Circuit Court for Baltimore County
Case No. C-03-CV-22-005085

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0712

September Term, 2024

SAMUEL AND MICHAELINE YAFFE,
ET AL.

v.

RAYMOND AND SANDRA FRANK,
ET AL.

Leahy,
Kehoe, S.
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.
Concurring and Dissenting Opinion
by McDonald, J.

Filed: May 1, 2026

Since 2018, Sandra and Raymond Frank, through their wholly-owned entity, Inverness Brewing, LLC, have operated a "farm brewery" on their farm in rural northern Baltimore County. The brewery was first conceived by Ms. Frank after she developed an interest in craft beer brewing and hop cultivation. The Franks then explored opening a brewery as a method of generating "extra income" for the Franks' farm. After discussing the idea with their neighbors and finding that many supported it, the Franks filed a petition for a special exception under the Baltimore County zoning laws, seeking permission to establish a farm brewery on their farm under the name "Inverness." The petition included a site plan for the proposed brewery, among other exhibits.

An Administrative Law Judge ("ALJ") for the Office of Administrative Hearings for Baltimore County held a hearing on the Franks' requested special exception on August 2, 2017. Several of the Franks' neighbors, along with other members of the public, testified and questioned Ms. Frank concerning the Franks' plans for the brewery. Although some of the individuals present at the hearing strongly supported the Franks' proposal, others expressed concerns about traffic, noise, odors, and other nuisances that might accompany the brewery. Samuel Yaffe, a neighbor of the Franks, and Lynn Jones, the President of the Sparks Glencoe Community Planning Council, were among those present at the hearing who expressed concerns.

In an opinion and order entered on August 8, 2017, the ALJ granted the Franks' petition for a special exception (the "2017 Special Exception Order"). The special exception was granted subject to certain conditions that included, among other things,

limitations on the amount of beer the Franks could brew each year, the brewery's hours of operation, and the number of "temporary promotional events" the brewery could host each year. The order provided that the Franks could seek modifications to the restrictions in the order, upon a showing of good cause, after the brewery had operated for one year. No appeal from the 2017 Special Exception Order was filed, nor have the Franks filed a petition to amend the special exception.

In December of 2019, Samuel Yaffe and his wife Michaeline, who live across the street from the Franks, and the Sparks Glencoe Community Planning Council (collectively, the "Appellants") filed a petition requesting a "special hearing" under section 500.7 of the Baltimore County Zoning Regulations (the "BCZR"). In their petition, the Appellants sought interpretation of certain provisions and conditions contained in the 2017 Special Exception Order, including what constitutes "temporary promotional events," along with a determination as to whether the Franks were operating Inverness in violation of that order and various provisions of the BCZR.

After a public hearing, the ALJ presiding issued an opinion and order interpreting the relevant provisions of the 2017 Special Exception Order and declaring, among other things, that the "huge crowds and loud music [on the property] on a regular basis . . . is contrary to the spirit and intent of [the 2017 Special Exception Order] and the 'agricultural support' exception use." The Franks and Inverness Brewing, LLC (hereinafter, the "Franks" or "Appellees") appealed the ALJ's order to the Baltimore County Board of Appeals (the "BOA"). After conducting a *de novo* public hearing, the BOA determined

that the Inverness brewery operation was not in violation of the 2017 Special Exception Order and conditions therein, but that the Franks were in violation of the site plan filed in the special exception case. In its order, the BOA imposed additional conditions, some of which modified the 2017 Special Exception Order, and ordered the Franks submit a new site plan incorporating those modifications.

The Appellants petitioned for judicial review in the Circuit Court for Baltimore County, and that court affirmed in a May 12, 2024 memorandum opinion. The Appellants then filed this timely appeal and present four questions which we recast and reorder as follows:[1]

I. Did the BOA err *by imposing* additional conditions to the 2017 Special Exception Order, including requiring the Franks to file an amended site plan without filing a petition to amend the special exception, and by *not imposing*, as a condition of approval, that retail sale of beer at the brewery be "accessory"?

II. Was the BOA's definition of an "event" as an occasion when the brewery is open until 10 p.m. based on an erroneous conclusion of law, and was there substantial evidence in the record to support the

[1] In their brief on appeal, Appellants present their question as follows:

I. "Did the Board of Appeals err in defining an 'event' only as an occasion when the brewery is open until 10 p.m.?"

II. "Did the Board of Appeals err in not imposing, as a condition of approval, that retail sale of beer at the brewery be 'accessory'?"

III. "Did the Board of Appeals err in finding that the parking area used by the Franks is not violative of the 2017 Plan and 2017 Order?"

IV. "Did the Board of Appeals err in allowing the Franks to file an amended site plan without complying with the standard procedure for amending special exceptions?"

BOA's finding that the parking area used by the Franks does not violate the 2017 Special Exception Order?

We conclude that the BOA did not have the authority, in the posture of the underlying proceedings, to modify the 2017 Special Exception Order. Further, the BOA did not adequately explain (1) its conclusion that the operation of Inverness does not violate the 2017 Special Exception Order, but *does* violate the 2017 site plan and (2) which of the conditions imposed in the underlying order are meant only to clarify, as opposed to modify, the 2017 Special Exception Order. Accordingly, we vacate the BOA's order and remand this case for the BOA to issue a decision consistent with this opinion.

For guidance on remand, we address the remaining issues raised by the Appellants in this appeal. As further explained below, we conclude that the BOA's interpretation of what constitutes a "temporary promotional event" was not incorrect, and that there was substantial evidence in the record to support the BOA's finding that the parking area used by the Franks does not violate the 2017 Special Exception Order. Furthermore, as the BOA did not have the authority to modify the 2017 Special Exception Order and, in any event, retail sales of beer at a farm brewery must by law be accessory, it follows that the BOA did not err by declining to impose a requirement that retail sale of beer at the brewery be "accessory."

BACKGROUND

Special Exception Petition and 2017 Hearing

Sandra and Raymond Frank have owned a 92-acre farm located at 2800 Monkton Road in Baltimore County, Maryland since 2001. In June of 2002, the Franks received

$368,356.80 from Baltimore County for placing that farm in an "agricultural preservation easement." Many years later, in 2017, the Franks filed a petition for a special exception to establish a farm brewery on their farm, and simultaneously sought approval from the Agricultural Preservation Advisory Board due to the easement.

A hearing was held before an ALJ on the Franks' petition for a special exception on August 2, 2017. At this hearing, Sandra Frank described her farm and detailed her plans for operating a Class 8 farm brewery on the property.[2] Ms. Frank related that when she and her husband purchased the farm, it was "in severe need of help" and that they "redid the barns, redid all the wood, regraded everything, just made it beautiful." She stated that after moving to the farm, she began to "dabble[] in brewing beer" and attend local breweries. She eventually attended a course on growing hops and thereafter began growing hops on her farm.

Ms. Frank explained that she had applied for a Class 8 brewer's license at her son's suggestion and hoped to locate a "very small system" of five barrels[3] for brewing beer "[i]n a few of the stalls in the" farm's horse stables. She stated that the brewery would be a "hobby" and a way to "bring extra income into the farm." Ms. Frank planned to construct a "tasting room" in "a big, beautiful barn" that the Franks had remodeled for their son's wedding, with "[f]ive, maybe seven" taps for beer and outdoor seating space "[j]ust in front

[2] Class 8 farm breweries are licensed in Maryland under Maryland Code (2016, 2024 Repl. Vol.), Alcoholic Beverages and Cannabis Article ("ABC") § 2-210.

[3] According to Ms. Frank, five barrels would hold a total of 155 gallons of beer. She testified that she would "make one batch, probably every Monday."

of the [] barn and in front of the stable[.]" She said that the brewery would be "very family-friendly" with games like bocce and badminton.

The site plan that the Franks had filed with their petition for a special exception showed the parking areas. When asked at the hearing where patrons of her proposed brewery would park, Ms. Frank pointed to an existing parking lot with "thirty-five legal spaces" and noted that, if necessary, four additional "paddocks" right behind the parking area could easily accommodate more cars. She further emphasized that two of these paddocks would be "very, very easy" to access for overflow parking. Ms. Frank also stated that she only planned to wholesale distribute her beer on a "very small" scale, and that if demand increased, she would give another local brewery her recipes rather than brew an increased volume of beer herself. Ms. Frank said that she planned to host "promotional events" at the brewery, including a pumpkin picking or a "farm fest" at which local farmers would sell their crops. She averred that, although the paddocks behind the parking lot would be used for overflow parking at these events, there were also "plenty of open fields" at the farm that could be used for parking.

At the hearing, Ms. Frank was questioned by several community members about the planned scope of her operation. In response to a question from a neighbor attending the hearing, Ms. Frank stated that the agricultural preservation easement prevented her from building anything in connection with the brewery, although she might be allowed to erect another barn for the farm. She stated that she was unsure whether the brewery operation might be expanded by a subsequent owner of the farm, but that she had no plans to "expand

into a much larger commercial . . . program[.]" Her counsel also stated that "if there's ever any change in the future" from what was shown on the plan, the Franks would have to "file for another hearing" by means of a petition to amend the special exception. The ALJ agreed with counsel's representation and stated that "there would be, at a minimum, a hearing before [changes] would occur." In response to concerns about the odors emanating from the proposed brewery, Ms. Frank stated that her five barrel system would be "very small" and smell like "baking bread." Although she stated that she would have music at her promotional events, she expressed that the music would "probably not" be loud. She explained that she planned to operate the brewery each week from 12:00 p.m. to 8:00 p.m. on Thursday through Sunday, primarily as a "fun retirement thing" for her and her husband. Still, Ms. Frank declined to retract her Class 8 license application or self-impose a permanent cap on the production capacity of her brewing system at five barrels.

The Franks called David Martin, a "registered landscape architect," as an expert witness. Mr. Martin explained that he had prepared a plan of the Franks' farm, using "Baltimore County GIS data" retrieved from the County's website and overlaying "a prescribed list of things that the zoning office wants to see[,]" including "things like adjacent property owners, various standard notes and labeling . . . of the actual structures within the property," and "a zoning description, which is basically the outline of the property." Mr. Martin stated that he had visited the Franks' farm three times and that based on his assessments, the proposed farm brewery would not "be detrimental to the health, safety or general welfare of the locality" because it would be "an accessory use . . . to the

farming operation." Mr. Martin further testified that "the proposed use at this particular location would [not] have any adverse effects above and beyond those inherently associated" with such use, and that the proposed use would be "no worse here than any other RC-2 zone that meets the criteria that's required for this Class 8" brewery. He said that the farm was "sized right for the small operation [the Franks] were talking about."

The ALJ gave the attendees at the hearing an opportunity "to provide testimony concerning their concerns about the case[.]" Several neighbors and other individuals opposing the special exception expressed concerns about traffic, noise, odors, and disruption to the rural character of the local area. Some opined that a special exception allowing a farm brewery appeared at odds with the fact that the same land was subject to an agricultural preservation easement. Some stated their apprehensions about the potential expansion of brewery operations in the future. Other individuals present, including some neighbors, expressed their support for the proposed brewery.

The Franks' attorney presented a closing statement, arguing that the brewery would have "no adverse effects that are above and beyond or worse than those that are inherent in the use" of the property as a Class 8 farm brewery. The ALJ then concluded the proceedings, announcing his intent to issue "a written order" within "a week to ten days," and provide copies of the order to everyone present at the hearing who had signed a sheet requesting a copy.

2017 Special Exception Opinion and Order

On August 8, 2017, the ALJ issued an opinion and order granting the Franks'

requested special exception for use of their farm as "a Brewery, Class 8, including accessory retail and wholesale distribution of beer produced on the premises, and temporary promotional events, such as beer tasting or public gatherings associated with the brewery." The 2017 Special Exception Order imposed the following conditions on the operation of the brewery:

> 1. [The Franks] may apply for necessary permits and/or licenses upon receipt of this Order. However, [the Franks] are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, [the Franks] would be required to return the subject property to its original condition.
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> 2. [The Franks] must comply with the ZAC comment of DEPS, a copy of which is attached hereto.[4]
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> 3. Prior to issuance of permits [the Franks] must submit for approval by the [Department of Planning] a schematic plan showing the location of any dumpster used for this facility, which must be screened in accordance with the requirements of the landscape manual.
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> 4. The brewery shall be permitted to produce, sell and/or distribute no more

[4] This condition refers to comments provided by the Department of Environmental Protection and Sustainability ("DEPS") at a June 19, 2017 meeting of the Baltimore County Zoning Advisory Committee ("ZAC"). Those comments require the Franks to submit a "water usage letter" to "Ground Water Management [] detailing the size and scope of the proposed brewery operation along with an estimate of the volume (Design Flow) and strength of wastewater that will be generated from the brewery operation and the 'promotional events[,]'" submit "[a]n application for Soil Percolation Testing" to the county "indicating the proposed sewage disposal area that will be sufficient to support the approved Design Flow[,]" show "[e]xisting and proposed wells" on the site plan and "demonstrate[] that the proposed well to be used for the brewery has adequate yield and water quality to support the proposed use[,]" and "apply for a water appropriation permit or exemption through the Maryland Department of the Environment, Water Supply Program."

than 5,000 barrels of malt beverage per year.[5]

5. The hours of operation shall be restricted to Thursday-Sunday from 12 noon to 8:00 p.m., although certain special events (discussed below) may be held Thursday-Sunday from 12 noon to 10:00 p.m.

6. [The Franks] may hold no more than eight (8) temporary promotional events or gatherings associated with the brewery per year.

7. After the proposed brewery has been in operation for one year, the restrictions contained herein are subject to modification following a public hearing, upon a showing of good cause.

There is no indication in the record that the 2017 Special Exception Order was appealed, or that the Franks ever filed a petition to amend the special exception or modify the restrictions in the order pursuant to paragraph 7.

Petition for Special Hearing and 2021 ALJ Opinion and Order

More than two years later, on December 12, 2019, the Appellants filed a petition for special hearing pursuant to BCZR § 500.7. They set forth ten questions for consideration:

1. Whether the events/gatherings that have been held at the subject property constitute 'temporary promotional events or gatherings' under the [2017 Special Exception Order]?

2. Whether the property owner has held more than the eight (8) 'temporary promotional events or gatherings associated with the brewery per year' permitted under the [2017 Special Exception Order]?

3. Whether the use of the subject property otherwise complies with the [2017 Special Exception Order]?

4. Whether good cause exists to modify the restrictions in the [2017 Special Exception Order]?

[5] This restriction was below the legal limit for a farm brewery. Presumably, the ALJ imposed this restriction in light of Ms. Frank's testimony that it would be "insane" for the proposed brewery to produce the amount of beer allowed by law for a farm brewery.

5. Whether the use of the subject property is a "Brewery, Class 8" as defined in section 101.1 of the BCZR?

6. Whether the use of the subject property is an "agricultural support use" under section 1A01.2.C.3[1] of the BCZR?

7. Whether the use of the subject [property] is a "Brewery, Class 7 or 8" under § 1A01.2.C.3[1].j of the BCZR?

8. Whether the events/gatherings that have been held at the subject property constitute 'temporary promotional events, such as beer tasting or public gathering associated with the brewery' under section 1A01.2.C.3[1].j of the BCZR?

9. Whether the use of the subject property otherwise complies with the BCZR?

10. Whether the use of the subject property otherwise complies with applicable policies, laws, and regulations?

The Franks then filed a motion to dismiss, arguing that the petition was barred by the doctrine of res judicata. An ALJ, who was not the same judge who had issued the 2017 Special Exception Order, denied the motion to dismiss, stating that he was "persuaded that a Special Hearing under BCZR §§ 50[0.]6 and 50[0.]7 is appropriate for the limited purpose, as stated by [the Appellants], 'for an *interpretation* of [the 2017 Special Exception Order] and the regulations on which it is based.'" The ALJ then held a hearing on the petition on October 27 and 28, 2020.

At the hearing, the parties presented voluminous exhibits and witness testimony, much of which alleged that Inverness's operations had far exceeded the proposed scope of brewery described by Ms. Frank in 2017 and by the 2017 Special Exception Order. Among the witnesses was Caroline Owens, who testified that she lives about a quarter mile from Inverness and expressed her belief that the Inverness operations got "out of hand."

On January 21, 2021, the ALJ issued an opinion and order interpreting the 2017 Special Exception Order. At the outset, the ALJ noted that:

> [A] special hearing under BCZR § 500.7 is in the nature of a declaratory judgment action. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The purpose of this hearing was to interpret [the 2017 Special Exception Order] and to determine whether or not Inverness is abiding by the terms of it.

The ALJ then observed that during the 2017 special exception hearing, Ms. Frank explicitly testified that she "intended to operate a 'small system' brewery" with "only one 'small tasting room,' 'few, if any delivery trucks[,]'" and "'family friendly' neighborhood special events" with "live music . . . but 'probably not loud music[.]'" The ALJ also observed that "the Site Plan submitted in the prior hearing shows only 37 parking spaces directly adjacent to" the brewery, along with "a small auxiliary parking lot described as 'existing farm equipment parking paddock.'" He noted that the 2017 Special Exception Order "authorized Inverness to host 8" temporary promotional events per year, but that neither state nor county law defined "what is meant by a 'brewery promotional event,' or a 'temporary promotional event[.]'"

The ALJ reasoned that, based on the evidence presented at the special exception hearing, the special exception judge in 2017 did not have "any reason to believe that there would be hundreds of cars parked in the 'agricultural fields' each weekend, [] live amplified rock bands[,] . . . Port-a-Pots in the open fields, or supplies delivered by the tractor-trailer load." The ALJ observed that "the photographic and video evidence clearly document huge crowds and loud music on a regular basis," and that this was "contrary to

the spirit and intent of [the 2017 Special Exception Order]." The ALJ also determined that "the Inverness brewery operations ha[d] become the primary, if not sole, use of the farm[,]" which contradicted language in BCZR § 1A01.2.C.31.j and was not what the special exception judge had "envisioned" at the time of the 2017 Special Exception Order. The ALJ pointed out that under applicable State law, namely, Maryland Code (2016, 2020 Supp.), Alcoholic Beverages Article § 2-210(j), a Class 8 licensee is permitted to host a 3-day 'Brewery Promotional Event' up to 12 times a year. According to the ALJ, it would "completely warp[] the plain meaning of both the state and county laws, and [] make[] the 8[-]event limit in the [2017] Order meaningless" if there was not some distinction between the activities the Franks could conduct on normal business days and those they could conduct at "temporary promotional events."

The ALJ interpreted the 2017 Special Exception Order as imposing the following conditions on the operations of Inverness:

1. That Inverness is permitted to be open from noon until 8 p.m. Thursday through Sunday.

2. That Inverness is permitted to host eight (8) "temporary promotional events or gatherings associated with the brewery per year," and that during these events they can be open from noon until 10 p.m.

3. That based on state law these events can each last up to three (3) days, for a total of twenty[-]four (24) "event" days per year.

4. That Inverness is permitted to have live, amplified electric music at these temporary promotional events, and is permitted to have unamplified, acoustic music at all other times.

5. That Inverness is permitted to park cars in the agricultural fields during these temporary promotional events but shall at all other times limit vehicle parking to the areas depicted on the Site Plan introduced in [the

2017 Special Exception Order], i.e., the lot adjacent to the Stall structure and the auxiliary farm equipment parking paddock.

6. No further structures shall be constructed to house Inverness brewery operations, and no additional brewery equipment shall be permitted outside the stall and barn structures. No Port-a-Pot type bathroom facilities shall be used except during the 8 temporary promotional events.

7. Inverness shall remain limited to the production of no more than 5,000 barrels of beer per year.

On January 25, 2020, the Franks filed a motion for reconsideration, principally seeking clarity on where cars could be parked on the property. The Appellants filed oppositions to the Franks' motion, as well as cross-motions for reconsideration. Although the ALJ denied the Franks' and Appellants' motions, he granted Owens's motion and issued the following clarification to his initial order:

> In their Motion for Reconsideration the Petitioners urge that Sandra Frank testified at the first hearing that for the "day to day" operations at Inverness that in addition to the existing 35 space lot depicted on the Site Plan, that they intended to have cars park in all four of the paddocks north of that existing parking area.
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> After examining the excerpts of Ms. Frank's testimony that are attached to the Motion, and considering the arguments of all counsel, I believe a more accurate interpretation, when viewed with the rest of the evidence, is that Ms. Frank[] testified that they would use the two nearest paddock areas for overflow parking during special events. And that during normal operations at this small[-]scale farm brewery the existing lot would accommodate all the necessary parking.
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> THEREFORE, IT IS ORDERED this 16th day of February, 2021 by this Administrative Law Judge, that the [2017 Special Exception Order] is interpreted as follows:
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> ***
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> 5. That, (i) during regular business days, Inverness is permitted to park cars only in the pre-existing parking lot area depicted on the site plan introduced in [the 2017 case] (i.e., the area behind the existing barn

> structure containing room for +/- 35 parking spaces), and (ii) during temporary promotional events, Inverness is also permitted to park cars in the two horse paddocks immediately north of that lot, and nowhere else.

2022 Board of Appeals Hearing

The Franks filed timely appeals to the BOA from the Special Hearing ALJ's initial opinion and order as well as from the order issued upon the motions for reconsideration. The BOA held a hearing on June 8, 2021, to decide several preliminary motions filed by the Franks.[6] The BOA then conducted a multi-day *de novo* public hearing on the Franks' appeal on April 26, April 27, May 11, and May 12, 2022.

The Appellants first called Sandra Frank as a witness to review testimony she gave in the 2017 special exception hearing in light of subsequent events. She confirmed that the "parking lot" behind the barn had been "expanded" since 2017 and that she had added walk-in refrigeration units for beer storage and a food truck to the property. She also confirmed that Inverness had "three bars[,]" not all of which were open at any given time. Ms. Frank explained that she and her husband had installed an "agricultural use road" after the special exception was granted, primarily to support the agricultural work the Franks did on their farm. She confirmed, however, that she had begun directing patrons to exit via this agricultural use road "for safety reasons."

[6] The Franks' preliminary motions included a motion to dismiss the Yaffes' petition for special hearing, a motion for summary judgment, and a motion to quash certain subpoenas duces tecum filed by Richard Reinhardt, a neighbor. The BOA denied the motion to dismiss and motion for summary judgment, and "deferred on" the motion to quash until the conclusion of the hearing, ultimately determining that the matter was moot.

Ms. Frank further acknowledged that she did not "limit[] parking on non-event days to the thirty-five space" lot indicated on the site plan the Franks submitted along with their petition for special exception, but clarified that she had testified during the 2017 case that she intended to use four paddocks on the property, which could accommodate "like four hundred" cars, for overflow parking. She stated that the number of people at the brewery was "completely . . . weather dependent[,]" noting that on a cold winter day, there might be only "nine cars in [the] parking lot all day long[,]" while on a "beautiful sunny day," there might be "more than one hundred to one hundred and fifty people per day[.]" She explained that Inverness had added "a music meter" to monitor the volume of the music at the brewery and avoided loud music by permitting only "singles, duos, trios" that do not use drums to perform. Ms. Frank also testified that, since its opening, Inverness never hosted more than eight events per year as required by the 2017 Special Exception Order.

Samuel Yaffe, who testified next, recounted that he heard live amplified music from his home "more than eight times per year[.]" Nevertheless, Mr. Yaffe acknowledged that he had complained about noise at the Franks' farm before Inverness even opened and had expressed concerns regarding potential increases in notice and traffic during the 2017 special exception hearing.

The Appellants called Joseph Wiley, an employee of the Department of Planning responsible for inspecting the use of variances, special exceptions, and easements. He testified that he had visited Inverness in 2017 and had recommended that the Agricultural Land Preservation Board ("AG Board") approve the Franks' request to operate the

proposed farm brewery on land subject to the conservation easement on their property. He further testified that the Franks had requested and been preliminarily approved to use two acres of their property for parking on a day-to-day basis, although the AG Board was still seeking the Franks' compliance with certain conditions before granting final approval. Mr. Wiley clarified that the AG Board's parking concerns were focused on the Franks' conservation easement, and not on any zoning-related issues. To that point, Mr. Wiley stated that the Franks' neighbors had voiced zoning-related concerns about Inverness at AG Board proceedings, and that AG Board staff have reminded these neighbors that their zoning concerns "are not applicable" in those proceedings.

Next, the Appellants called Renee Hamidi, Executive Director of the Valleys Planning Council, a nonprofit organization engaged in land-preservation efforts in Baltimore County. Ms. Hamidi explained that in a previous role with the Manor Conservancy, another land preservation organization, she was asked to investigate the activities and events that had been taking place at Inverness since its opening. She took screenshots of Inverness's Facebook page that showed advertisements for "events" with cover charges, beer releases, and musical performances. Ms. Hamidi also testified about photos and videos that were introduced that she, her friends, and the Yaffes had taken of Inverness's operations. Inverness's Class 8 farm brewery license and requests for event permits, which Ms. Hamidi obtained through Public Information Act requests filed by the Appellants' counsel, were also introduced into evidence. Ms. Hamidi testified that there were several days when Inverness had labeled activities at the brewery as "events" on their

Facebook and website but had not obtained an event permit. She stated that the "only difference that she could find" between the activities that occurred on days for which an event permit had been obtained and the activities that occurred on other days was "that permitted events went on until 10:00 p.m."

Caroline Owens testified on her own behalf. She said that she had attended the hearing before the ALJ in 2020 to voice concerns about the volume of the music at the Franks' property. She stated that after the ALJ's 2021 opinion and order, the music ceased to be "an issue" for her, but that she became concerned about the "unintended consequence" of increased brewery traffic on J.M. Pearce Road, which runs directly in front of her house. She also described construction vehicles conducting "major earth moving" at the Franks' farm in March and April 2021 and using J.M. Pearce Road to transport soil. During the hearing, the parties stipulated that the construction Ms. Owens testified about was not connected to the brewery. Nevertheless, the Franks' counsel stated that the Franks were "absolutely willing to place a gate close to J.M. P[ea]rce Road . . . to ensure that there's . . . no brewery traffic at all in and out of the J.M. P[ea]rce entrance" to the Franks' farm.

Adele Reinhardt, another petitioner and neighbor of the Franks, testified that although she had originally been in support of Inverness in 2017, she grew frustrated with brewery traffic in front of her house on Markoe Road shortly after Inverness opened in 2018. Ms. Reinhardt described crowds of hundreds of people and introduced photos and videos she took of traffic on Markoe Road.

The Franks called several expert witnesses to support their argument that the brewery comported with the 2017 Special Exception Order and County regulations. They called Kevin Atticks, the Executive Director of the Brewers' Association of Maryland, who was accepted by the BOA as an expert in "farm brewery operations." Mr. Atticks explained the development of the law governing farm breweries in Maryland. He testified that he had visited "[a]t least twenty" farm breweries, in both professional and personal capacities, and that operations at Inverness were "typical" compared to the other farm breweries he had visited. Mr. Atticks testified that state licensing law no longer addresses promotional events or the need to obtain a permit for these.

The Franks called two witnesses concerning traffic and noise levels at Inverness. Michael Lenhart testified about traffic pattern studies he had conducted at Inverness and stated that his "level of service" analyses indicated good traffic conditions around the brewery throughout its hours of operation. Josh Curley testified that he had conducted an assessment of the noise level during Inverness's hours of operation at various locations on the Franks' property, and that noise levels never exceeded the limits specified in the Code of Maryland Regulations ("COMAR").

Several individuals living close to Inverness also testified in support of the brewery and stated that noise and traffic were not concerns for them. Several other individuals living close to Inverness testified, to the contrary, that they had concerns about traffic congestion and noise at the brewery, and that the brewery had "turned into a circus" right after the COVID-19 pandemic began.

The Franks' son, Ryan Frank, testified that he had been involved with the farm since the Franks purchased it, and had been involved with Inverness since the inception of the brewery. He explained the layout of the property and emphasized that it was used as a working farm in addition to a brewery. He also testified that the brewery had installed noise meters in an effort to keep within the limits described by Josh Curley and had voluntarily limited customer parking during regular operations to a two-acre portion of the parking pad and paddocks described by Ms. Frank during the 2017 special exception hearing.

At the conclusion of the hearing, the BOA invited the parties to submit memoranda in lieu of closing arguments. The BOA reconvened on July 12 for a public deliberation on the petition for special hearing.

Board of Appeals Order

On August 26, 2022, the BOA issued an opinion and order in which it found, for "the reasons discussed" in its opinion, that

> the subject property operates as a Brewery, Class 8, pursuant to BCZR 1A01.2.C.30.j, and the operation is not in violation of the [2017 Special Exception Order], subject to the conditions therein. However, the Board f[inds] that the Respondents/Owners are in violation of the site plan filed in that case.

The BOA recognized at the outset of its discussion that "farms are income producing commercial businesses," and that "[a]gricultural operations often create noise, traffic and odors." "No one living in the RC zones," the BOA observed, "can claim an agricultural

operation constitutes a nuisance, if it complies with BCZR § 1A01.5" (addressing inconveniences arising from agricultural operations).

Turning to the issues raised by petitioners regarding Inverness, the BOA concluded that "the BCZR require[s] *minimum* parking to be provided – rather than a maximum limit on parking" and reasoned that the Franks' use of their paddocks "to provide additional parking, particularly if managed by attendants, could mitigate traffic queuing on the local roads." The BOA found that, "[t]o the extent traffic and noise are incident to" the use, "these are inherent in the operation of a farm brewery. . . . Most, if not all special exception uses have such adverse impacts." (citing *Montgomery County v. Butler* 417 Md. 271 (2010)).

Although the BOA determined that the operation of Inverness does not violate the conditions imposed by the 2017 Special Exception Order, the BOA found that "site and building modifications have occurred that are not reflected on the site plan approved in 2017, and to that extent, Inverness is in violation of the approved site plan." Despite emphasizing that its decision was "limited to the interpretation of whether the operation of the brewery violates the use as granted and as limited in" the 2017 Special Exception Order, the BOA concluded that it could impose additional conditions under BCZR § 502.2.[7] In its order accompanying the opinion, the BOA stated that:

[7] Although the parties do not raise this issue on appeal, as we explain in our discussion, BCZR § 502.2 applies only in cases where the "Zoning Commissioner or the [BOA], upon appeal" *grants* a special exception. The instant case arose from the (Continued)

ORDERED that the decision of the [ALJ] in Case No. 2017-0327-X dated August 8, 2017 shall be affirmed subject to the following modifications and conditions: [8]

1. Condition No. 4 from the 2017 [Special Exception] Order shall be modified, as follows: "The brewery shall be permitted to produce, sell and/or distribute no more than 2,500 barrels of malt beverage per year";

2. A promotional event (Event) is an occasion when the brewery is open until 10:00 o'clock p.m., rather than the otherwise permitted 8:00 o'clock p.m. closing; such Events are limited to no more than eight (8) per year, each lasting up to three (3) consecutive days;

3. Music is permitted, but ~~loud~~ amplified music is not permitted;[9]

4. Retail sales other than beer products shall be limited as accessory;

Appellants' 2019 petition for special hearing under BCZR § 500.7, which did not involve the granting of a special exception. Accordingly, BCZR § 502.2 does not apply.

[8] There was no appeal filed with the BOA from the 2017 Special Exception Order, and therefore, as we explain in our discussion, the BOA could not "affirm" the 2017 Special Exception Order nor impose additional conditions at the request of a third party after the time for filing appeals in the special exception case expired. The procedural posture of the case was more correctly explained by the BOA in the first paragraph of its opinion where it stated:

> This matter comes before the [BOA] on an appeal of a January 21, 2021 Opinion and Order of the [ALJ] and a February 16, 2021 Order on Motion for Reconsideration . . . regarding a Petition for Special Hearing to determine if the [ALJ] Order of August 8, 2017 . . . and the uses approved as a special exception for a Class 8 Farm Brewery known as Inverness Brewery in the R.C. 2 zone had been exceeded.

[9] After the BOA entered the 2022 Order, the Appellants, Caroline Owens, Richard and Adele Reinhardt, and the Office of People's Counsel for Baltimore County filed motions for reconsideration. The BOA held a public deliberation on these motions for reconsideration on October 26, 2022. On November 21, the BOA denied each of these motions, but issued a corrected and restated order to address "two limited instances" in which the 2022 Order "contained language inconsistent with what the [BOA] intended[.]" Removal of the word "loud" from condition 3 of the 2022 Order was one of the two changes made, which we reflect here by striking through that language.

5. Inverness will install a gate at or near the entrance from J.M. Pearce Road to the farm road on the Property . . . such that no traffic coming to or from or serving the brewery may enter or leave the Property onto J.M. Pearce Road.

6. The cleared area shown on [an exhibit presented at the BOA hearing] will not be used for brewery parking, and may only be improved with a pole barn or storage building the use of which will be limited to farm storage and equipment.

7. Inverness shall install a permanent sound meter (to be selected with the assistance of the sound expert who testified at the hearing) on the Property boundary line along Markoe Road at the closest point between that boundary line and the bank barn, in order to monitor the noise level from the brewery operations to avoid exceeding the decibel limits imposed by COMAR Section 26.02.03.03 and shall make sound readings available to the County or neighbors upon request;

8. Inverness will limit parking for day-to-day operations to the two acre area depicted on [an attached exhibit], and will limit parking to the four acre area depicted on [an attached exhibit] for promotional events, in lieu of the 5.7 acre area that includes the paved parking area and four paddocks, subject to the potential for Inverness to modify and/or increase these areas by filing a petition for special hearing and holding a public hearing regarding the request to demonstrate the need for such modification/increase, to the satisfaction of the ALJ;

9. Inverness will install fencing and hardwood trees in the location shown on [an attached exhibit], in order to provide additional screening of the parking area when viewed from Markoe Road;

10. Inverness will install an evergreen tree buffer in the location shown on [an attached exhibit], in order to screen the potential for headlights shining toward the residents [on] JM Pearce Road;

11. Inverness will install an evergreen tree buffer at the location shown on [an attached exhibit], in order to provide additional screening when viewing the brewery from Markoe Road;

12. Inverness will reconfigure its fencing around the bank barn, in accordance with [an attached exhibit], in order to keep brewery patrons farther from Markoe Road;

13. Inverness will install an “Inverness Brewery” sign in the location shown

on [an attached exhibit], in order to direct patrons toward the brewery (rather than onto adjacent properties), subject to compliance with applicable law and obtaining all necessary approvals to install the sign;

14. Inverness will reconfigure its access to/from the parking area as shown on [an attached exhibit], in order to eliminate the use of the farm road north of the parking area, which will direct all traffic in and out of the brewery via the entrance/exit located along Markoe Road nearest to the bank barn, and plant additional screening in this area, per [an attached exhibit].

15. Within forty-five days of the entry of this order, Inverness will submit a site plan, over the seal of an engineer, surveyor or landscape architect, incorporating the modifications and restricted areas shown on [the attached exhibits], as well as the modifications made since 2017 or to be made pursuant to this order and which plan complies with the zoning checklist promulgated by the zoning office (https://resources.baltimorecountymd.gov/Documents/Permits/Zoning/zonezonec.pdf).

16. Inverness shall submit a zoning petition and be subject to a public hearing for any future modifications to the brewery or site plan.

Petition for Judicial Review and Circuit Court Decision

On December 19, 2022, the Appellants filed a petition for judicial review in the circuit court. The circuit court issued a memorandum opinion affirming the BOA's decision on May 12, 2024. The Appellants timely filed notice of appeal in this Court on June 9, 2024.

STANDARD OF REVIEW

When we review an administrative agency's adjudicatory decision, "we 'look through' the circuit court's decision and 'evaluate the decision of the agency.'" *Hayden v. Md. Dep't of Nat. Res.*, 242 Md. App. 505, 520 (2019) (quoting *Kor-Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 409 (2017)). Our role is "limited to determining if there is

substantial evidence in the record as a whole to support the agency's findings and conclusions" and to determining whether "the administrative decision is premised upon an erroneous conclusion of law." *Kane v. Bd. of Appeals of Prince George's Cnty.*, 390 Md. 145, 159 (2005) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-69 (1999)).

"Additionally, we review the agency's decision in the light most favorable to the agency, since 'decisions of the agency are prima facie correct.'" *Mayor & City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 667 (2021) (quoting *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)). "[W]here inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences." *Wallace H. Campbell & Co., Inc. v. Md. Comm'n on Hum. Rels.*, 202 Md. App. 650, 662 (2011) (quoting *Bulluck*, 283 Md. at 512-13). "[I]n zoning matters, the zoning agency is considered to be the expert in the assessment of the evidence, not the court." *Hyattsville v. Prince George's Cnty. Council*, 254 Md. App. 1, 24 (2022) (alterations in original) (quoting *Trinity Assembly of God of Balt. City v. People's Couns. for Balt. Cnty.*, 407 Md. 53, 78 (2008)). However, "a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *ProVen Mgmt.*, 472 Md. at 667 (quoting *People's Couns. v. Md. Marine Mfg. Co.*, 316 Md. 491, 497 (1989)).

We may reverse the decision of a local zoning body if we determine that the "legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property

that is the subject of the dispute." *Hyattsville*, 254 Md. App. at 23 (quoting *Trinity Assembly of God*, 407 Md. at 78). Nevertheless, we give considerable weight to an administrative agency's interpretation and application of any statute which that agency administers. *Banks*, 354 Md. at 69.

DISCUSSION

We must vacate the BOA's 2022 Order and remand this case for the BOA to address two specific issues. In Part I of our discussion, we determine that the BOA erroneously modified the 2017 Special Exception Order to impose new conditions not contained in that Order. As we explain, the BOA improperly relied on BCZR § 502.2, which does not apply to special hearings conducted under BCZR § 500.7, as authority in making such modifications.

Additionally, we hold that the BOA erred in concluding that "the operation of Inverness Brewery does not violate the conditions imposed by" the 2017 Special Exception Order, while also concluding that the operation of the brewery *is* in violation of "the site plan approved in 2017[.]" The 2022 Order does not explain how both of these things can be true at once, particularly given that the permitted use of the property under the special exception is limited to what is reflected in the site plan. Without clarification on that issue, we cannot determine whether the BOA erred in concluding that the operation of Inverness does not violate the 2017 Special Exception Order. To the extent that the violation of the site plan equates to a violation of the special exception order, the Franks must file a petition

to modify the special exception to initiate the necessary procedures for notice, comment and a hearing on a revised site plan.

However, as we explain in Part II, we can conclude that the BOA did not err by determining the definition of "temporary promotional event," and, that there was substantial evidence in the record to support the BOA's finding that the Franks did not violate the 2017 Special Exception Order with respect to the parking area used for those events. However, there was evidence that parking during normal operations may exceed that depicted in the site plan. Thus, while we must remand for the BOA to consider afresh whether Inverness's daily operations violate that Order, the BOA need not revisit its determinations concerning the definition of "temporary promotional events" and parking during such events.[10]

I.

IMPOSITION OF NEW CONDITIONS

A. Parties Contentions

Appellants contend that the BOA erred in permitting "the Franks to simply file" an amended site plan reflecting "certain modifications to its property and buildings which are not reflected on the 2017" site plan "without any further hearing or otherwise complying

[10] The record contains memoranda from County Planning staff to the effect that the brewery's "overflow" parking areas had been observed to exceed the parking acreage limit imposed by the conservation easement that the Franks had sold to the County. The enforcement of that easement is not at issue here. However, in construing the 2017 special exception, the Board may find relevant the Baltimore County Planning Department memorandum to the effect that the easement limited parking to two acres.

with the special exception procedures." Appellants contend that "[i]t is well-settled that when changes or additions are made to a special exception, . . . the property owner must file a new petition for special exception and prove at a hearing that the changes or additions comply with the special exception standards[.]"

The Franks respond that "[t]his would be a complete waste of time and judicial resources" and that the BOA reasonably requested that they submit an amended site plan to reflect modifications imposed by the 2022 Order. The Franks contend that they should not be required to file a petition to modify the special exception order because the proceedings before the BOA were effectively the same as if they had filed such a petition. The Board's decision, according to the Franks, "is reasonable, based on substantial evidence, and furthers the important interest of judicial economy in administrative hearings."

In reply, the Appellants argue that the BOA hearing was "a far cry from a hearing dedicated to the Franks[] affirmatively showing that they meet the applicable standards for a special exception." Appellants aver that at a hearing seeking amendment of a special exception, the Franks would be required to prove that any proposed amendments meet the substantive special exception standards set forth in BCZR § 502.1 and applicable Maryland common law.

Somewhat contrary to their argument that the BOA did not have the authority to amend or add conditions to the 2017 Special Exception Order, Appellants argue that the "zoning regulations require retail sales of beer to be 'accessory,' [and] the [BOA]

mistakenly failed to include this condition in its order." (Emphasis removed) Appellants contend that this "is a significant limitation on a farm brewery's sale of beer to the general public." Appellants state that the "members of the [BOA] recognized this, explicitly agreeing during their public deliberation on July 12, 2022 that the Franks' sale of beer to the public must be accessory and that this requirement would be imposed as a condition of approval."

In retort, the Franks claim that Appellants misread the governing regulation, "isolating the phrase 'retail' sales, and arguing that retail sales (alone) must be accessory to the Class 8 Brewery operation." The Franks say that Appellants' request for a condition "on this subject does not make sense" because the regulation permits both retail and wholesale distribution of beer produced on the premises.

Appellants reply that by not explicitly imposing a condition on the sale of beer, the 2022 Order suggests that "retail sales of beer need *not* be accessory."

In a separate, three-page appellee brief, Caroline Owens asks only that we affirm conditions 3, 5, 6, and 7 of the 2022 Order, contending that the Appellants' arguments challenge only conditions 2, 4, 8, and 15 of that order. Owens did not note a separate appeal.[11]

[11] We need not examine conditions 3, 5, 6, and 7 of the 2022 Order because Appellants do not challenge them and Owens did not file a separate appeal. *See Prahinski v. Prahinski*, 75 Md. App. 113, 120 (1988).

B. Legal Framework

General Authority of the BOA

Title 10 of the Local Government Article ("LG") of the Maryland Code, the "Express Powers Act," enumerates certain express powers and gives charter counties "the authority to exercise their express powers by legislative enactment." *Angel Enters. Ltd. P'ship v. Talbot Cnty.*, 474 Md. 237, 262 (2021). These express powers include the power to establish a county board of appeals with "original jurisdiction [over] or jurisdiction to review" various actions, including "an application for a zoning variation or exception or amendment of a zoning map[.]" LG § 10-305(b). The county may "enact local laws to provide for . . . a decision by the county board of appeals on petition of any interested person, after notice and opportunity for hearing, on the basis of a record before the board." LG § 10-305(a). Section 602(a) of the Baltimore County Charter, in turn, provides that "[t]he [BOA] shall have and exercise all the functions and duties relating to zoning described in" the Express Powers Act "as such functions and powers may be prescribed by legislative act of the County Council."

Zoning Hearings and Appeals

Section 500 of the BCZR sets forth regulations pertaining to the "Zoning Commissioner," which, under applicable Baltimore County law, also pertain to an administrative law judge authorized to conduct hearings as a Zoning Commissioner.[12] The

[12] Article 3, Title 12 of the Baltimore County Code sets forth the power and authority of the Office of Administrative Hearings in Baltimore County. Section 3-12-104 (Continued)

Zoning Commissioner has the authority to conduct hearings under BCZR § 500.6, which provides:

> [T]he Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the [BOA][.]

Under BCZR § 500.7, the Zoning Commissioner also has the power to conduct hearing and pass orders "necessary for the proper enforcement of all zoning regulations." The regulation states in full:

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

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of the Baltimore County Code states that the Office of Administrative Hearings "shall consist of two or more Administrative Law Judges[,]" and that any reference to the "Zoning Commissioner" in the Code or the BCZR "shall be deemed to be a reference to the Office." Under § 3-12-105, the Office of Administrative Hearings has jurisdiction over:

> (1) Any quasi-judicial Zoning Commissioner's hearing or procedure under the Code or the Baltimore County Zoning Regulations;
>
> (2) Any quasi-judicial Hearing Officer's hearing or procedure under the Code or the Baltimore County Zoning Regulations;
>
> (3) A code enforcement citation issued under Title 6 of this article;
>
> (4) A grievance referred to the Office by the Director of Human Resources or the Personnel and Salary Advisory Board under the Employee Relations Act; and
>
> (5) Any other matter delegated to the Office.

> property in Baltimore County insofar as they are affected by these regulations.
>
> With respect to any zoning petition other than a petition for a special exception, variance or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

BCZR § 500.7. The Zoning Commissioner can "prescribe rules and regulations for the conduct of hearings before him, [] issue summons for and compel the appearance of witnesses, [] administer oaths[,] and [] preserve order."[13] BCZR § 500.8.

Section 501 of the BCZR sets forth regulations that apply to the BOA. Under BCZR § 500.10, "[a]ny person or persons . . . feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the" BOA. The BOA hears such appeals "de novo[,]" and "[a]t such hearing[s], all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence." BCZR § 501.6. The BOA "may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner,

[13] Rules of practice and procedure before the Zoning Commissioner are set forth in Appendix G to the BCZR.

or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions." BCZR § 501.7.

Special Exceptions

The BCZR divides property in Baltimore County into various "zones[.]" BCZR § 100.1. The stated purpose of these zones is to "provide broad regulation of the use and manner of use of land, in accordance with comprehensive plans." *Id.* Article 1A of the BCZR governs property use in "resource conservation zones," including the R.C.2 (Agricultural) Zone. Under BCZR § 1A01.2.A, "[a]gricultural operations" are "afforded preferential treatment over and above all other permitted uses in R.C.2 Zones."

Section 32-3-301 of the Baltimore County Code ("BCC") authorizes the Zoning Commissioner to, "upon petition, . . . (1) [g]rant variances from area and height regulations; (2) [i]nterpret the zoning regulations; and (3) [g]rant special exceptions" "consistent with the general purpose, intent, and conditions set forth in the" BCZR and subject to appeal to the BOA as provided in BCC § 32-3-401. Under BCZR § 500.2, a petition for special exception may be filed with the Zoning Commissioner only "by the legal owner of the property or by his legally authorized representative." In reviewing petitions for special exception, BCZR § 500.5 provides that the Zoning Commissioner "shall receive such petitions in such form as he may prescribe[,]" "hold a public hearing thereon after giving public notice[,]" and thereafter "pass his order granting or refusing such special exception."

Section 502 of the BCZR sets forth "principles and conditions" that apply to the BOA and Zoning Commissioner specifically when "granting any special exception." BCZR § 502.1 lists the conditions the Zoning Commissioner must consider before granting a special exception.[14] Next, BCZR § 502.2 instructs: "[i]n granting any special exception, the Zoning Commissioner or the [BOA], upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of

[14] BCZR § 502.1 provides:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone[.]

surrounding and neighboring properties." If required by the Zoning Commissioner or the BOA on appeal,

> [t]he owners, lessees or tenants of the property for which a special exception is granted . . . shall enter into an agreement in writing with said Zoning Commissioner . . . stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

BCZR § 502.2. A list of uses permitted by special exception in the R.C.2 zone is found in BCZR § 1A01.2.C. That list includes, under § 1A01.2.C.31.j, a "Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises."

C. Analysis

We conclude that the BOA did not have the authority to modify the Franks' special exception in the special hearing proceedings under BCZR § 500.7 initiated by the Appellants – third parties who had no ownership interest in Inverness.[15] As we have previously observed, "[a] request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Balt. Cnty.*, 163 Md. App. 194, 209 (2005). It does not entitle neighbors to curtail property owners' use of their property under previously granted special exceptions. The petition for special hearing was not filed until almost two

[15] We do not decide whether a property owner who has been granted a special exception, such as the Franks, may *themselves* seek modification (as opposed to an interpretation) of their special exception under BCZR § 500.7.

years after the Franks' special exception was granted in 2017. Thus, the Franks' special exception approval was valid and vested as "all litigation concerning the special exception [was] final." *Powell v. Calvert Cnty.*, 368 Md. 400, 410 (2002). Accordingly, the ALJ's role in this case, under BCZR § 500.7, was to determine whether the Franks were using their property in violation of their special exception as granted in the 2017 Special Exception Order, the BCZR, or any other relevant laws and regulations. In turn, the BOA's role was to review the ALJ's opinion and order and affirm, reverse, or modify that opinion and order as it "deem[ed] proper, subject, however, to zoning regulations and restrictions." BCZR § 501.7.

In its opinion, the BOA correctly stated that its decision was "limited to the interpretation of whether the operation of the brewery violates the use as granted and as limited in" the 2017 Special Exception Order. Nevertheless, the BOA incorrectly stated that it had the authority, under § 502.2, to "impose additional conditions offered during the hearing or suggested by counsel to provide some mitigation to nearby property owners." As previously noted, BCZR § 502.2 applies only in cases when, "*[i]n granting* any special exception, the Zoning Commissioner or the [BOA], *upon appeal*, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." BCZR § 502.2 (emphasis added). As the Franks have repeatedly emphasized throughout this litigation, they were granted a special exception to use their farm as a Class 8 farm brewery in the 2017 Special Exception Order, issued as part of a separate action. The 2017 Special Exception Order was never

appealed, and became final when the time to appeal it expired years ago. Thus, the opportunity for the Appellants to seek modifications of 2017 Special Exception Order passed well before they filed the underlying petition requesting a "special hearing" under BCZR § 500.7. Correspondingly, to the extent that the Franks wished to operate Inverness in a manner that exceeded the scope of the special exception order, they were obligated to file a petition to amend the special exception, as set forth in paragraph 7 of the 2017 Special Exception Order.

We cannot reconcile the BOA's conclusion that the operation of Inverness does not violate the 2017 Special Exception Order with its conclusion that the operation of Inverness *does* violate the site plan the Franks filed in the 2017 special exception case. With respect to the latter conclusion, the Order simply states that "site and building modifications have occurred that are not reflected on the site plan approved in 2017[.]" Before the BOA, Sandra Frank testified that several changes had been made to the Franks' farm since 2017: "rolled stone" was placed in the paddocks for parking; an additional road was placed on the property; and moveable refrigeration units, a food trailer, and fencing were placed behind the barn where the tasting room was located. Additionally, Caroline Owens testified that the Franks had conducted "earth moving" in order to build a "pole barn," which the Franks' attorney stipulated would not be associated with the brewery. It is unclear whether the BOA was referring to any of these changes with its reference to "site and building modifications," or to something else entirely.

Moreover, it is unclear whether in reaching these conclusions, the BOA assessed the Franks' compliance with the 2017 Special Exception Order as *originally written.* As we have already explained, the BOA did not have the authority to modify the 2017 Special Exception Order. From the BOA's assertion that the conditions it imposed were designed to "clarify" the 2017 Special Exception Order, we surmise that the BOA understood at least some of these conditions to already be implicitly contained in the 2017 Order. However, the BOA did not adequately explain which of the conditions imposed in the 2022 Order are meant only to clarify, as opposed to modify, the 2017 Special Exception Order.

It follows that we also cannot say the BOA erred in *not* placing a condition in the 2022 Order "requiring retail sale of beer to be accessory[.]" Appellants appear to read a limitation on the retail sale of beer into the clause in BCZR § 1A01.2.C.31.j that provides for a "Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises." However, the term "accessory" in this clause can be read as modifying *both* "retail and wholesale distribution[,]" which, as the Franks point out, "are the only ways beer produced on site can be sold." Further, the term does not limit the amount of beer that the brewery can sell. The law already places an explicit limitation on the amount of beer a Class 8 brewery can produce and sell – under ABC § 2-210(c)(3), it may "brew, bottle, or contract for not more than 15,000 barrels of beer each calendar year[.]" In this case, the 2017 Special Exception Order further limits the production and sale of beer at Inverness to 5,000 barrels per year. This is the only specified limitation on

the amount of beer Inverness can sell each year, and it does not differentiate between retail and wholesale distribution.

Although we accord an agency deference when it interprets a regulation that the agency administers, it is clear that the BOA erroneously relied on BCZR § 502.2, which is inapplicable, in reaching its decision in this case. *In re Md. Office of People's Counsel*, 486 Md. 408, 441 (2024). This error compels us to vacate the 2022 Order. *See Hyattsville v. Prince George's Cnty. Council*, 254 Md. App. 1, 23 (2022) ("An appellate court may reverse the decision of a local zoning body 'where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.'" (quoting *Trinity Assembly of God of Balt. City v. People's Counsel for Balt. Cnty.*, 407 Md. 53, 78 (2008))).

On remand, the BOA may reach many of the same conclusions it reached in the 2022 Order. However, it may not do so with regard to modifications that should have been presented in a request to amend the special exception. In Part II of this opinion, we explain why the BOA's determinations on two of the issues raised in this appeal are legally correct and supported by the record as it was in 2022.[16] In other words, the BOA can clarify the 2017 Special Exception Order and approve conditions agreed to by the parties as conforming with the spirit and intent of the Order. The critical distinction is that the BOA

[16] We do not suggest that the BOA is limited to addressing practices in effect in 2022. The BOA may choose to address current conditions

cannot impose *new* conditions/modifications to the 2017 Special Exception Order in the posture of the underlying proceedings.

We recognize that disputes over Inverness's operations have now dragged on for many years, and that many of the conditions imposed in the 2022 Order were proposed by the Franks themselves in an effort to mitigate the concerns of their neighbors and resolve disagreements. Consistent with BCZR § 500.7, the BOA may declare whether any such conditions the Franks have agreed to with their neighbors or have sought to impose upon themselves do or do not violate the 2017 Special Exception Order, the BCZR, or other relevant laws and regulations. While an amended site plan might facilitate the BOA's determination that additional conditions to the 2017 Special Exception Order are necessary, we agree with the Appellants that an amended site plan may only be filed as part of a special exception petition by the Franks under BCZR § 502.1 allowing for a hearing following public notice and comment and input from relevant county agencies.

II.

PARKING AND "TEMPORARY PROMOTIONAL EVENTS"

A. "Temporary Promotional Events"

Parties' Contentions

The Appellants contend that distinguishing a "temporary promotional event" from normal operations merely based on Inverness's hours of operation "allows the Franks to self-define the scope of [Inverness's] 'events'" and will "lead to absurd results." In Appellants' view, the "obvious purpose in limiting the number of events that the Franks

could host . . . was to protect neighboring properties." They argue that "[t]here must be some distinction between an event and normal activities" beyond the hours of operation permitted, and that BCZR § 1A01.2.C.31.j defines an "event" as any "beer tasting" or "public gathering."

The Franks respond that the ALJ in the special exception hearing "determined 'temporary promotional events' would be those eight (8) times per year when the brewery could be open until 10:00pm" and that the BOA's decision "is consistent with, and effectively a recitation of, the definition" in the 2017 Special Exception Order, "which was never appealed." (Emphasis removed). They emphasize that the ALJ did not expressly impose any other conditions specific to events, such as "limit[ing] the number of people that could attend" the brewery on "a regular day" as opposed to "a special promotional event day," or requiring or prohibiting that events have a "theme" or cover charge to attend. Rather than permit them "to do 'whatever they want'" on non-event days, as the Appellants contend, the Franks argue the BOA's interpretation of the definition of "temporary promotional event" permits them to "exercise the privileges of a Class 8 Farm Brewery" on such days.

In reply, the Appellants argue that the 2017 Special Exception Order did not *define* the term "temporary promotional event," but merely "imposed a limit on the *number* of events." They posit that "there was no need to define 'event' because" Sandra Frank described Inverness's proposed events as "small, 'family friendly events' without loud music."

Analysis

We discern no error in the BOA's interpretation of the definition of "temporary promotional event." The parties' dispute over the meaning of this term is largely a result of how vaguely it is defined in BCZR § 1A01.2.C:

> The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity . . . 31. The following "agricultural-support" uses as principal commercial uses: . . . Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. **Temporary promotional events, such as beer tasting or public gatherings associated with the brewery**, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal.

The ALJ echoed this language when sketching the contours of a temporary promotional event in the 2017 Special Exception Order:

> THEREFORE, IT IS ORDERED this **8th** day of **August, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a Brewery, Class 8, including accessory retail and wholesale distribution of beer produced on the premises, and **temporary promotional events, such as beer tasting or public gatherings associated with the brewery**, be and is hereby GRANTED.

Aside from reiterating the language of BCZR § 1A01.2.C.31.j, the only color the ALJ gave to the term "temporary promotional event" was to specify that they could be "held Thursday-Sunday from 12 noon to 10:00 p.m." at Inverness, in contrast to the brewery's normal hours of operation, which he set at Thursday to Sunday from noon until 8 p.m.

The concept of a "temporary promotional event" appears to derive from the 2016 Maryland Code, Alcoholic Beverages Article § 2-210. This law originally read, in relevant part, as follows:

(f) *Hours of operation* – Subject to subsections (j) and (k) of this section, a license holder may exercise the privileges of the [Class 8] license each day:

(1) **from 10 a.m. to 6 p.m., for consumption of beer and sales and service of food at the licensed farm**; and

(2) **from 10 a.m. to 10 p.m., for**:

(i) sampling of beer;

(ii) consumption of beer off the licensed farm if the beer is packaged in sealed or resealable containers, such as growlers; and

(iii) **guests who attend a planned promotional event or other organized activity at the licensed farm**.

***

(k) *Brewery promotional event permit* – (1) The Comptroller may issue a brewery promotional event permit to a license holder.

***

(3) The permit authorizes the license holder to conduct at the licensed farm a promotional event at which the license holder may:

(i) provide samples of not more than 6 fluid ounces per brand to consumers; and

(ii) sell beer produced by the license holder to persons who participate in the event.

Relevant here, the version of the law in effect in 2017 permitted the regular sale and consumption of beer at a brewery only from 10 a.m. to 6 pm. during normal operations, but permitted the sale and consumption of beer from 10 a.m. to 10 p.m. during "promotional events." Critically, state law concerning Class 8 farm breweries has evolved considerably since then. In 2021, prior to the BOA entering the 2022 Order, the Legislature passed 2021 Maryland Laws, Ch. 359 (S.B. 821). This law modified § 2-210(f) as follows:

> (f) (1) **This subsection does not apply to a permit issued under § 2-140[17] of this title**.
>
> (2) A license holder at the location listed on the license **may exercise the privileges of the license each day from 10 a.m. to 10 p.m.**

The current version of § 2-210(f) is unchanged from the version adopted in 2021 Maryland Laws, Ch. 359 (S.B. 821). *See* Maryland Code (2016, 2024 Repl. Vol.), Alcoholic Beverages and Cannabis Article ("ABC") § 2-210(f).[18]

Thus, state law has removed the concept of a "promotional event" as it pertains to a Class 8 farm brewery and has removed time restrictions on the sale and consumption of beer on premises during normal operations. At the time of the BOA's decision, a Class 8

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[17] In relevant part, Maryland Code (2016, 2021 Supp.), Alcoholic Beverages Article § 2-140 stated:

> (a) The [Alcohol and Tobacco] Commission may issue a brewery special event permit to a holder of a Class 5 brewery license or a Class 8 farm brewery license.
>
> ***
>
> (c) The permit authorizes the license holder to conduct at the location listed on the license a special event at which the license holder may:
>
> (1) provide samples of not more than 6 fluid ounces per brand to consumers;
>
> (2) sell products manufactured by the license holder and other Maryland breweries to persons who participate in the event; and
>
> (3) in a segregated area approved by the Commission at the location listed on the license, store the products of other Maryland breweries.

[18] The Alcoholic Beverage Article was recodified as the Alcoholic Beverage and Cannabis Article in 2023. *See* 2023 Md. Laws, ch. 254 (H.B. 556); 2023 Md. Laws, ch. 255 (S.B. 516).

license holder was permitted to exercise *all* the privileges of a Class 8 license from 10 a.m. to 10 p.m., seven days a week, during normal operations. These privileges include selling beer for on-premises consumption, providing samples of beer, and selling food. *See* Maryland Code (2016, 2021 Supp.), Alcoholic Beverages Article § 2-210(c). Inherent within those privileges is the ability to conduct "beer tasting" or "public gatherings associated with the brewery," the two examples of a "[t]emporary promotional event[]" given in BCZR § 1A01.2.C.31.j. With the term "promotional event" removed from the applicable State law, we are left with the reference to "temporary promotional events" in BCZR § 1A01.2.C, which does not define the term or set any time restrictions.

Nevertheless, the term "temporary promotional event" clearly retains significance in the context of the 2017 Special Exception Order, which is what the BOA was interpreting via the special hearing petition. The 2017 Special Exception Order imposes greater restrictions on Inverness's hours of operation than does state law – although state law permits a Class 8 farm brewery to be open from 10 a.m. until 10 p.m., seven days a week, Inverness can only be open for business from noon until 8 p.m., Thursday through Sunday. However, Inverness may remain open until 10 p.m. for "temporary promotional events." Again, this difference in hours of operation was the only distinction drawn between "temporary promotional events" and normal operations in the 2017 Special Exception Order. The BOA reasonably interpreted the provision in the 2017 Special Exception Order providing that the brewery can stay open until 10 p.m. as the only meaningful distinction between a "temporary promotional event" and normal operations. *See Harvey*, 389 Md. at

299 ("[S]o long as the actions of administrative agencies are reasonable or rationally motivated, those decisions should not be struck down as 'arbitrary or capricious.'"); *In re Md. Office of People's Counsel*, 486 Md. at 441-42. The BOA otherwise retained the limitation of "no more than eight (8) [Events] per year, each lasting up to three (3) consecutive days" as provided in the 2017 Special Exception Order.

B. Parking Area

Parties' Contentions

Reasoning that the 2017 Special Exception Order restricted parking at Inverness to "an area of parking comprising only '+/- 35 spaces[,]'" the Appellants contend that the BOA should have found that the Franks "have [] violated the 2017 [Special Exception] Order as it relates to parking[.]" They argue that "a special exception plan, as approved, defines the scope and boundaries of the use" and that the site plan submitted in the 2017 case – specifically a parking lot described as having "+/- 35 spaces" – represents the only parking permitted under the 2017 Special Exception Order. The Appellants assert that the Franks have violated the 2017 Special Exception Order by allowing vehicles to park beyond this lot.

To the contrary, the Franks insist that the 2017 Special Exception Order "placed no condition or limitation on where parking could take place" and that Sandra Frank "testified in 2017 that overflow parking would take place in the paddocks" located beyond the +/- 35 spaces explicitly designated on the site plan. Given that there were "repeated references to the fact that over 400 cars would be able to fit in the paddocks," the Franks reason that "the

ALJ certainly could have limited the parking area for Inverness customers, but he did not."

In reply, the Appellants contend that Ms. Frank's testimony in the 2017 case "does not matter[,]" and reassert that the 2017 Special Exception Order "authorizes a parking lot of '+/- 35 SPACES' and nothing more."

Analysis

In the 2022 Order, the BOA recognized that parking at Inverness was the subject of "much testimony" during the 2022 hearing. Although the BOA ruled that "the BCZR require[s] *minimum* parking to be provided – rather than a maximum limit on parking[,]" it nevertheless clarified that Inverness is permitted two acres of parking during normal operations and four acres of parking during promotional events, "in lieu of the 5.7[-]acre area that includes the paved parking area and four paddocks[.]" The Appellants argue that the BOA's interpretation "was clearly erroneous" because the site plan the Franks submitted with their original petition for special exception "clearly shows an area of parking comprising only '+/- 35 spaces" and "a special exception plan, as approved, defines the scope and boundaries of use."

The site plan the Appellants reference does show an existing paved parking lot containing 35 parking spaces. But it also shows four existing "paddocks," located behind that parking lot and agricultural fields behind the paddocks. During the 2017 case, Sandra Frank had the following exchange with the ALJ:

> Q: Okay. Thank you. Where – where will your patrons park?
>
> A: Behind the stable, there's been a parking lot there forever and I measured it out. There are thirty-five legal spaces now. And – and **if need be, directly**

> **behind that parking area, there are two, well there's four paddocks, but there's two paddocks would be very, very easy just to, if there was more than thirty-five cars**.

Later, Ms. Frank and the ALJ discussed parking for temporary promotional events:

> Q: Okay. For these events, you described how – how parking would occur sort of on the day-to-day operations, for the events, how do you anticipate you could accommodate parking?
>
> A: **Back in those paddocks.** That's one really neat thing about it is people could be parked behind the parking area in those paddocks and nobody would ever see a car.
>
> Q: Okay. Do you see any risk of anyone parking along Markoe Road or Monkton Road when visiting your brewery, either for a tasting event or for-
>
> A: No, there's no reason for it.
>
> Q: Okay, and why is that?
>
> A: We've got **plenty of open fields, flat open fields**.

Thus, the Franks made clear during the 2017 case that they intended to use the paddocks and, if need be, the agricultural fields – both of which were clearly marked on the 2017 site plan – for parking during "temporary promotional event[s.]" Given that the 2017 Special Exception Order makes no mention of any further parking limitations, we conclude that there was substantial evidence in the record to support the BOA's finding that the Franks did not violate the 2017 Special Exception Order with respect to the parking area used. *Kane v. Bd. of Appeals of Prince George's Cnty.*, 390 Md. 145, 159 (2005).

Conclusion

In summary, we conclude that the BOA improperly modified the 2017 Special Exception Order on the petition of third parties during a special hearing held pursuant to BCZR § 500.7, and that its conclusion that the operation of Inverness does not violate the

2017 Special Exception Order is inconsistent with its conclusion that the operation of Inverness violated the site plan filed in connection with that order. Accordingly, we vacate the 2022 Order. In reconsidering and redrafting its opinion and order, the BOA has remedial flexibility to decide whether, in light of our decision, to hold additional proceedings or rely on the record to determine whether the Franks were using their property in violation of their special exception as granted in the 2017 Special Exception Order, the BCZR, or any other relevant laws and regulations. The BOA's role was to review the ALJ's opinion and order and affirm, reverse, or modify that opinion and order as it "deem[ed] proper, subject, however, to zoning regulations and restrictions." BCZR § 501.7. The BOA need not revisit its determinations on the issues addressed in Section II above.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE SPLIT EVENLY BETWEEN THE PARTIES (EXCLUDING APPELLEE OWENS).

Circuit Court for Baltimore County
Case No. C-03-CV-22-005085

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0712

September Term, 2024

SAMUEL AND MICHAELINE YAFFE, ET AL.

v.

RAYMOND AND SANDRA FRANK, ET AL.

Leahy,
Kehoe, S.
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

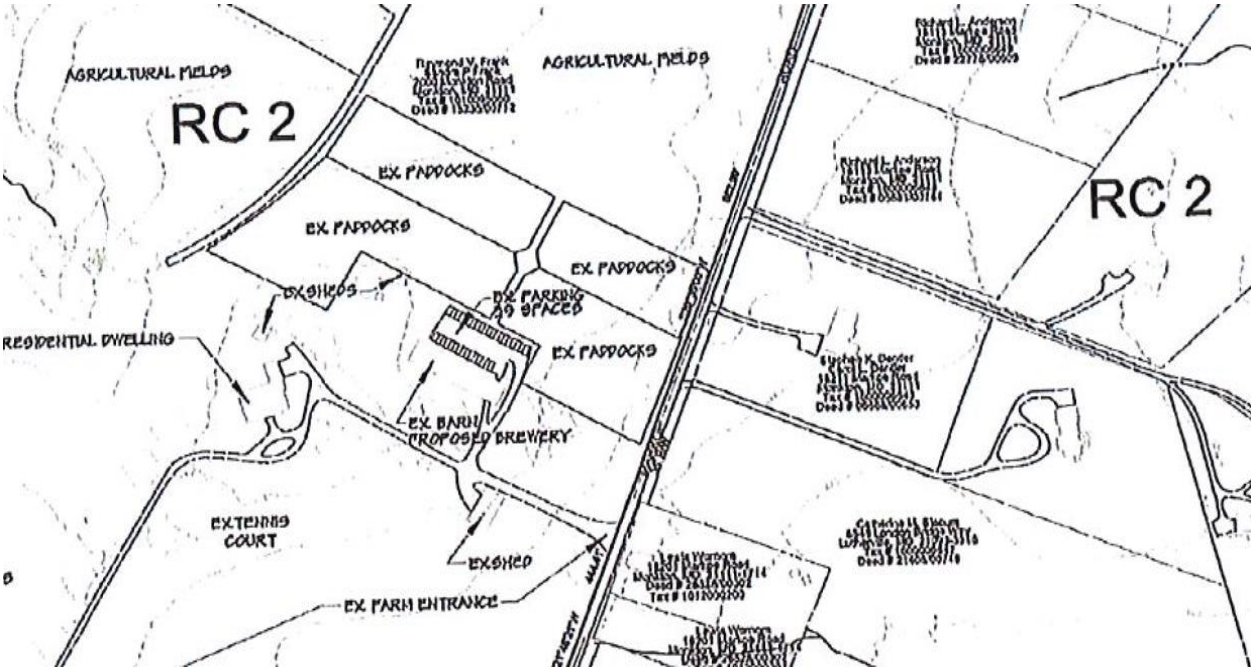
Concurring and Dissenting Opinion
by McDonald, J.

Filed: May 1, 2026

***** This is an unreported opinion. The 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).

I concur with the Court's thorough and well written opinion, except as to the Majority's interpretation of the extent and location of parking permitted by the 2017 Special Exception Order. The site plan submitted with the petition for the special exception shows only an "existing" parking lot adjacent to the "proposed brewery." See the enlargement of that portion of the site plan from p. 29 of the Record Extract attached below. No other parking area is designated either on the site plan or in the resulting Special Exception Order.

It is true that the site plan shows "existing paddocks" and agricultural fields, but it does not designate them as parking areas. The Majority relies on the fact that Ms. Frank testified during the 2017 ALJ hearing that those areas could be used for overflow parking during "temporary promotional events." That testimony is not reflected in the site plan for the special exception. The BOA, and now the Majority, are treating that testimony as effectively an oral amendment of the petition for special exception as depicted in the site plan submitted with that petition. That oral amendment – that the areas designated on the site plan as "agricultural" fields and "existing paddocks" would actually be used for parking for the farm brewery use sought in the special exception – was made without advance notice to the public.


AGRICULTURAL FIELDS
RC 2
EX PADDOCKS
EX PADDOCKS
EX SHED
EX PARKING
20 SPACES
EX PADDOCKS
RESIDENTIAL DWELLING
EX BARN
PROPOSED BREWERY
EXISTING
COURT
EX SHED
EX FARM ENTRANCE
AGRICULTURAL FIELDS
RC 2