

Circuit Court for Baltimore City  
Case No.: 24-C-22-003104

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 138

September Term, 2023

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IN THE MATTER OF CLIFF RANSOM

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Reed,  
Albright,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, J.

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Filed: April 30, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

In his third appeal to this Court, Fells Point resident Cliff Ransom, appellant, challenges a decision by the Baltimore Municipal Board of Zoning Appeals (“BMZA”) to grant a conditional use application to develop residentially zoned property at 808 South Ann Street, Baltimore. *See Matter of Ransom*, No. 1099, Sept. Term, 2021, 2022 WL 1566996 (consolidated appeals) (Md. App. May 18, 2022), *cert. denied sub nom. Ransom v. Maryland Hist. Tr.*, 482 Md. 27 (2022) (hereafter, “*Ransom I*”). Under the neighborhood commercial establishment provisions of the Baltimore City Zoning Code (the “Zoning Code” or “ZC”), the challenged decision allows Thames Street Holdings, LLC (“TSH”), appellee, to convert a rear portion of its existing brick building on its Ann Street property into an “accessory” dining room that will be directly connected to and accessed solely through the Italian restaurant (the “Restaurant”) that TSH operates on its connected and commercially zoned property at 1724-26 Thames Street, and to use the remainder of the South Ann Street building as office space.

Ransom contends that the BMZA erred in allowing TSH to expand its Restaurant, from its property on Thames Street, into its abutting and attached building on South Ann Street. In Ransom’s view, “the proposed conditional use does not comply with the Zoning Code requirements” because it allows TSH to extend its Restaurant into a residential zone in violation of statutory restrictions against a neighborhood commercial establishment being used as a restaurant with live entertainment and having a principal entrance that is not on its primary adjoining street. Based on the law and record reviewed below, we disagree and affirm both the BMZA’s decision and the Circuit Court for Baltimore City’s judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

The relevant record is undisputed and largely set forth in *Ransom I*, the BMZA’s Resolution approving TSH’s application, and the circuit court’s memorandum opinion.

### *The Property and Conditional Use Application*

By deed dated December 30, 2020, TSH acquired the Fells Point properties located at 1724-26 Thames Street and at 808 South Ann Street. *See Ransom I*, 2022 WL 1566996, at \*2-3. These “adjacent historic Fells Point properties are situated in a turnstile or tee shape such that the rear of both parcels abut each other and have been connected through an internal passageway that has existed since approximately 2002.”

Because Fells Point is designated as a Baltimore City Historic District, site testing on TSH’s properties is subject to review by the Maryland Historical Trust (the “Trust”) and TSH’s improvement plans had to be approved by the Committee on Historical and Architectural Preservation (“CHAP”).<sup>1</sup> *See id.* at \*2. After the Trust approved site testing and CHAP conditionally approved a rooftop deck proposal for the Restaurant, Ransom appealed. *See id.* at \*1. This Court consolidated and dismissed those appeals on the ground that both were moot, because the internal test pits already had been excavated and TSH withdrew its roof deck proposal. *See id.* at \*2, \*7-8.

TSH then applied for a conditional use permit to develop 808 South Ann Street as a “[n]eighborhood commercial establishment” under §§ 1-310(j) and 14-328 of the Zoning

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<sup>1</sup> Although not at issue in this appeal, we note that more than 20 years before these events, “separate perpetual preservation easements were executed on the properties, to be held by the Trust for the purpose of preserving and maintaining the properties’ ‘substantial historic, aesthetic and cultural character.’” *Ransom I*, at \*2 (footnote omitted).

Code, with an accessory dining room in the rear of the building that would be accessed through the Restaurant and its Thames Street entrance, and the remainder of the building to be used for office space accessed from South Ann Street.<sup>2</sup> When the Zoning Administrator denied that application, TSH appealed to the BMZA. In March 2022, the Department of Planning recommended approval of the application, subject to conditions, including that the Thames and Ann Street properties be consolidated and that all exterior modifications be approved by CHAP.

### *The BMZA Hearing and Resolution*

On April 5, 2022, the BMZA held a public hearing on TSH’s conditional use application. After considering testimony and documents from the City’s Planning Department, Fells Point and Canton neighborhood groups, TSH, its proposed tenant,<sup>3</sup> and affected neighbors including Mr. Ransom, the BMZA voted to approve the proposed use of specified portions of 808 South Ann Street as an accessory dining room and as office space.

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<sup>2</sup> While that application was pending, the Baltimore City Liquor License Board approved transfer of an existing Class BD7 License “from an establishment that had gone out of business . . . over to 1724 Thames Street” for TSH’s Restaurant.

<sup>3</sup> In support of TSH’s application, the Waterfront Partnership submitted a letter to the BMZA, stating that it would lease office space at 808 South Ann Street and identifying itself as “a 501 (c)(3) non-profit that administers the Waterfront Management District, ensuring the Waterfront District is clean, safe, and green for the enjoyment of locals and tourists[,]” by “provid[ing] three basic operational services; safety guides to help visitors, cleaning to make the Waterfront free of litter and grime, and landscaping to make the area more attractive.”

On June 21, 2022, the BMZA issued a Resolution granting permission for TSH to use 808 South Ann Street for both an accessory dining room and as office space for a proposed tenant, subject to (1) consolidation of the Ann Street parcel with 1724 Thames Street, (2) CHAP approval of exterior modifications, (3) prohibition of “retail sales of alcoholic beverages[,]” and (4) prohibition of “live entertainment or dancing” “on the Property [known as] 808 S. Ann Street.” In pertinent part, the BMZA predicated its approval on the following undisputed facts established at the hearing:

The Property is located in an R-8 Zoning District and is an irregular interior lot comprising 2,111 square feet of land are[a], improved with . . . a 1920 two-story attached brick building containing 1,690 square feet of floor area. The last authorized use of the premises is as an office.

The Department of Planning, in its memorandum dated March 14, 2022, recommended approval subject to the conditions that (1) the lot known as 808 S. Ann Street be consolidated with the lot known as 1724 Thames Street and that (2) all exterior modifications be subject to review and approval by the Commission for Historical and Architectural Preservation (CHAP).

Several community members appeared in support of the appeal, with eight (8) letters submitted in support before the hearing. The letters of support stated that the historic character of the neighborhood includes restaurants and taverns like the one proposed, that the applicant has attended many community meetings and adjusted his plans to address concerns, and that the proposed use would not have a negative impact on the neighborhood.

Appellant [Caroline Hecker, attorney for TSH] proffered much of the case on behalf of her client. She noted that this block of Ann Street already has other commercial uses and is on the border between the C-1 commercial zoning district along Thames Street’s bustling commercial corridor and the R-8 residential zoning district. Both sides agree that the Property has historically been used for non-residential uses in the past. The current plan for 808 S. Ann is to use the rear of the building as an accessory dining room for the restaurant located at 1724 Thames Street and for the front of the building to continue to be used as an office, both uses allowable under the neighborhood commercial establishment section of the Code. Fells Point

Residents Association and the Waterfront Partnership support the project, and the Canton Community Association submitted a letter of reference for the owner/operator of the proposed restaurant. Appellant’s clients agree that they will consolidate the two parcels.

Several community members also appeared in opposition to the appeal, with 35 letters submitted in opposition before the hearing. Community opposition testimony argued that food service and liquor sales in a residential zoning are inappropriate, unwelcome and unnecessary and that the Property owner has a larger, destructive future vision for the office space.

Mr. Thomas Minton presented the opposition’s case on behalf of his client, Mr. Cliff Ransom, a nearby neighbor on Ann Street. Mr. Minton argued that this block of S. Ann Street is a jewel in Fells Point, due to the presence of the Robert Long House, the oldest surviving urban residence in Baltimore; a 150-seat restaurant with a BD-7 liquor license is not compatible with this historic district, he argued, and [TSH] cannot meet its burden of showing compliance with the requirements of the Code.

As set forth in its Resolution, the BMZA reviewed “all documents, memoranda and other evidence submitted” in support of and opposition to the application. Applying the standards governing conditional use, the BMZA concluded that TSH’s proposal satisfied all of the Zoning Code requirements for a neighborhood commercial establishment with a mixed restaurant and office use. Specifically, the BMZA addressed each factor enumerated in the Zoning Code, as follows:

**Nonresidential structure in construction or use:** . . . It is undisputed by the parties that this Property satisfies the neighborhood commercial establishment definition. Records from the State Department of Assessments and Taxation indicate that the Property was originally built for use as a “manual arts building,” and city land use cards state that the Property received zoning approval to be used as a visitor’s center and museum in 1998. The Property is therefore eligible to be considered for use as a neighborhood commercial establishment.

**Pedestrian orientation:** . . . [TSH] proffered that the proposed tenant in the office space will be Waterfront Partnership; the office use is not likely

to draw visitors in cars, and their employees patrol on foot. [TSH] also proffered that the dining room will be part of the Thames Street restaurant and will not draw a significant amount of automobile traffic. The Board found that this information was sufficient to satisfy the pedestrian orientation requirement.

**Principal entrance:** The Board next evaluated the . . . requirement in Article 32, § 14-328(d), . . . that the principal entrance of the Property be a direct entry from the primary adjoining street. For the office use, all parties agree that the principal entrance will be from Ann Street, the primary adjoining street. [TSH] argued that this factor was satisfied for the restaurant use as well, because the accessory restaurant dining room will be part of the restaurant and accessible from the main entrance of the restaurant, whose principal entrance is from its primary adjoining street, Thames Street. The Planning Department’s memorandum agrees with this view. While [TSH] could provide an entrance to the restaurant from Ann Street, [TSH] has chosen not to do so at the request of neighbors who did not want restaurant patrons to enter and exit through the quieter, residential Ann Street side of the building. Opponents argue that this section of the Code prohibits the “annexation of an R-8 property by a larger, commercial property in a C-1 zone” and that therefore the Code requires a principal entrance on Ann Street. The Board held that [TSH’s] plans satisfy the principal entrance requirement.

**No live entertainment or dancing:** Opponents of the application pointed out that . . . a restaurant may not have live entertainment or dancing. The restaurant in this matter does plan to host live entertainment and dancing, but [TSH] has stated that there will not be live entertainment or dancing in the dining room located in the portion of the building located on the Property. The Board held that the application could proceed under this stipulation agreed to by [TSH], which is a condition of the Board’s approval.

**No retail alcohol sales:** Similarly, opponents of the application raised the issue that . . . the business at the Property may not engage in retail alcohol sales. [TSH] stated that the business has no plans to sell retail alcoholic beverages in any portion of the building, on the Property or on the Thames Street side and agreed that this could be a condition of the Board’s approval. The Board held that the application could proceed under this condition as well.

Next, the BMZA discussed opponents’ claims that the proposed “conditional uses, office and restaurant, would have a greater impact on this block than” elsewhere in the R-

8 zoning district “because of the historical significance of this block” based on its unique “history, location, and architectural importance and integrity” with the “Robert Long House and Colonial Gardens directly abut[ting] the Property[.]” In particular, the BMZA acknowledged that opponents cited the following factors:

the nature of the surrounding area and the extent to which the proposed use might impair its present and future development, the proximity of dwellings, . . . public structures, . . . and other places of public gathering, the preservation of cultural and historic landmarks and structures, and the character of the neighborhood.

Yet TSH countered that “the surrounding area is entirely compatible with the proposed uses” because “the Property is in a transitional area between the busy Thames Street and the ‘somewhat quieter’ adjacent residential areas.” In its view, “the dining room will be ‘virtually invisible’ to neighbors on Ann Street.”

After concluding “that the office use at this location would not have adverse effects above and beyond those inherently associated with an office use in an R-8 zoning district generally[.]” the BMZA turned to the “accessory restaurant use”:

Under the evidence presented, the Board found that establishment, location, construction, maintenance, and operation of the restaurant conditional use would also not be detrimental to or endanger the public health, safety, or welfare. The evidence presented showed that the dining room for the Thames Street restaurant would not have a public entrance, so patrons would not be able to enter or exit from Ann Street, lessening the burden on the Ann Street neighbors. The Board took special note of the historic Robert Long House located next to the Property, but the Board held that this interior-only restaurant dining room use would not have any demonstrable negative effect on the special historic character of the house or the 800 block of S. Ann Street in general, which already hosts other dining and drinking establishments. The Board also found that the use would not be precluded by other law, would not be contrary to the public interest, and would be in harmony with the purpose and intent of the Code. Applying the *Schultz* standard, the Board found that the restaurant use at this location would not have adverse effects



above and beyond those inherently associated with a restaurant use in an R-8 zoning district generally. In fact, the adverse effects under the plans . . . would likely be less than the effect [of] a hypothetical restaurant with an entrance and exit directly on Ann Street would have.

Stating that it found “sufficient evidence in the record to support the application[,]”

the BMZA granted THS a special exception subject to four conditions:

1. No retail sales of alcoholic beverages may take place on the Property k/a 808 S. Ann Street.
2. No live entertainment or dancing may take place on the Property k/a 808 S. Ann Street.
3. The Property must be consolidated with 1724 Thames Street before use a permit for 808 S. Ann Street can be issued.
4. All exterior changes, including additions, demolitions, alterations and signage must be completed or installed in accordance with an Authorization To Proceed issued by the Commission for Historical and Architectural Preservation (CHAP).

### *Judicial Review*

Ransom requested judicial review in the Circuit Court for Baltimore City. Following briefing and oral argument, the court filed a memorandum opinion and order affirming the BMZA’s decision. The court concluded that the BMZA considered the mandatory factors specified in the Zoning Code, had “some rational basis for its determination[,]” and “did not err in its decision regarding” the impact of the plans on the neighborhood or “the issue of live music or alcohol sale in the venue.” With respect to the principal entrance/primary adjoining street issue, the court observed that consolidating the properties “would not change” the two different zoning classifications and related restrictions on the parcels. Instead, the court, citing the historic and proposed primary use of 808 South Ann Street as

office space, concluded that its principal use “is the office space whose principal entrance is located on South Ann Street[.]” whereas “the principal entrance of the restaurant” and its new accessory dining room “is located on Thames Street.”

Ransom noted this timely appeal, in which TSH and the Mayor and City Council of Baltimore (the “City”), as appellees, have filed a joint brief in support of the BMZA’s decision.

### **DISCUSSION**

At issue in this appeal is the BMZA’s approval of a conditional use permit (sometimes known as a special exception) for TSH to extend its Italian restaurant at 1724-26 Thames Street by adding an accessory dining room in the rear portion of its building at 808 South Ann Street, with the remainder of that property occupied by office space accessed from South Ann Street. Ransom does not contest the BMZA’s decision to allow TSH to use the Property as office space. Instead, he contends that the BMZA erred in “permitting a restaurant to expand its operations from a commercial zone into a residential zone, where the proposed conditional use does not comply with the Zoning Code requirements for approval[.]”

Applying the statutory framework for conditional uses in a neighborhood commercial establishment to this administrative record, we conclude that the BMZA’s decision satisfies the applicable zoning standards and is supported by substantial evidence.

#### ***Legal Standards Governing Conditional Uses for Neighborhood Commercial Establishments***

Although 1724-26 Thames Street is in a C-1-E commercial and entertainment

zoning district, 808 South Ann Street is in an R-8 residential zoning district, on “a block that is transitional” with some other commercial uses already present and only a couple parcels away from the commercial zone. At the heart of this appeal is whether TSH’s hybrid-use proposal for its South Ann Street property satisfies the standards for relief from the residential zoning restrictions on that parcel.

As the Supreme Court has explained,

[a] special exception, sometimes called a “conditional use,” is a zoning device that provides a middle ground between permitted and prohibited uses. It allows the local legislature to set some uses as *prima facie* compatible for a given zone, subject to a case-by-case evaluation to determine whether the use would result in an adverse effect on the neighborhood (other than any adverse effect inherent in that use within the zone), such that would make the use actually incompatible. Because special exceptions are created legislatively, they are presumed to be correct and an appropriate exercise of the police power.

*Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 513 n.17 (2015)

(internal citations omitted).

Because TSH proposed to establish office space and an accessory dining room in an R-8 property, it applied for a conditional use permit under the “[n]eighborhood commercial establishment” provisions of §§ 1-310(j) and 14-328 in Article 32 of the Baltimore City Code (the “ZC”), authorizing residentially zoned properties that previously have been used for non-residential purposes to be used for specified commercial purposes subject to certain conditions. ZC § 1-310(j) defines a “[n]eighborhood commercial establishment” as

a non-residential use that is within a residential or office-residential zoning district, but in a structure that:

(1) is non-residential in its construction and original use; or

(2) has received prior zoning approval for a non-residential use, as evidenced by permits, construction, or historical evidence of lawful non-residential use.

See [https://legislativereference.baltimorecity.gov/sites/default/files/Art%2032%20-%20Zoning%20\(rev%2018OCT23\).pdf](https://legislativereference.baltimorecity.gov/sites/default/files/Art%2032%20-%20Zoning%20(rev%2018OCT23).pdf) (last visited Apr. 15, 2024).

In turn, ZC § 14-328(b) identifies specific “[n]on-residential uses allowed” in neighborhood commercial establishments.<sup>4</sup> In pertinent part, that code provision states that

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<sup>4</sup> The Zoning Code provides:

(b) *Non-residential uses allowed.*

A neighborhood commercial establishment may contain any one or more of the following nonresidential uses in any part or all of the building:

- (1) Art galleries – no live entertainment or dancing.
- (2) Arts studios.
- (3) Day care centers: adult or child.
- (4) Offices.**
- (5) Personal services establishments.
- (6) Restaurants – no live entertainment or dancing.**
- (7) Retail goods establishments – no alcoholic beverage sales.

(c) *Pedestrian orientation.*

***The development and the proposed use must be pedestrian-oriented and not oriented to the automobile.***

(d) *Principal entrance.*

***The principal entrance must be a direct entry from the primary adjoining street.***

\* \* \*

(g) *Uses limited to building interior.*

(1) *In general.*

All business, servicing, processing, display, and storage uses must be located within the building, unless the Zoning Board expressly authorizes, as a conditional use, one or more of these uses to be located, in part or in whole, outside the building.

(2) *Expansion of building.*

The Zoning Board may authorize, as a conditional use, the expansion of a neighborhood commercial establishment into a newly constructed addition to the principal building, on the same original property.

(continued...)

“[a] neighborhood commercial establishment may contain” “[o]ffices” and “[r]estaurants” with “no live entertainment or dancing” “in any part or all of the building[.]” ZC § 14-328(b)(4), (6). Retail sales of alcoholic beverages are prohibited. ZC § 14-328(b)(7). In addition, “[t]he development and the proposed use must be pedestrian-oriented and not oriented to the automobile[.]” ZC § 14-328(c), and “[t]he principal entrance must be a direct entry from the primary adjoining street.” ZC § 14-328(d).

The burden is on the applicant to “persuade [the BMZA] ‘by a preponderance of the evidence that the special exception will conform to all applicable requirements’” in the Zoning Code. *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 286 (2017) (quoting *People’s Couns. for Baltimore Cnty. v. Loyola Coll. in Md.*, 406 Md. 54, 109 (2008)). In making that determination, the BMZA must consider specific factors, including “the nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement

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(h) *Signs.*

Signs must comply with Title 17 {“Signs”} of this Code.

(i) *Tobacco products sales prohibited.*

\* \* \*

(j) *Outdoor dining.*

(1) *In general.*

Where the right-of-way is 10 feet or greater, outdoor dining may:

- (i) be on the street side of the property;
- (ii) be on the interior of the property;
- (iii) be in the rear yard of the property;
- (iv) be on the deck above the ground floor; and
- (v) be on the roof of the property.

(2) *Deck dining - prohibition.*

No deck used for outdoor dining shall be constructed in the 10 foot right-of-way described under this section.

ZC § 14-328 (emphasis added).

of structures;” “the nature of the surrounding area and the extent to which the proposed use might impair its present and future development;” “the preservation of cultural and historic landmarks and structures;” “the character of the neighborhood;” as well as “the provisions of the City’s Comprehensive Master Plan” and “any applicable Urban Renewal Plan” and “applicable standards and requirements of this Code[.]” ZC § 5-406(a).

This Court reviews the BMZA’s approval of TSH’s conditional use application as an “administrative agency action[.]” by “look[ing] through” the circuit court’s judgment affirming it, to determine whether the BMZA’s decision is predicated on an error of law, whether the administrative record contains substantial evidence to support the BMZA’s findings, and whether the BMZA reasonably applied the law to the facts. *Prince George’s Cnty. Council v. Concerned Citizens of Prince George’s Cnty.*, 485 Md. 150, 177 (2023). *See Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 532-33 (2017); *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008). When reviewing the administrative record, we do “not engage in an independent analysis of the evidence,” but instead “proceed from the premise that an agency’s decision is *prima facie* correct and presumed valid[.]” *Montgomery Cnty. v. Butler*, 417 Md. 271, 284 (2010) (cleaned up) (quoting *Armstrong v. Mayor of Baltimore*, 410 Md. 426, 444 (2009)).

“Although this Court defers to the factual findings of agencies, we review their decisions regarding matters of law *de novo*, while still providing a degree of deference on some legal issues in accordance with the position of the agency.” *Matter of Homick*, 256 Md. App. 297, 308 (2022). Courts uphold the agency’s order when “it is sustainable on the agency’s findings and for the reasons stated by the agency[.]” *E. Outdoor Advert. Co. v.*

*Mayor of Baltimore*, 128 Md. App. 494, 516 (1999) (cleaned up), but “should defer to the conclusions of the zoning body granting or denying an application where the evidence makes the question of the special exception’s harmony with the jurisdiction’s zoning plan ‘fairly debatable.’” *Homick*, 256 Md. App. at 324 (citation omitted). “Substantial evidence” for the BMZA’s decision exists when, based on the administrative record viewed in its entirety, “‘a reasoning mind reasonably could have reached the factual conclusion the agency reached.’” *Clarksville Residents*, 453 Md. at 532 (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999)).

In addition to addressing Zoning Code requirements, the Board must evaluate conditional use applications by focusing on the potentially adverse impacts of the requested use, under the standards established in the seminal case of *Schultz v. Pritts*, 291 Md. 1, 11-15 (1981). Although this “is not a second, separate test (in addition to the statutory requirements) that an applicant must meet in order to qualify for the grant of a special exception[.]” “the test announced in *Schultz* essentially adds language to statutory factors to be considered in evaluating proposed special exceptions[.]” *Loyola Coll.*, 406 Md. at 69. It overlays or “exists within a county’s regulatory scheme governing conditional uses[.]” *Clarksville*, 453 Md. at 551. In *Schultz*, the Supreme Court explained that

the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

*Schultz*, 291 Md. at 15. Absent facts or circumstances establishing particularized adverse effects that are not inherent to the conditional use, such uses by virtue of their inclusion in the local zoning regulatory scheme, are presumptively valid. *See id.* at 11, 13-14. Because “the legislature assumes that those uses will include some adverse impacts[,]” the adverse effect on surrounding properties ““must be more than mere annoyance[.]”” *Clarksville*, 453 Md. at 541 (quoting *Mayor of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 542 (2002)).

Consequently, when reviewing the BMZA’s decision, we recognize that conditional uses are an integral component of a comprehensive zoning plan because they presumably promote the general welfare. Absent some evidence negating that presumption, by establishing that the proposed use has “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone[,]” *Schultz*, 291 Md. at 22-23, the BMZA’s approval of a special exception application is consistent with a legislative policy determination that such conditional uses are desirable, permissible, and valid. *Id.* at 22-23. *See Attar*, 451 Md. at 286-87.

#### ***Satisfaction of ZC § 14-328 Conditions***

Because Ransom does not challenge the BMZA’s decision to approve the office use proposed for 808 South Ann Street, we focus on approval of the accessory dining room proposed for the rear of that building. Ransom contends that TSH’s conditional use application for the dining room “fails two” Zoning Code requirements: (1) the prohibition against live entertainment in ZC § 14-328(b)(6), and (2) the rule that “[t]he principal entrance ***must be*** a direct entry from the primary adjoining street[,]” under ZC § 14-328(d). (Emphasis added in brief.) In Ransom’s view, “TSH decided not to put the restaurant’s



entrance on South Ann Street and has expressed its intent to have live entertainment in the restaurant. These facts should have been fatal to the application.” (Cleaned up.) Addressing each challenge in turn, we disagree and explain why the BMZA did not err.

***Prohibition Against Live Entertainment***

Ransom argues that the BMZA erred by misconstruing the “plain language” in the Zoning Code to mean that as long as live entertainment does not occur in the accessory dining room, the prohibition in ZC § 14-328(b)(6) will not be violated by the live entertainment taking place elsewhere in the Restaurant, within the commercially zoned premises at 1724-26 Thames Street. In Ransom’s view, that interpretation renders this prohibition against live entertainment in the accessory dining room “meaningless” given the attendant noise and traffic generated by the live entertainment taking place in other areas of the Restaurant.

TSH and the City respond that “there was absolutely no evidence from which the BMZA could have concluded that the accessory restaurant use would include live entertainment.” To the contrary, they point out that TSH expressly acknowledged during the BMZA hearing that

[l]ive entertainment is not allowed in the R-8 District as part of a restaurant as a neighborhood commercial establishment. There’s just simply no, no way to have that authorized. We’re not intending to have live entertainment on this property.

Moreover, TSH’s liquor license “does not allow” live entertainment, and the BMZA expressly conditioned its approval on a prohibition against live entertainment in the accessory dining room.

Ransom does not contest this undisputed evidence that there will be no live entertainment on the Ann Street premises, including in the accessory dining room located at the rear of that building. Instead, he maintains that the BMZA erred by parsing out the dining room from the rest of the consolidated parcel because doing so “nullified . . . important statutory protection[s]” against the potential for music being heard on the street, attracting larger and perhaps “rowdier crowds[,]” requiring use of “the residential property entrance as a staging or loading ground[,]” and other “problems associated with live music that the statute contemplates.” In Ransom’s view, “reducing the issue to a room-by-room approval is a gratuitous, unfounded abdication of [the BMZA’s] duty to enforce the plain terms of the Zoning Code.”

Ransom misunderstands how zoning laws operate when a property covers two different zoning classifications. Under Baltimore’s Zoning Code, “[w]here a lot is divided into 2 or more parts by a zoning district line[,] . . . for all purposes except density, each part must comply with all of the regulations applicable to its zoning classification[.]” ZC § 6-304(1). The rule is simple: each property must comply with the zoning restrictions on it. *See generally* 101A C.J.S. *Zoning and Land Planning* § 123 (Each part of a dual-zoned property “must comply with the restrictions imposed upon the zone in which it is located.”). When, as here, a zoning district boundary line divides two lots that are in common ownership, “[h]owever great the need for expansion of a use across the boundary line” from the less restricted lot into the more restricted lot, “the less restricted lot . . . may not be used in contravention of the ordinance without the owner having attained such right by a variance, a rezoning, [or] a special exception (if such is provided for in the ordinance)[.]”

1 *Rathkopf's The Law of Zoning and Planning* § 10:24 (4th ed.). Similarly, when a zoning district boundary line divides portions within a single lot, the premises within the more restricted zone must comply with such restrictions. *See id.* *See generally* 101A C.J.S. *Zoning and Land Planning* § 123 (Each part of a dual-zoned property “must comply with the restrictions imposed upon the zone in which it is located.”).

Here, the combination with 1724-26 Thames Street did not alter the R-8 restrictions on the former 808 South Ann Street parcel. Nor did it preclude the Ann Street premises from being eligible for a commercial neighborhood establishment special exception to operate a restaurant without live entertainment.

Consequently, we reject Ransom’s contention that consolidating the two parcels was an improper maneuver designed to evade the R-8 zoning restrictions on 808 South Ann Street. Because each differently zoned portion of this consolidated parcel still “must comply with all of the regulations applicable to its zoning classification[,]” ZC § 6-304(1), consolidating two differently zoned lots into a single parcel is a not a red flag, but a red herring.

Nor are we persuaded that the BMZA erred in granting TSH’s conditional use application because of what might be heard in the accessory dining room or what might occur on the Restaurant premises in terms of patrons, musicians, set-up, and other activities supporting the entertainment. To be sure, the Zoning Code affords opportunities for opponents to raise noise, access, and related activity objections based on any circumstances affecting the property seeking approval of a special exception. But it does not establish the presumption posited by Ransom, i.e., that the live entertainment permitted in the adjacent

Restaurant premises will so unreasonably burden the entire property at 808 South Ann Street that the rear portion of that building should not be developed as an accessory dining room, even if it is not used for live entertainment or accessible from South Ann Street. Absent any evidence establishing such speculation as fact, the BMZA did not err in concluding that the accessory dining room and offices proposed for 808 South Ann Street would not be unduly burdened by the live entertainment occurring elsewhere within the existing Restaurant at 1724-26 Thames Street.

***Requirement of Principal Entrance Through Primary Adjoining Street***

Ransom alternatively contends that “[t]he BMZA’s flouting of the [principal] entrance requirement is the clearest example of legal error” because “[t]he ‘primary adjoining street’ for 808 South Ann Street is South Ann Street[,]” not Thames Street. In his view, the BMZA “improperly relied on” the Planning Department’s interpretation of the requirement that the principal entrance must be through the primary adjoining street to be satisfied because the accessory dining room “will be part of the restaurant and accessible from the main entrance of the restaurant . . . from its primary adjoining street, Thames Street.” Nor could the BMZA “circumvent the entrance requirement,” he continues, by conditioning its approval on consolidating the residential parcel with the commercial parcel because “[t]he Zoning Code prohibits this type of cynical maneuver to evade statutory requirements[,]” by stating that “for all purposes except density, each part much comply with all of the regulations applicable to its zoning classification[.]” ZC § 6-304. This view of the Zoning Code, he argues, ignores the plain language of the statute. *See Design Kitchen & Baths v. Lagos*, 388 Md. 718, 729 (2005) (“[W]hen the statutory language is plain and

unambiguous, a court may neither add nor delete language so as to ‘reflect an intent not evidenced in that language,’ nor may it construe the statute with ‘forced or subtle interpretations’ that limit or extend its application.’” (internal citations omitted)).

TSH and the City counter that “nothing in the text or intent of the Code” supports such a restrictive reading of the principal entrance/primary adjoining street requirement for neighborhood commercial establishments. They argue that

the BMZA followed a common-sense reading of the Code which simply requires that neighborhood commercial establishments have entrances directly onto the street where the business is located. Because the accessory dining room is [now] part of the Restaurant located on Thames Street, and because the Restaurant’s principal entrance is on Thames Street, it naturally follows that customers to the dining room would use the Restaurant’s principal entrance.

We agree that the BMZA did not err in determining that the primary adjoining street for the post-consolidation accessory dining room is on Thames Street. Ransom disregards the substantial evidence in the administrative record supporting that common-sense conclusion.

As we have explained, the BMZA conditioned its approval on consolidating 808 South Ann Street with 1724-26 Thames Street, where TSH operates its Restaurant, and developing the dining room as an accessory to the Restaurant, without any entrance on South Ann Street. It was undisputed that the new dining room at the rear of the building will be connected to and accessed solely through the Restaurant, so that it physically shares the Restaurant’s principal entrance on its primary adjoining street, which is Thames Street. The BMZA did not err in concluding that TSH’s proposal to consolidate the parcels and reconfigure a portion of the 808 South Ann Street building as an accessory dining room

connected directly to the Restaurant complied with the principal entrance/primary adjoining street requirement in the Zoning Code.

*Conclusion*

Ransom does not challenge the conditional use permit for the projected office use at 808 South Ann Street, focusing instead on the accessory dining room proposed for this R-8 zoned parcel. The BMZA applied the correct legal standards to evaluate that application, concluding that, upon consolidation with 1724-26 Thames Street and subject to express conditions, TSH's proposal satisfies the Zoning Code restriction against restaurants with live entertainment and the requirement that the principal entrance to the dining room must be from its primary adjoining street. Because the BMZA did not err in granting TSH's conditional use application, we will affirm that decision and the ensuing judgment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**