

Circuit Court for Prince George's County
Case No.: CAL22-05470

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0593

September Term, 2023

CHRISTINE HOUGH, et al.

v.

COUNTY COUNCIL FOR PRINCE
GEORGE'S COUNTY, et al.

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Reed, J.

Filed: May 12, 2026

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

This matter is before the Court on an appeal by Christine Hough and Charles Askins from the ruling by the Circuit Court for Prince George’s County, which affirmed on judicial review the decision of the County Council of Prince George’s County, sitting as the District Council.¹ The District Council approved an application by the Carozza Trust for a Zoning Map Amendment to rezone a tract of approximately 60.02 acres situated near Upper Marlboro, Maryland, from a Residential-Rural (R-R) to a Mixed-Use-Transportation Zone (M-X-T) (the “Property”).

Appellants Ms. Hough and Mr. Askins challenge the circuit court’s affirmance of the District Council’s decision, and present the following questions for our review:

1. Whether the District Council’s Final Decision is legally deficient because it fails to set forth any findings of fact, conclusions of law, or analysis relied on by the District Council and instead merely incorporates by reference the District Council’s written decision.
2. Whether the District Council erroneously interpreted the term “substantially impair.”
3. Whether the District Council erroneously concluded that the provisions of the comprehensive plan were recommendations, not requirements.
4. Whether the District Council erroneously shifted the burden of proof to Citizen-Appellants.

¹ Appellants Christine Hough and Charles Askins reside in neighboring communities. Ms. Hough is the representative of residents of the Marwood Community, and both individuals are citizens-protestants who oppose the rezoning application. They will generally be referred to as the named “Appellants.” Appellees include Maria Volpe and Sandra Carey, Trustees of the Anna Carozza Trust, the rezoning Applicants, and the Prince George’s County Council, appearing as the District Council.

5. Whether the record lacks substantial evidence to support the District Council’s decision to approve the zoning map amendment request.

For the reasons to be discussed, we shall reverse the decision by the circuit court.

INTRODUCTION

The Property in this matter lies within the Prince George’s County portion of the Maryland-Washington Regional District (“Regional District”), as that area is “recognized in the Maryland-Washington Regional District Act (‘RDA’)[.]” *County Council of Prince George’s County v. Zimmer Development Co.*, 444 Md. 490, 523 (2015). See Md. Code (2012, 2025 Supp.), Division II, Title 20 of the Land Use Article (“LU”). In “Maryland, the General Assembly has delegated planning and zoning powers to charter and non-charter counties and municipalities.” *County Council of Prince George’s County v. Robin Dale Land LLC*, 491 Md. 105, 116 (2025) (citing *Zimmer, supra*). See LU § 20-202. The RDA serves as the exclusive source of Prince George’s County’s zoning authority. *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 528 n.3 (2002) (citing *Montgomery County v. Revere Nat’l Corp.* 341 Md. 366, 383-84 (1996)). Pursuant to this delegated zoning and planning authority, the RDA and the zoning provisions of the Prince

George’s County Code (“PGCC”) govern the regulation and rezoning application of the Property in this case.² *See Zimmer*, 444 Md. at 523-27.

Four distinct authorities assume zoning and planning authority under the RDA: “the Maryland-National Park and Planning Commission (the ‘Commission’), the Prince George’s County Planning Board, the Prince George’s County Council (referred to as the ‘District Council’ when exercising its authority under the RDA), and the Prince George’s County Board of Appeals.” *Heard v. County Council of Prince George’s County*, 256 Md. App. 586, 599-600 (2022) (quoting *Zimmer*, 444 Md. at 523-24). As noted, Appellants in this matter have sought judicial review of the District Council’s decision, which in turn adopted and incorporated the findings and conclusions of a Zoning Hearing Examiner (“ZHE”).

² The Prince George’s County Zoning Ordinance is set forth in Subtitle 27 of the Prince George’s County Code. Although the Zoning Code was “repealed and replaced” in 2021, with changes effective April 1, 2022, the former version of Subtitle 27 in effect at the time of the rezoning application and relevant hearings in this matter will apply. *Heard v. County Council of Prince George’s County*, 256 Md. App. 586, 601 n.2 (2022). *See Wolf v. Planning Board of Prince George’s County*, 260 Md. App. 103, 108 n.2 (2023). *See also* Sec. 27-1703(a) (2022), which provides: “Any ... application for zoning classification, that is filed and accepted prior to the effective date of this Ordinance may be reviewed and decided in accordance with the Zoning Ordinance in existence at the time of the acceptance of said application.”

PROCEDURAL BACKGROUND

THE APPLICATION

On July 2, 2019, Maria Volpe and Sandra Carey, Trustees of the Anna Carozza Trust (“Appellees” or “Applicants”), filed an application with the Prince George’s County Planning Department seeking approval to rezone the subject Property from Rural Residential (R-R) to Mixed Use – Transportation (M-X-T) “in order to develop a mix of potential uses including residential, commercial, retail, offices, and institutional allowed in the M-X-T zone.”

The Property’s “Premise Address” is listed at 9702 and 10200 Marlboro Pike in Upper Marlboro, and is described in the first of two decisions by the ZHE as follows:

(1) The subject property is comprised of Parcels 32, 35 and 92 recorded in Liber 13557 at Folio 730. It has approximately 4,290 feet of frontage along, and access to, Marlboro Pike to the south, 4,300 feet of frontage along Pennsylvania Avenue (MD4) to the north, and 250 feet of frontage along Woodyard Road to the east. Applicant avers that “excepting the estimated 0.1-acres of open lawn fronting the 336 square foot (per SDAT records) vacant brick structure located at 9702 Marlboro Pike, the site is observed to be covered in what appears to be naturally occurring secondary woodland vegetative growth of small trees and understory shrubbery.” (Exhibit 16, Backup p. 69)

* * *

(6) The subject property lies within an area governed by the 2013 Subregion 6 Master Plan and Sectional Map Amendment (“SMA”). The 2013 Master Plan retained the prior Master Plan’s recommendation of Residential Low land uses for the site, defined as up to 3.5 dwelling units per acre and primarily single-family detached dwellings. The 2013 SMA retained the R-R zoning classification for the site.

According to the Applicants, the Property’s “neighborhood” includes the Westphalia Town Center, which is a Mixed-Use zoned development to the north of Pennsylvania Avenue. Across Marlboro Pike to the south are “large lot/acreage parcels” that have been “improved with single-family dwellings in the R-R Zone interspersed with more contemporary smaller lot single family subdivisions, including the Marwood subdivision where Appellant Ms. Hough resides, and another development which is home to Appellant Mr. Askins. The Property also lies within a Military Installation Overlay (MIO) zone due to its location near Joint Base Andrews, formerly Andrews Air Force Base.³

TECHNICAL PLANNING STAFF REPORT

The Zoning Map Amendment – Carozza Property – was assigned case number A-10051, and the Application (with exhibits) was forwarded for technical review to the Prince George’s County Planning Department, Maryland – National Capital Park and Planning Commission (M-NCPPC) on July 23, 2019. The Technical Planning Staff (“Planning

³ As noted by the District Council: “[¶] (10) The 2016 Military Installation Overlay (“M-I-O”) Zoning Map Amendment placed the subject property within the M-I-O Zone in surfaces D (inner horizontal surface) and E (conical surface) which limits the height of any construction and within the ... 60 dB-74dB High-Intensity Noise Area.”

Staff”) was charged with reviewing the Application pursuant to criteria set forth in Section 27-213 of the former Prince George’s County zoning ordinance.⁴

⁴ Section 27-213 of relevantly provided:

Sec. 27-213. Map Amendment approval; amendments.

(a) Criteria for approval of the M-X-T Zone.

(1) The District Council shall only place land in the M-X-T Zone if at least one (1) of the following two (2) criteria is met:

(A) Criterion 1. The entire tract is located within the vicinity of either:

(i) A major intersection or major interchange (being an intersection or interchange in which at least two (2) of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher classified street reasonably expected to be in place within the foreseeable future); or

(ii) A major transit stop or station (reasonably expected to be in place within the foreseeable future).

(B) Criterion 2. The applicable Master Plan recommends mixed land uses similar to those permitted in the M-X-T Zone.

(2) Prior to approval, the Council shall find that the proposed location will not substantially impair the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may include guidelines to the Planning Board for its review of the Conceptual Site Plan.

(3) Adequate transportation facilities.

(A) Prior to approval, the Council shall find that transportation facilities that are existing, are under construction, or for which one hundred percent (100%) of construction funds are allocated within the adopted County Capital Improvement Program, within the current State Consolidated Transportation Program, will be funded

(continued)

On October 17, 2019, the Planning Staff recommended disapproval. The Planning Staff initially found that the application met the first criterion but fell short on the second.

The Planning Staff first concluded:

This application meets the requirements of Section 27-213(a)(1)(A) due to the subject site’s location within the vicinity of a major intersection or interchange (that being the intersection or interchange of two roadways of arterial or higher classification), namely the intersection of MD 4 and MD 223.

The Planning Staff then found that the second criterion was not met:

This application does not meet the requirements of Section 27-213(a)(2). This application will substantially impair the integrity of the 2014 Plan Prince George’s 2035 Approved General Plan and Subregion 6 Master Plan and SMA. As previously stated, the intent of the master plan and the general plan is to direct mixed-use, high-intensity developments, such as that permitted by and encouraged in the M-X-T Zone, into designated regional transit districts and local centers, rather than scattered throughout the County. Since the subject properties are not located within any designated regional transit district or local center, the master plan envisioned this area for low-to medium-density residential neighborhood development, rather than high-density mixed-used development. In addition, pursuant to Section 27-213(a)(2) of the Zoning Ordinance, this application does not keep with the purposes of the M-X-T Zone.

by a specific public facilities financing and implementation program established for the area, or provided by the applicant, will be adequate to carry anticipated traffic for the proposed development.

(B) The finding by the Council of adequate transportation facilities at this time shall not prevent the Planning Board from later amending this finding during its review of subdivision plats.

PGCC §27-213(a) (2015, 2019 Supp.).

While the Planning Staff also determined that the application met the “requirements of Section 27-213(a)(3) for transportation adequacy,” it nevertheless concluded:

The intense character of M-X-T Zone development would be vastly different, inappropriate, and an abrupt transition in density and uses from what is envisioned in the 2014 Plan Prince George’s 2035 Approved General Plan and the Subregion 6 Master Plan and SMA. Therefore, staff finds that reclassifying the subject properties to the M-X-T Zone will substantially impair the goals, policies, and purposes of the general plan and the master plan. Consequently, staff recommends DISAPPROVAL of Zoning Map Amendment Application A-10051 Carozza Property, for rezoning from the R-R Zone to the M-X-T Zone.

The Prince George’s County Planning Board chose not to hold a hearing and adopted the Planning Staff’s recommendation as its own, that is, that the application should be disapproved. This matter was referred to the Office of the Zoning Hearing Examiner for an evidentiary hearing.

**INITIAL HEARING; ZONING HEARING EXAMINER’S
INITIAL DECISION AND DISTRICT COUNCIL REMAND ORDER**

At the request of the Applicants, a formal hearing was conducted before Zoning Hearing Examiner McNeil (“ZHE”) on January 15, 2020.⁵ No opponents of the project appeared at this hearing to challenge the application, and the Applicants offered documents and extensive testimony from experts to dispute the adverse findings of the Planning Staff Report.

⁵ The transcript of the first hearing is not in the Joint Record Extract but is an Appendix to Appellees’ response brief. *See* Maryland Rule 8-501(e) (appellee may reproduce part of record not included in record extract).

Jeffrey Ludwick, who was qualified as an expert in commercial real estate, described his lengthy association with the Carozza family and the various projects that have been developed in the vicinity of the Project that is at issue in this case. He testified that only a portion of the Property site would be designed for commercial use. When asked about the Property’s relationship with the Westphalia Town Center, which lies to the north across Pennsylvania Avenue, Mr. Ludwick agreed that the “proposed commercial aspect of this development” would be “complementary” to a convenience store in the neighborhood and “the major center across the street and is needed in the community.” Apparently referring to the “commercial aspect,” he emphasized that “there is not a single property from the [Washington] Beltway to the Calver[t] County line that provides these kinds of services.”

Jacob McCarthy was accepted as an expert in the field of “wetland ecology.” Mr. McCarthy had visited the Property site “two or three times” and disagreed with the findings of the Technical Report, specifically about the presence of “regulated” environmental features. He particularly disagreed with the Planning Staff’s conclusion that approximately 56 acres of the Property are impacted by environmental constraints. He testified as follows:

I cannot find evidence of any regulated environmental streams out there, any features that would be regulated. Everything was an ephemeral channel, which only runs during or after - immediately after rain event or precipitation. All the channels I saw had no defined bed and banks, no significant scouring or evidence of leaf litter being moved due to overland flows. There was no evidence of groundwater connection.

Most of the channels were very shallow depressions. There were few that were little more in size, just due to the nature of the landscape position. Most of those were immediately abutting route along the roadway.

Mr. McCarthy emphasized that while aerial surveys and the Prince George’s Atlas depict regulated environmental features, “in the field, they’re just simply ephemeral depressions created in uplands[] . . . they do not represent what is actually out there.”

Ryan McAlister, an employee of Dewberry Engineers, Inc., was qualified as an expert in landscaping architecture. He participated in preparing documents, plans, and exhibits for the hearing and described his familiarity with the Property. Mr. McAlister had “walked the full site, not straight direction, but kind of crisscrossing patterns in grid to survey the site for all the many features of it.” He recounted that the “[site itself] exists of partial woodlands . . . in some clearing areas . . . at this time with some existing improvements from the past.”

MR. SHIPLEY [Appellees’ Counsel]: And are there existing environmental features or conditions found on the site such as woodlands, streams, wetlands, and other regulated environmental features?

MR. MCALISTER: . . . [W]e evaluated both the environmental features as well as the woodlands on site, also soils, topography. Basically, number of things were found. The site does have previous improvements. This is consistent with some of the historic aerials, which will talk about in second.

But some of the changes that we found were in with the canopy and the force [forest?] coverage based on previous clearing areas. We found evidence of hay grass or pasture grass in isolated areas which have been planted based on farming, previous farming activities, which would not normally be seen on the property unless farming was previously done on the property. Without evidence of existing infrastructure improvements including two wells, visible underground infrastructure from the wells moving north on the site,

which was evidence of where we believe the single-family houses were located.

MR. BROWN [People’s Zoning Counsel]^[6]: Show me where that is on that Exhibit 41.

MR. MCALISTER: Yeah, the first well was right about in here at the top of this ridgeline. The second well was underneath the parcel 32 designation. There was another property fronting out the back of it overlooking Pennsylvania Avenue. We believe the five houses had driveways off of Marlborough Pike that you can tell from the clearing. ...

We believe that there was house up here. ... We believe there was also previously house pad down in the lower part of the eastern corner, and those were consistent with the aerial photographs and the topography that we found on site.

A lot of the trees that we found were planted for landscape or reforestation purposes[] ... associated with Pennsylvania Avenue [construction]. ... The pattern was also not irregular. It was consistent with horizontal grid spacing, which makes us think that it was reinforced station that was used after the construction.

We found evidence of construction debris, asphalt, concrete, debris materials, which we believe were from the Pennsylvania Avenue construction. We saw evidence of wildlife. ... The property ... was not what would be considered pristine natural area, untouched. We found evidence of all these improvements.

The existing drainage ways were dry. Even with the amount of rain leading up to our site visit, which was three days of rain beforehand, the drainage ditches were dry. We checked for specimen trees. These were limited to two isolated areas, which were here, and through here. Again, those were mostly beech, red oak, white oak, sweetgum, which is consistent with previous disturbance as well as that's where disturbance had been done during the Pennsylvania Avenue construction. So we believe that that was again, planted during that time.

⁶ Mr. Stan Brown was authorized to appear as the People’s Zoning Counsel. *See* Sections 27-136 *et seq.* of the former Prince George’s County Zoning Ordinance (2015, 2019 Supp.); Sections 27-3309 *et seq.* of the current County Zoning Ordinance (2022).

The disturbance was consistent with the 1965 aerial, post Pennsylvania Avenue. And then consistent with what the pre-Pennsylvania Avenue construction was in 1938. That aerial was submitted in the record as well. And the other aerial photographs which show the farming and clearing activities for the single-family detached houses.

MR. SHIPLEY: Okay. Are there any streams running for the property?

MR. MCALISTER: So we walked the site. ... We concur with Bay Engineering's or Bay Environmental's report ... that these are not regulated environmental streams. These are drainage ditches, ephemeral ditches, if you will, which are also not related [regulated?] by the county code.

Mr. McAlister emphasized again that the information the Applicants were presenting was more accurate than the data supplied to the Planning Staff:

MR. MCALISTER: The definition that the green infrastructure plan size is consistent with the county code. The difference is that the level of accuracy that was used for the mapping and for the determination of these [environmental] features. And so our on-site field determinations are more accurate versus what was provided by staff, which they reference of [sic] their staff report, was directly from PG Atlas, the website.

The PG Atlas information the green infrastructure plan was developed from, the 2000 aerial photos. ... The green infrastructure plan also utilizes digital elevation models and topography. So the difference is that no field inspections were completed as part of the crafting of that plan.

Because he viewed the on-site evaluations as more accurate than the data that informed the green infrastructure plan, Mr. McAlister emphasized Applicants' "belief that the features are not regulated." As a result, his study and observation did not confirm the Planning Staff's views that the Property contains "environmentally sensitive features[.]" He elaborated: "This property has less than 1 percent of interior forest habitat ... this is such small area compared to the overall site." Mr. McAlister continued:

What we also found was that there are no unique habitats. There's no bays, pecosins, there is no designated areas of environmental significance that we can find on any other natural resource plans. So lot of this information was used to make this determination, but for the evaluations and for the regular areas that we think we believe have more accurate information, which is why those inconsistencies with the information that staff had available to them at the time this report was drafted.

Mr. McAlister also touched on the building height and noise mitigation requirements that were related to the presence of the military installation Joint Base Andrews, which extends a Military Installation Overlay (MIO) zone over the area, and the acoustic impact of an arterial roadway, such as Pennsylvania Avenue, presumably noise generated by traffic on that roadway.

Following more discussion about other infrastructure details, Mr. McAlister concluded, in response to Applicants' counsel:

MR. SHIPLEY: And your opinions are based on the fact that you participated in the preparation of the application [and related studies?] ...

MR. MCCALESTER: Yes, concur with all of those. There's nothing that would prohibit the development of this property and the uses that you described.

Michael Lenhart was accepted as an expert in transportation planning. Mr. Lenhart had prepared a traffic study for the Applicants. He described the methodology as follows:

MR. LENHART: Yes, yes. We did prepare that traffic impact study for this case. In the study was dated June 20, 2019 which was revised August 27, 2019 as part of this case. The revision was to address the state highway administration comments, and in that traffic impact study we conducted scoping agreement with the Park and planning staff, the transportation staff, where we obtained an approved scope and agreement. We conducted traffic counts at the study intersections, added approved background development as required, in the scoping agreement, and then the site trips for the assumed

uses, for the purposes of this rezoning application, we conducted levels of service analyses at all study intersections, and that was submitted for review and ultimately staff reviewed and agreed with our findings of that report.

Mr. Lenhart opined that the roadway network would be sufficient to “safely handle the traffic generated by the project[.]”

Francis Silberholz testified next for the Applicants as a “land planner.” He pointed out that the property has been “RR zoned since 1961 and there is no activity.” He then claimed that the “rezoning of the subject property will facilitate opportunities for future development that will provide an effective transition between Pennsylvania Avenue. So the mixed-use development on the subject site provides buffer to the neighboring residential uses on the south side of Old Marlborough Pike from the property.”

Mr. Silberholz reviewed in detail his survey and critique of the Planning Staff Report. He pointed out that the Planning Staff agreed that the Application is for rezoning the subject Property from Rural-Residential to Mixed-Use-Transportation (M-X-T) zone. The Planning Staff also agreed that the Application met the criterion set forth in Section 27-213(a)(1) because the Property is located “[W]ithin the vicinity of (i) A major intersection or major interchange (being an intersection or interchange in which at least two (2) of the streets forming the intersection or interchange are classified in the Master Plan as an arterial or higher classified street reasonably expected to be in place within the foreseeable future).” *See* Section 27-213(a)(1).

He emphasized that the “approval of the M[-]X-T zone at this property - the subject property will allow for planning and construction of complementary mix of uses which will

better respond to both positive and the impacts of the property’s location.” Further, he testified that “it will better address the high volume of traffic and the negative impacts of the traffic both to -- as well as the negative impacts of its proximity to Joint Base Andrews because of the noise.”

Mr. Silberholz discounted the continued viability of maintaining the current R-R zone for the subject Property, arguing that it would not be “practical or probably cost effective [inasmuch as] history has proven this property has been RR zoned since 1961 and there is no activity.” He opined that the current R-R classification is not the “proper zone for that use for that property because of the impact from the adjoining uses on the property as well as the cost to develop it.” He maintained that the “location of residential commercial retail, and office institutional uses [envisioned by the Application would] provide opportunity for a sustainable community structure that strengthens the sense of community identity and provides for a broad range of development opportunities.” Moreover, he claimed, the “rezoning of the subject property will facilitate opportunities for future development that will provide an effective transition between Pennsylvania Avenue.”

According to Mr. Silberholz, “the mixed-use development on the subject site provides [a sound barrier] buffer to the neighboring residential uses on the south side of Old Marlborough Pike from the property.” In short, the “proposed use will enhance the economic status of the county. The rezoning of the property to [M-X-T] will facilitate development that could provide residential, commercial, and an institutional, mix of uses which would generate tax revenue as well as jobs for County residents.”

Mr. Silberholz offered that the Project “will reduce sprawl. The transition to Pennsylvania Avenue . . . will reduce impact. There are -- sidewalks will be designed to facilitate access around and through the property and will connect with a buddy residential community and the approval of the subject application will be keeping with the purpose of MST [*sic*] because it will allow increased mix of medium density residential, and retail commercial uses, in compact, moderately dense configuration.” He insisted that “the location of the property is in keeping with its purpose of the MST [*sic*] zone because the property is located in the vicinity of major interchange and will allow for return of public investment and major infrastructure component by allowing it to maximize its development potential.”

In this case, Mr. Silberholz found it “difficult to rationalize how property that has this location such high impact area” would be “recommended for single family development which . . . would be very large lots, large houses, which nobody will want to have because of its proximity [to Joint Base Andrews].” He insisted that with the M-X-T rezoning, the Property will “not only interface . . . provide a buffer to the residential development to the south across Old Marlborough Pike, it will have a symbiotic relationship with the Westphalia Town Center.” “As Mr. Ludwick explained,” Silberholz noted, “Westphalia town center is designed as a power center, and this provides little more convenient uses. So that's in response to the section 27.542, the purposes of the MST [*sic*] zone.”

On August 20, 2020, the ZHE handed down her Decision. In detailed findings of fact and conclusions of law, she summarized the findings and comments from various agencies that had reviewed the Application and related supporting materials. She specifically cited comments by the Transportation Planning Section of the M-NCPPC and the Environmental Planning Section of the M-NCPPC. The ZHE then summarized the Planning Staff’s recommendation that the rezoning request should be disapproved, and outlined the Staff’s reasoning.

The ZHE then turned to summarizing the detailed requirements from various plans that affected the relevant area, setting forth relevant provisions and policies from the Prince George’s County 2013 Subregion 6 Master Plan and Sectional Map Amendment (“SMA”), the 2007 Westphalia Sector Plan, the 2014 General Plan, the 2016 Military Installation Overlay (“M-I-O”) Zoning Map Amendment: 2005 Countywide Green Infrastructure Plan and the 2017 Prince George’s County Resource Conservation Plan (which comprised an update to the Green Infrastructure Plan, the Agriculture Conservation Plan, and the Rural Character Conservation Plan).

Following this review, the ZHE recounted relevant testimony of Appellees’ experts: Jeff Lugwick, Jacob McCarthy, Ryan McAllister, Michael Lenhart, and Francis Silberholz. She paid considerable attention to the opinions of Mr. Silberholz, who had responded to the Planning Staff Report, and who explained why the Application “satisfies the criteria of the Zoning Ordinances”:

[T]he application is in keeping . . . with the general purposes of the zoning ordinance at [Section 27-102]. The first is to protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the county. Approval of this . . . application . . . will allow the planning and construction of a complementary mix of uses which will better respond to both positive and negative impacts of the subject property's location at the end of an interchange of a high-volume, high classification roadway and it benefits the efficient use of public . . . improvements to water and sewer And . . . as Mr. Ludwick explained, the use of a hotel and restaurant facility in close location to Andrews Air Force Base with its employees and contractors provide a vital service to them....

[The staff does not believe the request meets the test of not substantially impairing the [G]eneral [P]lan or the [M]aster[P]lan]. The approval of the M-X-T [Z]one at this property . . . will allow for planning and construction of complementary mix of uses which will better respond to both positive and [negative] impacts of the property's location.... [I]t will better address the high volume of traffic and the... negative impacts of its proximity to Joint Base Andrews because of the noise.

It's not practical or ...cost effective ... to continue [the R-R zoning of this property since] history has proven this property has been R-R zoned since 1961 and there is no activity. It's not a proper zone for that... property because of the impact from the adjoining uses on the property as well as the cost to develop it.

The applicant is confident that the location of residential[,] commercial[,] retail, and office institutional uses provide opportunity for a sustainable community structure that strengthens the sense of community identity and provides for a broad range of development opportunities. The rezoning of the subject property will facilitate opportunities for future development that will provide an effective transition between Pennsylvania Avenue.... [T]he mixed-use development on the subject site provides a buffer to the neighboring residential uses on the south side of Old Marlboro Pike from the property.

Essentially they will be building the sound barrier that... [is required due to the site's proximity to Joint Base Andrews and location within the MIOZ]. And the walls of the commercial buildings, and townhouses, will be that sound barrier as well as the extensive landscaping that they are going to be

required to put on the property as part of the CSP and the DSP review and development process....

The Applicants submitted post-hearing evidence intended to provide additional support for their view that their investigation into the presence of regulated environmental features was more accurate than the surveys conducted for the Green Infrastructure Plan and the County Resource Protection Plan.

Following a review of the Agency Comments, the Planning Staff Report, and testimony by Appellees’ experts, the ZHE set forth the applicable provisions from Sections 27-213 (criteria for approval) and 27-542(a) (purposes of M-X-T Zones) of the Zoning Ordinance. The ZHE then rendered favorable “Conclusions of Law,” but nevertheless recommended the following remand so that the Applicants could prepare a Natural Resources Inventory (“NRI”) to confirm or disprove the existence of “regulated environmental features”:

1. The Application shall be remanded to the Office of the Zoning Hearing Examiner. Within 90 days, or other reasonable time determined by the District Council, Applicants must submit to the Office of the Zoning Hearing Examiner an approved NRI Plan, which covers the entirety of the subject property, that verifies that the Green Infrastructure and Resource Conservation Plans inaccurately depict regulated environmental features on the site. Applicants may not grade or develop the property before submittal of the NRI Plan.
2. If the NRI Plan verifies the absence of regulated environmental features the Planning Board/Technical Staff shall have 30 days to submit any additional recommendations to guide further review of any development on the subject property.

3. The Zoning Hearing Examiner shall send her revised Decision to the District Council within 14 days of the receipt of any comments from the Planning Board/Technical Staff.

On January 25, 2021, the District Council, without conducting oral argument on the merits of the Application, voted to remand this matter to the Zoning Hearing Examiner. The District Council issued a written Order of Remand on February 9, 2021, directing that the “Examiner shall render a new or revised disposition recommendation subject to applicable requirements in the County Code and the Land Use Article.”

**REMAND PROCEEDINGS BEFORE THE
ZONING HEARING EXAMINER**

On March 24, 2021, the District Council served a “Notice of Virtual Hearing” that informed “Persons of Record” that the hearing would be conducted on April 14, 2021. Thereafter, the People’s Zoning Counsel indicated that he would participate in the hearing.

On April 5, 2021, in anticipation of the hearing, Applicants submitted the Natural Resources Inventory (“NRI”), a “Jurisdictional Determination” from the Army Corps of Engineers in which the Corps “reviewed and concur[red] with the Wetland Evaluation Report” prepared in support of the Application, a “Wetland Delineation Maps” and a “Conceptual Land Use Plan” prepared by Dewberry Engineers in support of the Application. On April 9, 2021, the Marwood Homeowners Association submitted detailed objections to the project, and Appellant Ms. Hough, Chairperson of the Legislative and Community Concern Committee of the Marwood Community Association, was authorized

to speak as person of record before the ZHE on behalf of the Association. In their written statement, the Marwood Association Objectors asserted:

This location is immediately across the street from the only entrance to the Marwood Development, a senior, age 55+, single-family housing development. In the past, a similar rezoning request for this property was denied by the M-NCPPC Technical Staff on 10/17/2019. According to county records, the request was appealed by the applicant on 9/21/2020 and during this pandemic period, the request for rezoning has progressed without the knowledge of the Marwood homeowners.

The Marwood Association Objectors also complained that the project would exacerbate traffic congestion and “significantly amplify” traffic problems. The Objectors submitted “Additional Objections” which included the text of the Planning Staff Report, comments, as well as photographs and maps of the project area and adjoining neighborhood that were intended, in part, to illustrate relevant environmental features. Andrea Chapman, another citizen-objector, filed an objection with the ZHE on April 6, 2021.

The remand hearing was conducted before the ZHE on April 14, 2021. Appellees brought back their witnesses for a reprise of their initial testimony; this testimony essentially tracked their presentations at the initial hearing that had been conducted on January 15, 2020.

Ryan McAlister participated in the preparation of the Natural Resources Inventory (“NRI”) pursuant to the District Council’s remand instructions.⁷ He explained that the NRI

⁷ A Natural Resources Inventory is usually prepared “as part of the next step in the process which would be a conceptual site plan.”

was prepared in accordance with the Environmental Technical Manual published by the Maryland-National Capital Park and Planning Commission. The NRI, which had not been available for the first hearing, was approved by the M-NCPPC and the Army Corps of Engineers; the NRI was commissioned to “confirm the site features that were found onsite[.]”

Mr. McAlister emphasized that the “information that is presented today on this [NRI] is more accurate than what we previously had and shows the exact location and elements of the streams and all the features that have been included on the plan.” Revisiting the substance of his prior testimony, he stressed that the information submitted for the application was also more accurate than the environmental information upon which the technical planning staff, in part, relied in recommending the disapproval.

Mr. McAlister opined that the development pursuant to the Applicants’ plan would be consistent with the NRI that was approved by the M-NCPPC on March 9, 2021. He also proffered that the Maryland Department of Natural Resources had not found any “additional sensitive species, habitat.” Mr. McAlister commented on restrictions that would follow from the Property’s location close to the Joint Base Andrews military installation. He acknowledged that the NRI showed the presence of an intermittent stream that would constitute a “regulated” stream, but the “rest of the drainage ditches are ephemeral” and are thus “non-regulated.”

In response to a question from Mr. James Chapman, one of the citizen-objectors, Mr. McAlister emphasized that he had worked with the Maryland National Capital Park

and Planning Commission and other agencies, including the Army Corps of Engineers, that reviewed and approved the NRI. Had there been any questions or issues from those regulators, the Applicants would have addressed them. Additional witnesses, Michael Lenhart, Mr. McCarthy, Mr. McAlister, and Mr. Silberholz, were presented by Appellees, and they addressed concerns raised by the citizen-opponents.

Following Mr. McAlister’s testimony, the citizen-objectors proffered the objections from the Marwood Community, and Appellant Ms. Hough testified. She described the threats to the quality of life and safety of the residents of Marwood, a “senior, age 55-plus, single-family housing development[.]” Ms. Hough specifically cited the potential for increased crime, air pollution, and traffic due to the “influx of commercial customers.” Moreover, she pointed out that there were pending plans to build a gas station at the nearby intersection and a “significant shopping and restaurant center mall on Pennsylvania Avenue[.]” which is known as Westphalia Town Center. She further stated that the creation of an additional commercial center would “not serve the needs of the [Prince George’s] County community[.]” but rather appeal to those who would transit the county on Pennsylvania Avenue. Ms. Hough also described the objectors’ annotations to the Planning Staff report in which the Staff had disapproved the application.

Ms. Hough’s testimony was followed by that of citizen-objector Mr. Askins. He described photographs he had taken of the property to establish the presence of environmental features, specifically “obvious channels . . . multiple tributaries.” In short,

Mr. Askins, a retired scientist, narrated slides prepared from photographs he had taken. Mr. Chapman then testified. He voiced concerns about the politics of the rezoning.

Applicants presented rebuttal testimony from Mr. Lenhart, who addressed concerns about traffic. He pointed out that the application is “supported by a traffic impact analysis provided by the [Appellants] and referred to the Maryland State Highway, Prince George’s County Department of Public Works, and Prince George’s County Department of Permitting, Inspections and Enforcement[.]” Mr. Lenhart testified that “all agencies concurred with the traffic study finding.” He pointed out that the “Technical Staff Report made a finding that transportation facilities will be adequate to carry the anticipated traffic for this development.”

Mr. Lenhart offered specifics about his traffic studies and his methodology and opined that the results showed that the “trip generation rates” for traffic in the affected area would “pass Park and Planning Guidelines.” He said that some of his analysis was done in response to citizen concerns. He also referred to construction at a nearby intersection that was part of the Westphalia Town Center. Mr. Lenhart acknowledged that any development on this property would increase traffic, but stressed that the “facilities would be adequate to carry that anticipated traffic.”

Ryan McAlister testified about environmental and wetlands concerns. He explained, in response to testimony by Mr. Askins, that the Natural Resources Inventory showed information that was more detailed and “in compliance with the approvals issued by the reviewing and approving agencies.”

Jacob McCarthy was called to offer additional testimony in which he acknowledged that “certain aspects of [Mr. Askins’s presentation] are confirmed in my wetland delineation.” He testified that there is indeed an “intermittent stream” which constitutes a regulated resource.

Mr. McCarthy also clarified the role of the Natural Resources Inventory:

The Natural Resource Inventory Plan is not any proposed development. It is simply an existing condition plan to show features required by the Park and Planning Commission on this plan; and so, this is used as a base plan, an existing conditions plan for purposes of future development plans. And so, at this time, we haven't prepared the Detailed Site Plan or even a Preliminary Plan, or Conceptual Site Plan for this property; and so, there is not any information in regards to impacts or allowable impacts, or proposed impacts for that matter to the stream itself, or any other areas onsite; but what I can tell you is because this is only one intermittent stream, it does not pose a significant constraint to allowing this property to be developed under the zone.

He continued:

So, if we refocus back to the, this case, which is for rezoning, the plan shows that there is not a significant constraint to development or development being proposed on this site. The zoning that's being requested would allow for it; and if and when we come forward in the future with a proposed development plan, that stream would not propose such a significant constraint that it would cause the property to be undevelopable at all; and so, there are provisions in the ordinance to allow for development on this site which we would have follow and, certainly, as we move forward in the process, that could be completed; but at this time, we do not see the single intermittent stream as a significant constraint for the development on this site.

Francis Silberholz also testified and emphasized that his prior testimony “countered” the findings in the Planning Staff Report and that he stood by his conclusions.

On April 30, 2021, the parties, through counsel, filed post-hearing memoranda. Appellants’ counsel filed “Citizen-Protestants’ Supplemental Post-Hearing Memorandum” and counsel for the Applicants filed a letter brief.

On July 9, 2021, the ZHE issued her Remand Decision. The Decision recommended the approval of the Application (A-10051) subject to conditions. The ZHE reiterated her initial finding that the first criterion was met:

The subject property has approximately 4,300 feet (0.81 mile) of frontage along Pennsylvania Avenue (MD 4), classified as a freeway within the Countywide Master Plan of Transportation. The subject property also adjoins the intersection of Pennsylvania Avenue and Woodyard Road which is classified as an arterial within the Countywide Master Plan of Transportation. Accordingly, the first criterion for approval of the M-X-T Zone (discussed more fully below) is met. ... Each of these criteria were addressed by Applicants witnesses.

The ZHE’s Remand Decision incorporated the record from the prior hearing and set forth additional evidence as required by the District Council’s remand order. Following a review of all relevant evidence, including updated expert testimony, citizen objections and agency comments, the ZHE issued the following Conclusions of Law:

(1) In its closing argument Applicants provided a chronology of the evidence presented in the original and remand hearings, stressing that nothing raised by the opposition should change the original findings and conclusions of this Examiner, and the request should, therefore, be approved. (Exhibit 17)

(2) Ms. Hough, the Marwood Community and Mr. Askins submitted a combined closing argument, prepared by counsel. (Exhibit 16) The first argument is that the M-X[-]T Zone may not be granted (regardless of the language in Section 27-213, supra) since it is not a floating zone or planned unit development, primarily because there is no “prior legislative determination as to where the use of a Mixed Use Zone would be prima facie proper.” (Exhibit 16, p. 3). The Opposition conclude that the request must

satisfy the change/mistake rule applicable to the rezoning of Euclidean zones, and that Applicants failed to show compliance with that test. The remainder of the argument mirrors the points raised by the Technical Staff – the request would substantially impair the integrity of the 2014 General Plan, the Subregion 6 Master Plan, the 2005 Green Infrastructure Plan and the 2017 Resource Conservation Plan; and the purposes of the M-X-T Zone could not be satisfied. The Opposition further argue [sic] that the traffic facilities will not be adequate to serve the development, and the Technical Staff should have provided additional comment for the remand hearing, as suggested in my original decision.

(3) I would first note that the District Council did not require the Technical Staff to provide an additional comment or report, and the request should not be denied on this ground.

The ZHE reiterated her determination that because the M-X-T zone is a “floating zone,” the “change/mistake” rule does not apply. The ZHE then emphasized that the Application “must be found to comply with the requirements of Section 27-213 and the purposes of the M-X-T Zone found in Section 27-542.” She then addressed these criteria, beginning with the elements of Section 27-213.

(7) The subject property is located at the intersection of two streets classified as arterial or higher – Pennsylvania Avenue (MD 4) and Woodyard Road (MD 223). (Section 27-213 (a)(1)(A)(i)) Accordingly, the 2013 Master Plan is not required to have recommended mixed land uses for the site similar to those permitted in the M-X-T Zone. (Section 27-213 (a)(1)(B))

(8) The Technical Staff and Applicants [sic] expert transportation planning witness both opined that transportation facilities are adequate to carry anticipated traffic for the proposed development. (Section 27-213(a)(3)) The Opposition did not provide sufficient evidence to dispute this finding. Moreover, transportation adequacy will be reviewed again at the time of subdivision approval.

(9) The opposition, Technical Staff and Applicants disagree as to whether the request can satisfy the provisions of Section 27-213 (a)(2). The Technical Staff and those in opposition believe the request substantially impairs the

integrity of the 2014 General Plan, 2013 Master Plan and the Countywide Green Infrastructure and Resource Conservation Plans. They argue that the General Plan and Functional Master Plan urge limited mixed-use development outside of areas identified as Regional Transit Districts and Local Centers, and since the subject property lies to the south of the Westphalia Town Center approval of the Application would amount to substantial impairment of these plans. They also believe the request substantially impairs the Functional Master Plans because there are regulated environmental features on the site that will be impacted if the density requested is approved.

The ZHE then set forth findings and conclusions to justify the approval of the

Application:

(10) I can no longer find that the request will substantially impair the Functional Master Plans since the Applicants were able to prepare a Natural Resource Inventory that satisfied the approving authorities regulated environmental features are shown and will be protected.

(11) The Zoning Ordinance does not expressly define the term “substantially impair”; accordingly, we look to the generally recognized usage. (See, Section 27-108.01(a)(7)) “Substantial” is generally defined as “considerable; ample; large”. (Webster’s New World Dictionary, 2nd College Edition) “Impaired” generally means weakened or damaged. Given these definitions, I cannot find that approval of mixed-use development on the subject property will substantially impair either the 2014 General Plan or the 2013 Subregion 6 Master Plan recommendations concerning mixed-use development.

Based on the testimony of Appellees’ experts, the ZHE concluded:

First, both Plans contain “recommendations” for land use and are not strictly binding on the District Council. **Second**, the goals/policies arguably impacted by the Application concerning location of mixed-use development urge that they be concentrated in Regional Transit Districts and Local Centers, not that they be restricted to those areas. **Third**, both Plans also support context-sensitive infill development (General Plan) and low-to moderate-density development unless it is part of a mixed-use development (Subregion 6 Master Plan), indicating that the District Council might still consider mixed-use that falls outside of these Districts and Centers. **Fourth**, Applicants’ expert in commercial real estate development noted: a) the

subject property has remained undeveloped since it was used for agricultural purposes or to build MD 4 nearly sixty years ago, and its location adjacent to MD 4 and within the MIOZ height and noise impact areas limit its feasibility to ever develop within the R-R Zone; and, b) in his vast experience the type of neighborhood commercial use proposed would be compatible with that developing in the Westphalia power (local) center. **Finally**, the Zoning Ordinance Rewrite will probably not change the zoning of the subject property since the R-R Zone will be carried over - so the District Council may not consider the “fit” of this zone during its upcoming Countywide Map Amendment. (Section 27-213(a)(2)) Given all of this evidence the District Council should be authorized to grant the request if it so chooses. **(emphasis added)**

Turning to the purposes of the M-X-T Zone as described in Section 27-542(a), the ZHE concluded:⁸

⁸ Section 27-542(a) outlines the "purposes of the M-X-T Zone as follows:

(1) To promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens;

(2) To implement recommendations in the approved General Plan, Master Plans, and Sector Plans, by creating compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open space, employment, and institutional uses;

(3) To conserve the value of land and buildings by maximizing the public and private development potential inherent in the location of the zone, which might otherwise become scattered throughout and outside the County, to its detriment;

(4) To promote the effective and optimum use of transit and reduce automobile use by locating a mix of residential and non-residential uses in

(continued)

(12) The Application furthers the purposes of the M-X-T Zone since: the subject property lies within the vicinity of a major interchange (MD 4 and MD 223); it can be developed in a manner to support the General Plan and Subregion 6 Master Plan goals of compact, mixed-use, and internally walkable design; it can encourage a robust (if not quite 24-hour) environment by providing a hotel, convenience store and restaurants as well as townhouse dwellings; and, the site plan approval process can ensure appropriate horizontal and vertical mix of uses and a functional relationship among the uses within a distinctive visual character and identity. (Sections 27-213(a)(2) and 27-542(a))

The ZHE addressed the concerns voiced by the citizen-opponents, and encouraged the ZHE to mandate development of the Property with those concerns in mind:

proximity to one another and to transit facilities to facilitate walking, bicycle, and transit use;

(5) To facilitate and encourage a twenty-four (24) hour environment to ensure continuing functioning of the project after workday hours through a maximum of activity, and the interaction between the uses and those who live, work in, or visit the area;

(6) To encourage an appropriate horizontal and vertical mix of land uses which blend together harmoniously;

(7) To create dynamic, functional relationships among individual uses within a distinctive visual character and identity;

(8) To promote optimum land planning with greater efficiency through the use of economies of scale, savings in energy, innovative stormwater management techniques, and provision of public facilities and infrastructure beyond the scope of single-purpose projects;

(9) To permit a flexible response to the market and promote economic vitality and investment; and

(10) To allow freedom of architectural design in order to provide an opportunity and incentive to the developer to achieve excellence in physical, social, and economic planning.

(13) I am cognizant of the residents very real concerns about the possibility of adverse impact on the use and enjoyment of their homes. I would, therefore, urge the Council to require that the property be developed in a manner compatible with surrounding development, in a manner that encourages safe pedestrian connectivity, in a manner that provides a scenic corridor buffer along Pennsylvania Avenue, and in a manner that will protect future residents from exposure to excessive noise should it choose to grant the rezoning.

In the Remand Decision, the ZHE recommended approval of the Application and again imposed several conditions. On August 3, 2021, Appellants, represented by counsel, filed exceptions to the ZHE’s Decision with the District Council. On January 10, 2022, the District Council conducted an exceptions hearing to consider the Application and on February 8, 2022, they voted for its approval and directed staff to prepare a “document of approval.” On March 1, 2022, the District Council issued a Final Conditional Zoning Map Amendment Approval A-10051-C.

Appellants then filed a timely petition for judicial review by the Circuit Court for Prince George’s County. A virtual motion hearing on Appellants’ Motion to Vacate was conducted, and on May 9, 2023, the circuit court affirmed the decision of the District Council and dismissed the petition for judicial review. This appeal followed.

STANDARD OF REVIEW

The District Council acts as an administrative agency when acting in its zoning capacity. *Grant v. County Council of Prince George’s County*, 465 Md. 496, 503 (2019); *City of Hyattsville v. Prince George’s County*, 254 Md. App. 1, 21 (2022). “When reviewing the decision of a local zoning body, such as the Board, we evaluate directly the

agency decision, and, in so doing, we apply the same standards of review as the circuit court[.]” *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 203 (2009) (citation omitted). We thus “look through” the circuit court’s decision, applying the same standards of review, and evaluate the decision of the agency, and not the circuit court. *Heard*, 256 Md. App. at 609 (cleaned up) (quoting *People’s Counsel of Balt. County v. Loyola College*, 406 Md. 54, 66-67 (2008)). See also *People’s Counsel for Balt. County v. Surina*, 400 Md. 662, 681 (2007). In conducting this inquiry, we review the District Council’s decision *de novo* and must determine whether (1) the record contains substantial evidence that supports the agency’s findings and conclusions, and (2) whether the agency premised its decision on an erroneous conclusion of law. *King v. Helfrich*, 263 Md. App. 174, 206 (2024) (citing cases); *Harford County People’s Counsel v. Bel Air Realty, Assoc. Ltd. P’ship*, 148 Md. App. 244, 257-58 (2002).

Although judicial “review of an administrative agency’s action generally is a narrow and highly deferential inquiry[.]” *M-NCPPC v. Greater Baden-Aquasco Citizens Ass’n*, 412 Md. 73, 83 (2009) (citing cases), questions of law are reviewed without deference. *Robin Dale Land, LLC*, 491 Md. at 138. “Administrative agency decisions are not set aside unless the decision is arbitrary, illegal or capricious. In determining whether a decision is arbitrary, illegal or capricious, a reviewing court must decide whether the question before the agency was fairly debatable. An issue is fairly debatable if reasonable minds could have reached a different conclusion on the evidence, and if the conclusion is supported by

substantial evidence in the record.” *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292, 306 (2007) (citations omitted), *aff’d*, 405 Md. 43 (2008).

The applicable level of judicial scrutiny depends on the nature of the agency’s process and/or action, e.g., quasi-judicial or legislative. *Kor-Ko Ltd. v. Md. Dept. of the Env’t*, 451 Md. 401, 409 (2017). On the record before us, the actions of the District Council are quasi-judicial because the decision was reached on individual grounds, based on evidence that was admitted, and credibility determinations that were made in a contested hearing. *See id.* (citing cases). *See e.g., WYDEA Westminster v. Westminster*, 462 Md. 369, 373-74 (2019).

1.

**INCORPORATION BY REFERENCE; ADOPTION OF THE
ZONING HEARING EXAMINER’S DECISION**

Appellants initially maintain that the District Director’s decision is “legally deficient” because the Council adopted the findings and conclusions of the ZHE. Appellants aver that the District Council failed to articulate its own independent findings and conclusions and thus did not render an independent decision.

At the outset, we disagree with Appellants’ “incorporation by reference” argument, and conclude that, in general, the adoption by the District Council of either a staff technical report or the findings and conclusions of the ZHE is not error. We are mindful that our Supreme Court has not been “prepared to rule, as a matter of law, that the District Council may not, in a specific case, comply with the statutory requirement to make written findings

of fact and conclusions of law of either the Planning Board or of the Technical Staff by specific reference to those findings.” *Greater Baden*, 412 Md. at 82-83, n.9 (citing *Montgomery v. Board of County Comm’rs*, 256 Md. 597, 603 (1970)).

In *Colao v. County Council of Prince George’s County*, 109 Md. App. 431, 453-54 (1996), *affirmed*, 346 Md. 342 (1997), this Court emphasized that where the Council “adopts and incorporates as its own findings and conclusions of others ... it must at least make certain that the findings it proposes to adopt comply with the statutory requirements of specificity.” *Id.* Indeed, our decision in *Colao*, addresses this issue succinctly:

[I]n the same manner that the Court of Appeals has recognized that it is acceptable for the Council to adopt as its own the findings and conclusions of others, we suppose that there is nothing inherently improper if the decision that the Council adopted, i.e., the ZHE’s decision, in turn adopts and incorporates the reports and recommendation of other public officers – *so long as the adopted findings and conclusions with each of the reports are sufficiently articulated, clear and specific.*

Id. at 460-61 (emphasis added). *See also, e.g., Heard, ante*, 256 Md. App. at 636 (Planning Board may rely on Staff Report provided it “is thorough, well-conceived and contains adequate findings of fact.”) (quoting *Greater Baden-Aquasco Citizens Ass’n*, 412 Md. at 110).

On this record, we must conclude that the District Council was entitled to adopt the ZHE’s findings and conclusions, which in turn are sufficient to permit judicial review.

2.

“SUBSTANTIALLY IMPAIR”

Appellants urge that the ZHE erred in its interpretation of the language “substantially impair,” which is an operative phrase in former Zoning Ordinance Section 27-213. Section 27-213 addresses “Map Amendment approval; amendments” and Subsection “(a)” presents the “Criteria for approval of the M-X-T Zone. Section 27-213(a)(2), with emphasis added, provides:

Prior to approval, the Council shall find that the proposed location will not **substantially impair** the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may include guidelines to the Planning Board for its review of the Conceptual Site Plan.

In paragraph 11 of its “Conclusions of Law,” the ZHE noted that the term “substantially impair” was not defined. Citing Former Ordinance Section 27-108, she continued:⁹

The Zoning Ordinance does not expressly define the term “substantially impair”; accordingly, we look to the generally recognized usage. (See, Section 27-108.01(a)(7)) “Substantial” is generally defined as “considerable; ample; large”. (Webster’s New World Dictionary, 2nd College Edition) “Impaired” generally means weakened or damaged. Given these definitions, I cannot find that approval of mixed-use development on the subject property will substantially impair either the 2014 General Plan or the 2013 Subregion 6 Master Plan recommendations concerning mixed-use development.

⁹ Former Ordinance Section 27-108.01(a)(7) provides in part:

Words and phrases not specifically defined or interpreted in this Subtitle or the Prince George’s County Code shall be construed according to the common and generally recognized usage of the language.

Quoting from a decision by the Appellate Division of the New Jersey Superior Court, Appellants maintain that “‘substantial impairment’ is determined by balancing the zoning benefits arising from a grant of the variance against the zoning harms to determine on balance whether the harms [are] substantial[.]” so that the “administrative body must compare how the request complies with the zoning code (benefits) to how the request conflicts with the zoning code (harms). The administrative body can then determine whether the conflicts (or harms) substantially outweigh the compliance (or benefit).” (quoting *Scully-Bozarth Post #1817 of Veterans of Foreign Wars of U.S. v. Planning Bd. of City of Burlington*, 827 A.2d 1129, 1141 (N.J. App. Div.), *cert. denied*, 834 A.2d 407 (N.J. 2003)).

We discern no error by the ZHE in resorting to a dictionary to articulate the meaning of the phrase “substantial impairment.” In *Harford County People’s Counsel v. Bel Air Realty*, we pointed out that “[t]he parties’ reliance on dictionaries to offer their respective interpretations of the phrase ‘directly accessible’ is a prudent method of determining the meaning of ordinary language that populates most statutes.” 148 Md. App. at 260 n.9. The same is true here.

3.

MANDATORY NATURE OF ZONING PLANS

Appellants contend that the ZHE erred when she concluded that the provisions of Prince George’s County Plan 2035 and the Subregion 6 Master Plan are advisory and recommendations, and not mandatory requirements. To some extent, we agree.¹⁰

“[I]t is commonly understood, in Maryland and elsewhere, that Master Plans are guides in the zoning process.” *Floyd v. County Council of Prince George’s County*, 55 Md. App. 246, 258-59 (1983) (collecting cases). Our Supreme Court has emphasized:

Nor is there any requirement, absent a statute, that the map amendment must adhere to the recommendations of the General or Master Plan. Such land use planning documents represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are in no sense a final plan; they are continually subject to modification in the light of actual land use development and serve as a guide rather than a strait jacket.

Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 704 (1977). More recently, the Supreme Court has elaborated:

[Master] Plans are long term and theoretical, and usually contain elements concerning transportation and public facilities, recommended zoning, and

¹⁰ For zoning and land use planning purposes, Prince George’s County is divided into geographical areas that are termed “subregions.” *County Council of Prince George’s County v. Robin Dale Land LLC*, 263 Md. App. 1, 11 (2024), *aff’d*, 491 Md. 105 (2025). “Two types of plans are required in the Regional District: “(1) a ‘general plan’ containing, at a minimum, recommendations for development in the respective county and supporting analysis; and, (2) ‘area master plans’ pertaining to local planning areas into which each county is divided.” *County Council of Prince George’s County v. Robin Dale Land LLC*, 491 Md. 105, 120 (2025).

The title of the general plan, referred to as “Plan 2035,” is “Prince George’s 2035 Approved General Plan,” available online at https://pgplanning.org/resource_library/plan-prince-georges-2035-approved-general-plan/ (visited April 17, 2026). Information about the Approved Subregion 6 Master Plan and Sectional Map Amendment may be found at https://www.pgplanning.org/resource_library/approved-subregion-6-master-plan-and-sectional-map-amendment/ (visited April 17, 2026).

other land use recommendations and proposals. ... We repeatedly have noted that plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning.

Mayor & Council of Rockville v. Rylyns Enters., Inc., 372 Md. 514, 529-31 (2002) (cleaned up). Indeed, they serve as a guide for long-term land-use and development goals and propose zoning changes to implement these goals. *County Council of Prince George’s County v. Chaney Enters. Ltd. P’ship*, 454 Md. 514, 522 (2017). There are instances, however, when there exist statutes or local ordinances linking planning and zoning. The Court continued in *Rylyns*:

[T]hey serve to elevate the status of comprehensive plans to the level of true regulatory device. ... In those instances where such a statute or ordinance exists, its effect is usually that of **requiring that zoning or other land use decisions be consistent with a plan’s recommendations regarding land use and density or intensity.**

Rylyns, 372 Md. at 530-31 (emphasis added).

On this record, and under the circumstances of this case, we conclude that relevant provisions of Section 27-213(a)(2) of the former Zoning Ordinance link planning and zoning. To reach this conclusion, we are guided by the Supreme Court’s decision in *Chaney Enterprises*.

The controversy in *Chaney Enterprises* involved the Prince George’s County District Council’s adoption of the 2013 Master Plan with Amendments that affected the interests of mining companies and a trade organization (“Mining Entities”) by establishing “policies and strategies to carry out a land use, preservation, and development vision for []

Subregion 5 consistent with the 2002 General Plan." *Chaney Enters.*, 454 Md. at 525. Aggrieved by aspects of the Master Plan and Amendments, the Mining Entities sought judicial review of the Master Plan. The Circuit Court for Prince George's County affirmed the District Council's adoption of the Master Plan Amendments, ruling in part that the Land Use Article did not authorize judicial review of the District Council's adoption of the Master Plan. This Court reversed the circuit court in an unreported *per curiam* opinion. *Chaney Enters. Ltd. P'ship v. County Council of Prince George's County*, 2016 WL 4698144 (Md. App. Sept. 7, 2016). We rejected the jurisdictional challenge to the Mining Entities' suit and invalidated the Master Plan.

The District Council sought review by the Supreme Court, and the Mining Entities lodged a cross-petition for *certiorari*. One issue before the Supreme Court was whether the Mining Entities could seek judicial review of the Master Plan pursuant to Section 22-407 of the Land Use Article. The District Council argued before the Court that the 2013 Master Plan "merely sets land use policies ... and therefore is not subject to judicial review."

The Supreme Court rejected that argument. In passages that are relevant to the issue before us, the Court continued:

LU § 22-407 can readily be interpreted to mean that the General Assembly intended to authorize judicial review of any final decision the District Council has the authority to make—whether a planning decision or a zoning decision. Moreover, although the "scope of review by Maryland courts of the legislative decisions embodied in original zonings and comprehensive rezonings is quite narrow," **that scope broadens** when "a relevant ordinance or regulation, or specific zoning, subdivision, or other land use approval, make compliance with the plan recommendations mandatory. ... [T]he

Master Plan itself becomes a regulatory device, rather than a mere guide and recommendation.”

Chaney Enters., 454 Md. at 531 (emphasis added) (quoting *Zimmer, supra* and *HNS Dev., LLC v. People’s Counsel Balt. City*, 425 Md. 436, 457 (2012)). The Court concluded:

The District Council acknowledges that the Mining Entities will need to apply for special exceptions for sand and gravel operations. And § 27-317(a)(3) of the Prince George’s County Code (“PGCC”) requires that a special exception use may only be approved if “[t]he proposed use **will not substantially impair** the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan.” (Emphasis added.) **This county law creates the link between planning and zoning that elevates the Amendments to a regulatory device.**

Chaney Enters., 454 Md. at 532-33 (emphasis added).

It is pellucid that former Zoning Ordinance Section 27-317(a)(3), the provision noted by the *Chaney Enterprises* Court, is a close analog to the former Zoning Ordinance provision that is before us, Section 27-213(a)(2). Just as the Supreme Court ruled that Section 27-317(a)(3) “creates the link between planning and zoning,” Section 27-213(a)(2) does as well.¹¹

¹¹ Section 27-213(a)(2), with emphasis added, provides:

(a) Criteria for approval of the M-X-T Zone.

...

(2) Prior to approval, the Council shall find that the proposed location **will not substantially impair** the integrity of an approved General Plan, Area Master Plan, or Functional Master Plan and is in keeping with the purposes of the M-X-T Zone. In approving the M-X-T Zone, the District Council may

(continued)

Because Section 27-213(a)(3) elevates the General Plan, Subregion Master Plan and associated plans to the status of regulatory devices, these plans are mandatory and not merely advisory recommendations. We thus conclude that the ZHE erred in ruling to the contrary.

4.

BURDEN OF PROOF

Appellants complain that the ZHE improperly shifted the burden of proof to the Citizen-Appellants. They specifically maintain that the ZHE erred in this regard when she concluded that it “cannot find that approval of mixed-use development on the subject property will substantially impair” the applicable plans.

Although this is a close issue, we disagree with Appellants. At the outset, we are confident that the ZHE is presumed to know the law. As this Court has recently observed: “Judges are presumed to know the law[,]” and “[a]bsent an indication to the contrary, we must assume that judges apply the law correctly to the case before them.” *Bailey v. Happer*, 268 Md. App. 618, 638-39 (2026) (quoting *Hebb v. State*, 31 Md. App. 493, 499 (1976)).

include guidelines to the Planning Board for its review of the Conceptual Site Plan.

Similarly, Section 27-317(a)(3) relevantly provides that:

(a) A Special Exception may be approved if:

...

(3) The proposed use **will not substantially impair** the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan[]

Other factors militate against Appellants’ argument. The ZHE observed in her Decision, paragraph 6 in the “Conclusions of Law,” that the “Application must be found to comply with the requirements of Section 27-213 and the purposes of the M-X-T Zone found in Section 27-542.” Former Zoning Ordinance Section 27-142 dictates that the “burden of proof in any zoning case shall be the applicant’s.” During his opening statement at the second hearing, Applicants’ counsel emphasized that “[a]s an Applicant, as the Carozza family, as the Applicant in this matter, we have the burden of proof[.]” In their Post-Hearing Memorandum, Appellants asserted that “[t]he application of an M-X-T Zone to the subject property **will substantially impair** the integrity of the relevant comprehensive planning documents regarding their land use and environmental policies.” (emphasis added).

In rejecting this argument, the ZHE could reasonably conclude that she “cannot find that approval of mixed-use development on the subject property will substantially impair” the applicable plans and do so without shifting the burden of proof. Indeed, “we must take into account whatever in the record fairly detracts from the weight of the evidence offered by the [Applicants][.]” *Bhd. of R. R. Trainmen v. Balt. & Ohio R. Co.*, 248 Md. 580, 601 (1968). Indeed, in their reply brief, Appellants argue that the “record contains no evidence to demonstrate that the application of the M-X-T Zone to the Subject Property will not substantially impair the integrity of the relevant comprehensive zoning documents.” We are mindful that the ZHE found that “[t]he Opposition did not provide sufficient evidence to dispute [a finding regarding transportation].” Nevertheless, testing a proponent’s proof

by argument or evidence intended to undermine its case is not an exercise in burden-shifting, particularly on the record before us.

Accordingly, we see no merit to Appellants’ assertion that the ZHE disregarded the Zoning Ordinance provision regarding burden of proof or ignored Applicants’ counsel’s acknowledgment of that burden of proof. Based on the record, we decline to parse this language as Appellants contend and discern no error in this regard.

5.

SUBSTANTIAL EVIDENCE

Appellants vigorously assert that the ZHE’s decision is not supported by substantial evidence. On this record, we agree. Significant portions of the ZHE’s findings and conclusions are not supported by substantial evidence, and the ZHE’s interpretation of the Zoning Ordinance does not accord with applicable law.

This Court has recently elaborated on the contours of substantial evidence review:

We review an agency’s factual determinations and its decisions about mixed questions of law and fact (whether an agency has correctly applied law to the facts) under the substantial evidence standard of review. When doing so, our scope of review is “narrow and highly deferential.” This deference stems from our recognition that “the zoning agency is considered to be the expert in the assessment of the evidence, not the court.” We thus uphold a factual determination or mixed question determination by a local zoning board if it is supported by “substantial evidence[,]” i.e., adequate evidence for a reasonable mind to reach the same conclusion. This inquiry focuses on whether the conclusion the Zoning Board reached is supported by substantial evidence, and we will not disturb that conclusion merely because substantial evidence supporting a contrary decision may also exist.

In re HRVC Ltd. P’ship, 266 Md. App. 391, 424 (2025) (cleaned up).

As noted above, the ZHE provided several reasons why the approval of the Application will not “substantially impair the Functional Master Plans[.]” The ZHE initially credited the fact that the Applicants submitted a Natural Resource Inventory. The ZHE reasoned that the approval of the Natural Resources Inventory “satisfied the approving authorities regulated environmental; features are shown and will be protected.” It is unclear from the ZHE’s decision at this point how the resources will be protected, however.¹² The ZHE then explained why approval of the Application would not substantially impair either the General Plan or the Subregion 6 Master Plan.

As for the binding nature of the General and Master Plans, at the outset, the ZHE concluded that they are not strictly binding. For the reasons set forth above, we have adopted a contrary view. *See Chaney, ante*. Because we view the Plans as binding, we also conclude that the ZHE was bound to, but did not, adhere more closely to the Plans’ strategies and policies.

As for the location of Mixed-Use Developments, as noted, the ZHE concluded that “the goals/policies arguably impacted by the Application concerning location of mixed-use development urge that they be concentrated in Regional Transit Districts and Local Centers, not that they be restricted to those areas.” We disagree. This conclusion is not supported by substantial evidence, because given the emphasis in the plans on Regional Transit Districts and Local Centers, we conclude that there could be no reasonable

¹² The Natural Resources Inventory discovered a “regulated stream” with a length of 751 feet, and 31 “Specimen Trees.”

disagreement about how central and important these districts and centers are to the integrity of the plans. The ZHE’s conclusion is facile at best, because the plans repeatedly focus on Regional Transit Districts, emphasizing that development should “[l]imit future mixed-use land uses outside of the Regional Transit Districts[,]” limit “expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers[,]” and “[c]oncentrate medium-to-high-density housing development in Regional Transit Districts and Local Centers[.]” It is clearly important to preserving the integrity of these Plans that the purposes of the M-X-T Zone are to “promote the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, **major transit stops**, and designated General Plan Centers so that these areas will enhance the economic status of the County and provide an expanding source of desirable employment and living opportunities for its citizens[.]” We conclude that the ZHE improperly sets no limits on the placement of this type of land use. Again, the ZHE’s determination is not supported by substantial evidence, because, given the General Plan’s emphasis on the location of the requested type of development in the vicinity of Regional Transit Districts and Local Centers, there is no set of facts that would justify the placement of an M-X-T Zone beyond that vicinity. The question as to whether M-X-T development could properly be placed on the Property is not fairly debatable.

The ZHE concluded that “both Plans also support context-sensitive infill development (General Plan) and low-to moderate-density development unless it is part of a mixed-use development (Subregion 6 Master Plan), indicating that the District Council

might still consider mixed-use that falls outside of these Districts and Centers.” The ZHE overlooks the fact that the “infill” would be “context-sensitive,” that is, relevant to the existing residential neighborhoods. Moreover, the Staff Report indicates that “Plan 2035 indicates that medium-to-high density housing, mixed-use and commercial development in this area of Prince George’s County is to be located within the Westphalia Town Center ... and other regional transit districts and local centers, and nowhere else.”¹³

We conclude that the ZHE’s finding that the District Council “might still consider mixed-use” that is located outside of Regional Transit Districts and Local Centers is not supported by substantial evidence on this record because it does not focus on the merits of this Application. Moreover, we take judicial notice of Policy 1 of the “Housing and Neighborhood – Policies and Strategies” of Plan 2035, which relevantly provides that “medium to high-density housing development” should be concentrated in “Regional Transit Districts and Local Centers with convenient access to jobs, schools, child care, shopping, recreation, and other services[.]” Given the mandatory nature of Plan 2035, we are unable to discern on this record how the District Council “might” consider the placement of mixed-use development in abrogation of the Plan’s policies.

¹³ The phrase “and nowhere else” does not appear in Plan 2035. Although the Staff overemphasizes the Plan’s policy on the location of this housing, we do not regard this phrase as detracting from the Plan 2035 emphasis on the placement of medium-to-high-density housing” in Regional Transit Districts and Local Centers.

The ZHE’s opinion, that the District Council “may not consider the ‘fit’ of this [R-R Zone] during the upcoming Countrywide Map Amendment ... [and] should be authorized to grant the request [in the future,]” is speculative and does not explain why the ZHE finds that the Application should be approved at this time and under the circumstances of this rezoning application.

Turning to the ZHE’s application of the Section 27-542(a) purposes of the M-X-T Zone, the ZHE overlooks the fact that the rezoning of the Property for M-X-T use will not “promote the effective and optimum use of transit and reduce automobile use[.]” The ZHE’s finding that the Rezoning would “further[] the purposes of the M-X-T Zone” overlooks the fact that the subject M-X-T rezoning would not promote orderly development in the vicinity of “major transit stops, and designated General Plan Centers.”¹⁴

The ZHE does not specifically address the Planning Staff’s view, as to M-X-T Purpose 3, Section 27-542(a)(3), that the Rezoning of the Property in this area would “scatter[] M-X-T-zoned properties in inappropriate areas[.]” Nor does the ZHE adequately

¹⁴ Appellees’ expert Michael Lenhart addressed the need for locating an M-X-T zone in the vicinity of major transit stops by claiming that “[t]ransit doesn't just mean potential rail and bus transit. There are park-and-ride facilities and other things that could serve as transit-type uses. And there are other [M-X-T] zoned properties even adjacent to this use right around the corner of the 223 and Marlborough Pike intersection.” He does not address whether a “park-and-ride” facility would encourage, and not limit, automobile use. We also take judicial notice of the Plan 2035 definition of “Transit Oriented Development” as “Land uses that are sited, designed, and combined to maximize transit, particularly rail, ridership.” (Plan 2035, Appendix B, p. 293).

address M-X-T Purpose 4, Section 27-542(a)(4), which reads that an M-X-T Zone should “promote the effective and optimum use of transit and reduce automobile use[.]” The failure to adequately address this effect detracts from the strength of the Applicants’ case as well as the ZHE’s decision.

Although the ZHE concluded that “the site plan approval process can ensure appropriate horizontal and vertical mix of uses and a functional relationship among the uses within a distinctive visual character and identity[.]” she overlooked the Planning Staff’s opinion that the Rezoned Property would “not blend with adjacent uses,” even if it blended internally. The failure to address the effects of the placement of an M-X-T Zone amid a Rural-Residential community further detracts from the strength of the ZHE’s decision. In the final analysis, the ZHE’s approval of the rezoning of the subject Property to mixed-use-transportation permits a far more intense use of the tract, and allows for this use apart from the Regional Transit Districts and Local Centers.

In general, we agree with Appellants that Applicants have not provided substantial evidence to support the ZHE’s decision. Mr. Silberholz, who appears to have been one of the Applicants’ more important witnesses, primarily emphasized that the “application is in keeping with the general purposes of the zoning ordinance at section 27102[.]” Although, contrary to Appellants’ argument that he ignores the policies set forth in Section 27-542(a), Mr. Silberholz incorporates some of those policies, *see, e.g.*, January 15, 2020 Transcript at 165 (paraphrasing standard 2); Transcript at 166 (standard 3), he briefly summarizes the general policies and purposes articulated in Section 27-102 and, to a lesser extent, Section

27-542(a), but does not focus on all of the purposes of the M-X-T zone set forth in Section 27-542(a). Neither does the ZHE in her Remand Decision.

In view of our holding that the District Council’s decision is not supported by substantial evidence, we must reverse the decision of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT REVERSED. COSTS TO BE
PAID BY APPELLEES.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0593s23cn.pdf>