Circuit Court for Prince George's County
Case No. CAL 20-11215

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 38

September Term, 2021

CARLTON STEWART, ET AL.

v.

PRINCE GEORGE'S COUNTY
PLANNING BOARD, ET AL.

Kehoe,
Berger,
Nazarian,
JJ.

Opinion by Kehoe, J.

Filed: March 31, 2022

The issue in this case is whether the Prince George's County Planning Board erred when it approved a preliminary plan of subdivision filed by GB Mall Limited Partnership. The Circuit Court for Prince George's County, the Honorable Wytonja Curry, presiding, affirmed the Board's decision. Carlton Stewart and others[1] have appealed from that judgment and present five questions, which we have reordered and reworded:

> 1. Does the Board have standing to participate in a judicial review proceeding that challenges one of its decisions?
>
> 2. Was the Board required to address whether GB Mall's preliminary plan of subdivision conformed to Prince George's County Plan 2035's vision for low- to medium-density development?
>
> 3. Did the Planning Board err when it approved a variation from the requirements of Prince George's County Code ("PGCC") § 24-128(b)(12) regarding the location of public utility easements?
>
> 4. Did the Board violate appellants' due process rights when it approved GB's preliminary subdivision plan after the Board's staff changed some of their recommendations during the Board's hearing?

[1] The other appellants are Angela Stewart, Jason Lee, Jeff Bailey, Joseph Yeboah, Rochelle Patterson, Empirian Village of Maryland, LLC, Joseph Kazarnovsky, Ralph Rieder, Giovanni Wade, Mouna Fall, Natalie Williams, and Mark Pauley.

5. Did GB Mall's proposal for access to Greenbelt Road require a variation from Prince George's County Subdivision Regulations § 24-121(a)(3)?[2]

We will affirm the judgment of the circuit court.

BACKGROUND

GB Mall owns the 53.88 acre Beltway Plaza shopping center in Greenbelt. It proposes to replace the shopping center with 700,000 square feet of commercial development and 2,500 dwelling units. Development proposals in Prince George's County of the scale and complexity proposed by GB Mall are subject to two procedurally distinct review processes, namely, subdivision approval and site plan approval.

[2] In their brief, appellants frame the issues as follows:

1. Whether the Planning Board's Resolution met the minimum requirements for articulating how PPS 4-19023 conformed to Plan 2035's vision for low- to medium-density development.

2. Whether the Planning Board erred legally when it approved a variation from the requirements of Section 24-128(b)(12) regarding the location of the public utility easement.

3. Whether the Planning Board violated Citizen-Appellants' due process rights when it approved PPS 4-19023 after Technical Staff made material changes to their recommendations during the Planning Board hearing.

4. Whether the three access points to Greenbelt Road (MD 193) required a variation from Section 24-121(a)(3).

5. Whether the Planning Board lacked standing to participate as a Respondent in the Circuit Court and lacks standing to participate as an Appellee in this Court.

Subdivision approval is a two-step procedure consisting of Planning Board review and approval of preliminary and final subdivision applications. Subdivision applications are governed by the County's subdivision regulations, codified as Title 24 of the County Code. Site plan approval is also a two-step process, requiring Planning Board review and approval of conceptual and detailed site plans. The standards for site design are set out in the County Zoning Ordinance, specifically at PGCC §§ 27-267–90.

The Planning Board approved GB Mall's conceptual site plan application in March 2019.[3] At issue in the present case is GB Mall's application for approval of its preliminary subdivision plan.

Before the Board can approve a preliminary plan, the Board's technical staff and other interested officials review the subdivision application and make recommendations to the Board based on whether the plan meets certain requirements, including the application's adherence to the area master plan. *See* Md. Code, LU § 23-205; and PGCC § 24-121(a). The Board is required to hold a public hearing on the application before approving or denying the application.

On February 20, 2020, the Board held a public hearing on the application. During the hearing, members of the Board's staff, representatives of GB Mall, and opponents to the

[3] The site plan approval process and the subdivision approval process are integrally related. The Board discussed the relationship between its conceptual site plan approval and GB Mall's preliminary plan of subdivision application on pages 12–15 of its resolution.

proposed subdivision plan presented testimonial and documentary evidence in support of their respective positions. After the hearing was concluded, the members of the Board voted unanimously to approve the application. The Board's reasoning was documented in a 42-page resolution that analyzed the evidence presented at the hearing and made findings of fact and conclusions of law.

THE STANDARD OF REVIEW

In a judicial review proceeding, the issue before an appellate 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) (cleaned up). For that reason, we "look through" the circuit court's decision in order to review the decision of the agency itself. *People's Counsel for Balt. County v. Loyola College*, 406 Md. 54, 66 (2008).

A reviewing court accepts an agency's factual findings if they are supported by substantial evidence, that is, if there is relevant evidence in the record that logically supports the agency's factual conclusions. *Bayly Crossing*, 417 Md. at 138-39. A reviewing court pays no deference to an agency's legal conclusions. *Id*. at 137. Additionally, "[a]n agency's decision is to be reviewed in the light most favorable to it and is presumed to be valid." *Assateague Coastal Trust v. Schwalbach*, 448 Md. 112, 124 (2016) (citing *Chesapeake Bay Foundation v. DCW Dutchship Island, LLC*, 439 Md. 588, 611 (2014)).

These standards apply to judicial review proceedings involving Planning Board reviews of subdivision applications. *See West Montgomery County Citizens Ass'n v. Montgomery County Planning Bd.*, 248 Md. App. 314, 332–33 (2020), *cert. denied* 474 Md. 198 (2021).

ANALYSIS

1. The Planning Board's Standing

Appellants assert that the Board is without legal authority to participate as a party in a judicial review proceeding involving one of its decisions. Appellants do not challenge GB Mall's standing to participate in this action.

"It is a settled principle of Maryland law that, where there exists a party having standing to bring an action[,] [appellate courts] shall not ordinarily inquire as to whether another party on the same side also has standing." *Garner v. Archers Glen Partners*, 405 Md. 43, 54 (2008) (cleaned up). In *Garner*, the Court of Appeals was confronted with the precise issue presented by appellants, *viz.*, whether the Prince George's County Planning Board has standing to participate in a judicial review proceeding challenging one of its own decisions. *Id.* at 55. The Court declined to address the standing issue because there was another party, namely the affected property owner, which clearly had standing. *Id.* In the same case, the Court observed that "an appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided." *Id.* at 46.

Guided by *Garner*, we will leave for another day the interesting issue of the Board's standing in cases like the one before us.

2. Compliance with Plan 2035

Appellants assert that GB Mall's subdivision proposal was required by law to comply with the County's current general plan, generally known as "Plan 2035,"[4] as well as the master or sector plan for the area in which GB Mall's property is located. They state:

> [T]he Planning Board's resolution correctly stated that "Plan 2035 designates this application in the Established Communities Growth Policy Area. The vision for the Established Communities area is context-sensitive infill and low- to medium-density development." The Resolution then states that "Conformance with the 2014 Plan Prince George's 2035 Approved General Plan (Plan 2035) and sector plan are evaluated as follows." Not one sentence in the Resolution discusses whether [GB Mall's proposal] conformed with Plan 2035's vision for low- to medium-density development.

(Citations omitted.)

Appellants argue that the Board's resolution is legally deficient because the Board failed to articulate how GB Mall's preliminary plan of subdivision complies with Plan 2035. Appellees counter that appellants' premise is legally incorrect and that the appellate decisions marshalled by them to support their contentions are inapposite. We agree with the appellees.

First, we will distinguish between "general" plans and "master" plans:

[4] Plan 2035's formal citation is "The Maryland-National Capital Park and Planning Commission, PLAN PRINCE GEORGE'S 2035 APPROVED GENERAL PLAN (May 2014)."

> Within the Regional District, two types plans are required: (1) a "general plan" containing, at a minimum, recommendations for development in the respective county and supporting analysis; and, (2) "area master plans" pertaining to local planning areas into which each county is divided. These plans are prepared by the Maryland–National Capital Park & Planning Commission (which is composed of separate planning boards for each county; the two boards sit together on bi-county issues and separately on matters that pertain purely to its respective county) and must be approved by the local legislature of the respective county. Area master plans govern typically specific, smaller portions of a county and are usually more detailed than general plans overlapping the same area.

County Council of Prince George's County v. Zimmer Dev. Co., 444 Md. 490, 522 (2015) (cleaned up).

Plan 2035 is Prince George's County's current general plan. It includes recommendations for guiding future development in Prince George's County that are articulated as goals, policies, and strategies for eight separate countywide objectives.[5] "In Prince George's County, development is guided by a county-wide General Plan, which operates in concert with several subregion-specific Master Plans." *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 49 (2008). "Area master plans govern typically specific, smaller portions of a county and are usually more detailed than general plans overlapping the same area." *Zimmer*, 444 Md. at 522. The *Zimmer* Court also explained that:

> Because plans are guides, and not law, proposals for land use contained in a plan constitute a non-binding advisory recommendation, unless a relevant

[5] The eight objectives are Land Use; Economic Prosperity; Transportation and Mobility; Natural Environment; Housing and Neighborhoods; Community Heritage, Culture, and Design; Healthy Communities; and Public Facilities.

> ordinance or regulation, or specific zoning, subdivision, or other land use approval, make compliance with the plan recommendations mandatory.

Id.

A "sector plan" is a detailed plan for the development of a portion of a master planning area. It is defined as:

> A comprehensive plan for the physical development of a portion of one or more planning areas, showing in detail such planning features as type, density and intensity of land uses, pedestrian traffic features, public facilities (parking structures, public open space, rapid transit station, community service provisions, and the like), and relationship of the various uses to transportation, services, and amenities within the area of the sector plan and, where appropriate, to other areas.

PGCC § 27-107(a)(206.2).

It follows that a development proposal which complies with the relevant sector plan also complies with the relevant master plan. Appellants do not dispute this.

In its brief, the Planning Board correctly points out that, although the Subdivision Regulations require preliminary plans of subdivision to comply with the relevant "area master plan, including maps and text," *see* PGCC § 24-121(a)(5), there is no corresponding provisions in the regulations requiring the Board to assess whether the proposed subdivision complies with the general plan.

Consistent with the Board's view of the law, Plan 2035 states that "[a]ll planning documents which were duly adopted and approved prior to the date of adoption of Plan 2035 shall remain in full force and effect, except [for] the designation of tiers, corridors, and centers, until those plans are revised or superseded by subsequently adopted and approved

plans." Plan 2035 at 270. This includes area master plans and sector plans. Plan 2035 was adopted by the Prince George's County District Council in 2014. The sector plan relevant to GB Mall's application is the GREENBELT METRO AREA AND MD 193 CORRIDOR SECTOR PLAN AND SECTIONAL MAP AMENDMENT, which was approved in 2013.

All of this points to the conclusion that the Planning Board did not err when it addressed the degree to which GB Mall's preliminary subdivision plan complied with the 2013 sector plan instead of Plan 2035. In arguing otherwise, appellants direct us to three decisions: *Maryland-Nat. Capital Park & Plan. Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73 (2009); *Naylor v. Prince George's County Planning Board*, 200 Md. App. 309 (2011); and *Archers Glen Partners, Inc. v. Garner*, 176 Md. App. 292 (2007), *aff'd on other grounds*, 405 Md. 43 (2008).

These cases pertained to the effect of language in Prince George's County's then current general plan (the "2002 Plan"). *Greater Baden-Aquasco*, 412 Md. at 92–93; *Naylor*, 200 Md. App. at 329-37; and *Archers Glen Partners, Inc.*, 176 Md. App. at 312-17. The 2002 Plan divided the County into three regional categories: the "developed tier," the developing tier," and the "rural tier." *Greater Baden-Aquasco*, 412 Md. at 78 n. 4. The 2002 Plan also stated that:

> The growth objective of the [2002 Plan] is that 33 percent of the county's residential growth over the next 25 years is to be located in the Developed Tier, 66 percent in the Developing Tier, and one percent in the Rural Tier.

Id. at 78 n.6.

In *Archers Glen*, we held that the relevant language in the 2002 Plan was intended to be incorporated in the County's area master plans. 176 Md. App. at 325. Although its reasoning differed somewhat from ours in *Archers Glen*, the Court of Appeals reached the same conclusion in *Baden-Acquasco*. 412 Md. at 106. In *Naylor*, we commented that in *Baden-Acquasco*, "the Court of Appeals resolved a long-simmering dispute when it held that the Prince George's County Planning Board . . . is obligated to consider the 1% growth objective when evaluating an application for a preliminary subdivision plat." 200 Md. App. at 312.

What separates the *Baden-Acquasco* line of cases from the case before us is that the 2002 Plan contained language that required the Board to address the plan's growth objectives when it considered subdivision applications. There is no similar language in Plan 2035 and, as we have pointed out, Plan 2035 explicitly states that, except for "designations of tiers, corridors, and centers," "planning documents which were duly adopted and approved prior to the date of adoption of Plan 2035 shall remain in full force and effect . . . until those plans are revised or superseded by subsequently adopted and approved plans."

In the present case, as appellants concede, the Planning Board considered Plan 2035's designation of "tiers, corridors, and centers," and concluded that the GB Mall property was in a growth policy area. In other words, the Planning Board fully complied with the relevant mandatory provision of Plan 2035.

3. and 4. GB Mall's requests for variations

In its application, GB Mall sought two variations from the requirements of the County Subdivision Regulations.

A

The first pertained to PGCC § 24-121(a)(3), which states in pertinent part:

> (a) The Planning Board shall require that proposed subdivisions conform to the following:
>
> * * *
>
> (3) When lots are proposed on land adjacent to an existing or planned roadway of arterial or higher classification, they shall be designed to front on either an interior street or a service road. . . .
>
> * * *

As submitted, GB Mall's application called for the approval of several proposed lots that abutted Greenbelt Road, a public highway. These lots also had frontage on private roads that would be located within the subdivision. GB Mall requested a variation from PGCC § 24-121(a)(3) to permit this frontage. After the application was filed but prior to the public hearing, representatives of GB Mall met with the members of the Board's technical staff. In reviewing the application, the Board's staff concluded that no variation was needed for two of the lots because they would be accessed from interior streets within the development and not from Greenbelt Road. As to the third lot, GB Mall redesigned the lot so that it would be accessed from a private road. At the Planning Board hearing, counsel for GB Mall formally withdrew the request for the variation.

Appellants cry foul. To this Court, they assert that:

> Technical Staff made material changes to their recommendations regarding the need for a variation for access to Greenbelt Road (MD 193) during the Planning Board hearing on February 20, 2020. Technical Staff provided no notice to Citizen-Appellants prior to the hearing of these material changes. Citizen-Appellants were materially unable to assess the changes to the Plan because, as they stated in the hearing, the "project [was] a moving target . . . [with] repeated amendments at the last minute and [] even more in the last 18 hours [before the hearing]."
>
> Citizen-Appellants reasonably prepared to litigate whether GB Mall proved the necessary facts for a variation for access to Greenbelt Road (MD 193), not whether GB Mall required such a variation. The Planning Board violated Citizen-Appellants' due process rights when it approved PPS 4-19023 and incorporated Technical Staff's new recommendations that no variation was required access to Greenbelt Road (MD 193).
>
> These improper actions violated Citizen-Appellants' procedural due process rights. . . .

In response, the Board and GB Mall argue: first, that appellants' argument that their due process rights were violated is not reserved for appellate review because the contention was not presented to the Board at the hearing; and second, that appellants' due process contention is not persuasive.

In their reply brief, appellants assert that:

> The due process violation alleged by Citizen-Appellants is not that Technical Staff made these changes—indeed, if Technical Staff believed they were properly amending an illegal position to bring their recommendations in line with the Ordinance, then it would be proper to fix that position as soon as possible—but *that they never informed Citizen-Appellants of this change and announced the change during the hearing, such that Citizen-Appellants were unable to analyze or respond to this change in position*. Due process is concerned with fundamental fairness in the proceeding, not with whether the agency has failed in some way to comply with a statutory requirement.

(Citation and quotation marks omitted, emphasis added.)

Appellants' preservation argument is not convincing.

To begin, in all forms of litigation, the preservation doctrine furthers considerations of fairness to the parties and adjudicative efficiency. *See, e.g., Chaney v. State*, 397 Md. 460, 468 (2007). But there is another reason why courts do not address contentions that were not raised to an administrative agency. For a court to do so is not consistent with the doctrine of separation of powers:

> A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.

Bulluck v. Pelham Wood Apartments, 283 Md. 505, 518–19 (1978) (quoting *Unemployment Compensation Comm'n v. Aragon*, 329 U.S. 143, 155 (1946)); *see also Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Maryland*, 370 Md. 1, 32, mandate modified on other grounds, 371 Md. 356, 378–79 (2002) (Courts cannot "resolve matters ab initio that have been committed to the jurisdiction and expertise of the agency."); *Dep't of Nat. Res. v. Linchester Sand & Gravel Corp*., 274 Md. 211, 228–29 (1975) (holding that a statute providing for *de novo* review of administrative decisions to grant or deny wetlands permits violated the doctrine of separation of powers); *Dep't of Labor v. Boardley*, 164 Md. App. 404, 415 (2005) ("It is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision.").

Maryland's appellate courts have addressed the notice requirements for administrative hearings on many occasions. One of the most concise and cogent is Judge James Eyler's explanation for this Court in *Balt. St. Parking Co., LLC v. Mayor & City Council of Balt.*, 194 Md. App. 569, 593–94 (2010):

> The essence of due process is the requirement that the party be given "notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348–49 (1976). . . .
>
> The heart of the requirement of notification in administrative proceedings is that *the noticee should be apprised clearly of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing.* If this minimum requirement is met, the notification is adequate[.]

(Emphasis added, cleaned up, some citations omitted.)

Returning to the case before us, the problem with appellants' lack of notice/due process contentions is that they did not articulate them, or anything close to them, at the hearing. Their counsel told the Board that (emphasis added):

> The theme of my clients' case is this project is a moving target, there are rules and schedules in the system that are designed to allow staff to review the application to allow interested citizens to review the application and there have been repeated amendments at the last minute and there were even more in the last 18 hours.
>
> * * *
>
> In terms of the themes also, our theme is too much traffic, doesn't satisfy the regulations and the overcrowding of the schools. We also assert, of course, that they fail to meet the test for whether you call it one variation or three for the access to MD-193.
>
> These are all fundamental hard legal issues. *Let me just make the record clear. This is an issue we're not raising. We are not arguing that my clients did not*

> *get adequate notice of this application. We have reams of notice.* We've had multiple meetings with the applicant. I mean I don't want to tell you how many meetings I've been to and heard presentations. *We know the facts. We have the notice. We're not raising that in [sic] argument.*

Counsel's affirmative statements that his clients had "reams of notice" and that they were "not arguing that [they] did not get adequate notice of this application" is not a basis for us to conclude that counsel was somehow asserting that, in fact, his clients did not have adequate notice. We can certainly appreciate that appellants may have been surprised by the staff's change of position on GB Mall's variation request. But, having assured the Board that they were not challenging the adequacy of the public notice, it was incumbent upon appellants to tell the Board that things had changed and that they were now challenging the adequacy of notice. They failed to do so. The appellants' due process contention is not preserved for appellate review.

B

GB Mall also requested a variation from PGCC § 24-128(b)(12). In brief summary, § 24-128(b) authorizes the Board to approve private roads in certain types of subdivisions. § 24-128(b)(12) states:

> (12) Private roads provided for by this Subsection shall have a public utility easement contiguous to the right-of-way. Said easement shall be at least ten (10) feet in width, and shall be adjacent to either right-of-way line.

As part of its application, GB Mall sought permission to build private roads for internal circulation purposes within its project. Asserting that the precise locations of the private

roads were yet to be determined, GB Mall requested that the requirement that its preliminary plan of subdivision depict the location of utility easements associated with those roads be deferred until the precise location of private roads was determined. Where the roads would be located would depend upon how the Board decided several issues as part of its detailed site plan review and approval process. GB Mall sought to resolve this conundrum by requesting a variation which, if granted by the Board, would defer a decision on the precise location of the private roads and their attendant easements until the detailed site plan review and approval process. The Board thought this was a reasonable request and its resolution included a detailed discussion explaining why GB Mall satisfied the

requirements for a variation.[6]

Appellants assert that the Board erred. Recognizing that they did not argue to the Board that GB Mall had failed to demonstrate that it had satisfied the statutory criteria for a variation, they assert that they "did not waive their argument [as to the correctness of the Board's reasoning] because they had no obligation to even be at the hearing in order to challenge a subdivision process." Appellants' attempt to conflate the concepts of standing and preservation is completely unpersuasive. As we have explained, Maryland law is clear

[6] The variation criteria are set out in PGCC § 24-113(a):

> (a) Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations . . . provided that the Planning Board shall not approve variations unless it [makes] findings based upon the evidence presented to it in each specific case that:
>
> (1) The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property;
>
> (2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties;
>
> (3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation; and
>
> (4) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
>
> * * *

that a court in a judicial review proceeding will not consider an assertion of error on the agency's part unless the contention was presented to the agency. Because appellants did not argue to the Board that GB Mall had failed to satisfy the statutory criteria for a variation, they cannot present such an argument to a reviewing court.

5. Access to Greenbelt Road

Finally, appellants assert that the Planning Board erred when it approved GB Mall's preliminary plan of subdivision because the plan violated PGCC § 24-121, which sets out planning and design requirements for subdivisions. Their focus is on § 24-121(a)(3), which states in pertinent part:

> When lots are proposed on land adjacent to an existing or planned roadway of arterial or higher classification, they shall be designed to front on either an interior street or a service road.

GB Mall's proposed preliminary plat depicted eight lots that had frontage on Greenbelt Road (State Highway 193). (To make the following discussion less obscure, we have attached an edited exhibit from the Board's hearing. Public streets are depicted in purple and private streets in gold. Greenbelt Road is the public street at the bottom of the image.)

GB Mall did not propose to construct any service roads; however, each lot fronting on Greenbelt Road also had frontage on one or more of the interior streets depicted on the plat. In its review process, the Board's technical staff concluded that the two interior roads that provided vehicular access to the parcels in question required a variation from strict compliance with § 24-121(a)(3). This conclusion was reflected in staff's written submission to the Board. GB Mall's representatives met with the staff regarding these matters. As to the

so-called "western lot," GB Mall proposed that access would be limited to the private road located at the rear of the property. This mooted the necessity of a variation for this parcel. As to the remaining parcels, GB Mall indicated that access would be by the proposed interior private roads. Staff concluded that GB Mall was correct. One of the witnesses at the Board hearing was Sherri Conner, the Supervisor of the Subdivision Section of the Development Review Division. Ms. Conner informed the Board that "the Staff Report not specifying that those two [roadways] didn't [need[7]] a variation was an oversight on staff's part."

Appellants assert that the change in the Technical Staff's position was arbitrary and capricious. Conceding, as they must, that a private street "should certainly . . . be considered a street," appellants state:

> the fact remains that Technical Staff extensively reviewed GB Mall's documents for nearly five months, with the existing entry streets being precisely the same as they ever had been, and they had consistently stated that even so, the project required variations. . . . [U]ntil the hearing on February 20, 2020, Technical Staff had officially and repeatedly held that the access on Greenbelt Road to Beltway Plaza did not fit the parameters of Section 24-121(a)(3), and that there was no change to the plans or the classification of these streets after the GB Mall withdrew its variation applications.
>
> . . . . [T]his Court should find that the Technical Staff, and consequently the Planning Board, clearly had no justification in agreeing with GB Mall that

[7] In its brief, counsel for GB Mall notes that the hearing transcript reads "meet." They assert that the audio recording of the hearing "clearly demonstrates that Ms. Conner used the term 'need' not 'meet.'" Appellants do not challenge this assertion and we accept counsel's representation as correct.

> they no longer needed variations and reverse or, alternatively, vacate the Planning Board's decision.

These contentions are not persuasive. We agree with two points made by GB Mall in its brief: First, what is at issue in this judicial review proceeding is not the report of the Board's staff; rather, it is the decision of the Board itself. Second, the Board is not bound by its staff's recommendations but is required to consider them in light of all of the evidence adduced at the hearing as well as legal arguments presented by the parties. Moreover, the Board's "decision is to be reviewed in the light most favorable to it and is presumed to be valid." *Assateague Coastal Trust v. Schwalbach*, 448 Md. 112, 124 (2016). And we "give considerable weight to [an] agency's interpretation and application of the statute which the agency administers." *West Montgomery County Citizens Ass'n v. Montgomery County Planning Bd.*, 248 Md. App. 314, 333 (2020). The Board's conclusion that no variations were needed is supported by substantial evidence in the record, and the Board's interpretation of the relevant provisions of the Subdivision Regulations was legally correct.

Appellants raise an additional argument in their reply brief. They assert that the private road dispute should turn on our assessment as to whether

> "interior streets" means "streets located entirely inside a private property and do not open to public streets" as contended by [appellants] or merely "streets that are built on private property" as contended by [appellees].

The short answer to this is that PGCC § 24-128(b)(8) authorizes the Board to approve "a subdivision with private rights-of-way, easements, alleys or roads" in the Development District Overlay Zone. GB Mall's property is in a DDO district. There is nothing in § 24-

128(b)(8) that restricts the Board's authority to approve private streets only in cases where the proposed private roads do not intersect with public streets. Appellants' attempt to limit the Board's authority to approve private streets in DDO districts is not supported by the relevant statute.

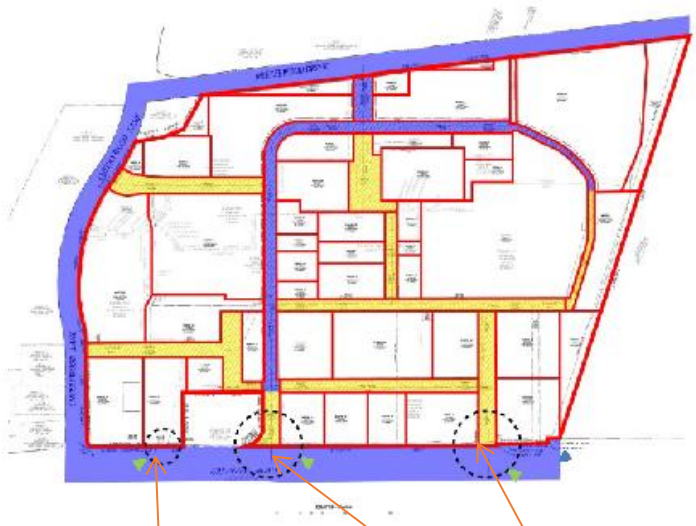
CONCLUSION

We hold that the Board's factual findings were supported by substantial evidence and that it did not err in its analysis and interpretation of the relevant provisions of the County's Subdivision Regulations. The Planning Board's resolution reflects an exhaustive and meticulous analysis of the legal standards and factual issues raised by GB Mall's application.

We affirm the Board's decision in this complicated and challenging case.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.

Access to Greenbelt Road:



The "western lot"—Prior to the Board's hearing, GB Mall changes access from a driveway onto to Greenbelt Road to the private street at the rear of the parcel.

GB Mall's proposed private road connections to Greenbelt Road