Circuit Court for Anne Arundel County
Case No. C-02-CV-19-000124

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 282

September Term, 2020

KIMBERLY A. GRECO, et al.

v.

HARVEY O. RILEY, JR., et al.

Arthur,
Beachley,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 14, 2021

On March 27, 2020, the Circuit Court for Anne Arundel County determined that the Anne Arundel County Board of Appeals (the "BOA") erred in granting Kimberly and Darren Greco's (the "Grecos") application for a Special Exception Use ("SEU"). The Grecos applied for an SEU in order to construct a commercial dog kennel at 1474 Shot Town Road, Annapolis, Maryland (the "Property"), which is zoned in the Residential Low Density Zoning District ("RLD"). After filing an unsuccessful motion to alter or amend pursuant to Maryland Rule 2-534, the Grecos timely noted an appeal to this Court. The Grecos have presented three issues for our review (issues 1, 2, and 4 below), but for reasons we shall explain, we must also address a fourth. The issues we must resolve, which we have rephrased and reorganized, are:

1. Did any appellee have standing to challenge the Grecos' application for an SEU?

2. Did the trial court err in ruling that the Zoning Code does not allow "dog training" as part of a commercial kennel's use?

3. Did the BOA err in granting the SEU?[1]

4. Did the BOA err by limiting the Grecos' use to 20 dogs on the Property?

[1] The Grecos do not allege that the BOA erred in granting the SEU. Instead, and as we shall explain below, appellees essentially urge us to affirm the circuit court, albeit for reasons that the circuit court did not rely upon. Because it would have been improper for appellees to note a cross-appeal from a wholly favorable circuit court judgment, they did not file a cross-appeal. Nevertheless, we shall address their appellate arguments. *See Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989) (noting that "one who seeks to attack, modify, reverse, or amend a judgment (as opposed to seeking to affirm it on a ground different from that relied on by the trial court) is required to appeal or cross appeal from that judgment." (citing *Taylor v. Wahby*, 271 Md. 101, 110 (1974))).

We reject the Grecos' standing claim, but agree that the trial court erred in reversing the BOA. We also hold that the BOA did not err in granting the SEU, nor did it err in limiting the Grecos' use of the Property to 20 dogs. Accordingly, we reverse the judgment of the circuit court and remand with instructions to reinstate the BOA's decision to approve the SEU with the specified conditions.

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns the Grecos' application for an SEU on their RLD-zoned Property. For reference, Md. Code (2012, 2020 Supp.), § 1-101(p) of the Land Use Article ("LU") explains that an "SEU"

> means a grant of a specific use that:
>
> (1) would not be appropriate generally or without restriction; and
>
> (2) shall be based on a finding that:
>
> (i) the requirements of the zoning law governing the special exception on the subject property are satisfied; and
>
> (ii) the use on the subject property is consistent with the plan and is compatible with the existing neighborhood.

"The special exception adds flexibility to a comprehensive zoning scheme by serving as a 'middle ground' between permitted uses and prohibited uses in a particular zone." *Mills v. Godlove*, 200 Md. App. 213, 228 (2011) (quoting *People's Counsel for Balt. Cty. v. Loyola*

Coll. in Md., 406 Md. 54, 71 (2008)). Under Anne Arundel County Code[2] (the "Code") § 18-4-106, a commercial kennel is allowed in the RLD Zone, but only as an SEU.

Ms. Greco is an animal trainer who intends to construct a dog training facility at the Property. The Grecos also intend to build a single-unit dwelling—their residence—on the Property.[3] On April 21, 2017, the Grecos filed an application for an SEU to construct a commercial dog kennel on the Property. The proposed kennel will measure 56 feet by 50 feet, and is to contain a 28-foot by 24-foot caretaker apartment for an employee to remain at the site overnight.

On June 6, 2017, a hearing was held before the Office of Administrative Hearings. At the hearing, various neighbors who also live on Shot Town Road testified in opposition to the Grecos' application. We shall refer to these neighbors, who are the appellees in this case, as "Opponents." Harvey O. Riley, Jr., the named lead appellee in this case, was one such Opponent.[4] On June 29, 2017, the Office of Administrative Hearings granted the Grecos an SEU to construct and operate a commercial kennel on their Property, which led to Opponents noting an appeal to the BOA.

[2] We are aware that the Code has since been amended, but shall rely on the version of the Code as it existed during the proceedings before the BOA and the circuit court.

[3] In their opening brief, the Grecos state that they have already built their residence on the Property. We could not independently verify in the record whether this assertion is true, but for purposes of this opinion assume that they have indeed built their residence on the Property.

[4] We shall identify the other Opponents in our discussion section when we reject the Grecos' standing argument.

In response to Opponents' appeal, the BOA held nine hearings in 2018: on January 9, February 13, April 19, April 24, September 25, September 26, October 9, October 18, and October 25. Following these hearings, on December 17, 2018, the BOA issued its Memorandum of Opinion in which it granted the Grecos' application for an SEU, subject to three conditions:

> a) There shall be no more than 20 dogs on the [Property] at any one time, excluding household pets of residents of the [Property];
>
> b) That the [Grecos] shall implement sound attenuating materials on the interior and/or exterior of the facility, to maintain noise levels that are compliant with COMAR 26.02.03.02B(1) and (3); and
>
> c) That this facility shall function predominantly as a dog training facility with overnight boarding only permitted as an accessory use. It shall not be used as a primary overnight boarding facility.

Both Opponents and the Grecos filed petitions for judicial review in the circuit court. Opponents argued that the BOA erred in granting the Grecos' requested SEU. The Grecos challenged the BOA's decision to limit the total number of dogs allowed on the Property. Following a hearing in July 2019, the circuit court issued its Memorandum Opinion on March 27, 2020. In reversing the BOA's decision, the circuit court relied on an issue never raised before the BOA—whether "dog training" is permitted under the definition of a "commercial kennel" as set forth in the Code. The court noted that, pursuant to the Code, a "commercial kennel" "means a facility for the housing of dogs, cats, or other domesticated animals for the purpose of commercial breeding, sale, boarding, or grooming." Code § 18-1-101(61). Recognizing that the definition did not specifically mention "dog training," the court noted that, under Code § 18-2-201(b), "A use not

specifically allowed in this article is prohibited." Combining these principles, the court concluded that dog training, a use not specifically mentioned in the Code, was therefore prohibited. Accordingly, the court reversed the BOA's decision to grant the application for an SEU. The circuit court subsequently denied the Grecos' motion to alter or amend. We shall provide additional facts as necessary.

STANDARD OF REVIEW

Although the Grecos appealed from the decision of the circuit court, our task is to review the BOA's decision.

> When reviewing a decision of an administrative agency, we look through the circuit court's decision and evaluate the decision of the agency. Our primary goal is to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious. We conduct a two-fold inquiry, examining whether there is substantial evidence in the record to support the agency's findings and conclusions and whether the agency's decision is premised upon an erroneous conclusion of law. We will uphold the agency's decision as long as it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven. We review *de novo* an agency's conclusions of law. This includes questions of statutory interpretation.

Hayden v. Md. Dep't of Nat. Res., 242 Md. App. 505, 520-21 (2019) (internal citations and quotation marks omitted). Although we review an agency's conclusions of law *de novo*, "Appellate courts should give 'considerable weight' to 'an administrative agency's interpretation and application of the statute which the agency administers.'" *Bd. of Liquor License Comm'rs for Balt. City v. Kougl*, 451 Md. 507, 514 (2017) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 572 (2005)). "In this regard, 'the expertise of the agency

in its own field of endeavor is entitled to judicial respect.'" *Id.* (quoting *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 590 (2004)).

DISCUSSION

I. OPPONENTS HAD STANDING BEFORE THE BOA

We first address the Grecos' argument that the BOA erred when it denied their motion to dismiss Opponents' appeal for lack of standing. For context, at the January 9, 2018 hearing before the BOA, the Grecos submitted a Motion to Dismiss Appeal. In their Motion, the Grecos noted that, on Opponents "Notice of Appeal" form, rather than write their names in the appropriate blank, they instead wrote "See Attached List of Appellants." On a sheet attached to the Notice of Appeal form, all Opponents provided their names, addresses, and contact information. Harvey O. Riley, Jr.'s name appears at the top of the list. The Grecos argued, "There is no appellant identified in the Appeal Notice and therefore the Appeal Notice lacks standing and jurisdiction." The Grecos alternatively argued that, assuming Mr. Riley was a valid appellant because his name appeared at the top of the "See Attached List of Appellants," he lacked standing because he did not constitute a "person aggrieved." Finally, the Grecos argued that "piggyback standing" would not apply to grant standing to the other appellants whose names appeared on the attached list. At the hearing on September 26, 2018, the BOA unanimously denied the Grecos' motion.

On appeal, the Grecos argue that the BOA erred in denying their motion to dismiss. We confess having some difficulty fully understanding the Grecos' arguments. They write:

> There was only one timely appellant on the Notice of Appeal to the [BOA] because none of the persons on the list of appellants were attorneys, and therefore the one person who filed the Notice of Appeal could not legally make the appeal on behalf of any other persons. Piggyback standing does not apply before the [BOA], as held by the Court in *Chesapeake Bay* [*Found.*]*, Inc. v. DCW Dutchship Island, LLC,* 439 Md. 588 (2014). This means that the Notice of Appeal was filed by a lay person on his own behalf who lacked standing to appeal and therefore the Notice of Appeal was a nullity and the Appeal should have been dismissed.

The Grecos go on to argue that Mr. Riley lacked standing because he lives too far away from the Property to constitute a "person aggrieved," and that none of the other listed Opponents "made their own appearances as [a]ppellants, and none of them filed their own timely notices of appeal to the [BOA]."

We reject these arguments. As we shall explain: 1) there was more than one appellant in the proceedings before the BOA, 2) the concept of "piggyback standing" has no application here, and 3) all of the listed appellants had standing as either "persons aggrieved" or as "persons specially aggrieved."

We first reject the Grecos' argument that Mr. Riley was the only appellant listed on the Notice of Appeal. As noted above, in their brief the Grecos baldly assert that "none of the persons on the list of appellants were attorneys, and therefore the one person who filed the Notice of Appeal could not legally make the appeal on behalf of any other persons." We preliminarily reject this argument because the Grecos failed to provide any support for this assertion, and it is not our obligation to find legal support for them. *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (citing *von Lusch v. State*, 31 Md. App.

271, 282 (1976), *rev'd on other grounds* 279 Md. 255 (1977)).[5] In any event, we reject the Grecos' claim that it was procedurally improper for Opponents to note their appeal by inserting "See Attached List of Appellants" on the BOA appeal form. Moreover, there is nothing on the attached list that would indicate that Mr. Riley intended to represent all of the listed appellants.[6] Finally on this point, it would seem draconian and illogical to require all nine[7] of the listed appellants to separately pay the $400 filing fee in order to appeal to the BOA.

Next, we hold that the Grecos' "piggyback standing" argument has no application here.[8] In *Chesapeake Bay Found., Inc.*, parties that had not participated in proceedings before the County Administrative Hearing Officer attempted to participate in proceedings before the County Board of Appeals. 439 Md. at 592-93. To establish their standing, these

[5] To the extent the Grecos rely on Rule 2-105 from the Anne Arundel County Code Rules of Practice and Procedure of the Board of Appeals, we simply note that nothing in that rule precludes multiple individuals from representing themselves in their own individual capacities, nor does it require each appellant to file his or her own appeal.

[6] Although the words "MAIN CONTACT" are handwritten next to Mr. Riley's name on the sheet, there is nothing to indicate an intent that he was to represent the rest of the individuals listed.

[7] As we shall explain below, ten names appear on the attached form. We simply presume that Paul and Dana Collins constitute a single appellate party in this context.

[8] The Grecos' entire "Piggyback standing" argument consists of the following sentence: "Piggyback standing does not apply before the [BOA], as held by the Court in *Chesapeake Bay* [*Found.*], *Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588 (2014)." Maryland Rule 8-504(a)(6) requires an appellate brief to contain "Argument in support of the party's position on each issue." A single sentence with a case citation falls well below that standard. We shall nevertheless summarily reject this argument.

parties relied on "piggyback standing," the principle that, "where there exists a party having standing to bring an action . . . [appellate courts] shall not ordinarily inquire as to whether another party on the same side also has standing." *Id*. at 596-97 (quoting *People's Counsel for Balt. Cty. v. Crown Dev. Corp.*, 328 Md. 303, 317 (1992)). The Court of Appeals rejected application of "piggyback standing" to administrative and trial court proceedings, explaining that the rule was designed to streamline only appellate court cases. *Id*. at 597-98.

Nevertheless, the concept of "piggyback standing" has no application here because all of the named appellants on the Notice of Appeal form participated in the proceedings before the Administrative Hearing Officer. The appellants/Opponents listed on the Notice of Appeal to the BOA were: Harvey O. Riley, Jr., Charles Kleinsmith, Ronald Starlings, Simeon Klebaner, Michelle Schonzeit, Paul and Dana Collins, Mary Daniels, Marcus Day, and Ali Deyhim. Those same ten individuals opposed the Grecos' application before the Office of Administrative Hearings. In fact, in the Administrative Hearing Officer's June 29, 2017 decision, the hearing officer specifically mentioned their participation:

> A number of neighbors (Mary Daniels, 1473 Shot Town Road; Ali Deyhim, 1490 Shot Town Road; Charles Kleinsmith, 1420 Shot Town Road; Ron Starlings, 1422 Shot Town Road; Harvey Riley, 1405 Shot Town Road; Dana and Paul Collins, 1441 Shot Town Road; Michelle Schonzeit, 1440 Shot Town Road; Marcus Day, 1873 & 1874 Shot Town Road; and Simeon Klebaner, 1440 Shot Town Road) came to the hearing to testify in opposition to granting the special exception. Concerns were expressed about traffic on Shot Town Road, which is narrow, without shoulders, and full of blind corners. The neighbors are worried about new traffic generated by the facility and the impact on children walking on Shot Town Road.

By participating in the proceedings before the Administrative Hearing Officer, none of the appellants needed to rely on "piggyback standing" under *Chesapeake Bay Found., Inc.*, in order to have standing to participate in proceedings before the BOA.

Finally, the above-listed Opponents had standing as either persons aggrieved or persons specially aggrieved.[9] To be sure, the Grecos are correct that, in order to have standing to challenge a zoning decision, the party must be "a party aggrieved." *A Guy Named Moe, LLC, v. Chipotle Mexican Grill of Colorado, LLC*, 447 Md. 425, 450 (2016) (citing LU § 4-401). In *A Guy Named Moe*, the Court of Appeals explained:

> To be a person aggrieved, [t]he 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. An adjoining, confronting or nearby property owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved.

Id. at 451 (internal citations and quotation marks omitted) (citing *Bryniarski v. Montgomery Cty. Bd. of Appeals*, 247 Md. 137, 144-45 (1967)).

Here, the record shows that Opponents are nearby landowners concerned about increases in noise, increases in traffic, and the possible decrease in their property values if the SEU is approved.[10] As nearby property owners with specific interests in the outcome

[9] In their brief, the Grecos only argue that Mr. Riley is not "a person aggrieved" or "specially aggrieved." To that extent, the Grecos waived any argument that the remaining Opponents lack standing on the basis that they are not "persons aggrieved" or "specially aggrieved." We nevertheless conclude that Opponents were aggrieved and had standing.

[10] For example, the evidence showed that Mr. Starling's lot was approximately 400 feet from the proposed facility.

of this case, Opponents allege they will be specially affected in a way different from that suffered by the general public. Increases in noise at their homes, increases in traffic on Shot Town Road (where all Opponents live), and concerns about decreases in property values are all allegations that do not impact the general public. Accordingly, they meet the definition of "a person aggrieved."

Even assuming that Opponents live too far away to meet the criteria for "a person aggrieved," Opponents would still have standing as persons "specially aggrieved":

> A protestant is specially aggrieved when [he] 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.

Id. (quoting *Ray v. Mayor and City Council of Balt*., 430 Md. 74, 85 (2013)). The Court of Appeals explained the criteria to qualify as a person "specially aggrieved":

> 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. For example, an owner's lay opinion of decreasing property values and increasing traffic has been considered sufficient for special aggrievement when combined with proximity that is almost as great as in cases where properties are "adjoining, confronting or nearby." Conversely, without sufficient proximity, similar facts will only support general aggrievement.

Id. (quoting *Ray*, 430 Md. at 82-85). Here, all Opponents have alleged specific injuries—they claim that they will be able to hear dogs barking while in their homes, that the

neighborhood may become unsafe due to increases in traffic along Shot Town Road (where all Opponents live), and that the presence of the commercial kennel will affect the character of their residential community such that it may reduce their property values. To the extent any of the Opponents "do not quite satisfy the 'adjoining, confronting or nearby' standard of *prima facie* aggrievement," their proximity to the Property and specific allegations of injury are sufficient to grant them standing. *Id.* Accordingly, we reject the Grecos' borderline frivolous argument concerning standing.[11]

II. THE CIRCUIT COURT ERRED IN INTERPRETING THE CODE

We next turn to the circuit court's decision that reversed the BOA. As noted above, the circuit court determined that "dog training"—the intended use at the Property—is not listed as a permitted, conditional, or special exception use in the Code, nor is it found in the definition of a "commercial kennel." Accordingly, the court construed "dog training" as a prohibited use (by virtue of the fact that it is not expressly permitted), and found that the BOA erred as a matter of law in granting the SEU application. We conclude that,

[11] In their brief, the Grecos note that in *A Guy Named Moe, LLC*, the Court of Appeals found there to be no standing where the two properties were only 425 feet apart. 447 Md. at 428. The Grecos misread *A Guy Named Moe, LLC*. The Court of Appeals rejected the standing argument because "The motivator driving Moe to protest the rezoning was, as found by the Circuit Court Judge, simply a matter of competition. It is clear, however, that, a person is not aggrieved for standing purposes when his sole interest in challenging a zoning decision is to stave off competition with his established business." *Id*. (internal quotation marks omitted) (quoting *Superior Outdoor Signs, Inc. v. Eller Media Co*., 150 Md. App. 479, 500 (2003)).

because Opponents never raised this ground as a basis for denying the SEU before the BOA, the circuit court erred by relying on this ground to reverse the BOA.

It is well-settled in Maryland that, "appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." *Capital Commercial Props., Inc. v. Montgomery Cty. Planning Bd.*, 158 Md. App. 88, 96 (2004) (citing *Mayor and City Council of Rockville v. Woodmont Country Club*, 348 Md. 572, 582 n.3 (1998)). Indeed,

> A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action. *We do not allow issues to be raised for the first time in actions for judicial review of administrative agency orders entered in contested cases because to do so would allow the court to resolve matters* ab initio *that have been committed to the jurisdiction and expertise of the agency*.

Id. at 96-97 (emphasis added) (internal quotation marks omitted) (quoting *Delmarva Power & Light Co. v. Public Serv. Comm'n of Md.*, 370 Md. 1, 32 (2002)).

Here, the circuit court set aside the BOA's determination on a ground that was never argued before the BOA. In their "Closing Argument" submitted to the BOA, Opponents argued: 1) that the proposed commercial kennel would be detrimental to public health, safety, and welfare, and that it would increase local traffic; and 2) that the Code does not allow for two separate uses on a single lot in the RLD Zone (a residence and a commercial kennel). We are unable to find a single instance in the record where Opponents challenged the SEU application before the BOA by arguing that dog training is a prohibited use under the Code—the ground upon which the circuit court relied to reverse the BOA. Not only

did Opponents' "Closing Argument," filed with the BOA fail to raise this specific argument, but Opponents' memorandum in support of their petition for judicial review filed in the circuit court likewise never argued this point.[12] What we stated in *Capital Commercial Props., Inc*. applies with equal force here: "We do not allow issues to be raised for the first time in actions for judicial review of administrative agency orders entered in contested cases because to do so would allow the court to resolve matters *ab initio* that have been committed to the jurisdiction and expertise of the agency." *Id*. (quoting *Delmarva Power & Light Co*., 370 Md. at 32).[13] Thus, in reversing the BOA's decision, the circuit court erred in relying on a ground not raised before the agency.

[12] As far as we can tell, Opponents raised this argument for the first time at the July 8, 2019 hearing before the circuit court.

[13] In their opening brief, the Grecos asserted that this issue was not preserved: "Nowhere in the record was there ever any contention by anyone that a commercial kennel is not allowed to train dogs. The County did not question the propriety of dog training, the [BOA] did not question the propriety of dog training, and [Opponents] never claimed that dog training was not permitted at a commercial kennel." Opponents never responded to that contention in their brief. Indeed, Opponents have made little attempt to endorse the circuit court's rationale in our Court. We reprint their entire appellate argument on this point:

> the trial court [reversed the BOA's decision] based upon finding that [the Grecos'] intended use for the site is as a dog training facility, not a commercial kennel, which is not [an SEU] under the Code. While [Opponents] concur that the trial court was correct, and that it had authority to enter the order based upon that error of law, [Opponents] also contend that [the Grecos] are not entitled to the requested [SEU] for the reasons it presented to the [BOA] and the trial court.

III. THE BOA DID NOT ERR IN GRANTING THE SEU

We next turn to whether the BOA erred in granting the SEU—an argument raised by Opponents rather than the Grecos. We note that Opponents had no opportunity to file an appeal in this case because the circuit court issued a decision wholly favorable to them, and an appeal is "impermissible from a judgment wholly in a party's favor." *Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989) (citing *Offutt v. Montgomery Cty. Bd. of Ed.*, 285 Md. 557, 564 n.4 (1979)). We may review Opponents' arguments regarding whether the BOA erred in granting the SEU because,

> [w]here a party has an issue resolved adversely in the trial court, but . . . receives a wholly favorable judgment on another ground, that party may, as an appellee, argue as a ground for affirmance the matter that was resolved against it at trial. . . . This is merely an aspect of the principle that an appellate court may affirm a trial court's decision on any ground adequately shown by the record.

Id. (quoting *Offutt*, 285 Md. at 564 n.4). "But one who seeks to attack, modify, reverse, or amend a judgment (as opposed to seeking to affirm it on a ground different from that relied on by the trial court) is required to appeal or cross appeal from that judgment." *Id*. (citing *Taylor v. Wahby*, 271 Md. 101, 110 (1974)).

Here, the circuit court granted Opponents the relief they sought—reversal of the BOA's decision—but on grounds Opponents never argued. In this appeal, Opponents simply seek to affirm the circuit court's decision, albeit on different grounds than those relied upon by the court. Pursuant to the principles set forth above, we may review

Opponents' challenges to the correctness of the BOA's decision even though they never noted an appeal to our Court.[14] *Id*.

Opponents challenge the BOA's decision to grant the SEU in three ways. First, they argue that the Code does not allow two simultaneous uses on a property in the RLD Zone, and that the Grecos therefore may not maintain both their residence *and* a commercial kennel on the Property. Second, Opponents argue that the caretaker apartment, which will be attached to the commercial kennel, is not permitted in the RLD Zone. Finally, Opponents argue that the BOA erred in construing the applicable noise ordinance when it approved the SEU. We shall reject these arguments in turn.

A. Two Principal Uses on One Lot

We first reject Opponents' argument that the Code does not permit two principal uses on a single lot in the RLD Zone. In urging us to affirm the circuit court's decision, Opponents note that Code § 18-1-101(26) defines a "business complex" as "a development on a lot or lots under single ownership or control that combines two or more of the permitted, conditional, or special exception uses allowed in the district in which the development is located." Based on this Code provision, Opponents assert that the Code therefore allows two simultaneous uses on a single lot only in one context—as a "business complex." According to Opponents, although "business complexes" are permitted as of right in the commercial districts (*see* Code § 18-5-102) and industrial districts (*see* Code §

[14] The Grecos have never argued that Opponents failed to note a cross-appeal, or that it is improper for us to consider Opponents' arguments regarding the BOA's decision.

18-6-103), they are not mentioned and therefore not permitted in the RLD Zone (*see* Code § 18-4-106). Opponents conclude that, because the Grecos intend to have both their primary residence at the Property (a use permitted as of right under § 18-4-106) *and* their dog-training facility (pursuant to the SEU application), they are effectively requesting approval of a "business complex," a development use that is not allowed in the RLD Zone.

The parties agree that the Code does not specifically address whether a lot zoned RLD may serve two simultaneous and separate uses. In addition to their "business complex" argument, Opponents note that Code § 18-2-201(b) provides that "A use not specifically allowed in this article is prohibited." The Grecos simply respond that the Anne Arundel County Office of Planning and Zoning has consistently construed the Code as allowing both a permitted and a special exception use on a lot zoned in the RLD. As we shall explain, we reject Opponents' interpretation of the Code.

Opponents' argument is one of statutory interpretation. "When presented with a question involving statutory interpretation, we begin with the words of the ordinance 'since the words of the [ordinance], construed according to their ordinary and natural import, are the primary source and most persuasive evidence of legislative intent.'" *Foley v. K. Hovnanian at Kent Island, LLC*, 410 Md. 128, 152 (2009) (quoting *Lanzaron v. Anne Arundel Cty*., 402 Md. 140, 149 (2007)). "We construe the ordinance so as to give effect to each word so that no word, clause, sentence or phrase is rendered superfluous or nugatory." *Id*. (citing *Kushell v. Dep't of Nat. Res*., 385 Md. 563, 577 (2005)). Furthermore, our interpretation of a statute must be reasonable, it may not be illogical or

incompatible with common sense. *Green v. Church of Jesus Christ of Latter-Day Saints*, 430 Md. 119, 135 (2013) (quoting *Gardner v. State*, 420 Md. 1, 9 (2011)). Finally, we note the well-established and long-held principle in Maryland that

> ordinances are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language.

Landay v. Bd. of Zoning Appeals, 173 Md. 460, 466 (1938) (citing *Monument Garage Corp. v. Levy*, 194 N.E. 848, 850 (N.Y. 1935)).

First, we shall afford proper deference to the BOA's implicit interpretation of the Code. As noted above, although we review an agency's conclusions of law *de novo*, "Appellate courts should ordinarily give 'considerable weight' to 'an administrative agency's interpretation and application of the statute which the agency administers.'" *Kougl*, 451 Md. at 514 (quoting *Noland*, 386, Md. at 572). "In this regard, 'the expertise of the agency in its own field of endeavor is entitled to judicial respect.'" *Id*. (quoting *Finucan*, 380 Md. at 590).

The record here demonstrates that the BOA was fully aware of Opponents' "business complex" argument, and rejected it by approving the SEU application. At the April 24, 2018 hearing, Opponents thoroughly cross-examined Donnie Dyott, a planner with the Zoning Division of Anne Arundel County, on this very issue. The BOA heard the following testimony:

> [OPPONENTS' COUNSEL]: So now, in the Zoning -- in the eyes of the Zoning Division, if it's not an accessory

use, then you are approving two principal uses on this lot?

[MR. DYOTT]: Yes.

[OPPONENTS' COUNSEL]: Now, can you point to any provision in the Code that allows an individual on RLD land to have two principal uses on a lot?

[MR. DYOTT]: No.

[OPPONENTS' COUNSEL]: There's nothing in the Anne Arundel County Code that allows these two principal uses to co-exist on one lot; does it?

[MR. DYOTT]: No.

[OPPONENTS' COUNSEL]: Okay. So, in fact, there is a provision in the Anne Arundel County Code that allows somebody to have two principal uses on one lot if you're in the commercial zone or in the industrial zone, right?

[MR. DYOTT]: Correct.

[OPPONENTS' COUNSEL]: Okay. Now, that has a particular definition, right?

[MR. DYOTT]: Correct.

[OPPONENTS' COUNSEL]: And that definition is for a business complex, right?

[MR. DYOTT]: Correct.

[OPPONENTS' COUNSEL]: So you can't have a business complex on a residential zone, can you?

[MR. DYOTT]:	No. If it's not listed as a permitted use in residential zoning.
[OPPONENTS' COUNSEL]:	Okay. A business complex in fact, under the definitional section of the Code, the zoning article, means "a development on a lot or lots under single ownership or control that combines two or more of the permitted[,] conditional or special exception uses allowed in the district in which the development is located," right?
[MR. DYOTT]:	Yes.
[OPPONENTS' COUNSEL]:	Okay. So what your division has just approved is a business complex in a residential zone where the Code specifically does not allow you to have one.
[MR. DYOTT]:	We have not approved anything. We recommended approval of this.
[OPPONENTS' COUNSEL]:	So your approval is specifically contrary to the Code provisions; wouldn't you agree?
[MR. DYOTT]:	*I would not agree. Our consistent interpretation from Zoning has been to allow a special exception use along with a single-family dwelling on a property*. Our interpretation -- I would not agree at [sic] our interpretation is different than that.
[OPPONENTS' COUNSEL]:	Your interpretation is not supported by any provision that you can point to in the Anne Arundel County Code; isn't that true?
[MR. DYOTT]:	Yes.

[OPPONENTS' COUNSEL]: Okay. But you do have definitions that would allow this combined use in commercial and industrial zones?

[MR. DYOTT]: Yes.

(Emphasis added).

Later at that same hearing, Opponents' counsel further pressed the point:

[OPPONENTS' COUNSEL]: Okay. And yet if I wanted to put two uses -- two principal uses on one lot, you have a definition for that in the Code, don't you?

[MR. DYOTT]: Yes.

[OPPONENTS' COUNSEL]: And that's called a business complex?

[MR. DYOTT]: That's correct.

[OPPONENTS' COUNSEL]: And that's a defined term?

[MR. DYOTT]: That's correct.

[OPPONENTS' COUNSEL]: That is specifically not allowed in a residential zone?

[MR. DYOTT]: That's correct.

[OPPONENTS' COUNSEL]: And even though it uses the word "business," it doesn't have to be two commercial uses, right? We're talking two primary uses. It says "a development on a lot or lots under single ownership or control that combines two or more of the permitted[,] conditional or special exception uses allowed in the district."

So, if the County wanted to make what these people want to do on this lot work, they could allow a business complex.

> They could amend the Code to allow business complexes in residential zones, but it's not allowed, is it? You can't have two principal uses on one residential lot, can you -- under that definition?
>
> [MR. DYOTT]: Technically, no.

Despite this testimony, the BOA also learned that the Zoning Division consistently allowed two permitted uses on the same lot:

> [GRECOS' COUNSEL]: Okay. So is there anything that would prohibit a person having a house on five acres with his landscape business in the back of the house?
>
> [MR. DYOTT]: If you got the approvals we have interpreted that to be allowed.
>
> [GRECOS' COUNSEL]: Okay. And --
>
> [MR. DYOTT]: The same way we've interpreted farming to be allowed. Farming is a listed use, as well. So we've allowed a single-family dwelling to go along with farming.
>
> [GRECOS' COUNSEL]: Uh-huh.
>
> [MR. DYOTT]: We've allowed churches to also have a single-family dwelling used as a parsonage. So, yes, there -- *we have interpreted various ways that a single-family dwelling can co-exist on a residential lot with another use.*

(Emphasis added).

At one point during the April 24, 2018 hearing, BOA member Patsy Blackshear asked Mr. Dyott a series of questions directly related to this issue:

[MS. BLACKSHEAR]:	[Opponents' counsel's] contention as I understood the discussion, was that you can't have two principal uses on property; is that correct?
[MR. DYOTT]:	I believe her line of questioning is -- yes, I believe that was what she was getting at; yes.
[MS. BLACKSHEAR]:	And so her contention was that you could not identify any Codes that allows that to occur on the residential property; was that correct?
[MR. DYOTT]:	Correct.
[MS. BLACKSHEAR]:	But if I understood correctly, you didn't quite say it, so you need to clarify for me. Zoning looked at this as a special exception rather than two principal uses?
[MR. DYOTT]:	Well, those two don't really -- they don't really necessarily have anything to do with each other. The kennel is only allowed in RLD by a special exception so we had to -- or analyzing the kennel based on the basis of a special exception standards [sic]. The dwelling is a permitted use by right, so I guess, I don't quite understand your question.
[MS. BLACKSHEAR]:	I think you're answering my question.
[MR. DYOTT]:	Uh-huh.
[MS. BLACKSHEAR]:	So since the dwelling is allowed use by right --

[MR. DYOTT]: Right.

[MS. BLACKSHEAR]: -- this special exception provides -- provide the basis for Zoning looking at this as the kennel being allowed in addition to the primary dwelling?

[MR. DYOTT]: The specific special exception standards don't point to anything in regard to a single-family dwelling. If you're looking at the kennel special exception standards, you're not going to find the specific correlation to the dwelling.

[MS. BLACKSHEAR]: But again, tell me how Zoning looked at this if you didn't have specific codes that allowed you to look at these?

[MR. DYOTT]: *Zoning has consistently and historically allowed a single-family dwelling and another use on the property in conjunction with it, whether it be a kennel, whether it be a vet clinic, whether it be a landscape contractor that required special exception, it consistently allowed a special exception and a single-family dwelling in residential zoning.*

(Emphasis added).

At the September 26, 2018 hearing, the Grecos revisited this issue:

[GRECOS' COUNSEL]: All right. Well, there's nothing in the [C]ode that prohibits two uses on one lot, is there?

[MR. DYOTT]: There's no provision that is worded that way, no.

[GRECOS' COUNSEL]: Okay. And that's why your interpretation of the [C]ode allows uses like a

	commercial kennel -- which is allowed in residential, correct?
[MR. DYOTT]:	By special exception, yes.
[GRECOS' COUNSEL]:	Yeah. And allows a single[-]family dwelling in residential, correct?
[MR. DYOTT]:	My -- yes. *During my time with the County, we've consistently allowed a single-family dwelling use to co-exist with another use in the property*.

(Emphasis added).

Mr. Dyott noted that when one applies for a special exception for a commercial kennel, nothing in the Code limits approval to whether the lot will also be used for some other purpose. By granting the Grecos' application for an SEU in conjunction with the Grecos' residential lot, the BOA inferentially accepted Mr. Dyott's testimony that "Zoning has consistently and historically allowed a single-family dwelling and another use on the property."[15] We are mindful that we "should ordinarily give 'considerable weight' to 'an administrative agency's interpretation and application of the statute which the agency administers.'" *Kougl*, 451 Md. at 514 (quoting *Noland*, 386 Md. at 572). We therefore defer to the BOA's implicit rejection of Opponents' interpretation that the Code precludes two uses on a single lot.

[15] The Memorandum of Opinion never expressly addresses whether the Code allows both a permitted and special exception use on the same lot in the RLD Zone. That the BOA granted the SEU evinces the BOA's rejection of Opponents' argument on this point.

In addition to deferring to the BOA's interpretation of the Code, we also note that Opponents' interpretation of the Code is incompatible with common sense. According to Opponents, under § 18-4-106, a dwelling could not co-exist on a lot in the RLD Zone with: an animal hospital or veterinary clinic (an SEU in the RLD Zone), a farm (a permitted use in the RLD Zone), a "[r]oadside stand[] consisting of temporary seasonal structures that sell produce and other agricultural goods" (a permitted use in the RLD Zone), a private swimming pool (a permitted use in the RLD Zone), or Christmas tree sales (a permitted use in the RLD Zone). According to Opponents, a lot in the RLD Zone can accommodate any of the above uses, so long as the lot is not used for anything else. In their view, the presence of a dwelling on a lot in the RLD Zone precludes any other permitted or conditional use. Such a restrictive interpretation of the Code defies logic. Anecdotally, in *Montgomery Cty. v. Butler*, the Court of Appeals upheld the denial for an SEU on a residential lot. 417 Md. 271, 277-78 (2010). The basis for that denial, however, was not that the lot would serve two separate purposes—a landscaping business and a residence—but that the use itself caused adverse effects to the surrounding residences. *Id*. at 308. Similarly, in *Mills*, this Court held that the local board erred in granting an application for an SEU for a residential lot where the applicants both lived and parked their paving equipment. 200 Md. App. at 217. That error, however, was not based upon the fact that the lot served two separate uses, but because "the Zoning Board did not sufficiently discuss the adverse effects above and beyond those inherently associated with a storage yard." *Id.* at 239. To be sure, those cases did not address the specific question presented here—

whether two separate permitted, conditional, or special exception uses may exist on the same lot. But we are unaware of any legal authority to the contrary, and, aside from its "business complex" argument, Opponents cannot cite to any section of the Code or any caselaw supporting their interpretation of the Code.[16]

Finally on this point, we reject Opponents' reliance on § 18-2-201(b), which provides, "A use not specifically allowed in this article is prohibited." Opponents construe this section of the Code in concert with their theory that a permitted use and special exception use on the same lot constitutes a "business complex," and argue that because business complexes are not specifically allowed in the RLD Zone, the BOA erred in approving the SEU on the same lot where the Grecos intended to build their primary residence. We do not construe § 18-2-201(b) as limiting whether a permitted and special exception use may coexist on the same lot in the RLD Zone; we construe it as limiting what uses are permitted as of right, permitted by condition, permitted by special exception, or not permitted at all, in any given zone.

Again, the BOA implicitly rejected Opponents' interpretation of the Code by approving the SEU application, and we must give "considerable weight" to the BOA's

[16] At the April 24, 2018 hearing, counsel for Anne Arundel County questioned Mr. Dyott about whether the Code previously permitted two separate uses on the same lot. Mr. Dyott testified that, "in the previous 1985 Code edition there was a specific section that spelled out you can't have more than two principal uses" but agreed that this section "has since been removed[.]" Despite the fact that we gave both the Grecos and Opponents the opportunity to file supplemental briefs in this case, neither party made any argument based on previous iterations of the Code.

interpretation. Additionally, Opponents cannot point to any section in the Code that specifically precludes both a permitted use and a special exception use on the same lot in the RLD Zone, and we reject their reliance on § 18-2-201(b) as supporting that contention. Accordingly, the BOA did not err in granting the Grecos' SEU application.

B. Caretaker Apartment as Accessory to Commercial Kennel

Opponents next argue that the BOA erred by allowing the caretaker apartment as an accessory use to the commercial kennel use. The Code defines an "accessory use" as "a use or structure that customarily is incidental and subordinate to another use or structure." Code § 18-1-101(1). We note that, as part of their proposed dog-training facility, the Grecos also intend to construct an attached "caretaker apartment." This was to accommodate the Grecos' plan to have animals temporarily staying at the dog-training facility overnight, and their "obligation to make sure that there [are] no issues at night[]." According to Opponents, the proposed caretaker apartment is not allowed under the Code because it constitutes a "dwelling unit, caretaker or resident manager," a use only specifically allowed in commercial zones.

Although the BOA failed to make specific findings regarding the caretaker apartment, the record shows that the BOA was aware of this aspect of the proposed plan, and that it understood the caretaker apartment to be an accessory use to the dog-training facility. At the hearing on September 26, 2018, BOA Chairman Spencer Dove and BOA member Paul Devlin questioned Mr. Dyott regarding the caretaker apartment:

CHAIRMAN DOVE: On special exception, as attaching condition specifically with a caretaker

unit over the kennel itself in that garage, you said that your office and Mr. Mettle's[17] office, they were at odds with the interpretation of the law, if I'm recalling correctly.

[MR. DYOTT]: Yes.

CHAIRMAN DOVE: Okay. And your office views the caretaker unit as an accessory to the kennel operation because the person residing in there will conceivably be an employee of the kennel --

[MR. DYOTT]: Yes.

CHAIRMAN DOVE: -- and not just a general member of the public?

[MR. DYOTT]: Yes. If it was someone not involved in the kennel operation, that would likely change our interpretation.

CHAIRMAN DOVE: So if [the BOA], hypothetically speaking, granted the special exception and attached on there a condition that there has to be a legal employee/employer relationship between the tenant or occupant of that apartment and the kennel business, that would be in line with your office, correct?

[MR. DYOTT]: Yes.

CHAIRMAN DOVE: And that would satisfy that one line in Mr. Mettle's memo that said that this needs to be clarified by the [BOA].

[MR. DYOTT]: Yes.

[17] Mr. Mettle refers to Michael Mettle, who worked in the development division of the Office of Planning and Zoning.

CHAIRMAN DOVE:	Okay. That's all. Thank you.
[MR. DYOTT]:	Yes.
CHAIRMAN DOVE:	Oh. Anything further up here? Go ahead, Mr. Devlin.
MR. DEVLIN:	Given that the apartment will not be just rented to the general public, in what way does that affect [Opponents]? It's irrelevant to them, isn't it?
[MR. DYOTT]:	I can't speculate on the --
MR. DEVLIN:	Do they --
[MR. DYOTT]:	-- [Opponents'] opinions.
MR. DEVLIN:	Why would they care who's in that apartment? It doesn't satisfy the crux of the matter here, does it?
[MR. DYOTT]:	I can't speak to [Opponents'] feelings.
MR. DEVLIN:	Thank you.

Although the BOA did not ultimately include any such condition in its Memorandum of Opinion, it mentioned the anticipated apartment several times. Based on the colloquy above, the BOA implicitly determined that the caretaker unit was allowed as an accessory use to the dog-training facility. Granting the BOA appropriate deference in its administration of the Code, we perceive no error. *Kougl*, 451 Md. at 514.

C. Noise Ordinance

Finally, we turn to Opponents' argument that the BOA erred by misapplying the applicable noise ordinance standards in granting the SEU. In their brief, Opponents argue

that there was not substantial evidence in the record to support the BOA's finding that the Grecos could meet the standards of the applicable noise ordinances because "the [BOA] apparently considered the standards set forth in the Noise Ordinance as measuring the sound received at the nearest [Opponents'] dwelling, and not at the property line of the emitting site[.]" According to Opponents, "As set forth in Section B (4) of the [applicable] regulation, the restrictions are applied to sounds emanating beyond the property line—not to the neighboring houses." (Footnote omitted).

The regulation Opponents refer to is COMAR 26.02.03.02B(4). That regulation provides:

> A person may not cause or permit, beyond the property line of a source, *vibration of sufficient intensity to cause another person to be aware of the vibration by such direct means as sensation of touch or visual observation of moving objects*. The observer shall be located at or within the property line of the receiving property when *vibration determinations are made*.

We summarily reject Opponents' argument because COMAR 26.02.03.02B(4) refers to "vibrations" rather than "noises" when referring to what may be detected beyond a person's property line. There is nothing in the record to show that the Grecos intend to use the Property in such a way as to create vibrations that can be detected "by such means as sensation of touch or visual observation of moving objects."

Whereas COMAR 26.02.03.02B(4) specifically refers to vibrations and the sensation of touch or visual objects, COMAR 26.02.03.02D(2) specifically mentions "noise levels." That regulation provides: "The measurement of *noise levels* shall be conducted at points *on or within the property line of the receiving property* or the boundary

of a zoning district, and may be conducted at any point for the determination of identity in multiple source situations." (Emphasis added). This language directly contradicts Opponents' argument that noise levels *must* be measured to the property line. The Grecos' expert in sound measuring and engineering, Scott Harvey, testified before the BOA that the noise from barking dogs at the proposed facility would not exceed the noise restrictions found in COMAR 26.02.03.02, and his calculations specifically accounted for noise levels measured to Mr. Starling's home—the closest neighbor to the proposed facility. There was substantial evidence in the record to support the BOA's conclusion that the proposed dog-training facility would comply with COMAR 26.02.03.02. Accordingly, we reject Opponents' reliance on COMAR 26.02.03.02B(4) that specifically refers to measurements of "vibrations" rather than noise levels.

IV. THE BOA DID NOT ERR IN LIMITING THE GRECOS' USE OF THE PROPERTY

Finally, we reject the Grecos' argument that the BOA erred in limiting their use of the Property to only allow 20 dogs at a time. As noted above, in granting the SEU application, the BOA attached three conditions, one of which was that: "There shall be no more than 20 dogs on the [Property] at any one time, excluding household pets of residents of the [Property.]" Regarding the BOA's power to impose conditions in granting the SEU, we note that,

> The power to impose conditions upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception. This is so because the whole basis for the exception is the peculiar hardship to the applicant, and the [agency] is justified in limiting the exception in such a way as to mitigate the effect upon neighboring property and the community at large. Both a variance and a special exception

> authorize uses which otherwise would not be permitted. Having been given the power to authorize such unusual uses, the [agency] must also have the power to limit those uses to protect the health, safety, and welfare of the community.

Halle Cos. v. Crofton Civic Assoc., 339 Md. 131, 140-41 (1995) (internal citations and quotation marks omitted).

The Grecos rely on Code § 18-4-104(a) to argue that the Code allows them to keep 36 dogs on their property at all times. That section provides:

> The keeping of pets for other than commercial purposes is allowed. . . . The keeping of dogs shall be in accordance with the following schedule:

Number of Dogs	**Minimum Lot Size**
1 to 4	No requirement
5 to 6	25,000 square feet
7 or more	40,000 square feet, plus 5,000 square feet for each additional dog above 7

The rest of this section of the Code limits the number of livestock and fowl that may be kept at a property based on the size of the lot. Under this ordinance, the Grecos seemingly would be permitted to have 36 pet dogs at the Property at a time.[18] Our review of the record and the BOA's Memorandum of Opinion demonstrates that the BOA was aware of Code § 18-4-104(a), but nevertheless rejected its application for purposes of the SEU.

[18] The Property is 4.3 acres. A single acre is 43,560 square feet. 4.3 acres x 43,560 square feet/acre = 187,308 square feet. 187,308 square feet minus 40,000 square feet for the first 7 dogs leaves 147,308 square feet remaining. 147,308 square feet divided by 5,000 square feet = 29.4 or 29 dogs. 29 + 7 = 36 dogs allowed at the Property.

In its "Summary of Evidence," the BOA recounted the Grecos' testimony regarding the number of dogs expected to be at the Property. According to the BOA's opinion, Mr. Greco explained that "Without a special exception, up to 36 dogs are permitted on the [Property]." Also according to the BOA's opinion, Ms. Greco believed that there would be enough space on the Property for 36 dogs. The BOA further noted that, "Upon [Ms. Greco's] review of the Code, in addition to the 36 dogs, she could also have 18 donkeys, 46 sheep/goats, 37 pigs or 149 chickens." In its "Findings and Conclusion," the BOA referenced this section of the Code, stating, "The Code would also allow [the Grecos] to maintain 34 swine, 43 goats/sheep, or 17 donkeys on the [Property], by right."

Nevertheless, the BOA limited the Grecos to only 20 dogs at a time. In doing so, the BOA explained,

> **While we conclude that the commercial kennel will not be detrimental to the public health, safety and welfare, [the Grecos'] case was highly fact specific**. The [Grecos'] presentation emphasized that this special exception is for a specific "board and train" facility; and, we examined the application under the specific facts presented. Thus, we must condition the approval to ensure that the examined model continues on this [Property], even if [the Grecos] do not. Therefore, the kennel shall not be primarily used as an overnight boarding facility. Overnight boarding shall be an accessory use to the training conducted on site**. Additionally, the operation was described to [the BOA] as a limited training facility with no more than one or two classes at any one time having 10 to 12 dogs, at most. Accordingly, we will condition the approval so that the commercial kennel shall have no more than 20 dogs on the [Property] at any one time (excluding, of course, [the Grecos'] pets). With these conditions securely binding our decision, the [BOA] feels confident that the specific use proposed will not metastasize over time into an activity not contemplated and approved**.

(Emphasis added).

By considering the "public health, safety and welfare" in imposing this condition, the BOA acted within its authority. *Halle Cos.*, 339 Md. at 140-41. Additionally, the condition itself was based on substantial evidence in the record. At the April 24, 2018 hearing, Ms. Greco testified that she did not expect to train more than 10 or 15 dogs in a single class because training more dogs would compromise her own professional standards. In fact, Ms. Greco testified that she "capped" her classes at somewhere between 6 to 10 dogs per class, and saw no benefit in holding two classes simultaneously at the Property.

The BOA's limitation on the number of dogs at the Property comports with Ms. Greco's testimony regarding her business plan. Indeed, as noted above, the Grecos' plan for a dog-training facility was "highly fact specific," and the BOA restricted its review to "examin[ing] the application under the specific facts presented." In light of this testimony, the BOA properly exercised its discretion to impose conditions to protect the health, safety, and welfare of the community. *Id.*[19]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REINSTATE THE BOA'S DECISION TO APPROVE THE

[19] We acknowledge that Ms. Greco also testified that she believed the interior of the proposed facility could accommodate 36 dog crates to board up to 36 dogs at a time, suggesting that while 10-15 dogs were attending training classes, the remaining 20 dogs on site would be kenneled. The BOA inferentially rejected that proposed use, however, when it conditioned approval of the SEU by requiring that the facility primarily be used for dog-training, and that the overnight boarding was only permitted as an accessory use. The Grecos have never challenged the BOA's requirement that the facility be used primarily for dog-training rather than overnight kenneling.

SPECIAL EXCEPTION WITH SPECIFIED CONDITIONS. COSTS TO BE PAID AS FOLLOWS: 25 PERCENT BY APPELLANTS AND 75 PERCENT BY APPELLEES.