Circuit Court for Baltimore City
Case No. 24C20002910

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 959

September Term, 2021

IN THE MATTER OF THE PETITION OF THE COUNCIL OF UNIT OWNERS OF THE MILLRACE CONDOMINIUM, ET AL.

Beachley,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kenney, J.

Filed: August 15, 2022

This appeal involves MCB Woodberry Developer, LLC's (the "Developer") request for approval of a minor amendment (the "Amendment") to the Clipper Mill Planned Unit Development #121–2001 Druid Park Drive (the "PUD") by the Baltimore City Planning Commission (the "Commission"). Appellants include owners and residents living in the PUD, Jessica Meyer, Jeffrey Pietrzak, Mark Saldtich, and Christopher Whipps, in addition to the Council of Unit Owners of the Millrace Condominium, and the Homes at Clipper Mill Homeowners Association, Inc. After the Commission's approval, appellants filed a petition for judicial review by administrative mandamus in the Circuit Court for Baltimore City. The circuit court affirmed the Commission and appellants noted this timely appeal.

Appellants present one question for our review, and the Developer challenges appellants' standing to appeal. We have framed the standing challenge as a separate question that we will address first. The questions are:

I. Do appellants have standing to challenge the unanimous decision of the Commission to approve the minor amendment to the PUD?
II. Did the Planning Commission correctly determine that the construction of the two new buildings was a minor change to the approved final development plan?

FACTUAL AND PROCEDURAL BACKGROUND

The property is a 17.4-acre, mixed-use community in North Baltimore on the site of the former Poole and Hunt foundry. In 2003, a previous developer acquired the land and proceeded to develop it as an "office-residential Planned Unit Development" that involved renovating historic buildings on the site and building new residential and commercial space. The PUD was approved by City Council ordinance that same year.

On June 18, 2020, the Commission approved the Amendment at issue for the construction of 98 residential units above two levels of parking in what is referred to as the Tractor Building, along with a 2.5 story parking garage on an adjacent lot referred to as the Stables lot or area. At the hearing on the Amendment, the Commission heard extensive testimony from one of its staff, Eric Tiso, who had prepared the staff report on the Amendment. It also heard from various individuals who either supported, were neutral to, or opposed the Amendment. After hearing the testimony, and without making findings of fact, the Commission concluded that the changes in the Amendment were minor and voted unanimously to approve it.

Exchanges between Mr. Tiso and two Commissioners during that hearing are particularly relevant to the major-minor amendment question. First, Commissioner Sean Davis asked for an explanation as to why, if at all, the lack of Maryland Historical Trust ("MHT") approval for the Amendment mattered. In response, Mr. Tiso stated:

> Certainly. We went over this in November during the last hearing, and the simple version of that is there were a lot of older and historic buildings that were here. And in 2003, when this PUD was originally created, there was a desire to preserve some of that historic character. And, again, just looking at the drafting habits of counsel at the time, they were perhaps a little less formal than they are today. And in consultation with Eric Holcomb, who's executive director of our CHAP[1] division, we believe that what they were talking about is they were simply calling to mind that some of the projects that were being considered in that day may have been going for tax credits. And if that was the case, then the Maryland Historical Trust, MHT, with the National Park Service, NPS, as you may see them abbreviated, would have had a hand in that review.

[1] "CHAP" is the acronym for the Commission for Historical & Architectural Preservation.

> Some of those early designs did not go forward. None of them have used tax credits to my knowledge, so those really don't apply here. So we keep having that question raised by concerned residents. Several of them mentioned that specifically. John Murphy, who's an attorney representing some of them, you'll see a lengthy letter from him in the file, and that is one of the points he raises as well. In their November hearing, the applicants said okay, you know, we don't think that this really applies here and it's kind of common sense, but we'll go ahead and we'll ask MHT for their opinion, and they declined to review. They said we have no interest here, thank you.
> So in my view, it sort of doesn't make sense to attempt to force a process that doesn't exist, that isn't needed, that hasn't been, you know, considered as a legitimate part of this development review since that 2003 era, but yet we do keep hearing from it.

Councilman Leon Pinkett "challenge[d] whether the construction of the parking garage on a lot adjacent to the Tractor Building can really be considered a minor change," because its construction was "not consistent with the original PUD," and seemed to him "to be a different form of land use, which [he thought] would trigger a major change:"

> [Mr. Tiso]: In my view, it would not be [a major change]. Again, older PUDs had a long list of uses that could be approved. Parking is and was approved, and in fact, you know, the underlying zoning is now a TOD.[2] If the PUD were not here, they would actually have much more right to build than is there. So, unfortunately, you know, land use is land use. Parking is parking. So I don't see that as a change in land use.
>
> * * *
>
> [Councilman Pinkett]: I mean, we're going to just have to disagree. I mean, I can understand what Eric is saying as it relates to parking, but the creation of a structured parking structure, to me is a definite change in land use over a vacant lot. I don't see how you don't see that as a different land use.
> [Chairman Davis]: Eric, was the PUD, was that particular parcel always going to be a parking lot? I mean, what was identified in the original PUD documents regarding that?
> [Mr. Tiso]: So in the original PUD, it was a blank space, and that's why I had mentioned that, you know, it was shown in other development reviews around it as having a couple of things done with it, one of which was a pocket park, one had like a little fountain in it. But that particular Stables lot area was never actually formally approved for anything. And in that earlier

[2] Transit-oriented Development.

> hearing, yeah, I said I think what has happened here is nobody wants to leave a blank square, so they kind of filled it with something, but it's sort of on the margins, as it were. It wasn't until a surface lot was actually designated in 2005, and then revised in 2008, that the parking lot was the first formal thing that was approved there. Again, the earlier PUD, they kind of were taking it as it came phase by phase. There wasn't you know, like we see in a lot of newer PUDs where there's a grand plan and then you build according to that as it goes.

On July 1, 2020, appellants sought judicial review by way of administrative mandamus. Before a hearing was held, the City and the Developer filed separate motions to remand the case for the Commission to make proper findings of fact and conclusions of law. The appellants objected, but on November 13, 2020, the circuit court remanded the case to the Commission to make proper findings of fact and conclusions of law.

On December 17, 2020, the Commission held a second hearing on the proposed Amendment. At that hearing, the Commission did not take further testimony. It explained that all testimony relevant to the Amendment had been taken in June, and that, prior to the meeting, the Chairman had prepared findings of fact that were to be shared with the entire Commission at the meeting. And, after noting previously received testimony from Mr. Tiso and other individuals at the June 18, 2020 hearing, the Chairman proceeded to present his prepared findings:

> [Chairman Davis]: On June 18th, 2020, the Baltimore City Planning Commission heard testimony on the [Amendment]. The purpose of this document is to outline the findings of fact and conclusions of law that led to the Commission's decision to approve the application.
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> * * *
>
> During the public hearing on the 18th, [Mr. Tiso] had presented a 26-slide PowerPoint presentation which summarized the site conditions, proposed development, standards of review, et cetera, and culminated in the

Department of Planning's recommendations for approval with a minor change in file and design approval for Clipper Mill Planning (indiscernible) at 2039, Clipper Park Road, the Tractor Building.

* * *

As outlined in Mr. Tiso's presentation, Slide 68, Title 13, Subtitle 4 spells out the factors to be considered in determining a change and whether it will be minor or major. These are outlined below along with the findings of facts which include a 10 percent increase or 25 percent decrease in the approved number of dwellings. The total number of dwellings as permitted for this PUD is determined by dividing the total site by 1,500 square feet. This yields 513 homes, and so 513 units.

Total number of units developed in the PUD including the Tractor Building was 297. There are remaining sections to be developed. The current proposal does not exceed a maximum density of 10 percent. . . . There was no height limitation proposed in the original PUD so there was no increase or decrease.

A change in the type, location, or arrangement of land use within the development as shown on the previously approved final development plan. The original approved planning and development plans [were] very general in nature and did not go into specific uses and specific portions of the property, as we've seen in a number of items in this particular PUD. As part of the written opposition and during the public testimony, opponents stated that the proposed garage would replace a part designated as open space on the PUD plans.

When asked, Mr. Tiso stated that this area, referred to as the Stables area, was never designated as anything, and over the years it's been shown as both free space and a parking lot. In 2005 and 2008, it was shown as a parking lot. The Commission agreed with Mr. Tiso's testimony and since this area was designated as a parking lot, the construction of a parking structure does not re-change the boundaries. Re-changing the boundaries of the planning development is the fourth criteria in determining whether it's minor or major. And since no one contests that the subject property was part of the original lease, there was no change in the boundaries.

Number 5, a decrease in open space that had been included as a public benefit or amenity in Section 13-204, the section from (indiscernible) of this title, and there were no open space requirements contained in the original PUD so there was no change proposed.

> Finally, Number 6, any change that, one, fails to substantially comply with the PUD Master Plan or City regulations, or—and since opponents argued the proposed building exceeds the height (indiscernible) parking structure would change the plans (indiscernible) and the facts presented and, therefore, believes the proposed modification is in substantial compliance with the PUD and City regulations. Two, it violates the underlying zoning, and the underlying zoning use (indiscernible) PUD. An approved exception, and no approved exceptions were presented to the Commission so, therefore, is no violation. The condition of approval attached to the planning and development with the exception of modifications (indiscernible) about the phasing schedule, no conditions of approval have been violated.
>
> Opponents claimed that the Applicant had to obtain approval by the National Park Service for new construction. However, the Commission was persuaded by the [Developer] that the approval by the Maryland Historical Trust[3] and Commission for Historic and Architectural Preservation met the intent of this additional requirement.
>
> And finally, a provision of the ordinance that approved or amended the (indiscernible). No provision or any ordinance of the original deed was filed.
>
> As the Commission determined the above findings of fact, the Commission concluded that the proposed modifications were minor, and, therefore, subject to the Commission's approval.
>
> The Commission's vote was unanimous at eight to zero. Having found the modification to be minor, the Commission could then consider the final design request and approve a final design submission within a unanimous (indiscernible). That concludes the final statement that I had prepared. I ask any of the Commissioners who were present at the time if you have anything that you would like to add to that or change.

The Commission approved the Chairman's findings without alteration, and appellants again petitioned for administrative mandamus. A hearing was held in the circuit court on July 14, 2021, and on August 2, 2021, the circuit court affirmed the Commission on all issues. Appellants noted their timely appeal on August 30, 2021.

[3] There was no MHT approval.

DISCUSSION

I. Standing

Standard of Review

Standing to appeal a "decision of a zoning board is a question of law, which we review de novo." *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 494 (2003).

Contentions

The Developer/City[4] contends that appellants do not have standing. More specifically, it argues that under Maryland Rule 7-403, no party has identified a substantial right that has been prejudiced by the decision of the Commission, and that the two homeowners' associations do not have a property interest separate and apart from its individual members.

Appellants adopt the circuit court's conclusion that the individual petitioners Pietrzak and Whipps were "homeowners on the same street as the proposed development plans" and the petitioner Myers was a "long time resident" in the Millrace Building, and that they were "prima facie aggrieved by the decision of the Planning Commission" because they live on the same street as the proposed development and are all "confronting the proposed renovations to the Tractor Building."

[4] The Developer and the City filed a joint brief in this case. In discussing their arguments, we will refer to them in the singular as "Developer/City."

Analysis

To petition for judicial review of the Commission's decision, appellants must have been a party to the Commission's proceedings and aggrieved by the Commission's final decision. *See Greater Towson Council of Cmty. Ass'ns v. DMS Dev., LLC*, 324 Md. App. 388, 409 (2017). A party is sufficiently aggrieved when their "personal or property rights are adversely affected" in a way that is different from the general public. *Id.* (citing *Bryniarski v. Montgomery Cnty. Bd. of Appeals*, 247 Md. 137, 144 (2017)). For that reason, "standing issues are determined by the courts on a case-by-case basis, and the decision in each case rests upon the facts and circumstances of the particular case under review." *Id.* (quoting *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 90 (2013) (internal quotation marks omitted)).

In cases involving land use and zoning decisions, aggrievement typically depends on the proximity of a person's property to the property subject to the decision. *See Ray*, 430 Md. at 83. "[P]roximity is the most important factor to be considered" when evaluating whether a person is aggrieved. *Id.* at 82. The Court of Appeals in *Ray* explained that a party is *prima facie* aggrieved when they own property "adjoining, confronting, or nearby" the property at issue. *Id.* at 85. And that a party who is further away but "still close enough to the site of the rezoning action" and who "offers plus factors supporting injury" can be considered to be "almost *prima facie* aggrieved." *Anne Arundel County v. Bell*, 442 Md. 539, 559 (2015) (quoting *Ray*, 430 Md. at 81 (internal quotation marks omitted)). In other words, a nearby property owner who is not *prima facie* aggrieved by the decision must allege that they would suffer a "special kind of harm different from that suffered by the

general community." *Id.* at 574 (citing *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 448 (2014)). Protestants, living between 200 to 1000 feet away from the subject property, have been found to be almost prima facie aggrieved, but there is no bright-line rule "delineating such boundaries." *Id.*

Prior to the hearing, the Commission received a handful of emails from individuals, some of whom are parties to this action. Jeffrey Pietrzak, the President of the Clipper Mill Homeowners Association, sent an email stating that the residents in Clipper Mill opposed the Amendment. Noting that MHT did not review the project, he wrote that the residents wanted the historic character of the Tractor Building to be properly retained. And that the proposed parking garage, which will sit very close to the homes on Eric Shaeffer Way and Clipper Park Road, will have an adverse effect on those homes.

Jessica Meyer testified at the June 18, 2020 hearing. She explained that she was a longtime resident of Clipper Mill and lives in the Millrace Building. Christopher Whipps, a homeowner in the PUD and a member of the Woodberry Community Association, testified that the construction of the parking garage violated the PUD ordinance, and that people bought their homes relying on the PUD ordinance being properly enforced.

In the circuit court, appellants argued that Jeffrey Pietrzak and Christopher Whipps were property owners who were prima facie aggrieved because they lived "barely ½ block from the project." Attached as an exhibit to one of their filings, appellants marked where Mr. Pietrzak and Mr. Whipps lived on a map. That exhibit showed that their properties were in close proximity to the property at issue.

We agree with the circuit court that Mr. Pietrzak and Mr. Whipps live in such close proximity to the proposed parking garage and the Tractor Building as to be *prima facie* aggrieved by the Commission's decision to approve the Amendment. But even if they were not, they would be almost *prima facie* aggrieved because their proximity to the Tractor Building and Stables lot causes them to suffer harm from the proposed Amendment "different from that suffered by the general community." *Id.* at 574.

The Developer/City also argue that the associations do not have standing, but "[w]here one party has standing, we do not inquire typically as to whether another party on the same side also has standing." *Bell*, 442 Md. at 583 (citing *State Center*, 438 Md. at 550; *Bd. of Supervisors of Elections v. Smallwood*, 327 Md. 220, 233 n. 7 (1992); *Bd. of License Comm'rs v. Haberlin*, 320 Md. 399, 4040 (1990)). We see no reason to do so in this case.

II. The Approval of the Amendment

Standard of Review

The amendment of a PUD is a quasi-judicial action. *Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 396 Md. 16, 40 (2006). "An action for a writ of administrative mandamus is available for 'review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.'" *Headen v. Motor Vehicle Admin.*, 418 Md. 559, 657 n.4 (2011) (quoting Md. Rule 7-401). The standard of review in judicial review and administrative mandamus proceedings is "essentially the same." *Armstrong v. Mayor and City Council of Baltimore*, 169 Md. App. 655, 667-68 (2006). We review "to determine 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 upon an erroneous conclusion of law." *Kenwood Gardens Condominium, Inc. v. Whalen Properties, LLC*, 449 Md. 313, 338 (2016).

In that review, we view the evidence in a light favorable to the administrative agency. *Colburn v. Dep't of Pub. Safety & Corr. Servs.*, 403 Md. 115, 128 (2008). The substantial evidence standard is satisfied when "a reasoning mind" could have reached the conclusions that the agency did on the record before it. *Schwartz v. Maryland Dep't of Natural Resources*, 385 Md. 534, 554 (2005). Additionally, "[w]hen the agency decision being judicially reviewed is a mixed question of law and fact, the reviewing court applies the substantial evidence test, that is, the same standard of review it would apply to an agency factual finding." *Charles Cnty. Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 296 (2004). "[P]urely legal issues are reviewed de novo with considerable weight afforded to an agency's experience in interpretation of a statute that it administers." *Comm'r of Labor and Industry v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019) (quoting *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005)). Additionally, ordinance interpretation is a question of law, *Cremins v. County Comm'rs of Washington County*, 164 Md. App. 426, 447-48 (2005), but the Commission's interpretation of the ordinance is entitled to weight, *see Marzullo v. Kahl*, 366 Md. 158, 172 (2008) ("[A]n administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.").

We "may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers of America AFL-*

CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665, 679 (1984) (citing cases). Therefore, for us to perform properly our review, the "decision must contain factual findings on all the material issues of a case and a clear, explicit statement of the agency's rationale." *Maryland State Bd. of Dental Examiners v. Tabb*, 199 Md. App. 352, 379 (2011) (quoting *Fowler v. Motor Vehicle Admin.*, 394 Md. 331, 342 (2006)). As the Court of Appeals has explained, searching the record for evidence to support a party's theory is an administrative function that is committed, in this case, to the Commission. *Bethlehem Steel*, 298 Md. at 680. It is not a proper function of a court on judicial review. *Id.*

Contentions

Appellants mount a multi-prong challenge to the approval of the Amendment. They contend that the approval of 98 units in the Tractor Building is a major change because it is an increase in excess of 10% and that changing the surface parking lot to a multi-story parking garage is a change in location, type, or arrangement of land use. In addition, noting that the Tractor Building is not being properly preserved, they contend that the lack of MHT and NPS review of the project violates a condition of approval of the PUD.

The Developer/City contends that all the proposed modifications in the Amendment are minor changes. It argues that the approval of 98 units in the Tractor Building is not a major change because the approved density of the PUD allows 513 dwelling units, and the addition of 98 units would only increase the approved dwelling units to 297. It also posits that a prior approval by the Commission allowed 90 units in the Tractor Building, and that the additional 8 units was not a 10% increase of that approval.

In regard to the parking garage on the Stables lot and whether it represents a change in the use, type, or arrangement of land use, Developer/City focuses on the 2008 approval of the 90 units in the Tractor Building and the designation of the Stables lot as a parking lot. It contends that the Commission, based on Mr. Tiso's findings in his staff report, properly determined that the construction of a parking garage was not a change in land use because the use of the property would still be parking.

In regard to MHT and NPS review, the Developer/City contends that no condition of approval attached to the PUD has been violated. It argues that because the Amendment was presented to MHT for its review and it declined to review it, and because CHAP had reviewed and allowed the plan to go forward, the intent of the condition was satisfied.

Discussion

Because the overarching question in this case is whether the Amendment approved by the Commission involved minor or major changes to the PUD, we look first to the comprehensive rezoning ordinance known as Transform Baltimore.[5] Under that ordinance, the PUD was grandfathered, subject to certain transition rules. *See* Baltimore City Code, Article 32, Baltimore City Zoning Ordinance ("BCZO"), §§ 2-203(h), 13-102. The new ordinance categorizes amendments to existing PUDs as "engineering corrections, minor changes, or major changes." A minor change may be approved by the Commission.

[5] Transform Baltimore was enacted via Baltimore City Ordinance 16-581 and took effect on June 5, 2017. For a comprehensive discussion on Transform Baltimore's legislative history, see *Floyd v. Mayor & City Council of Baltimore*, 463 Md. 226, 232 (2019).

Approval of a major change "requires introduction and enactment of an ordinance." BCZO § 13-403(b). BCZO § 13–402(a) designates the following as major changes:

> (1) *A 10% increase or 25% decrease in the approved number of dwelling units*;
> (2) a 10% increase or a 25% decrease in the maximum building heights in the approved planned unit development;
> (3) *a change in the type, location, or arrangement of land use within the development, as shown on the previously approved final development plan*;
> (4) a change in the boundaries of the planned unit development;
> (5) a decrease in open space that had been included as a public benefit or amenity under § 13-204 of this title; and
> (6) *any change*:
> i. that fails to substantially comply with the PUD master plan or City regulations; or
> ii. *that violates*:
> (A) the underlying zoning;
> (B) an approved exception;
> (C) *a condition of approval attached to the planned unit development, with the exception of modifications to the planned unit development's phasing schedule*; or
> (D) *a provision of the ordinance that approved or amended the planned unit development*.

The Commission determined that the proposed changes to the PUD in the Amendment were all minor. Whether substantial evidence in the record as a whole supports that conclusion requires an analysis of its findings related to the changes at issue:

> In order to determine whether sufficient evidence existed to allow [an administrative agency] to render a decision under a correct legal standard, we turn to the factual findings provided by the [administrative agency]. As an administrative [agency], [it] is required to issue findings of fact and conclusions of law in support of its opinion. *See Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 62-63 (2002) (noting that "administrative agencies are required to resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." (quoting *Forman v. Motor Vehicle Admin*, 332 Md. 201, 221 (1993))). The Court of Appeals further specified that "findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory

> statements, or boilerplate resolutions." *Mehrling*, 371 Md. at 62-63 (quoting *Bucktail v. Talbot County*, 352 Md. 530, 553 (1999)). The purpose of the findings requirement is threefold: (1) requiring an articulation of the reasoning process makes the decision-maker accountable to the public; (2) it allows the injured party to understand the reasons behind the agency's decision; and (3) most important, the findings requirement assists in facilitating judicial review of the agency's decision. *Sweeney v. Montgomery County*, 107 Md. App. 187, 197 (1995) (citing *Baltimore Gas and electric Co. v. Public Service Commission*, 75 Md. App. 87 (1988)).

Maryland State Bd. of Dental Examiners v. Tabb, 199 Md. App. 352, 383-84 (2011) (quoting *Bd. of Cnty. Comm'rs for St. Mary's Cnty. v. S. Res. Mgmt., Inc.*, 154 Md. App. 10, 34-35 (2003)).

A. The Increased Number of Dwelling Units

Regarding the increase of dwelling units, the Commission found:

> As outlined in Mr. Tiso's presentation, Slide 68, Title 13, Subtitle 4 spells out the factors to be considered in determining a change and whether it will be minor or major. These are outlined below along with the findings of facts which include a 10 percent increase or 25 percent decrease in the approved number of dwellings. The total number of dwellings as permitted for this PUD is determined by dividing the total site by 1,500 square feet. This yields 513 homes, and so 513 units.
>
> Total number of units developed in the PUD including the Tractor Building was 297. There are remaining sections to be developed. The current proposal does not exceed a maximum density of 10 percent.

Appellants argue that the Tractor Building plan is a major change under BCZO § 13–403(a)(1) because the proposed new dwelling units represent a 10% increase in the approved number of dwelling units. Their argument is based on the "Building Tabulation" chart on the 2003 PUD plan which shows 220 units as the "proposed number of residential units, by type." *See* BCZO § 9-107(11)(ii). As they see it, the "flaw" in the Commission's

analysis is the focus on the "permitted density" in the approving ordinance rather than the "approved dwelling units" language in BCZO § 13–402(a)(1).

The Commission reasoned that the ordinance approving the PUD provided an "overall density of the PUD [of] 1,500 square feet per dwelling unit," or a potential of 513 total units. And with "remaining sections to be developed," only 297 units had been developed. Under that analysis, the proposed dwelling units in the Tractor Building would not be a 10% increase in the "approved number of dwelling units."

Ordinance interpretation is a question of law, but we afford weight to the Commission's experience in interpreting an ordinance that it administers. We are not persuaded that its decision was based on an erroneous conclusion of law, and reviewing the Commission's application of the law to the facts as a mixed question under the substantial evidence test, we hold that a "reasoning mind" could have reached the decision that it did on this record.

B. Change in Type, Location, or Arrangement of Land Use

Appellants contend that changing the surface parking lot to a multi-story parking garage represents a change in the type, location, or arrangement of land use within the development as shown on the previous approved final development plan for both the Tractor Building and the Stables lot. In its findings on this issue, the Commission stated:

> The original approved planning and development plans [were] very general in nature and did not go into specific uses and specific portions of the property, as we've seen in a number of items in this particular PUD. As part of the written opposition and during the public testimony, opponents stated that the proposed garage would replace a part designated as open space on the PUD plans.

> When asked, Mr. Tiso stated that this area, referred to as the Stables area, was never designated as anything, and over the years it's been shown as both free space and a parking lot. In 2005 and 2008, it was shown as a parking lot.[6] The Commission agreed with Mr. Tiso's testimony and since this area was designated as a parking lot, the construction of a parking structure does not re-change the boundaries. Re-changing the boundaries of the planning development is the fourth criteria in determining whether it's minor or major. And since no one contests that the subject property was part of the original lease, there was no change in the boundaries.

The Commission concluded that the use of the land remains parking. In doing so, it adopted Mr. Tiso's reasoning in regard to the Stables parking garage. He testified that the construction of a parking structure does not change the underlying land use. He explained that the Tractor building had already been approved to be a residential building with 90 units and that the Stables lot had already been approved for parking in 2008. As Mr. Tiso saw it, "[w]e have a residential building. We have [a] parking lot. That hasn't changed."

We understand the Commission's reference to changing boundaries—which is a separate element in determining what is a "major" amendment—to mean, in the context of this finding, that land within the PUD previously dedicated to parking will remain dedicated to parking. BCZO § 13–403(a)(3)-(4). A parking garage could be seen by some as a different "type" of parking than an open parking lot. But, in general terms, it is not a different type of land use. In short, the Commission's decision is not based on an erroneous conclusion of law and its application of the facts to the law is supported by substantial evidence in the record.

[6] The Commission is referring to previously approved amendments in 2005 and 2008 that identified the Stables area as a parking lot.

C. MHT Review

Appellants assert that the Tractor Building is not being properly preserved. More particularly, they argue that the lack of MHT and NPS review violates a condition of approval contained within the ordinance establishing this PUD and therefore is a major change. City Ordinance No. 03-590 § 4(a) states:

> Historic Compatibility – [The Developer] will design new buildings that are *compatible with the historic character of the site as defined by the Maryland Historical Trust and the National Park Service*. New construction will substantially be of brick or stone and is subject to review by the Maryland Historic Trust, the National Park Service, and the Planning Commission.

(Emphasis added). In its findings, the Commission stated:

> Opponents claimed that the Applicant had to obtain approval by the National Park Service for new construction. However, the Commission was persuaded by the [Developer] that the approval by the Maryland Historical Trust[7] and Commission for Historic and Architectural Preservation met the intent of this additional requirement.

As previously stated, an administrative agency's interpretation and application of an ordinance that it administers" is entitled to weight. *Cremins*, 164 Md. App. at 448. We interpret "local ordinances and charters under the same canons of statutory construction as we apply to statutes." *Cherry v. Mayor and City Council of Baltimore City*, 475 Md. 565, 598 (2021) (quoting *120 W. Fayette St., LLLP v. Mayor and City Council of Baltimore City*, 413 Md. 309, 331 (2010)). The primary source of legislative intent is the plain language of the ordinance, and, in our search for legislative intent, "we assign the words of the ordinance 'their ordinary and natural meaning and avoid adding or deleting words to

[7] As previously noted, MHT did not review or approve the Amendment.

impose a meaning inconsistent with the plain language' of the measure." *Id.* (quoting *120 W. Fayette St.*, 413 Md. at 331).

The language of the ordinance at issue is plain and quite specific. Baltimore, Md. No. 03-590 § 4(a). It requires new buildings to be designed and constructed "compatible with the historic character of the site as defined by the Maryland Historical Trust and the National Park Service." In addition, any "new construction" is "subject to review" by the MHT, NPS, and the Planning Commission. No evidence in this record supports a finding that the proposed buildings are "compatible with the historic character of the site as defined by the [MHT] and [NPS]."

The Commission, with brief analysis, was persuaded that MHT and CHAP approvals met the intent of what it recognized as an "additional requirement." There was, however, no review or approval of the Amendment by MHT and the CHAP Staff Report is hardly an approval and certainly not an endorsement of the Amendment's compatibility "with the historic character of the site." Without using or referencing MHT and NPS standards, the CHAP report explained that the Amendment was "reviewed using CHAP's Design guidelines sections 1.18 Alterations and Additions, 2.1 Guiding Principles for New Design, and 2.3 Scale and Form." It also explained that it was reviewing the project because it had been placed "on the Potential Landmark List" on March 10, 2020.

And in reference to retaining character-defining features, the report states that the Tractor Building "does not conform to the [CHAP] guidelines." In regard to being compatible and sympathetic to the character of the historic Tractor Building, the CHAP report states that the new proposed structure does not conform because of the substantial

removal of historic features. The CHAP report's most positive statement was that the preservation of the elevation of three sides of the Tractor Building preserved only a "sense of the historic structure." The CHAP report's recommendation was couched in terms of possible options: disapproval, requesting further information for "greater analysis," or approval because it was "without substantial derogation of the intent" of Article Six of the City Code[8] and denial would "result in substantial hardship to the applicant."

Mr. Tiso testified that he "believe[d] that what [the City Council was] talking about [was] they were simply calling to mind that some of the projects that were being considered in that day may have been going for tax credits.[9] And if that was the case, then the Maryland Historical Trust, MHT, with the National Park Service, NPS, . . . would have had a hand in that review." But because tax credits were not being sought in this case, he did not think that the condition applied or that it made sense to "attempt to force a process that doesn't exist, that isn't needed, that hasn't been, you know, considered as a legitimate part of this development review since that 2003 era, but yet we do keep hearing it." Mr. Tiso's belief as to the reason the requirement was included in the PUD approval is speculative at best.

PUDs are based on negotiations between the local government and the developers. *See, e.g.*, *75-80 Properties, L.L.C. v. Rale, Inc.*, 470 Md. 598, 642-643 (2020) (explaining that the developer negotiated to secure discretionary zoning approvals). We see nothing in

[8] Article Six of the Baltimore City Code governs "Historical and Architectural Preservation."

[9] Review of the record suggests that other buildings in this PUD did seek federal tax credits.

the plain language of the ordinance to suggest that design and construction compatibility with "the historic character of the site" as defined by MHT and NPS was not intended to be "a legitimate part" of development review of the PUD throughout its development. What the language indicates, whether we view it as a condition of approval or "a provision of the ordinance that approved" the PUD under subsection (d) of BCZO § 13-402, is the legislative intent to maintain "the historic character of the site" in accordance with a very specific standard. Compliance with that standard could be somewhat assured by involving MHT and NPS in the review process.

We hold that the Commission's decision that this aspect of the Amendment was minor because the intent of the requirement had been satisfied is based on an erroneous conclusion of law and not supported by substantial evidence in the record. We recognize that MHT and NPS may no longer be available for the purpose of determining compatibility under the ordinance standard. And we also recognize that a compatibility determination may involve some degree of discretion about which reasonable people might not agree. Perhaps this ordinance requirement is no longer necessary because its intended purpose, whatever that may have been, has been satisfied or that a different compatibility standard should be substituted. But excising the requirement or modifying it by way of interpretation is not a decision for the Commission to make. It is a decision for the City Council.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS REVERSED IN PART AND AFFIRMED IN PART. THE CASE IS REMANDED TO THAT COURT WITH INSTRUCTIONS TO VACATE THE

COMMISSION'S DECISION AND REMAND TO THE COMMISSION FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID TWO-THIRDS BY APPELLEES AND ONE-THIRD BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0959s21cn.pdf