Circuit Court for Washington County
Case No. C-21-CV-18-000377

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3298

September Term, 2018

BOWMAN SPIELMAN, LLC

v.

JANE HERSHEY, ET AL.

Kehoe,
Nazarian,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: March 16, 2020

This appeal arises from a judicial review by the Circuit Court for Washington County reversing approval by the Board of Appeals (the "Board") of a site plan proposing to develop appellant, Bowman Spielman's, property for a mixed use. In July 2017, the Washington County Planning Commission (the "Commission") approved a site plan in which, appellant proposed to develop 9.11-acres of land into a restaurant, office space, and mixed retail sales of food and fuel. Appellees, Jane Hershey, et al, appealed. Following a *de novo* hearing, the Board approved the site plan. Appellees then appealed to the Circuit Court for Washington County. The circuit court reversed the Board's decision. Appellant presents the following question for our review:

1. Did the circuit court err in reversing the decision of the Board where the Board's interpretation of the zoning ordinance definition for "truck stop" was consistent with the tenets of statutory construction and further supported by the legislative history of the definition?

For reasons set forth below, we affirm.

BACKGROUND

Appellant has owned approximately 9.11-acres of land in Washington County since June 2000. The land is located at the intersection of Lappans Road (Md. Route 68) and Spielman Road (Md. Route 63). The property is zoned HI (Highway Interchange) by the Zoning Ordinance for Washington County, Maryland (the "Zoning Ordinance"). In February 2016, appellant submitted a site plan (the "Site Plan") proposing to improve the property for a mixed-use by building a restaurant, a store for selling food items, a car wash, 16 fueling stations for cars and motorcycles, 107 parking spaces for cars and motorcycles,

6 fueling stations for trucks, and 4 parking spaces for trucks. The Commission approved the Site Plan. Subsequently, appellees appealed the Commission's approval to the Board, asserting that the intended use proposed in the Site Plan constitutes a "truck stop" as defined by the Zoning Ordinance, which requires a Special Exception[1] to be permitted in the HI zoning district.

A hearing was held in April 2018. After reviewing the site plan and hearing testimony, the Board made the following findings of facts:

1. Bowman Spielman LLC, the Applicant for site plan approval, submitted a proposed site plan (SP-l 6-005) for a "Mixed Use Food Sales/Retail/Office/Fuel Sales" facility on the subject property.
2. The property is 9.11 acres in area, more or less, and is zoned "Highway Interchange.
3. The site plan showed a building of 11,800 square foot gross area, with a 5,000 square foot restaurant area; a 4,322 square foot food and fuel [and retail] sales area; and 1,858 square foot office area.
4. The proposed facility has 16 fueling stations for cars and motorcycles and six fueling stations for trucks.
5. All fueling stations are located under canopies.
6. There are 107 proposed parking spaces for cars and motorcycles.
7. There are four proposed parking spaces for tractor trailers.
8. There are no provisions for showers or overnight accommodations for truck drivers.
9. There is no truck repair, maintenance, service, or truck wash proposed for the site.
10. There is a car wash proposed for a portion of the site.
11. Retail sales are proposed to accommodate motorists and travelers.
12. A restaurant use is proposed to service motorist, travelers, and other customers.

[1] Special Exception is defined as "A grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood."

In concluding the proposed use did not constitute a "truck stop," the Board found "the facility, considered as a whole, is not 'proposed to be used primarily for the sale of fuel for trucks.'" In interpreting the meaning of "truck stop" as defined in the Zoning Ordinance, the Board noted the use of the word "primarily" in the first clause of the statute. Interpreting the dictionary definition of the word "primarily," the Board stated:

> "primarily" [is classified] as an adverb that means, "for the most part: mainly." Thus, the adverbial use of "primarily" qualifies the preceding verb "used," so the definition of "Truck Stop" can be read as requiring "structure or land" used mainly for the "sale of fuel for trucks," and one or more of the additional uses set forth following the first use of the word "and" in the definition.

The Board held that the sale of fuel for trucks is not the main use of the property, but is merely one of a multitude of uses occurring thereon, including retail sales, food sales, and office uses." As such, the Board held the proposed use "is not a 'Truck Stop' as defined in Article 28A of the Ordinance."

The Board's decision was then appealed to the Circuit Court for Washington County. The circuit court reversed the Board's decision, finding that "the Board erred in its conclusions of law." In its interpretation of the definition of "truck stop," the court did not give weight to the word "primarily" and instead focused on the wording of the second clause, stating:

> The definition of truck stop offers two descriptions. The first clause specifies that the use be "intended to be used, primarily for the sale of fuel for trucks. . . ." The second clause is an independent description, noting that it is a distinct alternative by the use of the word "or." Its phrase "such a use" refers to the sale of fuel for trucks. It does not use the modifier "primarily." Had that been the intent of the drafters, a second clause would be mere surplusage; the drafters would have completed the definition in one clause, incorporating all of the intended uses.

The court noted further "the Board read the two descriptions as if they were one and, concluding that the sale of truck fuel was not the primary intended use, ended its analysis." The court reasoned that the Board should have interpreted the proposed use under the second clause of the truck stop definition, stating, "the intended uses on the site plan fit the second description of a truck stop" because it "include[s] the sale of fuel for trucks, truck parking, and an eating facility." The court found the Board instead ignored the existence of truck parking and restaurant facilities in its reasoning, and thus, erred in its conclusion. As such, the court found "the uses on the proposed site plan constitute a truck stop." This timely appeal followed.

STANDARD OF REVIEW

When analyzing a judicial review proceeding, the issue before this Court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division,* 417 Md. 128, 136 (2010). Therefore, we "look through" the decision of the circuit court in order to "evaluate the decision of the agency" itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008). Our review 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." *Montgomery v. Eastern Correctional Inst.,* 377 Md. 616, 625 (2003) (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994)). Statutory interpretation is normally deemed a question of law. *Bayly*, at 137. However,

"[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency." *Eastern Correctional*, at 625 (citations omitted). Thus, we "ordinarily give considerable weight to the administrative agency's interpretation and application of the statute that the agency administers." *Id.*

I. The circuit court did not err in reversing the Board's decision.

Appellant contends the circuit court erred in reversing the Board's decision because the Board correctly interpreted the definition for "truck stop." Specifically, appellant argues, the Board did not err in concluding "the phrase 'such a use' in the second part of the 'Truck Stop' definition means a use 'primarily for the sale of fuel for trucks,' the same as provided in the first part of the definition." Conversely, appellees argue "the group of uses proposed by appellant is, by definition, a truck stop, requiring Board of Appeals approval of a special exception in the HI Zone," thus, the circuit court properly reversed the Board's decision.

The Washington County Zoning Ordinance provides for various zoning districts, in which certain specified uses are permitted. These uses are classified as either principal permitted uses or special exception uses. Section 19.2 provides that the principal permitted uses in the HI zoning district are:

> a) All Principal Permitted Uses allowed in the BL, BG, PB, and ORT Districts. Also permitted are all Principal Permitted Uses in the IR District except heliports and Commercial Communications Towers.
> b) Agriculture, as defined in Article 28A, including animal husbandry facilities, as defined in Article 28A, which shall be subject to the requirements set forth in Article 22, Division IX.

Section 19.3 lists special exception uses in the HI zoning district requiring authorization by the Board and a public hearing. This list includes "truck stops."

When presented with a question involving statutory interpretation, we look first to the words of the applicable ordinance "since the words of the [ordinance], construed according to their ordinary and natural import, are the primary source and most persuasive evidence of legislative intent." *Lanzaron v. Anne Arundel County*, 402 Md. 140, 149, 935 A.2d 689, 694 (2007). Our goal "is to ascertain and effectuate the intent of the legislature." *Comptroller of the Treasury v. Science Applications Int'l Corp.*, 405 Md. 185, 198 (2008). We will "neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute." *Maryland Overpak Corp. v. Mayor & City Council*, 395 Md. 16, 47 (2006) (quoting *Kushell v. Dep't of Natural Res.*, 385 Md. 563, 576–77 (2005)). "We construe the ordinance so as to give effect to each word so that no word, clause, sentence or phrase is rendered superfluous or nugatory." *Foley v. K. Hovnanian at Kent Island, LLC*, 410 Md. 128, 152 (2009) (quoting *Kushell*, 385 Md. at 577). Thus, if an ordinance is clear and unambiguous when construed according to its ordinary and everyday meaning, we give effect to the statute as it is written. *Id.* If, however, the language in an ordinance is ambiguous, we will look to external sources in an effort to discern legislative intent. *Id.*

Here, the parties differ as to whether appellant's proposed use constitutes a "truck stop." Article 28A of the Zoning Ordinance defines a truck stop as:

> A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually long-term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve

> the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping or truck parking facilities. As used in this definition, the term "trucks" does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration.

The parties agree the definition of "truck stop" is separated into two clauses by a semicolon. The use of a semicolon indicates the legislature intended there to be two similar, yet, non-synonymous clauses. The "or" following the semicolon generally has a disjunctive meaning and usually indicates an alternative or separate description. "Normally, use of a disjunctive indicates alternatives and requires that they be treated separately unless such a construction renders the provision repugnant to the [statute]." *George Hyman Construction Co. v. Occupational Safety & Health Review Comm'n*, 582 F.2d 834, 840 n. 10 (4th Cir.1978). Thus, the drafters intended the second clause to have a meaning different than the first.

The phrase "such a use" in the second clause refers back to the use described in the first clause, "the sale of fuel for trucks." The second clause, however, does not include the modifier "primarily." Our role as an appellate court is not to add words to a statute when the legislature did not do so expressly. To read the word "primarily" into the second clause, as appellant suggests, would result in a forced interpretation in an attempt to limit the statute's meaning, and thus, is not reflective of the legislature's intent as evidenced by the plain language. *See Bellard v. State*, 452 Md. 467, 481–82 ("we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the [legislature] used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning."). Further, reading "primarily" into the second clause would

be surplusage and render the second clause meaningless. To read it as such would virtually provide no distinction between the two clauses, other than the first clause referring to "a land or structure" and the second "a group of facilities."

Thus, we hold, the Board incorrectly concluded appellant's proposed use was not a "truck stop." The Board focused its interpretation on the use of the word "primarily" and determined that the proposed use was not "a group of facilities." The site plan, however, shows there will be a building that will serve food and other items, several canopies to house the fuel pumps, truck parking, and a separate structure for a car wash, thus the proposed use describes "a group of facilities." Appellant is proposing to develop a group of facilities consisting of the sale of fuel for trucks as well as attendant eating, truck parking, and a car wash. The proposed use constitutes a "truck stop" under the second clause of the Zoning Ordinance.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.