*, 327 Md. 596, 611 (1992)). A person who is "aggrieved" is someone

> whose personal or property rights are adversely affected by the decision of the [administrative agency]. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.

Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 144 (1967); *see Ray*, 430 Md. at 81. The standard for determining whether an individual is "specially affected" is flexible and determined on a case-by-case basis. *Bryniarski*, 247 Md. at 144.

In *Ray*, the Baltimore City Council approved the construction of a mixed-use development in the Remington and Charles Village neighborhoods of Baltimore City. 430 Md. at 78. Two individuals who both lived approximately 0.4 miles, or a little over 2000 feet, away from the development filed petitions for judicial review of the Council's approval. *Id.* One of the petitioners claimed that he could both see and hear the development from his second-floor bathroom, while the other claimed only that the

development would change the character of the neighborhood. *Id.* at 78-79. The circuit court dismissed both petitions, finding that neither petitioner was a "adjoining, confronting, or nearby" property owner and neither had shown any damage that would distinguish them from the general public. *Id.* at 79. This Court affirmed. *Id*. at 79-80.

The Maryland Supreme Court held that "proximity is the most important factor to be considered[]" when property owner standing to challenge a zoning action is at issue, and the "relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property." *Id.* at 82-83. After conducting a review of Maryland case law, the Court summarized the categories of individuals who have standing in a land use action:

> Maryland courts have accorded standing to challenge a rezoning action to two types of protestants: those who are *prima facie* aggrieved and those who are almost *prima facie* aggrieved. A protestant is *prima facie* aggrieved when his proximity makes him an adjoining, confronting, or nearby property owner. A protestant is specially aggrieved when she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, *and* offers "plus factors" supporting injury. Other individuals are generally aggrieved.

Id. at 85 (emphasis in original). The Court also suggested that a third category may exist – 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 [agency's] action.'" *Id.* at 85-86 (quoting *Bryniarski*, 247 Md. at 145). The Court, however, found no Maryland case where such a category was determined to exist. *Id.* at 86.

Turning towards the facts of *Ray*, the Supreme Court first held that "the creation of a class of aggrieved persons is done on an individual scale and not based on delineations of city neighborhoods." *Id.* at 88. The parties conceded that living 0.4 miles from the proposed development precluded them from being "*prima facie* aggrieved," but argued that they lived close enough to be "almost *prima facie* aggrieved." *Id.* at 91. The Court noted that the category of "almost *prima facie* aggrieved" had been held to be applicable "only with respect to protestants who lived 200 to 1000 feet away from the subject property." *Id.* at 91. The Court concluded:

> Petitioners attempt to distinguish these precedents based on the large urban nature of the PUD involved here. Yet, nowhere 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. at 555–56.

Similarly, in *State Center*, the Maryland Department of General Services and Department of Transportation selected State Center, LLC to redevelop the State Center complex in Baltimore. 438 Md. at 478. Fifteen plaintiffs filed a complaint against State Center, LLC and the two agencies, arguing that they were excluded from the bidding process. *See id.* at 483-84. One of the questions before the Supreme Court of Maryland was

whether the plaintiffs had standing to bring the lawsuit under the doctrine of property owner standing. *See id.* at 474.

The Supreme Court first determined that all of the plaintiffs' properties were too far away from the State Center complex to be considered *prima facie* aggrieved, as they were all between 0.57 and 0.84 miles away from the complex. *See id.* at 530-31. The Court also decided that, despite the plaintiffs alleging several "plus factors," the plaintiffs lacked sufficient proximity to qualify as "almost *prima facie* aggrieved" because such factors are only sufficient "when combined with proximity that is almost as great as in cases where properties are 'adjoining, confronting or nearby'" *Id.* at 533-34. (quoting *Ray*, 430 Md. at 83-84). Finally, the Court held that the facts of the case were insufficient for the plaintiffs to qualify for standing under the "[n]ebulous third category of property owner standing[.]" *Id.* at 536-38.

In the instant case, it is clear that the Planning Commission's order was a "land use decision" because it was a "decision . . . enacted or promulgated by a legislative or administrative body for the purpose of directing the development of" the Village. *Superblock III*, 426 Md. at 30. In addition, appellant was a party to the administrative proceeding, because she submitted written comments to the Planning Commission and spoke in opposition of the Village at the January 6, 2022 virtual public hearing. Thus the focus of our inquiry regarding property owner standing is whether appellant is "aggrieved" by the decision of the Commission regarding the Village. *See Turner*, 245 Md. App. at 266 n.10.

According to her Petition for Judicial Review, filed on April 28, 2022, appellant lives at 1228 Crummell Avenue, Annapolis, MD 21403. The proposed development area for the Village is the land to the west/southwest of the intersection of Forest Drive and Spa Road in the vicinity of Crystal Spring Farm Road, in the City of Annapolis. In support of their Motion/Amended Motion to Dismiss in this Court, as well as in their brief and appendix, the Developers attached a map showing the linear distance from appellant's property to the Village. The map indicates that such distance is 2.6513 miles, which converts to approximately 13,999 feet. In her Opposition, appellant did not dispute the linear distance between her property and the Village.

Following both *Ray* and *State Center*, we conclude that appellant owns property too far from the Village to be considered either *prima facie* aggrieved or almost *prima facie* aggrieved. *See Ray*, 430 Md. at 85, 91-92; *State Center*, 438 Md. at 530-35. Indeed, in both *State Center* and *Ray*, the Supreme Court recognized that "'we have found no cases, in which a person, living over 2,000 feet away, has been considered specially aggrieved.'" *State Center*, 438 Md. at 534; *Ray*, 430 Md. at 91. Appellant does not argue any "plus factors" supporting her inclusion in the category of "almost *prima facie* aggrieved" or the "poorly-defined" third category of those far removed from the subject property that are "specially and adversely affected." *See Ray*, 430 Md. at 85-86. We cannot conceive of any valid basis for a determination of special aggrievement for appellant whose property is almost 14,000 feet from the Village, or seven times the distance that the Supreme Court

has found does not qualify for special aggrievement. Therefore, we hold that appellant does not have property owner standing to maintain the instant appeal.

B. Taxpayer Standing

1. Arguments of the Parties

Appellant makes no argument regarding taxpayer standing in her brief. However, in appellant's Opposition she argues that

> if the [Village] were to be completed[,] its impact on roads, public facilities, infrastructure, public health, environmental mitigation and other remedies along the Forest Drive/Bay Ridge Road corridor would result in additional County taxes being required for maintenance or improvement. The [a]ppellant owns real property in Anne Arundel County along the Forest Drive/Bay Ridge corridor and is likely to suffer a pecuniary loss and an increase in taxes in a manner unique to taxpayers if [the Village] is allowed to be built without compliance with the MPDU.

In addition, appellant argues that construction of the Village would increase traffic on the Forest Drive/Bay Ridge Rd. corridor, which "is the primary arterial conduit for [Anne Arundel] County residents who reside adjacent to the road, with limited means of ingress and egress." She asserts: "Appellant, a county resident who resides on the peninsula, would be adversely affected by [a]ppellee[s]' Project. The additional traffic load would constitute a public safety hazard as emergency personnel would be unable to get to her residence and back out [on] Forest Drive in a timely manner." Appellant concludes that she "is aggrieved by the failure of the [Developers] to comply with the City of Annapolis[]' 'Moderately Priced Dwelling Unit' Ordinance ('MPDU'), Annapolis Code, Chapter 20.30."

The City argues that appellant "has failed to establish taxpayer standing because she is not a taxpayer of the City of Annapolis – she is an Anne Arundel County resident and therefore a taxpayer of a separate jurisdiction." In addition, the City contends that appellant cannot establish "that she will suffer a pecuniary loss or increase in taxes" due to the Commission's MPDU decision and is, in reality, trying to stop the development of the Village altogether.

Similarly, the Developers contend that appellant does not have taxpayer standing because appellant does not live within the Annapolis city limits, and thus cannot challenge a decision of the Commission, an agency of the City. The Developers also argue that appellant cannot claim both that the increased traffic from the development of the Village will be a public safety hazard and that "her pecuniary losses and increased taxes will be personally suffered 'in a manner unique to taxpayers' because of her ownership on the Annapolis Neck Peninsula." According to the Developers, the alleged harm must either be "public in nature and broadly impact[] similarly situated persons alike, or [] involve[] special and particularized harm to certain individuals – not both."

2. Analysis

The taxpayer standing doctrine "permits taxpayers to seek the aid of courts, exercising equity powers, to enjoin illegal and *ultra vires* acts of public officials when those acts are reasonably likely to result in pecuniary loss to the taxpayer." *State Center*, 438 Md. at 538. The doctrine, however, does not "provide unfettered access to the courts to citizens unhappy with all actions taken by state or local governing bodies," and, just like the

doctrine of property owner standing, the complainant "'must have a special interest in the subject-matter of the suit distinct from that of the general public.'" *Bell*, 442 Md. at 576 (quoting *State Center*, 438 Md. at 519).

A party satisfies the "special interest" requirement by alleging both: "1) an action by a municipal corporation or public official that is illegal or ultra vires, and 2) that the action may injuriously affect the taxpayer's property, meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes." *Superblock I*, 407 Md. at 267. The "illegal or *ultra vires*" requirement is easy to meet, as it only requires an allegation in good faith of "an *ultra vires* or illegal act by the State or one of its officers[.]" *State Center*, 438 Md. at 556. Also, "[t]he facts alleged need not lead necessarily to the conclusion that taxes will increase; rather, the taxpayer must allege that he, she, or it will suffer pecuniary damage potentially." *Bell*, 442 Md. at 578. In assessing what type of harm amounts to pecuniary harm, "the issue is not what 'type' of harm is sufficient necessarily, but rather a much more forgiving question of whether the type of harm is one that may affect the complainant's taxes." *State Center*, 438 Md. at 565.

Nevertheless, "there must be a 'nexus' between the showing of potential pecuniary damage and the challenged act." *Bell*, 442 Md. at 579 (quoting *State Center*, 438 Md. at 572-80). Further, "the taxpayer must be asserting a challenge and seeking a remedy that, if granted, would alleviate the tax burden on that individual and others; otherwise, standing does not exist." *State Center*, 438 Md. at 572 (footnote omitted). Therefore, according to our Supreme Court, there must be "a connection between the alleged illegal or *ultra vires*

act, the harm caused to the taxpayer, and the potential for the remedy to alleviate the harm incurred." *Bell*, 442 Md. at 579.

In *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479 (2003), the Board of Zoning Appeals of the Town of Willards granted zoning variances that would allow a media company to erect two new billboards on Route 50 in Wicomico County. *Id.* at 486-87. Upon a petition for judicial review, the trial court held that the Board's decision was supported by substantial evidence. *Id.* at 488. On appeal, the media company moved to dismiss the appeal on the ground that the appellants, a sign company and a business owner, lacked standing. *Id.* at 489. The appellants conceded that the sign company did not have standing. *Id.* at 494. As to the business owner, this Court stated:

> [I]n the case at bar, [**the business owner] does not own real property in the Town of Willards and does not pay real property taxes to the town.** Rather, he owns real property inside Maryland but outside the Town of Willards, and pays real property taxes to governmental entities other than the Town of Willards. [The business owner] takes the position that the phrase "any taxpayer" in section 4.08(a)(ii) should be read broadly to cover a real property taxpayer in *any* jurisdiction in Maryland, not just a property taxpayer in the local jurisdiction in which the board is authorized to act. Thus, to have "any taxpayer" standing to challenge a zoning decision or action by a local municipality under that statute, a person need not be a taxpayer of that municipality. To be sure, a literal reading of the words "any taxpayer" would cover not only any taxpaying entity (individual, corporate, etc.), but also any property taxpayer wherever the property or the taxpayer might be located. Indeed, as [the business owner's] counsel acknowledged in response to questions from the bench in oral argument in this Court, a literal reading of "any taxpayer" also would include payers not only of property taxes, but of any kind of tax—sales, income, estate and gift, etc.
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> **The type of taxpayer who has an interest that could be affected by the zoning decision of a local board of appeals is a property taxpayer**

> **within that jurisdiction**. . . . It is fundamental that zoning concerns the regulation of land use; and it is the policy of this State that such regulation will occur at the local level. *See* art. 23A, section 2(b)(36)(ii) (stating that "[i]t has been and shall continue to be the policy of this State that planning and zoning controls shall be implemented by local government."). **Because local jurisdictions have the power to regulate land use, and to levy real property taxes, the real property taxes assessed against a property owner in the local jurisdiction may be affected by land use decisions and actions taken by the jurisdiction. Thus, in a general way, such a taxpayer has an interest in the zoning decisions of the local jurisdiction. One who pays property tax to another local jurisdiction, and not to the jurisdiction making the zoning decision, does not have such an interest.**
>
> When read in its proper statutory context, **the phrase "any taxpayer," in section 4.08(a)(ii), means any person, including an entity, who pays real property taxes to the local jurisdiction whose zoning action is being challenged on appeal.**

Id. at 504-07 (emphasis added).

In the instant case, this Court concludes that appellant does not have taxpayer standing to prosecute an appeal from the circuit court's approval of the Commission's MPDU decision. We reach this conclusion for three reasons.

First, and foremost, appellant fails to allege any nexus between her potential pecuniary damage and the challenged act of the Commission. *See Bell*, 442 Md. at 579. In her Opposition, appellant repeatedly claims taxpayer standing as a result of the adverse impacts of the construction of the Village. For example, appellant states that "if the Project were to be completed[,] its impact on roads, public facilities, infrastructure, public health, environmental mitigation . . . would result in additional County taxes . . . ." Again, appellant claims that she "would be adversely affected by [a]ppellees' Project[,]" because "the additional traffic load would constitute a public safety hazard[.]" Finally, appellant claims to have a "public safety concern that would be exacerbated because of the Project's impact

and alteration to Forest Drive." Appellant, however, does not challenge the Commission's approval of the Village in the instant appeal. Instead, she objects to the Commission's failure to require the Village to comply with the City's MPDU ordinance. Other than one conclusory statement,[6] appellant does not assert any connection between the alleged illegal act, *i.e.*, the Commission's failure to impose the MPDU ordinance on the Village, and the adverse impacts detailed above. *See id.* In its brief, the City aptly noted that "it remains unclear how [appellant] would suffer pecuniary loss if the percentage of moderate income residents were replaced with non-moderate income residents due to the inapplicability of the MPDU laws, as decided by the [] Commission."

Second, there must be "the potential for the remedy to alleviate the harm incurred." *Bell*, 442 Md. at 579. In the Complaint supporting her petition for judicial review in the circuit court, appellant alleged, among other things, that the failure to enforce the City's MPDU ordinance violated the Federal Fair Housing Act. For relief, appellant asked the court to declare that the Federal Fair Housing Act applied to the Village and to remand the case "for reconsideration to apply the Federal Fair Housing Act" to the Village. In her Opposition, however, appellant fails to explain how the remedy of subjecting the Village to the MPDU ordinance would alleviate the harm caused by the alleged adverse impacts of the construction and operation of the Village. In our view, applying the MPDU ordinance to the Village would only change who would reside in the MPDU units, not the size,

[6] Without elaboration or explanation, appellant states that she "owns real property in Anne Arundel County along the Forest Drive/Bay Ridge Road corridor and is likely to suffer a pecuniary loss and an increase in taxes in a manner unique to taxpayers if the Project is allowed to be built *without compliance with the MPDU*." (Emphasis added).

operation, or impact of the development. Indeed, one could argue that requiring the Village to comply with the City's MPDU ordinance would result in the Developers increasing the size of the Village to compensate for the loss of revenue from the MPDU units, thereby exacerbating the adverse impacts complained of by appellant.

Finally, in order to have taxpayer standing a complainant must have a "'special interest' in the subject-matter of the suit distinct from that of the general public." *Bell*, 442 Md. at 576. In *Superior Outdoor Signs, Inc.*, this Court determined that such interest is held by a "person, including an entity, who pays real property taxes to the local jurisdiction whose zoning action is being challenged on appeal." 150 Md. App. at 507. The Village is within the city limits of Annapolis, and appellant lives outside of the City. Thus appellant is unable to challenge decision of the Commission, an agency of the City, on the grounds that she is a taxpayer.[7]

In sum, this Court holds that appellant has neither property owner standing nor taxpayer standing to bring the instant appeal challenging the Commission's decision that the City's MPDU ordinance does not apply to the Village. Accordingly, we will dismiss appellant's appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[7] In her Opposition, appellant also argues that she has "housing standing" to bring this appeal because the instant case is not only a land use case, but also a housing law case. Specifically, appellant contends that she has "housing standing" because the MPDU decision is "a violation of the Maryland law and the federal 'Fair Housing Act,'" and because appellant is "the legal representative of her mother who qualifies for affordable housing." Appellant points to no case law establishing the existence of "housing standing," and we have found none. We therefore reject appellant's claim of standing on the basis of her housing status.