Rel: August 11, 2023

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2022-0697

Teachers' Retirement System of Alabama and Employees' Retirement System of Alabama

v.

Baldwin County Planning and Zoning Department; Baldwin County Board of Adjustment No. 1; and Point Clear Property Owners Association, Inc.

Appeal from Baldwin Circuit Court
(CV-21-900858)

PER CURIAM.

Two governmental entities owning property in Baldwin County, i.e., the Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama (collectively referred to as "RSA"), appeal

from a judgment of the Baldwin Circuit Court entered in an appeal RSA had taken to that court pursuant to subsection (a) of Ala. Code 1975, § 45-2-261.13, affirming a final decision of a county board of adjustment, i.e., Baldwin County Board of Adjustment No. 1 ("the Board"), which had reversed a determination of the county zoning administrator that RSA was entitled to the issuance of a land-use certificate under the applicable Baldwin County zoning ordinance. We affirm.

The record reflects that RSA, which owns approximately 27 acres of land generally located on the eastern shore of Mobile Bay that includes a hotel known as "The Grand Hotel," applied for a land-use certificate that would allow it to construct additional lodging space on a strip of real property located just north of an existing marina. As envisioned by RSA, the proposed structure would constitute a 5-story building with 23 separate lodging units. After several previous applications from RSA seeking land-use certificates had been denied, the county zoning administrator issued a land-use certificate to RSA on May 17, 2021.

Pursuant to a local statute, "any person aggrieved" by "any decision of any administrative officer representing [Baldwin C]ounty in an official capacity in the enforcement of" local zoning laws and ordinances may

appeal to one of two numbered boards of adjustment serving particular districts in Baldwin County. Ala. Code 1975, § 45-2-261.11. Point Clear Property Owners Association, Inc. ("PCPOA"), representing approximately 400 members who reside in or own property in the district where RSA's proposed project is located (District 26), appealed to the Board, which has jurisdiction over matters arising therein and is statutorily empowered "[t]o hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulations adopted" by the Baldwin County Commission. Ala. Code 1975, § 45-2-261.12(1); accord Baldwin County Zoning Ordinance § 18.5.1.

PCPOA's notice of appeal identified the following six grounds as to why the land-use certificate should not have been issued: the project failed to comply with a portion of the local zoning ordinance requiring 40-foot front-yard and 20-foot side-yard setbacks, the project was located too close to a bulkhead ostensibly marking a boundary of RSA's property strip, the strip was a separate and distinct parcel that was separate from the remainder of RSA's holdings in the area, the project encroached upon a coastal high-hazard area so as to require a 50-foot buffer from the

landward reach of mean high tide, the project was located on land subject to flooding so as to constitute a safety hazard, and the project would have inadequate parking. RSA filed a response with the Board opposing PCPOA's appeal. At a regular meeting of the Board, representatives of PCPOA and RSA spoke and presented arguments regarding the appropriateness of the county zoning administrator's action in approving the land-use certificate. The Board then unanimously voted to approve a motion to "reverse the administrative decision" based on the six grounds specified by PCPOA -- with the moving Board member specifically noting "[t]he boundary line" of the subject property -- and a notice of the Board's action was thereafter issued.

RSA timely appealed from the Board's final decision, as § 45-2-261.13 permitted RSA to do. As a preliminary matter, we note that § 45-2-261.13 originated from a 1991 local act that was amended in 1998 before being codified in Title 45; as originally codified, § 45-2-261.13 had indicated that an appeal from a final decision of a Baldwin County board of adjustment was to be "tried de novo" in the circuit court after transmission of the record made before that board of adjustment, which is the traditional judicial remedy for persons aggrieved by decisions of

boards of adjustment in Alabama. Cf. Ala. Code 1975, § 11-52-81 (providing for de novo review by circuit court of decisions of municipal boards of zoning adjustment). However, our legislature, in Ala. Acts 2006, Act No. 2006-609, deleted the former reference in § 45-2-261.13 to "tri[al] de novo" while retaining the requirement that the record made before the board of adjustment be provided to the circuit court. As this court has noted, "[t]he general rule for review of administrative agency action "is that, "'[i]n the absence of specific statutory provisions for a de novo hearing, or of a proceeding not in accordance with due process requirements, the [reviewing] court is limited in its review to the record made in the agency's proceedings.'" Waldrop v. Alabama State Bd. of Pub. Acct., 473 So. 2d 1064, 1066 (Ala. Civ. App. 1985) (quoting Ex parte Smith, 435 So. 2d 108, 110 (Ala. Civ. App. 1983)); see also Hadi Store, LLC v. City of Tuscaloosa, 297 So. 3d 1233, 1236-40 (Ala. Civ. App. 2019) (construing statutory amendment deleting reference to de novo review as mandating application by judiciary of presumption of correctness to decision under review).

Consonant with those principles, the circuit court, as indicated in its judgment, "reviewed the record and transcript from the Board's

decision" to nullify the land-use certificate, as well as appellate briefs and oral argument presented by the parties, and "did not consider new evidence which had not been before the Board and did not reweigh the evidence or make its own assessments regarding credibility." Upon conducting that review, the circuit court determined that "the Board's decision was supported by substantial evidence" and that that decision was "neither arbitrary and capricious[] nor contrary to law." From the circuit court's judgment of affirmance, RSA timely appealed to this court, which has jurisdiction to hear appeals arising from administrative proceedings pursuant to Ala. Code 1975, § 12-3-10.

At the outset, we agree with RSA's position that the circuit court's judgment is due to be reviewed "'without any presumption of correctness'" and that this court is, in effect, in the same position as the circuit court with respect to reviewing the propriety of the Board's final decision. See Ex parte City of Fairhope, 739 So. 2d 35, 38 (Ala. 1999) (quoting State Dep't of Revenue v. Acker, 636 So. 2d 470, 473 (Ala. Civ. App. 1994)). However, as discussed above, the proceedings in the circuit court were not conducted on a de novo basis; rather, by local statute, the circuit court's review was on the record. Thus, we instead accord a

presumption of correctness to the decision of the Board. See Waldrop, 473 So. 2d at 1066 (limiting review under analogous statutory scheme to determining "whether the Board's decision is supported by substantial evidence and whether the Board's decision is reasonable and not arbitrary"). In effect, as PCPOA correctly notes, RSA must disprove the proposition that substantial evidence exists as to all of the six grounds relied upon by PCPOA before the Board. See Hadi Store, 297 So. 3d at 1240 (indicating that "[a] showing of evidence to support only one of the grounds for [a particular administrative decision] is necessary to uphold" that decision).

Pursuant to its authority granted under Ala. Code 1975, § 45-2-261.04(a), the Baldwin County Commission has adopted a comprehensive zoning ordinance governing, among other things, "the size of yards, courts, and other open spaces" on property located within the county. Among the land-use limitations adopted by that legislative body is the requirement that structures in a "Tourist Resort" zone shall be subject to the following specified minima set forth in § 7.1.4 of the zoning ordinance ("the yard-setback requirements"):

"Minimum Front Yard	40-Feet
"Minimum Rear Yard	40-Feet

"Minimum Side Yards 20-Feet"

The definitional portion of the pertinent zoning ordinance (§ 22.2) further provides that (a) a "[l]ot" is "[a] piece, parcel, or plot of land"; (b) a "lot line" is "[t]he boundary line of a lot"; (c) as to "waterfront lots," a "front yard" is deemed to extend "from the front line of the principal building to the waterfront property line," i.e., "the lot line abutting the water"; and (d) a "yard" is to be "open, unoccupied and unobstructed by buildings or structures."

As previously noted, RSA had unsuccessfully sought a land-use certificate from the county zoning administrator on several previous occasions before May 2021, and the building that it proposes to be built on its 1.25-acre holding north of the marina is located less than 11 feet from an existing concrete bulkhead located between the shore and an existing marina (which would constitute a "[w]aterway" under § 22.2 of the zoning ordinance because it constitutes an artificial "body of water"). The administrator's most recent denial deemed RSA's project not to be in compliance with the yard-setback requirements, among other reasons; the accompanying statement noted that, "[h]istorically, the Baldwin County Planning and Zoning Department ha[d] interpreted the [zoning

o]rdinance to require properties with multiple sides abutting the water as having multiple waterfronts"; had "appl[ied] the front yard setback to each waterfront"; and, "[a]bsent definite contrary evidence, … ha[d] historically relied on existing bulkheads/seawalls to determine the boundary line and resulting required setback line." However, the administrator, in approving the issuance of a land-use certificate to RSA as to the project in May 2021, predicated that approval "entirely on [a] surveyor's identification of the north margin of" a preexisting creek flowing into the marina "as the boundary line of the property for determining the applicable waterfront setback."

When the matter was later presented to the Board at its appeal hearing for plenary consideration of whether a land-use certificate should have been issued by the administrator,[1] members of the Board expressed a number of concerns after having been informed by the administrator of his rationale for approval of RSA's latest application and its reliance upon an undisputedly submerged property line. One Board member, who had

[1]Pursuant to Ala. Code 1975, § 45-2-261.12, the Board, in the exercise of its authority to hear appeals, has the power to "reverse or affirm, wholly or partly, or modify the … decision … appealed from and make the … decision [that] should [have been] made," i.e., the Board "shall have all the powers of the officer from whom the appeal is taken."

"grow[n] up and liv[ed] on the water all [her] life," opined that to "not consider a piece of land as your property line for building on" to be "reckless" and contrary to "common sense." Another Board member opined that it would be "unreasonable to arbitrarily set a setback to a frontage that's under water" and that he had "never seen that before." A third Board member, also commenting on "the 40 foot that's in the water," expressed doubt how "emergency vehicles, unless they floated down the side, [could get] in the front of the building" proposed by RSA. Ultimately, the Board voted unanimously to rescind the land-use certificate issued by the administrator.

RSA attacks the Board's decision both as being outside its jurisdiction and as incorrect on the merits. As to jurisdiction, RSA primarily contends in this court that the Board should not have heard PCPOA's appeal because, in RSA's view, PCPOA was not, under § 45-2-261.11, a "person" that was "aggrieved" by the administrator's decision to issue a land-use certificate (which, § 18.2.1 of the pertinent zoning ordinance provides, is a prerequisite to "commencement of development and issuance of any building permit"). RSA maintains that, because the PCPOA was not a "person aggrieved," its appeal to the Board did not

invoke the Board's subject-matter jurisdiction and, thus, that all of the Board's actions taken pursuant to PCPOA's appeal, including the Board's decision to deny RSA the land-use certificate, were void. The Board and the PCPOA have argued that RSA waived this argument because it did not raise it before the Board, in response to which argument RSA (although conceding that it did not raise the issue at any time before the Board had issued its final decision) contended that the issue could not be waived because it related to the subject-matter jurisdiction of the Board.

We believe that RSA is mistaken on that point. In City of Mobile v. Lee, 274 Ala. 344, 148 So. 2d 642 (1963), the City of Mobile appealed to the Mobile Circuit Court from a final decision of the Mobile Board of Adjustment granting Aloyis Lee a variance permitting Lee to construct a gasoline service station on a lot that he owned in a residential zone. In taking the appeal, the City of Mobile relied upon a statute that gave "to any party aggrieved by any final decision of the board of adjustment the right to appeal to the circuit court." 274 Ala. at 347, 148 So. 2d at 645. The Mobile Circuit Court affirmed the decision of the Mobile Board of Adjustment, and the City of Mobile then appealed to the supreme court. Lee moved to dismiss the appeal on the ground that the City of Mobile

was not a party aggrieved by the judgment of the circuit court. Our supreme court denied the motion to dismiss, reasoning that, in arguing that the City of Mobile was not a "party aggrieved" by the judgment affirming the variance, Lee was essentially challenging the capacity of the City of Mobile to file and maintain the appeal of the administrative decision granting the variance. Our supreme court held that Lee had waived that objection by failing to raise the issue of the alleged want of capacity in the Mobile Circuit Court through proper pleading and procedure. 274 Ala. at 347, 148 So. 2d at 645.

In this case, the PCPOA, like the City of Mobile in Lee, took an appeal from an adverse decision of the county zoning administrator to the appropriate appellate tribunal, i.e., the Board, based on its alleged status as a "person aggrieved." RSA has conceded that, like the landowner in Lee, it did not lodge any objection to the Board to dispute the PCPOA's allegation that it was a "person aggrieved" with a right to appeal. Based on the reasoning in Lee, RSA thereby waived that particular challenge, and, thus, that challenge could not be considered in subsequent appellate proceedings. See also Bayport Civic Ass'n v. Koehler, 138 N.Y.S.2d 524, 531 (Sup. Ct. 1954) (not officially reported in

New York Miscellaneous Reports) ("[I]f the applicant before the Zoning Board claims that any person appearing in opposition is not a 'person aggrieved' he must state his objection and have it ruled upon by the Board, or he must be deemed to have waived it.").[2] Based on the holding in Lee, RSA's argument that the Board lacked jurisdiction over the appeal filed by the PCPOA because the PCPOA was not a "person aggrieved" within the meaning of § 45-2-261.11 and § 18.5.2 of the local zoning ordinance has been waived -- this court can properly consider only the jurisdictional arguments actually raised before the Board and reiterated in this court.

In its letter brief submitted to the Board, RSA contended that the PCPOA had no right to appeal to the Board because § 18.2.6 of the local zoning ordinance provides that "[t]he applicant may appeal the denial of

[2]Notably, in Lee, our supreme court did not state that the City of Mobile could only be considered a "party aggrieved" in order to have standing before the board. Lee analyzed the case solely as concerning lack of capacity, which, unlike lack of standing, is a procedural deficiency that can be waived. See generally Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31 (Ala. 2013) (discussing distinction between lack of standing, which involves a jurisdictional defect, and lack of capacity); ABC Coke v. GASP, 233 So. 3d 999 (Ala. Civ. App. 2016) (holding that, the decision whether a party has a right to a hearing before an administrative board as a "person aggrieved" is not governed by standing requirements).

the land use certificate to the Board of Adjustment[] in writing within twenty (20) calendar days after the rejection of the application" (emphasis added) and that no other part of the zoning ordinance provides for a right of appeal from the decision regarding a land-use-certificate application. During the July 20, 2021, Board hearing, RSA again argued that a right to appeal does not arise from the preliminary decision to issue a land-use certificate. A land-use certificate, under § 22.2 of the local zoning ordinance, is a "[c]ertificate issued by the Zoning Administrator indicating that a proposed use of land is in conformity with the zoning ordinances, a prerequisite to issuance of a building permit" (emphasis added). RSA thus maintained before the Board that any right to appeal did not ripen until the final administrative decision to issue a building permit. RSA makes similar arguments in its brief to this court.

RSA is correct that § 18.2 of the local zoning ordinance, the section governing land-use certificates, contains only one provision relating to appeals, which is § 18.2.6 (quoted above). Section 18.2.6 refers only to appeals by applicants who have been denied land-use certificates. However, as previously explained in detail, both the Code of Alabama at § 45-2-261.11 and the applicable zoning ordinance at § 18.5.2 expressly

provide a right to appeal to any person aggrieved by any decision of the county zoning administrator, which, by its plain meaning, would include the decision to issue a land-use certificate pursuant to § 18.2 of the zoning ordinance.

By identifying the right of an applicant to appeal from the denial of a land-use-certificate application, § 18.2.6 of the applicable local zoning ordinance does not negate the broad right of appeal established in § 45-2-261.11 -- a state statute -- because an ordinance cannot prohibit an action that is provided by its own enabling act. See Riverbend P'ship v. City of Mobile, 457 So. 2d 371, 371 (Ala. 1984). Further, § 18.2.6 cannot properly be construed so as to conflict with the broad right of appeal set forth in § 18.5.2 of the zoning ordinance because the various provisions of a single zoning ordinance relating to the same subject matter should be read in pari materia. City of Mobile v. Grizzard, 109 So. 3d 187, 191 (Ala. Civ. App. 2012). Section 18.5.2 provides a general right to appeal from any adverse decision of a county zoning administrator within 30 days of the decision, whereas § 18.2.6 allows appeals from the decision of a county zoning administrator to deny an application for a land-use certificate only within 20 days of the date of the rejection. Construing

those two sections of the zoning ordinance together, it is apparent that the drafters included the specific appeal provision in § 18.2.6 in order to specify a shorter deadline for appeals from the denial of an application for a land-use certificate and not to implicitly prohibit appeals from a decision granting a land-use certificate. The language of § 18.2.6 of the local zoning ordinance thus neither deprives the PCPOA of a right to appeal pursuant to Ala. Code 1975, § 45-2-261.11, and § 18.5.2 of the local zoning ordinance nor deprives the Board of the power to hear and decide the appeal pursuant to Ala. Code 1975, § 45-2-261.12(1), and § 18.5.1 of the local zoning ordinance.

RSA correctly notes that the issuance of a land-use certificate is only the first step in the administrative process implemented by the local zoning ordinance with respect to oversight of construction of new buildings on zoned property, a process that has been aptly summarized by our supreme court:

> "The zoning regulations for Baldwin County provide that any person who plans to develop land must obtain a land-use certificate from the zoning administrator before a building permit or any other permit or license can be issued. In order to obtain a land-use certificate, an applicant must fill out an application form and submit it to the zoning administrator, along with a site plan drawn to scale. The zoning administrator may circulate the application to the building

> official, the county engineer, and the coastal-program director for approval and comment. The certificate is then issued or denied within seven days."

Baldwin Cnty. v. Palmtree Penthouses, Ltd., 831 So. 2d 603, 607 (Ala. 2002) (summarizing §§ 18.2.1, 18.2.2, and 18.2.3 of the local zoning ordinance). Pursuant to § 18.2.4 of that ordinance, "[a] land use certificate shall be valid for the issuance of a building permit for 180 days after issuance." Further, under § 18.3 of the local zoning ordinance, construction of any proposed structure referred to in a land-use certificate cannot commence until the holder of the certificate obtains a building permit through a second and final administrative process.

However, as we have noted at length, the scheme governing appeals from decisions of the county zoning administrator does not provide that a right of appeal can mature only upon the completion of the permitting process. Both Ala. Code 1975, § 45-2-261.11, and § 18.5.2 of the local zoning ordinance authorize appeals from "any" decision of a county zoning administrator, and both Ala. Code 1975, § 45-2-261.12(1), and § 18.5.1 of the local zoning ordinance give the Board jurisdiction to hear appeals from "any" allegedly erroneous decision of a county zoning administrator. None of the operative statutes or provisions of the local

zoning ordinance provides that an appeal may lie only from a "final" decision or only from the decision to issue a building permit (which, importantly, is not even one of the authorized duties of the county zoning administrator, but is the responsibility of another official entirely).

This court must apply the plain language of the operative statutes and ordinances providing for a right to appeal from "any" decision, not just a "final" decision, unless the context clearly provides otherwise. See Ex parte T.C., 96 So. 3d 123, 130 (Ala. 2012). Based upon our review of the applicable statutes and provisions of the local zoning ordinance, we are clear to the conclusion that the plain language of those statutes and provisions grant a right to appeal from a decision of the county zoning administrator to grant a land-use certificate, even if that decision might be characterized as a merely intermediate step toward construction of a new building on zoned property.

In reaching this conclusion, we expressly reject RSA's contention that the right to appeal does not vest until construction of the building is approved and commenced. Both Ala. Code 1975, § 45-2-261.11, and § 18.5.2 of the local zoning ordinance expressly provide that the appeal "shall be taken within 30 days of the decision" that is the basis of the

appeal. In the case of an appeal from the issuance of a land-use certificate, the right to appeal vests at the time of the decision to issue the land-use certificate and not at some later date or upon the occurrence of some subsequent event. In this case, the right of appeal vested when the county zoning administrator issued the land-use certificate to RSA. The right to appeal did not lay dormant until RSA obtained a building permit or began constructing the building. Although, as RSA argues, it might be more sensible in the abstract for the right to appeal to arise at the completion of the permitting process, as some states hold, see Dufault v. Millennium Power Partners, L.P., 49 Mass. App. Ct. 137, 141-43, 727 N.E.2d 87, 91-92 (2000), and 5 Rathkopf's The Law of Zoning and Planning § 87:12 (4th ed.) (discussing reviewability of administrative zoning decisions), the plain language of the governing statutes and the provisions of the local zoning ordinance clearly provide otherwise.

We further observe that Palmtree, supra, does not conflict with our holding. In Palmtree, our supreme court held that the Baldwin Circuit Court lacked subject-matter jurisdiction over a civil action filed by a real-estate developer based on the allegedly unlawful refusal to honor a grandfather clause in the zoning ordinance at issue in that case. Our

supreme court determined that, at the time of the commencement of the civil action, the real-estate developer had not actually applied for a land-use certificate or any other permit -- the developer only anticipated that any application it filed would be denied. Our supreme court determined that the claims made in the civil action were not ripe for adjudication, observing in passing that the developer had been laboring under an assumption that the developer's application for a land-use certificate and "all of the ensuing permits necessary to develop its land," 831 So. 3d at 608, would be denied. The foregoing quoted excerpt merely recognizes the multistep permitting process for commencing construction on land subject to the zoning and building ordinances in Baldwin County; in contrast, it does not even discuss the right to appeal to the Board from a decision to issue a land-use certificate as part of the administrative process it examined. Palmtree also does not imply in any way that a right to appeal to the Board from a decision to issue a land-use certificate matures only upon the issuance of all other permits necessary to develop land. That question was not even before our supreme court in Palmtree, which concerned the subject-matter jurisdiction of the Baldwin Circuit

Court rather than the appellate jurisdiction of the Board, which is the jurisdictional issue that is before this court in this case.

In summary, the primary jurisdictional argument made by RSA on appeal has not been properly preserved for appellate review. The other jurisdictional arguments that the court can consider are not meritorious. Accordingly, the circuit court did not err by concluding that the Board had jurisdiction over the appeal filed by the PCPOA, even if the circuit court did not adhere to the same reasoning in reaching the proper conclusion.[3]

RSA also contends that the Board's decision is incorrect as a substantive matter. Again, however, we are compelled to reject that

[3]We further reject RSA's position that PCPOA was not actually "aggrieved" by the zoning administrator's decision to issue RSA a land-use certificate; as the Board's brief correctly indicates, in order to claim "aggrieved" status, a party such as a homeowners' association need only demonstrate that a particular decision to allow development of a nearby lot """could have""" adverse effects upon the use, enjoyment, or valuation of association members' properties. Fort Morgan Civic Ass'n, Inc. v. Baldwin Cnty. Comm'n, 890 So. 2d 139, 144 (Ala. Civ. App. 2003) (quoting Ex parte Steadham, 629 So. 2d 647, 648 (Ala. 1993), quoting in turn Crowder v. Zoning Bd. of Adjustment of Birmingham, 406 So. 2d 917, 918 (Ala. Civ. App. 1981)). In this case, the Board heard testimony from one of PCPOA's 400-plus members owning property in the vicinity of RSA's land indicating that the proposed building would be susceptible to flooding and would be almost 2.5 times the height of immediately adjacent residential structures.

position because the Board's decision is supported by the evidentiary record and the pertinent zoning ordinance.

As discussed herein, Baldwin County's zoning ordinance mandates that when buildings are to be constructed on lots within a zoning district, such as District 26 in Baldwin County where RSA's property and the properties of PCPOA's members are located, front yards of 40 feet and side yards of 20 feet, each consisting of "open, unoccupied and unobstructed" land, are required.[4] RSA has contended that the western lot line abutting the waters of Mobile Bay should be considered the only "front lot line" as to its parcel. However, the definitional section of the local zoning ordinance (§ 22.2) states that waterfront lots' front-boundary

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[4]Section 7.1.4 of the local zoning ordinance provides, in pertinent part:

> "Area and dimensional ordinances. [Except as otherwise provided in the zoning ordinance], the area and dimensional ordinances set forth below shall be observed.
>
> "....
>
> | | |
> |---|---|
> | "Minimum Front Yard | 40-feet |
> | "Minimum Rear Yard | 40-feet |
> | "Minimum Side Yards | 20-feet" |

Based on § 7.1.4, each lot upon which a principal building rests must have a minimum of 40 feet of yard to the front of the building.

lines are deemed to be those lot lines that are "abutting the water," and the record reflects that Baldwin County zoning officials have consistently interpreted that ordinance as mandating that the 40-foot front-yard requirement be applied to each side of "properties with multiple sides abutting the water"; further, those officials have "historically relied on existing bulkheads/seawalls" as determinative lot boundary lines from which "resulting required setback line[s]" are to be ascertained. Indeed, that long-standing interpretation on the part of Baldwin County zoning officials appears to have been among the primary bases on which RSA's multiple previous applications for a land-use certificate before January 2021 were denied. As to that interpretation of the local zoning ordinance, we note that, although "'an administrative interpretation of [a] statute by the agency charged with its administration'" is persuasive "'if that interpretation is reasonable,'" Surtees v. VFJ Ventures, Inc., 8 So. 3d 950, 968 (Ala. Civ. App. 2008) (quoting State v. Pettaway, 794 So. 2d 1153, 1157 (Ala. Civ. App. 2001)), any presumption that the administrators have correctly construed the enabling law is more properly said to arise "'where such construction has been followed for a long time.'" State Dep't of Revenue v. Kennington, 679 So. 2d 1059, 1061

(Ala. Civ. App. 1995) (quoting Glencoe Paving Co. v. Graves, 266 Ala. 154, 158, 94 So. 2d 872, 876 (1957)).

Thus, under § 22.2 of the local zoning ordinance as consistently interpreted by local zoning officials, the southern "front yard" of RSA's parcel is properly deemed to run from the front line of the principal building to the "waterfront property line," which, in context, refers to the line of property fronting or abutting the water (consistent with the definition of "lot line, front"). That line runs along the retaining wall secured by the bulkhead, and not the property line described in RSA's deed to its parcel. However, only approximately 10.5 feet of "yard" lies between the southern face of the building proposed to be constructed by RSA on its parcel and a bulkhead bounding the waters of the marina. Thus, the southern front yard of RSA's parcel with the proposed construction in place does not consist of a minimum of 40 feet of front yard as the local zoning ordinance requires.

The land-use certificate that PCPOA challenged was based upon an apparently novel and different interpretation of the local zoning ordinance -- that, contrary to the concept that a zoning boundary of a waterfront property is deemed to abut the existing waterline, waterfront

property owners such as RSA could overcome the general rules simply by relaying upon surveys locating legal lot boundaries in submerged lands several feet away from a lot's true usable acreage. As evidenced by the contemporaneous remarks of the members of the Board quoted herein, the Board recognized in deciding PCPOA's appeal that allowing RSA to take the position that its planned five-story building could utilize such a submerged property line for calculating yard setbacks that would bear no genuine relationship to the one acre of land actually available for use would be arbitrary and unprecedented rather than consistent with standard local zoning practices. As our supreme court has noted, "[t]he reason [for] enact[ing] a zoning ordinance pursuant to a comprehensive plan is to create a planned consistency in land-use patterns." Budget Inn of Daphne, Inc. v. City of Daphne, 789 So. 2d 154, 159 (Ala. 2000) (emphasis added).

In an appeal from a decision of the county zoning administrator, Ala. Code 1975, § 45-2-261.12, basically requires the Board to decide for itself whether a land-use proposal complies with all the provisions of the local zoning ordinance. In this case, the Board received substantial evidence establishing that, by failing to measure the yard setback from

the bulkhead, the county zoning administrator had followed neither the terms of the zoning ordinance regulating yard setbacks nor the long-standing prevailing administrative interpretation of those terms. The Board thus did not act arbitrarily or capriciously in reversing the decision of the county zoning administrator and by denying RSA a land-use certificate on the basis of a violation of the yard-setback requirements of the local zoning ordinance. On the record presented, then, we readily conclude that the Board, by exercising its statutory prerogative to "make the … decision … as should [have been] made" by the county zoning administrator under Ala. Code 1975, § 45-2-261.12, properly opted to adhere to long-standing and uniform administrative interpretations of Baldwin County's zoning ordinance and also that the circuit court, in exercising its limited appellate jurisdiction to review the correctness of the Board's decision, did not err in entering its judgment of affirmance.

Based on the foregoing facts and authorities, the judgment of the circuit court is affirmed.

AFFIRMED.

Thompson, P.J., and Moore, Edwards, Hanson, and Fridy, JJ., concur.