

Circuit Court for Harford County
Case No. 12-C-16-003414

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2348

September Term, 2018

JASON ROSENZWEIG, *ET UX.*

v.

HARFORD COUNTY DEPARTMENT OF
PLANNING AND ZONING, *ET AL.*

Nazarian,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 19, 2019

* 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.

Timothy and Lisa Limberger own farmland in Churchville on which they want to build an event facility. On December 22, 2016, the Harford County Director of Planning (the “Planning Director”) granted special development approval for their project and issued them a Site Plan Approval under § 267-68 of the Harford County Code (“HCC”). Jason and Nicole Rosenzweig live across the street from the Limbergers. They and a group of other neighbors opposed the development before the Planning Director; after it was approved, they sought judicial review in the Circuit Court for Harford County, which upheld the Planning Director’s decision. The Rosenzweigs appeal, and although (and inexplicably) neither the Limbergers nor the County responded, we affirm the Planning Director’s decision as well.

I. BACKGROUND

A. The Limbergers’ Request Approval for Special Development

The Limbergers own a little more than fifty acres on Glenville Road in Churchville (“the Property”). The Property is zoned “agricultural” and is located in a semi-rural area. They want to develop a portion of the Property into a horseback riding and private parties and receptions facility called The Regent at Stone House.

On March 18, 2015, the Limbergers submitted a Site Plan Application seeking special development approval of The Regent at Stone House. In addition to the documentation specified in the application, they submitted a Forest Stand Delineation and Forest Conservation Plan, a Landscaping Plan, a Stormwater Management Plan, a Sediment Control Plan, and two Traffic Impact Analyses. The Limbergers also held two Community Input Meetings. And although vehement opposition to the development from

other neighbors and residents came to light during those meetings, on December 22, 2016, the Planning Director approved the special development of The Regent at Stone House and issued the Site Plan Approval.

B. Judicial Review In The Circuit Court

The Rosenzweigs are residents of Churchville and own the lot across from the Property on Glenville Road. They assert they “will be specially and adversely affected by the development, construction, and use of the Regent at Stone House due to traffic, noise, view, and other impacts, and, therefore, are interested persons who are specially aggrieved by the approvals”

The Rosenzweigs, together with two other neighboring families who also own residences adjoining the Property, filed three separate petitions for review of the Planning Director’s decision in the circuit court. As the circuit court explained:

Case 12-C-3413 is an appeal to this Court of the county Site Plan Approval. Case 12-C-16-3414 is a direct appeal to this Court from the county’s purported granting of a Special Development Approval. Case 12-C-17-2684 is an appeal of the decision of the [Department of Planning & Zoning] Board of Appeals.

The filing of three separate petitions appears to have been the result of different and diverging avenues of appeal set forth in the HCC for different kinds of land use decisions. We discuss these in more depth below. The circuit court issued a stay in cases 3413 and 3414, pending the resolution of 2684 in the Zoning Board of Appeals.

The Zoning Board of Appeals referred the case to the Zoning Hearing Examiner, who found that the Planning Director’s decision was not reviewable by the Zoning Board

of Appeals:

It is, accordingly, found that the action of the Planning Director in granting a special development pursuant to Section 267-68(A) of the Code is not subject to [Zoning] Board of Appeals review. It is found additionally, the very clear provisions of Harford County Subdivision Regulations at Section 268-28, do in fact provide for an appeal of the actions which aggrieve the Applicants. Accordingly, the Applicants are not without a remedy, and are not without a forum within which to express their complaints.

The Zoning Hearing Examiner recommended the appeal be dismissed, and the Zoning Board of Appeals agreed. On March 15, 2018, the circuit court lifted the stay, consolidated the two cases, and affirmed the Zoning Board of Appeals's dismissal, agreeing that site plans must be appealed under the procedure set out in the Subdivision Regulations, which provides only for an appeal to the circuit court and then to this Court.

On April 23, 2018, the Rosenzweigs, Eissingers, and Osterias noted their appeal directly to the circuit court. They raised seven issues¹ that the court consolidated into two:

¹ The Rosenzweigs stated the Questions Presented in their petition as follows:

1. Does the decision of the Director of Planning granting the Special Development Approval exceed the statutory authority and jurisdiction of the Department of Planning and Zoning?
2. Did the approvals result from an unlawful procedure?
3. Is the decision of the Director of Planning granting the Special Development Approval affected by errors of law?
4. Is the decision of the Director of Planning granting the Special Development Approval supported by competent, material and substantial evidence in light of the entire record?
5. Is the decision of the Director of Planning granting the

first, whether special development approval under zoning regulations (section 267 of the HCC) is separate from site plan approval under subdivision regulations (section 268 of the HCC), and splitting the process in two;² and *second*, whether the record contained substantial evidence to support the Planning Director’s decision to grant Site Plan Approval. The circuit court held that there was no error in considering special development approval and Site Plan Approval contemporaneously,³ and that substantial evidence supported the decision to grant the Site Plan Approval. Only the Rosenzweigs filed a timely notice of appeal. For reasons the record does not reveal, neither the County nor the Limbergers has participated.

We supply additional facts as necessary below.

II. DISCUSSION

On appeal, the Rosenzweigs raise eight issues that boil down to one: they ask us to

Special Development Approval arbitrary or capricious?

6. Did the Director of Planning abuse his discretion in granting the Special Development Approval?
7. Was the decision granting Site Plan Approval illegal?

² The Rosenzweigs do not ask us to review this question on appeal.

³ Although we have not been asked to review this question, we emphasize that the trial judge came to the correct conclusion that “the provisions of Section 267 [and] 268 are to be read and harmonized together.” Although zoning laws and subdivision regulations are two separate functions of the land use continuum, “the two regulatory schemes are intended to complement each other in terms of safety, health, and general welfare of the community at large.” *People’s Counsel for Balt. Cty. v. Surina*, 400 Md. 662, 689 (2007). They “operate in practical application to ensure that land in a particular locality is developed in a relatively uniform and consistent manner.” *Id.* at 691. These principles “appl[y] to every jurisdiction in Maryland that exercises land use control authority.” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 651 (2018).

reverse the Planning Director’s decision to grant Site Plan Approval because it was not supported by substantial evidence.⁴ For the reasons discussed below, we hold that substantial evidence supports the decision to grant Site Plan Approval, and affirm.

A. Standards For Granting A Special Development

Harford County is a charter county. *See* § 101 of the Harford County Charter. As a charter county, it “established its own unique set of rules and regulations pertaining to

⁴ The Rosenzweigs stated the Questions Presented in their brief as follows:

1. Did the Special Development Approval granted by Appellee exceed the statutory authority of Appellee because it allows a new, non-agricultural structure to be built expressly for use as an events center/banquet hall?
2. Did Appellee misinterpret the Zoning Code and illegally approve a facility to house numerous activities which are not “private parties and receptions” activities to be constructed and operated on property zoned AG–Agricultural?
3. Did Appellee fail to make required findings of fact and does the Record contain evidence necessary to approve the Special Development?
4. Did Appellee illegally approve the Special Development where there was no evidence in the record to support a finding that “safe and adequate access shall be provided for vehicular traffic” via Glenville Road?
5. Did Appellee illegally grant approval for the use and structure because once the structure is built, the entire 50 acre parcel will not be entitled to receive an Agricultural Use Assessment?
6. Did Appellee misapply the Zoning Code by failing to exercise Appellee’s discretion to deny approval?
7. Did the Appellee err in failing to consider and impose reasonable conditions?
8. Did Appellee illegally grant Site Plan Approval?

planning and zoning administration.” *Fallston Meadows Cmty. Ass’n, Inc. v. Board of Child Care of Balt. Annual Conference of Methodist Church*, 122 Md. App. 683, 694 (1998). Harford County has vested zoning and planning authority in both the Zoning Board of Appeals and the Planning Director.

A special development, like a special exception or variance, is a flexible device that is meant to mitigate the stringent effects of zoning laws. 3 Edward H. Ziegler, Jr., *Rathkopf’s The Law of Zoning and Planning* § 44:2 (4th ed. 2015). Both the Zoning Board of Appeals and the Planning Director have authority to approve various types of special developments.⁵ Harford County Code § 267-68(A) lists the types of special developments the Planning Director has the authority to grant, and the list includes agricultural/commercial special developments. HCC § 267-68(A)(3). The Zoning Board of Appeals’s authority to grant special developments is limited to those set forth in HCC § 267-68(B). But all new special developments under zoning laws must be consistent with the subdivision regulations, which are contained in Chapter 268 of the Code. HCC § 267-69(D).

HCC § 267-73 sets forth the process for obtaining approval for an

⁵ These various decision-making authorities (and the corresponding avenues of appeal) seem to have led to three separate petitions for review, as noted above. Because the Regent at Stone House is a special development under HCC § 267-68(A), over which the Planning Director has approval authority, the only avenue for review is to the circuit court. *See* HCC § 268-28. If this were a special development under HCC § 267-68(B), over which the Zoning Board of Appeals has approval authority, the Rosenzweigs, Eissingers, and Osterias would have been able to have their case heard in the Zoning Board of Appeals before petitioning the circuit court for review. *See* HCC § 267-9.

agricultural/commercial special development. Subsection (A) lists the general requirements for agricultural/commercial special developments:

- (1) Must be approved by the Director of Planning.
- (2) Except as otherwise provided in this subsection, the parcel shall be a minimum of 10 acres.
- (3) For the 3 years prior to application for approval, gross agricultural income shall have been at least \$15,000 annually, as set forth on Internal Revenue Code Schedule F, or as set forth on any other financial documentation requested and approved by the Department of Planning and Zoning. Gross agricultural income shall remain at least \$15,000 annually as set forth in this Subsection (3).
- (4) The parcel shall be zoned and assessed agricultural.
- (5) Meets the specific criteria for the use.
- (6) Must be owner or tenant operated.
- (7) Safe and adequate access shall be provided for vehicular traffic, as determined by the State Highway Administration or Harford County.
- (8) Hours of operation are permitted between 6:00 a.m. and 10:00 p.m. unless otherwise specified.
- (9) Any lighting shall be shielded and directed away from any off-site residence and may be used only during permitted hours of operation.
- (10) Buildings in which animals are housed shall comply with § 267-53 (AG Agricultural District).
- (11) Setbacks for these uses shall be a minimum of 100 feet from any property line except road frontage and 200 feet from any off-site residence. A buffer yard shall be provided between any parking or storage area and any public road and any off-site residence.
- (12) Written approval from the record owner is necessary if someone other than the other of record is operating the use.

The HCC also provides for different types of agricultural/commercial special

developments. The types at issue here are commercial riding stables and private parties and receptions, which fall under HCC § 267-73(B):

- (1) Commercial riding stables.
 - (a) Parking shall be provided by a minimum of 100 feet from property lines except road frontage and 200 feet from any off-site residence.
 - (b) Pursuant to § 267-30 (Buffer Yards), the property on which the commercial stable is located shall be buffered with a Type “C” buffer. The buffer yard may be included in the setback area.
- (2) Private parties and receptions.
 - (a) Unless located entirely within an enclosed building, this use shall not be located less than 100 feet from any lot line except road frontage and 200 feet from any off-site residence.
 - (b) Adequate parking shall be provided on site and screened from any off-site residence.
 - (c) Hours of operation are not permitted between 12:00 midnight and 6:00 a.m.

To get special development approval, the applicant must submit a site plan application. The subdivision regulations list the criteria for obtaining Site Plan Approval.

HCC § 268-19(A) provides the submission procedure:

- (1) Preliminary plans and site plans shall be submitted to the Department of Planning and Zoning for all proposed subdivisions. Preliminary plans for residential subdivisions of more than 5 lots and commercial/industrial subdivision and site plans for nonresidential and multifamily housing uses shall be distributed to the members of the Development Advisory Committee for review.
- (2) Community input meetings must be held pursuant to § 268-20 (Community input meetings) of the Subdivision Regulations, as amended.
- (3) The preliminary plan and/or site plan shall be complete in

accordance with the information required in Subsection B below.

HCC § 268-10(B) requires site plans to “include all items as specified on the most recent checklist provided by the Department of Planning and Zoning which is incorporated by reference and made a part hereof as though it were fully stated herein.” Finally, HCC § 268-10(C) specifies that a Development Advisory Committee (“DAC”) must be established to advise the Planning Director regarding Site Plan Approvals, and provides a list of agencies that should be included in the DAC. The DAC must also hold meetings that are open to the public and respond to any comment made by a member of the public. HCC § 268-10(C)(2)–(7).

B. Substantial Evidence Supported Granting The Site Plan Approval For The Regent At Stone House.

All the arguments the Rosenzweigs advance agglomerate into whether the Planning Director had substantial evidence to grant Site Plan Approval. When reviewing an administrative agency’s final decision, “we look through the circuit court’s . . . decision, although applying the same standards of review, and evaluate the decision of the agency.” *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 531 (2017) (internal quotation marks omitted) (alterations in original). We evaluate whether “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 on an erroneous conclusion of law.” *Id.* (cleaned up). The “substantial evidence test” is met when “a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.* Evidence is substantial if there is “a little more than a scintilla of

evidence.” *Cremins v. County Comm’rs of Washington Cty.*, 164 Md. App. 426, 438 (2005) (cleaned up). We will not substitute our judgment for the expertise of the administrative agency, “[because] decisions of administrative agencies are prima facie correct” *Donaldson Properties*, 453 Md. at 533. An administrative agency’s decision must have “a record of the facts on which the agency acted or a statement of reasons for its action” *Becker v. Anne Arundel Cty.*, 174 Md. App. 114, 138. “If the agency fails to meet this requirement, the agency’s decision may be deemed arbitrary.” *Id.* at 139.

Several of the Rosenzweigs’ arguments take the form of bald assertions not supported by authority. They posit, for example, that The Regent at Stone House is actually a banquet hall under HCC § 267-88(B)(12), and not a private parties and receptions facility, because a new structure would have to be built on the Property to accommodate the parties/receptions. HCC § 267-88(A)(12) lists the requirements for an agricultural resource center, which is a special exception, and may be granted under the following conditions:

- (a) A minimum parcel area of 100 acres is established.
- (b) The principal access shall be provided from a collector or higher functionally classified roadway as defined by the most recently adopted transportation element plan.
- (c) No building or structure, including temporary structures, shall be located less than 200 feet from any adjacent residential lot.
- (d) Any outside lighting shall be designed, installed and maintained in a manner not to cause a glare or reflection on adjacent residential lots.
- (e) Ancillary uses to the agricultural resource center are defined as office space, **banquet hall** and meeting rooms. The ancillary uses are limited to 10% of the total building square footage or 25,000 square feet, whichever is less.

- (f) Public events are limited to 1 event per calendar days, and hours of operation for public events are permitted between 6:00 a.m. and 10:00 p.m.
- (g) A Type “E” buffer yard, pursuant to § 267-30 (Buffer yards), shall be provided adjacent to any residential lot. (emphasis added).

The Rosenzweigs assert that the activities for which The Regent at Stone House was approved do not come under the definition of “private parties and receptions” in the zoning code, “which does not include an event center, conference center or banquet hall.” They also contend that the Planning Director erred in granting approval because once the new structure is built, the Property will lose its agricultural use assessment. And they assert that the Planning Director should have conditioned approval on agreement to comply with a set of conditions they requested.⁶

⁶ The proposed conditions, which are not required by the County Code, were:

1. The hours of parties and receptions should be limited to 12 noon until 6:00 p.m., Thursday through Saturday, with the condition that all clean up and removal shall be completed within one hour after the scheduled end of the party or reception.
2. Parking shall not be permitted in any area outside of the parking lot designated on the final site plan; no offsite parking; and no transporting guests from off site.
3. Activities must not be allowed in any area or any structure not expressly designated and approved on the final approved site plan.
4. Additional activities, uses, structures, improvements or changes in operation must receive prior express approval from the Director of Planning after further DAC review and Community Input Meeting.
5. The building shall be constructed of sound proof materials.
6. The doors of the building must be closed when music is

Substantial evidence supports the Planning Director’s decision to approve this application. *First*, the Rosenzweigs offer no authority to support the notion that private parties and receptions can occur only in existing buildings or under a tent. Common sense says otherwise: parties or receptions can happen anywhere, and an event’s status as public or private isn’t determined by the venue. We share the circuit court’s sense that the Rosenzweigs’s definition is artificially narrow:

The neighbors make much of the fact that the zoning code does not contain a definition of private parties and receptions. They fault the [Planning] Director for not delineating and limiting what are private parties and receptions. Private parties and reception can include the very things that the neighbors say should be excluded. For example, wedding receptions are generally private limited to the guests invited and are catered. A corporate function could include a retirement party, Christmas party, which could also be called a reception and catered. We give words their ordinary dictionary definitions and common understandings. The fact that the [Planning] Director did not provide an exhaustive list of the types of functions that could be conducted is not erroneous. (citations omitted).

Second, the Rosenzweigs offer no support for the proposition that the Property would lose

playing inside the building.

7. There shall be no on site or off site signs.
8. No event customer or guest may stay on the property overnight.
9. Not more than one event shall be allowed per week.
10. No cooking facilities or kitchen shall be allowed on the premises.
11. At least one owner must be on the premises during all parties or receptions.

its agricultural use assessment if The Regent at Stone House were built on the Property. And *third*, the fact that the Planning Director had the discretion to deny the application doesn't mean that the decision had to go that way. There often, if not always, is a range of feasible outcomes for any discretionary decision, and the Rosenzweigs offer no compelling reason as to why the Planning Director was *required* to deny the application.

The Rosenzweigs advance several other arguments that, we find, the Planning Director also resolved correctly. The Rosenzweigs argue, for example, that there “is no finding or evidence that vehicular access via Glenville Road to the events center will provide ‘safe and adequate’ access.” (They mischaracterize the provision they cite, HCC § 267-73(A)(7), which modifies the “safe and adequate access” requirement with the phrase “as determined by the State Highway Administration or Harford County.”) The Rosenzweigs also assert that the Planning Director did “not provide a complete and accurate depiction or an adequate explanation of the proposed uses.” They say the following was not, and should have been included, in the application:

in addition to groom's quarters, customers have been told of bride's quarters located in the main house or the garage. The Limbergers' Facebook page described separate bride and grooms' cottages with separate courtyards. The Face Book page also states that the Limbergers will offer outdoor settings, covered or uncovered. The cottages, quarters, and outdoor settings are not shown on the site plan or described in the Application.

Although we must look, and have looked, through the circuit court opinion to review the decision of the Planning Director on these points directly, the trial judge's well-reasoned memorandum opinion addresses them in terms that capture our views as well.

With regard to the traffic plan, the circuit court described ably why the Planning Director had substantial evidence to conclude there would be safe and adequate access to Glenville Road:

One of the primary oppositions of the neighbors had to do with traffic on Glenville Road. The record on appeal contains extensive reports and analysis by the Traffic Group, a private consulting firm hired by the applicants to assess the traffic impact. Both the County and the State Highway Administration accepted the conclusion of no adverse traffic impacts. Again, while the neighbors disagree with that conclusion and think the traffic was inadequate, the fact remains that it was the professional experts who came to that conclusion while the [DAC] and the [Planning] Director are within their discretion to accept.

We also agree with the trial court's description of why there was more than substantial evidence to support the Planning Director's decision to grant Site Plan Approval:

The record on appeal contains overwhelming evidence that the Director of Planning considered and found compliance with all of these requirements. . . . After extensive review and hearings, the [DAC] recommended approval referencing approval from the agencies identified in 267-19(C)(1)(A) and (B). Community input meetings were held and several of the neighbors and others testified in opposition to the proposal.

And we adopt the trial judge's explanation of why the Planning Director's Site Plan Approval decision complied with zoning code and site plan requirements:

The site plan approval references only a "proposed building." The Department of Planning & Zoning does not issue building permits. All the site plan does with regard to buildings is designates an address for any proposed building and suggest emergency services provisions that need to be considered.

The administrative record in this case is extensive. It contained 544 pages of reports, analyses, meeting transcripts, maps, diagrams, and more. The application was contested

fully, and the Planning Director's decision to approve it was supported by substantial evidence.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**