

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1974

September Term, 2015

RICHARD SHEAHAN, et ux.

v.

HISTORIC PRESERVATION COMMISSION
OF ANNAPOLIS, et al.

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 8, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Richard Sheahan and Catherine Sheahan, appellants, noted an appeal from an order of the Circuit Court for Anne Arundel County, upholding a decision of the Annapolis Historic Preservation Commission. We affirm.

Appellants own property at 83 Shipwright Street, which is located in the historic district of Annapolis. Appellants opposed an application filed with the City of Annapolis by their neighbor, Mary Treger, seeking approval for plans to build a proposed addition to her home. The Annapolis Historical Preservation Commission, which is vested with authority to approve or deny such applications¹, held five days of hearings on the application, at the conclusion of which the Commission voted, by a margin of 6-1, that the application was in compliance with applicable guidelines set forth in the Annapolis Historic District Design Manual (“Design Manual”)² and approved the application.

Appellants sought judicial review of the Commission’s decision in the Anne Arundel County circuit court, which affirmed the decision. Appellants then filed an appeal to this Court, in which they claim that the Commission’s decision was not supported by substantial evidence and that the Commission applied an incorrect standard in evaluating the impact the proposed addition would have on the subject property and the Annapolis historic district.

¹ See Annapolis City Code, § 21.08.060.E4.

² Pursuant to authorization in Annapolis City Code § 21.08.060.E7, the Commission has adopted guidelines that “provide the criteria required for applicants to design and to make changes which contribute to the district.” *Building in the Fourth Century: Annapolis Historic District Design Manual*, p. 33 (available at www.annapolis.gov).

At issue is whether the proposed addition was in compliance with Guideline A.3 in the Design Manual, which provides as follows:

All projects which are visible from the water shall respect and reinforce the historic character of the district and shall respect traditional views and visual focal points³. . . . The scale, placement and configuration of new structures, and plantings within these view sheds need to be carefully planned so that new elements do not alter or obscure the character of these historic patterns.

Appellants’ position before the Commission was that the proposed addition would obstruct the view of their circa 1890 house in violation of this guideline. In its decision, the Commission concluded that the application complied with Guideline A.3, and explained the basis for its finding as follows:

We concur that 83 Shipwright Street is a structure that contributes to the historic character of the district. But we do not find that the height and width of the [proposed addition] encroaches to a degree that has an adverse effect on the view of 83 Shipwright Street from the water. In fact, much of 83 Shipwright St., including the character defining features (building materials, dormers and roof form) will still be largely visible. We find that the design does respect the historic character of the district. Both parties presented diagrams and photographs showing the view and the proposed addition, created from many angles. We considered all of this evidence in drawing this conclusion.

“A court’s role in reviewing an administrative agency adjudicatory decision is narrow, it 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 determine if the administrative decision is premised upon an erroneous conclusion of law.” *Motor Vehicle Admin. v. Weller*, 390 Md. 115, 141 (2005) (citation and internal quotation marks omitted). In doing

³ According to Guideline A.1 of the Design Manual, “visual focal points” “includ[e] the State House, St. Anne’s Church, and the water.”

so, “we [assume] the same posture as the circuit court . . . and limit our review to the agency’s decision.” *McClure v. Montgomery County Planning Bd.*, 220 Md. App. 369, 379 (2014) (citation omitted).⁴

“With regard to the agency’s factual findings, we do not disturb the agency’s decision if those findings are supported by substantial evidence.” *Id.* at 380. “Substantial evidence is defined as ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id.* (citation omitted). The substantial evidence test “is a deferential one, requiring ‘restrained and disciplined judicial judgment so as not to interfere with the agency’s factual conclusions[.]’” *HNS Dev., LLC v. People’s Counsel for Baltimore Cty.*, 200 Md. App. 1, 45 (2011) (citation omitted), *aff’d*, 425 Md. 436 (2012). Accordingly, an appellate court “should not examine the facts in any case further than to determine whether there was substantial evidence to sustain the order.” *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Maryland Pub. Serv. Comm’n*, 227 Md. App. 265, 283 (citation omitted), *aff’d sub nom.* 451 Md. 1 (2016).

Where evidence presented by one party conflicts with that of another party, as in the instant case, “it is the agency’s province to resolve [the] conflicting evidence and to draw inferences from that evidence.” *Motor Vehicle Admin. v Weller*, 390 Md. at 141 (citation and internal quotation marks omitted). We give deference “not only to agency factfinding, but to the drawing of inferences from the facts as well.” *HNS Dev.*, 200 Md. App. at 45

⁴ Because we limit our review to the agency’s decision, we do not consider the additional question presented in appellee’s brief, which is whether the circuit court’s decision was supported by competent, material and substantial evidence.

(citation omitted). Finally, “we review the agency’s decision in a light most favorable to the agency, since decisions of administrative agencies are *prima facie* correct, and carry with them the presumption of validity.” *Id.* (citation and internal quotation marks omitted).

Appellants’ first contention is that the evidence presented by Ms. Treger’s architect, regarding the impact that the proposed addition would have on the view of 83 Shipwright, was “mathematically incorrect.” They further assert that the “majority decision relied” on this “flawed” evidence, and that, therefore, the Commission’s finding that the proposed addition complied with Guideline A.3 was not based on substantial evidence.

Preliminarily, we observe that it is not clear from the record to what extent, if any, the Commission relied on the testimony of the architect in reaching the conclusion that the proposed addition would comply with Guideline A.3. Indeed, the Commission’s on-the-record deliberations suggest that, while it considered the architect’s testimony regarding the degree of visual obstruction of 83 Shipwright from Spa Creek, as well as the conflicting evidence presented by Mr. Sheahan, some of the commission members were not persuaded by either. As stated above, it is within the Commission’s province to resolve the conflict in the evidence, and, in doing so, to decide what weight, if any, to give the evidence. *See, e.g., Bereano v. State Ethics Comm’n*, 403 Md. 716, 747 (2008) (stating that “[t]he finder of fact properly may assign no weight and no credibility to a particular witness’s testimony.”) The Commission was not, as appellants suggest, required to accept “only one set of facts.”

We also observe that, in concluding that the proposed addition would not have an adverse effect on the view of 83 Shipwright, the Commission noted that “[i]n fact, much

of 83 Shipwright St., including the character defining features (building materials, dormers and roof form) will still be largely visible.” These “character defining features” appear to be “largely visible” in the diagram Mr. Sheahan prepared and submitted into evidence, showing the effect on the view of 83 Shipwright according to his calculations, as well as in the competing diagram prepared by the architect. Arguably, the Commission may not have found it necessary to resolve the conflicting testimony regarding the degree of obstruction of the view from Spa Creek, but simply concluded that, even if Mr. Sheahan was correct, the addition still would not adversely effect the view of 83 Shipwright.

In any event, the record reflects that the Commission’s decision was not based solely on the architect’s testimony regarding the view from one particular point on Spa Creek, but also by other evidence regarding the extent of any visual obstruction of 83 Shipwright that might result from the construction of the proposed addition. That evidence included testimony and a staff report from Lisa Craig, Chief of Historic Preservation for the Commission, in which she stated that the proposed addition was consistent with Guideline A.3, and specifically noted that “[w]hile the addition is within the viewshed of the water, the addition does not detract from adjacent historic properties.” Also admitted into evidence were photographs depicting the view of appellants’ home from several different vantage points on the water. Notably, in its written decision, the Commission acknowledged that “[b]oth parties presented diagrams and photographs showing the view and the proposed addition, created from many angles[,]” and that it had “considered all of this evidence in drawing th[e] conclusion” that the application complied with Guideline A.3.

Viewing the evidence in the light most favorable to the agency, we conclude that there was substantial evidence to support the Commission’s findings that the proposed addition would not have “an adverse effect on the view of 83 Shipwright Street from the water” and that it would “respect the historic character of the district[,]” and, accordingly, that the application was in compliance with Guideline A.3. *See also Maryland State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 457 (2015) (“[I]f reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then it is based upon substantial evidence, and the court has no power to reject that conclusion.”) (citation omitted).

Appellants’ second contention is that the Commission erred when it applied a “lenient” standard in evaluating the application. In evaluating applications for Certificates of Approval, the following standards apply:

The Commission shall be strict in its judgment of plans for landmarks, sites or structures determined by research to be of historic, cultural, archaeological, or architectural significance. The Commission shall be lenient in its judgment of plans for landmarks, sites or structures of little historic, cultural, archaeological, or architectural significance, or of plans involving new construction, unless in the Commission’s judgment such plans would seriously impair the historic, cultural, archaeological, or architectural significance of surrounding landmarks, sites or structures.

Annapolis City Code § 21.56.060(D) (emphasis added).

The Commission’s majority report does not state whether it utilized a lenient or a strict standard. Assuming that a lenient standard was applied, however, it follows, from the Commission’s determination that the proposed addition would not have an “adverse effect on the view of 83 Shipwright Street from the water[,]” and, that it “would respect

the historic character of the district[,]” that, in the Commission’s judgment, the addition would not “seriously impair the historic, cultural, archaeological or architectural significance of surrounding landmarks, sites or structures.” Accordingly, employing a lenient standard was appropriate.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**