Circuit Court for Worcester County
Case No.: C-23-CV-23-000283

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1738

September Term, 2024

IN THE MATTER OF
BLACK WATER RELICS, LLC

Berger,
Beachley,**
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 5, 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 persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** Beachley, J., now retired, participated in the hearing and conference of this case while an active member of this Court. He participated in the adoption of this opinion after being recalled pursuant to Maryland Constitution, Article IV, Section 3A.

Black Water Relics, LLC ("BWR") filed an application to rezone less than an acre of property in Worcester County from A-1 (agricultural) to C-2 (general commercial). The Worcester County Planning Commission recommended the rezoning. The Worcester County Commissioners ("Commissioners") denied the rezoning application. BWR petitioned for judicial review by the Circuit Court for Worcester County, which vacated the Commissioners' decision and remanded for the Commissioners to engage in further analysis. Thus, we are presented with an appeal by the Commissioners and a cross-appeal by BWR, each having raised two questions for our consideration, which we have distilled to:

1. Was the Commissioners' decision to deny BWR's rezoning application supported by the record?

2. If the Commissioners wrongly found that a mistake of fact did not exist in a prior rezoning, are the Commissioners required to grant BWR's zoning request where there is evidence that the property has "some" value in a C-2 zone?

We shall affirm the judgment of the circuit court vacating the decision of the Commissioners and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2023, BWR purchased a 0.78-acre parcel of property ("the Property") located on the east side of Market Street, about one-half mile from the Town of Snow Hill in Worcester County. BWR proposed to use the building on the Property for retail purposes. On the Property is an 11,200 square foot warehouse that was built in 1950; an asphalt parking lot, approximately the size of the warehouse; and a small strip of vacant land that contains a drain field. The Property is zoned A-1 (agricultural) as is the

unimproved land surrounding the Property. The land across the street from the Property, on the west side of Market Street, is zoned either R-1 (rural residential) or R-2 (suburban residential).

Zoning was adopted in Worcester County in 1964. Initially, the Property was included in a B-2 (general commercial) district and that designation was retained in the 1978 Worcester County comprehensive rezoning. Another comprehensive rezoning occurred in 1992, by which the Property was downzoned from B-2 to A-1. This downzoning is at the crux of this appeal.

In 2006, the Property, and several parcels comprising hundreds of acres, was annexed to the Town of Snow Hill and rezoned residential by the municipal zoning ordinance as part of a proposed residential subdivision that was never realized. Also in 2006, Worcester County again enacted a comprehensive rezoning which, of course, did not impact the Property which was still within the corporate limits of Snow Hill and beyond the jurisdiction of the County zoning ordinance. Ultimately, in 2019, because of the failure of the proposed residential subdivision, the Town of Snow Hill reversed the 2006 annexation. Again in the jurisdiction of the Worcester County zoning ordinance, the Property resumed the A-1 zoning classification.

In May 2023, several months after purchasing the Property, BWR petitioned the Commissioners to rezone the Property as we have noted, giving rise to the present litigation. The rationale in support of the Petition was that a "mistake" was made in the

1992 comprehensive rezoning, the last applicable comprehensive zoning.[1] Additionally, BWR asserted that a C-2 designation was more consistent with the goals of the 2006 Worcester County comprehensive plan, which designated the Property as being in a "Growth Area," meaning it was "suitable and desirable for future planned growth." BWR also asserted that, because of the Property's limited size, it failed to meet the minimum lot requirements and setbacks for "many" of the permitted uses in an A-1 district.

On August 3, 2023, the Worcester County Planning Commission (the "Planning Commission") held a hearing on the application. *See* ZS § 1-112(a)(2) (stating that the Planning Commission's duties are to investigate and make recommendations to the Commissioners regarding rezoning applications). The Planning Commission voted unanimously to recommend rezoning the Property from A-1 to C-2 and subsequently issued a seven-page finding of facts. The Planning Commission found that a mistake of fact occurred in 1992 when the Property was downzoned from B-2 to A-1 because the downzoning "created an unsuitable lot for agricultural uses." The Planning Commission

[1] The B-2 designation was replaced in the Worcester County Zoning and Subdivision Article ("ZS") in 2023 with the C-2 designation. Both are general commercial district designations.

According to the Worcester County Code, an A-1 zoning designation is intended to "preserve, encourage and protect the [C]ounty's farms" and to protect agricultural industries "from the disruptive effects of major subdivision" or nonagricultural commercialization. ZS § 1-201(a). A C-2 zoning designation is intended to "provide for more intense commercial development serving populations of three thousand or more within an approximate ten- to twenty-minute travel time. These commercial centers generally have higher parking demand and greater visibility. . . . Commercial structures and uses must be compatible with the community and the County's character." ZS § 1-210(a).

also found that upzoning the Property from an A-1 to a B-2 district was compatible with the existing and proposed development of the area as a Growth Area.

On October 17, 2023, the Commissioners held a public hearing on the Planning Commission's recommendation. Several witnesses spoke in favor of the rezoning request. After taking evidence and hearing the parties' arguments, the Commissioners voted 4-3 to deny the application, concluding that there was insufficient evidence to support a mistake of fact in the 1992 comprehensive rezoning. The Commissioners subsequently issued a three-page finding of facts. The Commissioners supported their "no mistake of fact" conclusion by citing evidence that, when the Property was downzoned from B-2 to A-1 in 1992, the historical commercial use of the building because of its proximity to the Town of Snow Hill was "known." The Commissioners also stated that the current A-1 designation was appropriate given that the Property is surrounded by active farming.

BWR sought judicial review in the Circuit Court for Worcester County. *See* Md. Rule 7-202 and ZS § 1-119(a). Following a hearing, the circuit court issued a written memorandum opinion and order, vacating the Commissioners' decision, ruling that "the record in support of the decision of the Commissioners is lacking and not amenable to meaningful judicial review." The court remanded the matter to the Commissioners for further analysis consistent with its opinion.

DISCUSSION

Standard of Review

In considering an appeal from a decision of an administrative agency, we look through the decision by the circuit court to the rulings of the agency, giving due deference

to the expertise of the agency. *Brandywine Senior Living at Potomac, LLC v. Paul*, 237 Md. App. 195, 210-11, *cert. denied*, 460 Md. 21 (2018). We review the decision of an administrative agency "under the same statutory standards" as the circuit court, meaning we "reevaluate the decision of the agency, not the decision of the lower court." *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96 (2001). Our review is limited to whether the agency's decision was legally correct and supported by substantial evidence. *Id*. at 496. "[S]ubstantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Piney Orchard Cmty. Ass'n v. Md. Dep't of Env't*, 231 Md. App. 80, 91-92 (2016) (quotation marks and citations omitted), *cert. denied*, 452 Md. 18 (2017). In applying the "substantial evidence test," we "must review the agency's decision in the light most favorable to the agency, since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity." *Brandywine Senior Living*, 237 Md. App. at 211 (quotation marks and citation omitted).

Zoning law

Maryland zoning authorities implement their zoning district's plans under one of three land use theories: "1) original zoning; 2) comprehensive rezoning; and 3) piecemeal rezoning." *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 532 (2002). "[T]he first two are purely legislative processes, while piecemeal rezoning is achieved, usually at the request of the property owner, through a quasi-judicial process leading to a legislative act." *Id*.

The wisdom of a zoning authority's adoption of an original or comprehensive zoning "enjoy[s] a strong presumption of correctness and validity[.]" *Id*. at 535. The zoning authority may change the established zoning thereafter "only by the adoption of a subsequent comprehensive rezoning" or by action on a piecemeal zoning application. *Id*. at 535-36. Moreover, a piecemeal zoning change may only be adopted on a showing that "there has been a substantial change in the character of the neighborhood since the time the original or comprehensive zoning was put in place" or that there was a mistake in the original or subsequent comprehensive zoning. *Id*. at 535-36. The latter option is known as the "change-mistake" rule, an either/or type rule. *Id*. at 538. It is the "mistake" half of the rule that we consider in this appeal.

Establishment of a zoning "mistake" requires proof of a mistake of fact, not a mistake of judgment. *Id.* at 539. To establish a mistake of fact, it must be shown that "the underlying assumptions or premises relied upon by the [zoning authority] during the immediately preceding original or comprehensive rezoning were incorrect." *Id*. at 538-39. A conclusion based on facts that are incomplete or inaccurate may be deemed a mistake of fact, however, an "aberrant conclusion based on full and accurate information . . . is simply a case of bad judgment[.]" *People's Couns. for Baltimore Cnty. v. Beachwood I Ltd. P'ship*, 107 Md. App. 627, 645 (1995), *cert. denied*, 342 Md. 472 (1996). Moreover, a mistake of fact can be established by showing that the zoning authority at the time of the comprehensive zoning "failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future[.]" *Id*. (cleaned up). However, evidence that the zoning authority did not give a reason for a downzoning does not

constitute a mistake of fact because the zoning authorities are under no obligation to give any reason for downzoning. *Id.* at 644.

I.

The Commissioners urge that we uphold their denial of BWR's rezoning application because BWR failed to present evidence of a mistake of fact in the 1992 downzoning of the Property from B-2 to A-1. There was not a mistake of fact in the 1992 rezoning, they assert, because, in 1992, the then-Commissioners knew of, and could observe, the commercial use of the warehouse, which had been located on the Property in "plain sight for over 40 years[.]" That knowledge, they argue, supported the downzoning.

BWR responds that the present Commissioners' ruling on mistake of fact was in error because they failed to consider the substantial evidence offered. Specifically, BWR presented evidence of the Property's historical commercial use; that it has never been suitable for any agricultural use considering its size; and that neither the Property nor the warehouse had ever been used for agricultural purposes.

As we have noted, following the October 17, 2023 hearing, and after having voted to deny the rezoning, the Commissioners, three weeks later, on November 7, 2023, issued a three-page "Findings of Fact."[2] The only finding the Commissioners gave to support their conclusion that no mistake of fact had occurred in 1992 was that, at the time of the

[2] In this instance, the Commissioners inverted the ordinary administrative agency procedure of conducting a hearing, issuing findings of fact, and then a decision based on the findings. Here, the findings of fact were prepared and issued in support of a decision already made.

comprehensive rezoning in 1992, the historical commercial use of the building was known to the then-Commissioners.[3] The Commissioners stated further that, even if there had been a mistake in 1992, rezoning the Property from A-1 to C-1 was not currently appropriate because the area surrounding the Property is zoned A-1. Moreover, the Commissioners rejected BWR's argument that the Property could not be used for an A-1 purpose, given the Property's lot size and the large warehouse/parking lot on it, as not credible because roadside stands and garden centers are permitted uses in an A-1 district.

The Circuit Court Ruling

The circuit court found the Commissioners' reasoning lacking, vacated the decision of the Commissioners, and remanded for further proceedings.

We share the court's skepticism of the sufficiency and effect of the findings of fact. We explain.

First, the circuit court found the Commissioners' reasoning regarding the 1992 Commissioners' knowledge of the historical use of the Property flawed. The court opined that the readily visible nature and commercial use of the Property in 1992 "could actually be viewed as evidence of mistake by a reasonable trier of fact." In other words, the

[3] At the hearing before the Commissioners, a BWR witness, who is a long-time resident of Snow Hill, testified about his research of the historical uses of the Property. His research included interviewing several persons, including his ninety-seven-year-old uncle, who has lived in the area his entire life. The witness testified, without objection, that the Property was originally built and used as a grocery outlet. Between 1960 and 1970, it was used as storage for the food distributor Lankford Sysco, and in the 1970s, it was used as a shirt factory and then an airplane storage parts warehouse. At some point, it was also used by a retailer of commercial chemicals for farming. According to that witness, the Property had never been used as an agricultural accessory building to a farm, which would have been an agricultural use.

Commissioners' 1992 decision to downzone the Property in light of the known commercial nature and use of the Property suggests that the downzoning was a mistake of fact. The court was not able to discern from the Commissioners' findings of fact whether this possibility was considered.

Second, Phyllis Wimbrow, of the Planning Commission, wrote in her notes during the Planning Commission hearing: "Kelly S. did maps – followed typ. ag. storage uses so downzoned." This note, according to the circuit court, reflects a mistaken understanding because the evidence showed that the Property had never been used as an agricultural accessory building to a farm; rather, the Property historically had been used for nonagricultural, commercial purposes that were separate and distinct from the adjacent agricultural properties. From that, the court reasoned that, if a member of the Planning Commission was mistaken in her belief about the historical uses of the Property, it was possible that the 1992 Commissioners, in downzoning the Property, also mistakenly believed the Property to have been used as an "accessory to the adjoining agricultural parcels and not a separate commercial use." The court found that it was not clear from the record whether the Commissioners considered Ms. Wimbrow's note and whether the note did or did not affect the mistake of fact analysis.[4]

[4] "Kelly S." is not identified in the record, and the parties did not elucidate. The parties did not provide a transcript of the Planning Commission hearing, nor did either brief provided further clarification. We might reasonably assume that the court and parties, being familiar with the local land use administration, took liberal notice of the identity and function of "Kelly S."

Finally, the circuit court found it unclear whether the Commissioners considered evidence that the 1992 downzoning to A-1 "created an unsuitable lot for agricultural purposes," as found by the Planning Commission. Although the Commissioners noted that permitted A-1 uses included roadside stands and garden centers, it is unclear whether any of those uses are in fact permitted on the Property. The court reasoned that the creation in 1992 of an unsuitable lot for agricultural purposes, if true, would further suggest that the Commissioners made a mistake in downzoning the Property. The court directed that, on remand, the Commissioners should "discuss and evaluate" the Planning Commissions' findings of unsuitability.

We agree with the circuit court's reasoning that the Commissioners' ruling to deny the rezoning application based on one conclusory statement failed to provide sufficient evidence for review or support the administrative decision.

Findings of facts by an agency "must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail, LLC v. Cnty. Council of Talbot Cnty*., 352 Md. 530, 553 (1999). In *Bucktail*, the Maryland Supreme Court remanded for further proceedings because the agency's findings of fact regarding an application to rezone certain property was insufficient to permit judicial review as to whether there was substantial evidence to support the agency's decision. This standard is particularly true where the agency reverses the recommendation of a planning commission. *Id*. at 558. An agency must provide "articulated evidence in support of a conclusory finding." *Critical Area Comm'n for Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 128-29 (2011). Mere conclusory statements fail to advise

the applicant "in terms of the facts and circumstances of the record, the manner in which the applicant failed, thereby evading meaningful judicial review." *Id*. at 129-30 (quotation marks and citation omitted).

The court was correct in its reasoning and direction to remand the case to the Commissioners to engage in further proceedings.[5] *See* Md. Rule 8-604(d)(1) (stating that an appellate court may remand the case to the lower court if an appellate court concludes that "justice will be served by permitting further proceedings," and, on remand, the lower court "shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court"). *See also Matter of Homick*, 256 Md. App. 297, 312 (2022) (holding that a "further proceedings" mandate on remand,

[5] A minor, collateral issue accompanies this case. BWR's application for rezoning related only to the Property – a 0.78-acre parcel. However, the Planning Commission recommended that adjacent parcel 89, which is also owned by BWR, be included in the rezoning from A-1 to C-2, even though it was not part of BWR's application, nor had BWR requested rezoning of that parcel. The inclusion of parcel 89 arose during the Planning Commission hearing when concerns were raised about the Property's septic capacity. In response, BWR's attorney stated that parcel 89, consisting of 1.01 acres, had an "adequate septic replacement area[.]" The Planning Commission concluded in its findings that "the use of the adjoining parcel 89 for services such as septic replacement and parking for the large commercial building" on the Property was "appropriate and should also be considered as part of the rezoning request."

At the hearing before the Commissioners, BWR's attorney stated that, although the Planning Commission recommended rezoning parcel 89 in addition to the subject Property, BWR was only asking for rezoning of the Property. Nonetheless, the Commissioners denied the rezoning request as to both the Property and parcel 89, without explaining the reason for their denial as to parcel 89. The circuit court directed that, on remand, the Commissioners were to engage in further analysis as to a mistake of fact but only as to the Property, not parcel 89. The court opined that, on remand, the Commissioners, in their discretion, could follow the Planning Commissions' recommendation as to parcel 89, but its analysis must be "separate and distinct" from their analysis regarding the Property. We agree with the circuit court's reasoning on this point.

barring a more limiting instruction, requires the agency to: (1) clarify the basis of its original ruling; (2) make a de novo policy decision based on the proper factors; (3) determine the initial record was insufficient and supplement it with additional arguments or evidence; or (4) ignore the record and proceed with a new de novo hearing (citing *People's Couns. for Baltimore Cnty. v. Country Ridge Shopping Ctr., Inc.*, 144 Md. App. 580, 593-94 (2002)).

II.

Lastly, the Commissioners argue that, even if BWR provided sufficient evidence of a mistake of fact in 1992, the Commissioners have no obligation to grant the petition and rezone the Property because BWR has not shown that it has been deprived of "all economically viable uses" of the Property. BWR agrees that there was testimony at the hearing before the Commissioners as to the permitted uses within an A-1 district; however, there was no evidence that any of those uses could be operated on the Property, as the "vast majority" of A-1 uses require a minimum lot area of five acres, and the Property is only 0.78 acres.

The Commissioners may, but are not *required* to, rezone the Property where there are economically viable uses available under the current zoning district. *See Rylyns*, 372 Md. at 539 ("Even with very strong evidence of change or mistake, piecemeal zoning may be granted, but is not *required* to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property." (emphasis added)).

That question is not presented in this appeal. Essentially, the Commissioners seek an advisory opinion on a potential issue that is not presented. Addressing purely theoretical

questions or questions that may never arise places the courts in the position of issuing advisory opinions, a long-forbidden practice in this State. *Hickory Point P'ship v. Anne Arundel Cnty.*, 316 Md. 118, 129-30 (1989). The question before the Commissioners on remand is whether a mistake of fact was made in the downzoning of the Property in 1992, and the Commissioners are directed to support their conclusion with articulated reasoning. The question as to whether there are other viable uses of the Property is not before us and, at this point, can only be determined by the Commissioners in the exercise of their discretion, after further proceedings as to whether a mistake of fact was made.

The Cross-Appeal

In its cross-appeal, BWR raises two questions, which we reduce to an assertion that the circuit court erred by remanding this matter to the Commissioners for further consideration, rather than merely reversing the decision of the Commissioners and ordering that the rezoning petition be granted. Our affirmance of the circuit's remand judgment answers that question; hence, we likewise affirm the circuit court's decision to not reverse, but to remand for further consideration by the Commissioners.

THE JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY VACATING THE DECISION OF THE COMMISSIONERS AND REMANDING TO THE COMMISSIONERS TO ENGAGE IN FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION IS AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.