Circuit Court for Charles County
Case No. C-08-CV-21-000050

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1841

September Term, 2021

IN THE MATTER OF
LAURELL A. AITON, ET AL.

Berger,
Arthur,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 30, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Charles County Board of Appeals (the "Board") granted Woodville Pines, LLC, ("Woodville") a "special exception" to use property it owns as an event and conference venue. Several surrounding landowners of the property appealed the Board's decision to the Circuit Court for Charles County, which reversed the Board's grant of the special exception permit. On appeal, Woodville asks: Did the Board correctly rule as a matter of law that the type of use proposed, an event and conference venue, falls within the special use exception of Art. XII, § 297-212(48)(B) of the Charles County Zoning Ordinance? For the reasons that follow, we shall reverse the circuit court's decision and affirm the ruling of the Board.

FACTUAL AND PROCEDURAL BACKGROUND

Woodville owns about 22 acres of real property at 17012 Prince Frederick Road in Waldorf, Maryland (the "Property"). Michael White and his son, George White, are the sole members of Woodville. The Property is an unimproved forested lot with no structures on it and has a zoning classification of Agricultural Conservation ("AC"). The adjoining properties are likewise zoned AC and most have been improved with single-family residences.

In July 2020, Woodville filed a request with the Board for a special exception permit to build a "lodge" on the Property for "milestone" events, "such as weddings, vow renewals, family services, birthdays[,]" and corporate meetings. The main building would be a two-story structure of approximately 6,720 square feet located on five acres of woods in the middle of the Property.

On December 8, 2020, the Board held a virtual public hearing on Woodville's request for the special exception permit. Several adjoining landowners (the "Adjoining Landowners") opposing the request were present at the hearing with their respective attorneys.[1] Also present was an employee with the Charles County Planning Division and an employee from each of the two private engineering firms Woodville had engaged in its development of the Property.

Two provisions of the Charles County Zoning Ordinance ("CCO") were of particular relevance in framing the presentation at the hearing. Article XXV, § 297-415(H) states that the Board "shall grant a special exception" when, by a preponderance of evidence, the proposed use satisfies nine stated criteria.[2] And, more specifically to this use, Article XIII, § 297-212(48), which states:

> **4.01.400 Social, fraternal clubs and lodges, union halls, meeting halls and similar uses.** Such uses are permitted by special exception in [six different zones, including the AC zone] provided that:

[1] The Adjoining Landowners included Laurell Aiton, Jeffrey Aiton, Andrea Daniels, and Brian Daniels.

[2] The criteria include, among other things, that the use: not be detrimental to or endanger the public health; not be detrimental to the use or economic development of surrounding properties; has no objectionable impact on traffic, noise, or light; and will have adequate utilities and adequate ingress/egress. The Department of Planning and Growth Management Staff Report concluded:

> *Staff finds that based upon the special exception application materials submitted for review the proposed use conforms to the applicable regulations of the Agricultural Conservation (AC) zone in which it is located and to the special requirements established for the specific use (per Article XIII, § 297-212, the minimum standards for the use, 4.01.400 Social, Fraternal Clubs & Lodges, union hall, meeting hall & similar uses).*

A. Any structure shall be located at a distance of not less than 100 feet from any lot line, except that not less than 50 feet at commercial or industrial zone lot lines shall be allowed. The front setback shall be at least 100 feet, except when bordering highways of eighty-foot rights-of-way or more, where the setback shall be 50 feet.

B. The provision of food, refreshments and entertainment for club or organization members and their guests may be allowed in connection with such use.

C. All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall intrude into any adjacent residential area.

(Emphasis added.) Provision B. is the focus of this appeal.

At the hearing, Michael White testified about the proposed use of the Property and answered questions from the Board. He testified that the corporate events would occur on the Property Monday through Thursday with less than 50 participants, and that the milestone events would be held on Fridays and Saturdays with up to 300 guests. He testified that, in addition to the main building, 147 parking spaces and a gazebo would be constructed, and that the "lawn area adjacent to the building would be used for brief ceremonies, with at the most, light music played in conjunction with the ceremony." Food and refreshments for the events would be provided by outside vendors. He advised the Board that the facility would be "open for the public at large," in that members of the public could reserve the facility for an event. He testified that the Property was chosen because it could draw from the surrounding larger population outside of Charles County, including other Maryland locations, Northern Virginia, and D.C.

A planner with the Department of Planning and Growth Management (the "Department") testified that the Department recommended approving the special exception

request, as it complied with the nine criteria of Article XXV, § 297-415 and the three provisions of Article XIII, § 297-212(48).[3] During the hearing, the Board noted that it had received "a lot" of emails expressing concern about the proposed project. And most of the testimony related to traffic concerns which resulted in a condition in the Board's ultimate order for a traffic study for the proposed use.

After the evidence portion of the hearing had ended, the attorney for the Adjoining Landowners argued, among other things, that the Board should deny the special exception because CCO § 297-212(48)(B) limited the special exception use of the property to "organization members and their guests" whereas Woodville's proposed facility could be used by the general public. Woodville's attorney responded that its proposal had met all the criteria for a special exception and rejected the Adjoining Landowners' interpretation of CCO § 297-212(48)(B). During the Board's deliberations, its attorney noted that the terms in the title were not defined and the question for interpretation was "what does similar uses mean[?]" He was of the opinion that the word "organization" as used in § 297-212(48)(B), was limited to like-organizations listed in the title and did not include "places of assembly that are open to the public" and not "tethered to [an] organization."

[3] The Department of Planning and Growth Management's Staff Report related the following "Staff Finding" about the provision of food and refreshment under provision B.:

> *The Applicant stated in their application that the proposed venue will provide food, refreshments, and entertainment at events. The Applicant intends to utilize local farm products and foods in their services to the public. The Applicant has also stated that they will abide by all applicable rules and regulations set forth by the County and State regarding food, refreshments, and entertainment.*

The Board unanimously approved Woodville's special exception request with several conditions, including setting the hours of operation from 10:00 a.m. to 10:00 p.m. In its subsequent written decision and order, the Board specifically addressed the requirements of CCO § 297-212(48)(B), stating that although the proposed use will provide "food, refreshments, and entertainment to the public[,]" this was not in contravention of the ordinance because:

> [t]he provision of food, refreshments and entertainment is the concept of this proposal. The opponents argued that food, refreshments, and entertainment may only be provided to members of an organization or club and their guests. While this subsection does permit such activity, this does not exclude members of the public from receiving such services. That is the concept of such places of social assembly.

The Adjoining Landowners appealed to the Circuit Court for Charles County. At a hearing held on September 20, 2021, their attorney argued that the Board had committed "legal error" in its application of provision B. because it limits the special exception use "to club or organization members and their guests" if food or refreshments are provided on the Property. It was their position that food cannot be served to the general public or to who wants to rent the facility under provision B. and that its food and refreshment provision was intended to limit the number of people using the facility.

Woodville's attorney focused on the deference to be given in judicial review to the Board's interpretation of an ordinance that it administers and that the "expertise of an agency in its field should be respected." As to the interpretation of provision B., Woodville's attorney stated: "We have all been to weddings, we have all been invited guests to a location. And I would urge this Court to look at what is the intent, and remember

that special exceptions are permitted, they are permitted in AC zone if you hit the three elements."

The Board's attorney, also stressing the standard of review, asked the circuit court to give "considerable weight" to the Board's and the Department's interpretation of the ordinance because they "administer and interpret the zoning regulations" and they both agree that the proposed use is permitted by special exception in the AC zone. As to the language of provision B., he argued that "meeting halls is certainly broad" and "[s]imilar uses is even broader[,]" which, even if seen as an ambiguity, could be interpreted by the Board and the Department as permitting the proposed use. As to the Adjoining Landowners' argument that provision B. was to protect them from uses incompatible with residential homes, the attorney, citing the broad uses provided for in an AC zone,[4] argued it would be a mistake to premise the interpretation of the provision on what is compatible with residential uses. In addition, if the Adjoining Landowners' interpretation of the ordinance language would prevail, it would necessarily apply in other districts where the use was permitted by special exception and which would result in the "very severe practical effect" that lodges or fraternal organizations in an AC zone could not rent their halls for such private events.

[4] The uses referred to included slaughter houses, livestock markets, recreation vehicle parks, automobile and motorcycle racing tracks, drive-in movie theaters, open air theaters, amphitheaters, amusement and theme parks, rifle and pistol ranges, war games, archery ranges, recreational activities using weapons, private use airports, helicopter facilities, fertilizer mixing plants, and surface mining.

After hearing the arguments presented, the circuit court reasoned that provision B. was intended to "narrow" the scale of the use to protect the adjoining property owners. The court reversed the Board's ruling and remanded the case back to the Board with instructions to deny the application, unless Woodville amended its application in a way that was consistent with § 297-212(48)(B) as set forth in its order. Woodville filed this timely appeal.

DISCUSSION

Standard of Review

When reviewing a decision by an administrative agency, this Court "looks through" the decision of the circuit court, applying the same standards of review to evaluate the agency's decision. *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018). Our review is "limited to evaluating whether 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." *Id.* (citing *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008)).

The test for reviewing factual findings of administrative agencies is substantial evidence, which '"has been 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, 92 (2016) (quoting *Tomlinson v. BKL York LLC*, 219 Md. App. 606, 614 (2014)). And '"not only is the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences."' *Brandywine Senior Living*, 237 Md. App. at 211

(quoting *Pollock v. Patuxent Inst. Bd. of Rev.*, 374 Md. 463, 477 (2003)). In "applying the substantial evidence test" we view the decision "in the light most favorable to the agency, [because] decisions of administrative agencies are prima facie correct and carry with them the presumption of validity." *Id.* at 210-11 (quotation marks and citation omitted).

We defer to an agency's factual findings supported by substantial evidence, but we review decisions regarding matters of law *de novo*, while providing a degree of deference to the agency on some legal issues based on its position in regard to the subject matter under review. *Willow Grove Citizens Ass'n v. Cnty. Council of Prince George's Cnty.*, 235 Md. App. 162, 168 (2017) (citing *Wallace H. Campbell & Co. v. Md. Comm'n on Hum. Rels.*, 202 Md. App. 650, 663 (2011)). For example, an '"agency's interpretation and application of the statute which [it] administers should ordinarily be given considerable weight[.]"' *Id.* at 168-69 (quoting *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009)).

Analysis

We employ a statutory interpretation approach when interpreting local zoning ordinances. *E. Outdoor Advert. Co. v. Mayor & City Council of Baltimore*, 128 Md. App. 494, 519-20 (1999), *cert. denied*, 358 Md. 163 (2000). In doing so, our

> principal goal is to determine the legislative intent underlying the relevant statutes. *See Downes v. Downes*, 388 Md. 561, 571 (2005). "We begin our analysis by looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Brown v. State*, 454 Md. 546, 551 (2017).

Shealer v. Straka, 459 Md. 68, 84 (2018). When confronted with an ambiguity, we will read the language in such a way that "will carry out its object and purpose." *Harbor Island Marina, Inc. v. Bd. of Cnty. Comm'rs of Calvert Cnty., Md*., 286 Md. 303, 311 (1979). And, we will also '"consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.'" *Spangler v. McQuitty*, 449 Md. 33, 50 (2016) (quoting *Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC*, 412 Md. 308, 315 (2010)).

When a use district is established, the applicable zoning regulations set out certain uses that are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981). If the county legislative body determines that the benefits of a certain use outweigh its potential adverse effects, the use is designated a permitted use. *Id*. at 21. Where a county legislative body determines that other uses are "compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect," these uses are designated as conditional or special exception uses. *Id*. at 22. For that reason, whether a special exception is compatible with permitted uses is not relevant in administrative proceedings on an application for such uses because the legislative body by designating the special exception has deemed it to be generally compatible with other uses. The issue to be considered is whether, in a particular location the adverse effects would be greater than the adverse effects ordinarily associated with the particular use. *E. Outdoor Advert.*, 128 Md. App. at 525-26.

The Charles County Zoning Code establishes 26 designated zones in which various stated uses may be allowed under three different designations: permissible with a zoning permit ("P"), permissible subject to conditions ("PC), and permissible by special exception permit ("SE"). *See* CCO § 297-61. The Code lists alphabetically 136 uses. *See* CCO § 297-212(1)-(136). By a numbering system that corresponds with various tables, it sets forth specific requirements for uses with conditions or special exceptions. *See id.* The 136 listed uses are to be interpreted "to include other uses that have similar impacts to the listed uses." CCO § 297-62(A). In other words, an unlisted proposed use is "to be included in that classification which most closely and most specifically describes the proposed use." *See* CCO § 297-62(A), (D).

The "Objectives" for the AC zone, are as follows:

> The Agricultural Conservation Zone provides a full range of agriculture and farming activities, protects these established uses from encroaching development which might adversely affect the agricultural economy of the County and encourages the right to farm in the County without undue burden on the landowner. The zone is to prevent premature urbanization in areas where public utilities, roads and other public facilities are planned to meet exclusively rural needs and where present public programs do not propose public facility improvements suitable for development at higher densities. This zone provides for certain agriculture-related commercial and industrial uses with special conditions. Such uses are to accommodate flexibility in the use of lands by those persons or organizations that pursue agriculture activities and/or earn their income from agriculture when these uses are not in conflict with the protection of farmland and support protection of the farm economy. The zone protects existing natural resources and scenic values and provides limitations on residential development and encroachment in these areas dominated by agricultural uses. In addition, the zone assists in the implementation of the County's Transferable Development Rights (TDR) Program by providing an appropriate zone to be designated as a sending area.

CCO § 297-87(A).

The use "Social, fraternal clubs and lodges, union halls, meeting halls and other similar uses" is a permissible use in 14 zones.[5] *See* § 4.01.400 attachment 1:5. In six zones (including AC), it is permissible by special exception.[6] *Id*. At issue in this case is "B. The provision of food, refreshments and entertainment for club or organization members and their guests may be allowed in connection with such use." *See* § 4.01.400(B).

As framed by Woodville, the question presented is whether "a wedding hall is forbidden from providing food, refreshments, and entertainment to pecuniary clients when operating under a special exception pursuant to Charles County Code, Art. XII Section 297-212(48)(B) as a matter of law[.]" It asserts that the answer to that question is "no" and that invited attendees at such milestone events would be guests to whom "food, refreshments, a entertainment" could be provided in connection with the special exception

[5] Those zones include: RO (residential office), CC (community commercial), CB (central business), CV (village commercial), IG (general industrial), IH (heavy industrial), PRD (planned residential development), PEP (planned employment and industrial park), MX (mixed use), PMH (planned manufactured home park), TOD (transit oriented development), CRR (core retail residential), WC (Waldorf central), and AUC (Acton urban area).

[6] The six zones are AC, RC (rural conservation), WCD (watershed conservation district), RV (village residential), CN (neighborhood commercial), and BP (business park). It is not permitted in any zone with conditions. It is not permitted at all in six zones: RR (rural residential), RL (low-density residential), RM (medium-density residential), RH (high-density residential), CER (core employment/residential), and CMR (core-mixed residential).

use.[7] They contend that we should defer to the Board's decision to grant the special exception request.

The Adjoining Landowners contend that we should uphold the circuit court. They assert that the Board erred as a matter of law by ignoring "the plain language of Article XIII, Section 297-212(48) and Article XXV, Section 297-415 of [the ordinance] and approved a special exception that failed to satisfy the required elements of Article XIII, Section 297-212(48)" of that ordinance. As they see it, for Woodville's proposed use in the AC zone to be approved "the provision of food, refreshments, and entertainment" is limited to "club or organization members and their guests." Woodville's proposal, however, would "allow the general public to rent and use the lodge/hall" and food, drinks, and entertainment would be available "to anyone without any requirement that they be members of a particular club or organization." Therefore, Woodville's proposal does not satisfy the requirements for the special exception.[8]

[7] They also argue that Woodville is an "organization" for the purposes of subsection 4.01.400(B). The Adjoining Landowners contend that the "organization" and "guests" arguments were not raised with the Board and the circuit court and should be disregarded. Woodville counters in its Reply Brief that preservation involves "issues" and "arguments" and that the "central, and indeed only, issue in this case is whether Woodville's request for a special exception satisfied the elements of Use 4.01.400 as a matter of law[.]" We agree with Woodville.

[8] Adjoining Landowners make much of the Board's attorney's statement after the record was closed that to be approved for a special exception under Article XIII, Section 297-212(48), the applicant has to be an "organization like the Elks, . . . the Order of Odd Fellows" covered "in the first line and that [provision] B provides for those clubs or organizations that there can be food, refreshments and entertainment." At the circuit court, the attorney supported the Board's position and stated that its "written decision order properly interpreted the law" and that "[m]eeting halls and similar uses would permit this particular use."

We agree that the issue presented is whether the use proposed by Woodville falls within the use classification "[s]ocial, fraternal clubs and lodge, union halls and *other similar uses*" and permits the type of facility proposed by Woodville. The Board found that the use classification related to "places of social assembly" and rejected the Adjoining Landowners' argument that the provision of "food, refreshments, and entertainment" was limited only "to members of an organization or club and their guests." According to the Board, the provision permitted providing food, refreshments, and entertainment to members and their guests but it did not "exclude members of the public from receiving such services" because that is "the concept of such places of social assembly."

Asserting a "plain language" reading and focusing on the circuit court's decision, Adjoining Landowners argue that the Board's reasoning was "flawed for two equally compelling reasons." First, if provision B. does not mean that the provision for food, refreshments, and entertainment is limited to "members and their guests," that language is rendered superfluous. And second, the Board's reasoning about places of social assembly "ignores the fact that this hall or lodge, in the [AC District], is not a fully permitted use and can only be located in that district if it is limited in accordance with the criteria listed in the Zoning Ordinance." As they see it, the Board's "reading" of the ordinance "is inconsistent with, or ignores, common sense or logic."

The Adjoining Landowners appear to acknowledge that a wedding or milestone events hall would be permitted in the AC District as a special exception but that food,

refreshments, and entertainment could only be provided if the operator was a club-like organization and the guests were invited by an organizational member.[9]

As stated, our interpretive goal is to determine legislative intent, which ordinarily begins with the plain language of the ordinance provision at issue read in context of the overall ordinance. Here, the ordinance itself sheds some light on its interpretation. For example, CCO § 297-9 "Rules of Construction" states that it is the declared intent of the County Commissioners that the terms and provisions comprising the text of the chapter "shall be liberally construed" by the agencies, commissions, and boards based on designated rules of construction and the "rules applicable generally to the construction of zoning ordinances and the interpretation requirement of the Charles County Code[.]" And CCO § 297-9(D) provides that when there is a "conflict between the text of this chapter and any caption . . . the text shall control." In regard to the uses set forth in the Table of Permissible Uses, § 297-62(A) provides that those uses are "all inclusive" and "shall be interpreted by the Zoning Officer to include other uses that have similar impacts to the listed uses." As for the meaning of certain terms, the Charles County Zoning Ordinance states that "all words other than the terms specifically defined herein shall have the meaning inferred from their context or as defined in the most recent edition of Webster's International Dictionary." *See* § 297-9(L).

With this in mind, we turn to the language of subsection 4.01.400 which reads:

[9] At the Board hearing, counsel for the Adjoining Landowners stated: "And I think this use is the correct use and staff has said this and I don't doubt them that if you wanted to build a wedding hall in Charles County, this is the use you would have to fall under."

> **Social, fraternal clubs and lodges, union halls, meeting halls and similar uses.** Such uses are permitted by special exception in the WCD, AC, BP, RC, RV and CN Zones, provided that:
>
> A. Any structure *shall be located* at a distance of not less than 100 feet from any lot line, except that not less than 50 feet at commercial or industrial zone lot lines shall be allowed. The front setback shall be at least 100 feet, except when bordering highways of eighty-foot rights-of-way or more, where the setback shall be 50 feet.
> B. The provision of food, refreshments and entertainment for club or organization members and their guests may be allowed in connection with such use.
> C. All outdoor lighting *shall be located, shielded, landscaped or otherwise buffered* so that no direct light shall intrude into any adjacent residential area.

(Italicized emphasis added.)

Section 297-10 speaks in terms of "minimal conditions" for special exceptions. Provisions A. and C. of subsection 4.01.400 are expressed in terms of "shall" and clearly represent conditions or requirements for approval of a special exception for this particular use. They state minimal setbacks for structures and location requirements for outdoor lighting. Provision B. is structurally different. It is expressed in terms of the permissive "may" and allows "food, refreshments and entertainment" to be provided to "club or organization members and their guests . . . in connection with such use."

The Adjoining Landowners interpret this to limit the provision of food, refreshments and entertainment only to "club or organization members and their guests," effectively limiting the special exception use to club-like organizations and precluding the grant of a special exception for Woodville's proposed use. But that interpretation conflates "use" with "user." In the phrase "other similar uses," "similar" does not modify or relate to the

organizational structure of the user but to the actual use of the property. "Use" is defined in the ordinance as "[t]he purpose or activity for which land, buildings or structures are designed, arranged or intended or for which land, buildings or structures are occupied or maintained." CCO § 297-49(E).

The ordinance expressly provides that the listed uses are "all inclusive" and are to be interpreted by the zoning officer to include uses that have "similar impacts to the listed ones." To be sure, the types of uses mentioned in the title – clubs, lodges, meeting and union halls – would accommodate club-like or membership organizations. But the text focuses on "such uses" and "similar uses" and not "similar users." We do not read the reference to "club or organization members and their guests" in provision B. as prohibiting other types of users from providing guests with food, refreshments and entertainment. To do so would result in two tiers of special exception users within the same zone – those that could provide food, refreshments and entertainment to guests and others that could not – even though the impact of the two facilities are substantially the same. For example, there is no expressed ordinance limit on the number of members, guests and events that a club-like organization might have.

That would, in our view, be an illogical result and conflict with other provisions in the ordinance for other uses in the AC zone. For example, a "farm alcohol production facility" is a listed use permitted with conditions in the AC zone. According to CCO § 297-212(107.1)(7.01.241)(A)-(D), provision C. for that use states that a farm alcohol production facility may "conduct festivals or other special events" upon attaining "all applicable County permits and approvals[.]" But to use the facility to host "private events

such as weddings or parties" the ordinance expressly states that the owner would have to "apply for a special exception as a social, fraternal club and lodge, union hall, meeting hall and similar use[.]" *Id.* This is an express legislative direction to that special exception use for private events such as weddings and parties – events of social assembly – where food and refreshments would ordinarily be expected. And it indicates that provision B. was not intended to prohibit food and refreshments being served to guests invited to such events and to limit the use in the AC zone to club-like organizations.

In short, we are not persuaded that the Board erred as a matter of law in its interpretation of the ordinance and its approval of the proposed special exception in this case.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED.

COSTS TO BE PAID BY APPELLEES.