Circuit Court for Cecil County
Case No. C-07-CV-20-000092

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1012

September Term, 2020

OWENS LANDING COUNCIL OF UNIT OWNERS INC., ET AL.

v.

12 RIVER, LLC, ET AL.

Fader, C.J.,
Arthur,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: December 3, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this appeal, the appellants, the Owens Landing Council of Unit Owners and seven community members (collectively, the "Unit Owners"), challenge the decision of the Board of Appeals of the Town of Perryville (the "Board") to approve a special exception for the service of alcoholic beverages at a yet-to-be constructed restaurant at a marina in Perryville. 12 River, LLC (the "Developer"), an appellee, applied for the special exception pursuant to the Town of Perryville Zoning Ordinance, Chapter 84 of the Town of Perryville Code (the "Zoning Chapter"). Under the Zoning Chapter, the Board is authorized to approve a special exception to permit the service of alcoholic beverages in an area zoned Residential-Marine ("RM District") as an accessory use to a "standard restaurant," which itself is a permitted use in an RM District as an accessory to a marina.[1]

After a hearing, the Board approved the special exception subject to conditions, including that the restaurant qualify as a "standard restaurant," as that term is defined in the Zoning Chapter. The Circuit Court for Cecil County affirmed the Board's decision. On appeal to this Court, the Unit Owners argue that the Board erred because: (1) it failed to apply the required legal test for approval of a special exception from *Schultz v. Pritts*, 291 Md. 1 (1981); (2) the special exception is not a valid accessory use because it is not accessory to a principal use, as required by the Zoning Chapter; (3) the Board failed to determine whether the future restaurant would satisfy the definition of a "Standard Restaurant" before approving the special exception; (4) the Board did not adequately

[1] A "permitted use" is a use that is "permitted as of right," while a special exception use is a use that is "permitted only under certain conditions." *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981).

articulate its findings; and (5) the record lacks substantial evidence to support the special exception. The Developer and the Town of Perryville (the "Town"), the other appellee, contend that the Board applied the correct legal standard, did not err as a matter of law, and adequately articulated its findings, and that substantial evidence supports the Board's determination.

We conclude that the Board did not commit legal error and that substantial evidence supports its decision. The Board was not required to apply the *Schultz* test because the Zoning Chapter contains its own standard for review of an application for a special exception. The Board also did not err in determining that a special exception for service of alcohol as accessory to a standard restaurant is permitted under the Zoning Chapter and that the Board was not precluded from ruling on the application in these circumstances. Finally, the Board adequately articulated the bases for its findings, and the record contained substantial evidence to justify the Board's decision. Accordingly, we will affirm.

BACKGROUND

Owens Landing Marina (the "Marina") is located directly adjacent to a residential condominium community named Owens Landing. Both are located in an RM District, which permits waterfront residential uses as well as limited commercial marine activities. The Developer owns the Marina and, as part of a plan to redevelop it, seeks to build a restaurant that will serve alcohol. Although not opposed to other aspects of the redevelopment project, some residents of Owens Landing oppose the restaurant and the service of alcohol in it.

The Zoning Chapter

The Zoning Chapter "is intended to promote the orderly development of the Town of Perryville, Maryland in accordance with the Perryville Comprehensive Plan or any of the component parts thereof and in compliance with the Land Use Article of the Annotated Code of Maryland, as amended." Zoning Chp. § 3.1. It further seeks:

> to promote the health, safety, order, convenience and general welfare of the citizens of the Town, . . . to implement the recommendations of the Perryville Comprehensive Plan, . . . to provide for economic and efficient land development, encourage the most appropriate use of land, provide convenient and safe movement of people and goods, control the distribution and density of population to areas where necessary public service can be provided, protect historic and environmental areas, encourage good civic design, and provide for adequate public utilities, facilities, and services.

Id. § 3.2.

Four sections of the Zoning Chapter are at the center of the present dispute between the Developer and the Town, on one side, and the Unit Owners, on the other. First, in § 9, the Zoning Chapter defines:

- an "Accessory Use" as a use "which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Chapter) on the same lot as the principal use of the premises";

- a "Special Exception" as "[p]ermission by the Board of Appeals to establish a specific use that would not be appropriate generally or without restriction throughout a zoning district but which if controlled as to number, area, location, or relation to the neighborhood, would comply with the purpose and intent of this Chapter. Such uses may be approved within a zoning district if specific provision for such a Special Exception is made in this Chapter"; and

- a "Standard Restaurant" as a "food serving establishment whose principal business is the sale of food and the principal method of

> operation is its service when ordered from a menu to seated customers at a table, booth or counter inside the establishment."

Second, § 206 of the Zoning Chapter provides in relevant part:

> Standard Restaurants shall be permitted in the . . . RM . . . district[] provided:
>
> 1. When such use abuts a residential zone or institutional premises the use shall be screened by a buffer yard . . . .
>
> 2. Vehicular access shall not be by means of any street internal to a subdivision for single-family dwellings.
>
> . . .
>
> 4. Standard restaurants are permitted in the RM . . . district[] only as an accessory use in a marina.

Third, § 208 of the Zoning Chapter provides in relevant part:

> Service of alcoholic beverages . . . may be permitted as a special exception in the . . . RM . . . district[] provided:
>
> 1. No such establishment is located nearer than 1,000 feet to any principal structure used as a hospital, church, or school.
>
> 2. In all districts the service of alcoholic beverages in a restaurant is permitted only as an accessory use to a standard restaurant provided all required approvals and licenses are obtained for the service of alcoholic beverages from Cecil County Board of Liquor License Commissioners.

Fourth, § 57 of the Zoning Chapter provides:

> No special exception shall be approved by the Board of Appeals unless such Board shall find:
>
> 1. That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.
>
> 2. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes

already permitted, nor substantially diminish and impair property values within the neighborhood.

3. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

4. That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.

5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

6. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Perryville.

7. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.

8. Conditions and Guarantees. Prior to the granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Article XII. In all cases in which special exceptions are granted, the Board of Appeals shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such proof shall be filed with the board on or before March 15 of each year. The first filing shall not be made unless and until at least 12 months have elapsed since the date of the grant of the special exception.

Thus, in an RM District: (1) a restaurant that meets the definition of a standard restaurant is a permitted use as an accessory to a marina; and (2) the Board may approve,

as a special exception, service of alcoholic beverages as an accessory use to a standard restaurant, provided that the restaurant is more than 1,000 feet from any hospital, church, or school, the operator obtains all required approvals and licenses, and the Board makes the findings required by § 57.

The Developer's Application

The Developer purchased the Marina at a time when the "property was in the process of sale at auction and potential foreclosure[.]" In planning for a comprehensive redevelopment of the Marina, the Developer "want[ed] to ensure [it was] able to acquire a liquor license for the sale of alcoholic beverages as an accessory use to a restaurant at the pool area on the waterfront." For that purpose, the Developer submitted an application for a special exception to permit the service of alcoholic beverages at a yet-to-be constructed standard restaurant at the Marina.

By a 2-1 vote, in a written report the Town Planning Commission (the "Commission") recommended to the Board "approval of the Special Exception for service of alcoholic beverages as an accessory to a standard restaurant[,]" subject to conditions recommended by Commission Staff, including that: (1) service of alcohol be "limited only as an accessory use to a standard restaurant"; (2) the operator be required to take measures to ensure that "patrons do not leave the restaurant in an inebriated condition"; (3) loud music and other noise be allowed only between noon and 10:00 p.m.; (4) alcoholic beverages be sold and consumed on the premises only while the restaurant was operating and "subordinate to the primary purpose of the restaurant for the sale of food"; (5) there be

no inconvenience to residents of surrounding properties; and (6) the Developer obtain a liquor license.

The Board then held a public hearing on the Developer's application. At the hearing, the Developer emphasized that all it was seeking through the application was "a special exception as an accessory to a restaurant to serve alcohol in a residential marine area," and not to gain approval for the building itself or to obtain a license to sell alcohol. In support of the Developer's argument, the Commission's Planning Director stressed that the issue before the Board was "completely separate" from the Developer's ultimate plans for the Marina and the restaurant itself, which would need to receive many other approvals. The Developer then explained its plan to develop the dilapidated Marina, which included rebuilding the boat slips, half of which were then unusable; renovating the bathrooms and outhouse; renovating the office; adding services; and adding a restaurant, in which it would like to be able to serve alcohol. The Developer also explained that it planned on taking community concerns into account in revising its plans, which it had done successfully in other "communities for dozens of years." The Developer believed "that a small restaurant with the service of alcohol will enhance the quality of life for those that are around it or in the marina." The Developer stressed that there would be "numerous meetings with the town and the neighbors as we go through the design phase" before any plans for the restaurant would be finalized.

Aside from the Developer and the Commission's Staff, two other individuals spoke in favor of the special exception at the hearing. One nearby resident testified about how responsibly the Developer had operated and worked with neighbors in other communities.

Another explained that many of the concerns the other neighbors expressed seemed to misunderstand the nature of the project, which was not a bar, but a restaurant that would serve alcohol.

Most members of the public who spoke at the hearing were opposed to the special exception. Much of the opposition focused on the proximity of the development to the condominium units, which are less than 30 feet away. Many of the concerns raised—such as the smell of food and traffic patterns—appeared to relate to the operation of a restaurant, regardless of whether it would serve alcohol. Other testimony related specifically to the service of alcohol, including concerns that inebriated patrons would loiter outside of the restaurant, trespass on Owens Landing property, and urinate in public. Several residents expressed concern that approval of the special exception would lead to a decline in their property values, and others were concerned that approval was being requested without the ability to review plans for the restaurant.

The Board voted to approve the special exception, subject to the conditions recommended by the Commission's Staff and others, including that:

> [t]his special exception approval for the service of alcoholic beverages as accessory to a standard restaurant shall remain effective only for so long as the restaurant remains an accessory use to the marina in which it is located, and the service of alcoholic beverages remains accessory to a standard restaurant. Prior to issuance of any zoning certificate for the service of alcoholic beverages the Director of Planning and Zoning shall determine that the location where alcoholic beverages will be served is part of a standard restaurant as defined in Section 9 of the Town Zoning Ordinance.

On judicial review, the Circuit Court for Cecil County affirmed the Board's decision. This timely appeal followed.

DISCUSSION

When reviewing an administrative decision, including a local government's decision to approve a special exception use of land, this Court "look[s] through the circuit court's . . . decision[], although applying the same standards of review, and evaluate[s] the decision of the agency." *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018) (quoting *People's Counsel v. Surina*, 400 Md. 662, 681 (2007)). "In other words, we 'review[] the agency's decision, not the circuit court's decision.'" *Brandywine Senior Living*, 237 Md. App. at 210 (quoting *Long Green Valley Ass'n v. Prigel Fam. Creamery*, 206 Md. App. 264, 273 (2012)).

The Unit Owners allege that the Board committed both legal and factual errors. They contend that: (1) the Board erred by failing to apply the *Schultz* test when evaluating the proposed special exception use for Service of Alcoholic Beverages; (2) the Board was not permitted to approve a special exception use for service of alcoholic beverages because, under the Zoning Chapter, an accessory use may be approved only as an accessory to a principal use, which a standard restaurant in an RM District is not; (3) the Board was not permitted to approve a special exception use for service of alcoholic beverages without first determining whether the associated restaurant will satisfy the Zoning Chapter's definition of a "Standard Restaurant"; (4) the Board did not adequately articulate the basis of its findings; and (5) the record did not contain substantial evidence to support the Board's approval of the special exception use.

The first three issues—application of the *Schultz* test and two challenges to the Board's ability, pursuant to the Zoning Chapter, to approve the Developer's special

exception use—are issues of law. We accord "a degree of deference" to "an administrative agency's interpretation of a statute that the agency administers." *Brandywine Senior Living*, 237 Md. App. at 211 (citations omitted). However, no deference is afforded to an agency's erroneous legal conclusions. *Id.* We address the standard of review for the remaining two issues—the adequacy of the Board's written findings and the substantiality of evidence to justify its approval of the special exception use—as we discuss them.

I. THE BOARD DID NOT ERR IN APPLYING THE CRITERIA OF § 57 OF THE ZONING CHAPTER INSTEAD OF THE *SCHULTZ* TEST.

The Unit Owners contend that the Board erred as a matter of law in failing to apply the special exceptions test from *Schultz*, 291 Md. at 1, to evaluate approval for the special exception use. The Developer and the Town counter that the Board correctly applied the criteria set forth in § 57 of the Zoning Chapter rather than the *Schultz* test. We agree with the Developer and the Town. As we will explain, in *Schultz*, the Court of Appeals established the appropriate standard for approval of a special exception use in the absence of a different legislative standard. Here, the Board correctly applied the legislative standard set forth in § 57 of the Zoning Chapter, which is more stringent than the *Schultz* test.

In *Schultz*, the Court of Appeals reviewed whether a decision of a county board of zoning appeals to deny a special exception use was arbitrary, capricious, or illegal. 291 Md. at 3. The Court observed that a special exception is "a part of [a] comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid." *Id.* at 11. The job of a local zoning board is thus "to judge whether the neighboring properties in the general neighborhood would be adversely affected and

whether the use in the particular case is in harmony with the general purpose and intent of the plan." *Id.* However, based on the presumption that a special exception use—with whatever adverse effects would ordinarily be expected to accompany it—is compatible with the general welfare in the zone at issue, the Court held that the appropriate standard for reviewing an application for such an exception 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." *Id.* at 22-23.

In *Montgomery County v. Butler*, relying on the "well settled" proposition that "even local legislative bodies[] may legislate 'around' or even abrogate non-constitutional holdings of this Court regarding the interpretation of their legislative enactments," the Court of Appeals recognized that the standard it set forth in *Schultz* is binding only "in the absence of clear legislative intent to the contrary." 417 Md. 271, 300, 302 (2010). Thus, "[i]n reviewing a decision of a zoning board approving or denying an application for a special exception, the emphasis must be first and foremost on identifying the relevant and prevailing zoning ordinance." *Id.* at 306. The *Schultz* test is to be applied only if "the zoning ordinance is silent on the matters to which *Schultz* and its progeny speak." *Id.*

Here, § 57 of the Zoning Chapter contains a comprehensive set of criteria by which the Board is to judge applications for a special exception. Notably, whereas the *Schultz* standard treats special exceptions as presumptively valid and so asks only whether the use at the particular location will have non-inherent adverse effects, *Schultz*, 291 Md. at 22-23, the § 57 standard includes no such presumption of validity. The Board is precluded from

approving a special exception use unless it finds that the use "will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare" and "will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood." Zoning Chp. § 57. The Board may not approve a special exception use that does not meet those standards regardless of whether its presence in the chosen location would have lesser adverse effects than its presence in other locations in the zone.[2]

Section 57 also imposes additional, specific requirements not imposed by the *Schultz* test, including precluding the Board from authorizing a special exception unless it finds that: necessary public facilities and improvements are provided; adequate measures to minimize traffic congestion in affected public streets are taken; and "the special exception . . . in all other respects, conform[s] to the applicable regulations of the district in which it is located or to the special requirements established for the specific use." In sum, § 57 constitutes "clear legislative intent," *Butler*, 417 Md. at 302, of the standard the Board is required to apply, which is not the *Schultz* standard. Consequently, the Board did not err in applying the § 57 standard.

[2] Contrary to the circumstances here, the zoning ordinance at issue in *Mills v. Godlove*, 200 Md. App. 213, 236-37 (2011), which the Unit Owners cite as support, was "silent as to the standards enunciated in *Schultz* and its progeny[.]"

II. THE BOARD DID NOT ERR IN CONSIDERING THE SPECIAL EXCEPTION USE.

The Unit Owners contend that the Board committed two legal errors in its application of the Zoning Chapter. First, the Unit Owners argue, in effect, that the Zoning Chapter does not actually authorize a special exception for service of alcohol at a standard restaurant in an RM District. Second, the Unit Owners contend that the Board could not approve a special exception for service of alcohol as an accessory to a standard restaurant without first determining that the yet-to-be constructed restaurant would satisfy the Zoning Chapter's definition of a standard restaurant. We will address each argument in turn.

A. The Zoning Chapter Permits Service of Alcoholic Beverages as an Accessory Use to a Standard Restaurant, Which Is Itself an Accessory Use to the Marina, in the RM District.

The Unit Owners first argue that the Board erred in approving a special exception for service of alcoholic beverages because no such exception is permitted due to an ambiguity in the Zoning Chapter. "When undertaking an exercise in statutory interpretation, we start with the cardinal rule of statutory interpretation—to ascertain and effectuate the [legislative body's] purpose and intent when it enacted the statute [or ordinance]."[3] *Cain v. Midland Funding, LLC*, 475 Md. 4, ___ (2021). We begin with a review of the plain meaning of the ordinance's language, "read as a whole, so that 'no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory[.]'" *Koste v. Town of Oxford*, 431 Md. 14, 25-26 (2013) (quoting *Doe v.*

[3] "Our review of local laws and ordinances is governed by the same principles as our review of State statutes." *F.D.R. Srour P'ship v. Montgomery County*, 407 Md. 233, 245 (2009).

Montgomery County Bd. of Elections, 406 Md. 697, 712 (2008)). "We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute [or ordinance], and we do not construe a statute [or ordinance] with 'forced or subtle interpretations' that limit or extend its application." *Lockshin v. Semsker*, 412 Md. 257, 275 (2010). Rather, "we seek to reconcile and harmonize the parts of a statute [or ordinance], to the extent possible consistent with the statute [or ordinance]'s object and scope." *Id.* at 276.

The Unit Owners' argument depends on interpreting the Zoning Chapter as establishing two contradictory propositions:

- First, service of alcoholic beverages at a restaurant in an RM Zone can be approved only as an accessory use to a standard restaurant. That proposition is based on a plain language reading of § 208 of the Zoning Chapter.

- Second, service of alcoholic beverages at a restaurant in an RM Zone cannot be approved as an accessory use to a standard restaurant. That proposition is based on the following steps:

    - An "Accessory Use," as defined in § 9 of the Zoning Chapter, has to be "clearly incidental to or customarily found in connection with . . . the principal use of the premises." That, the Unit Owners posit, means that an accessory use can be accessory only to a "principal use," not to another accessory use.

    - Pursuant to § 206 of the Zoning Chapter, standard restaurants are permitted in an RM District "only as an accessory use in a marina."

    - Because service of alcoholic beverages can be approved only as an accessory to a principal use, and a standard restaurant is not a principal use, service of alcoholic beverages cannot be approved as an accessory use to a standard restaurant.

We have no qualms with the first proposition, as § 208 expressly provides that service of alcoholic beverages shall be permitted as a special exception in the RM District

and that such service "in a restaurant is permitted only as an accessory use to a standard restaurant[.]" That provision establishes a clear legislative intent to allow a special exception for the service of alcoholic beverages at a standard restaurant in an RM District.

The Unit Owners' second proposition, however, is not only directly contrary to the clear legislative intent expressed in § 208, but it also is not supported by the language of the Zoning Chapter. Teasing apart the grammatical structure of the definition of an accessory use, such a use is one that (1) "is clearly incidental to or customarily found in connection with . . . the principal use of the premises"; and (2) is "on the same lot as the principal use of the premises" unless "otherwise provided in this Chapter." Zoning Chp. § 9. Although service of alcoholic beverages is permitted in a restaurant in an RM District only as an accessory to a standard restaurant, that does not preclude a conclusion that it meets both parts of the definition of an accessory use, because it (1) is incidental to and customarily found in connection with a marina (the principal use of the premises), and (2) would, if permitted, be on the same lot as the marina. In other words, nothing about the definition of an accessory use precludes service of alcoholic beverages from being both accessory to a standard restaurant *and* incidental to and customarily found in connection with, and located on the same lot as, a marina. Indeed, here, testimony before the Board supported the proposition that service of alcoholic beverages is incidental to and customarily found in connection with a marina and it is undisputed that the service would occur on the same lot as the Marina.

In sum, we do not agree with the Unit Owners that there is any ambiguity in the Zoning Chapter with respect to whether the Board is authorized to approve a special

exception for service of alcoholic beverages as an accessory to a standard restaurant in an RM District where such a standard restaurant is itself an accessory to a marina. The Board is so authorized.

B. A "Standard Restaurant" Determination Need Not be Made Before a Conditional Approval of a Special Exception Use for Accessory Service of Alcoholic Beverages.

The Unit Owners next argue that the Board erred in approving a special exception for service of alcoholic beverages as an accessory to a standard restaurant without first determining that the yet-to-be constructed restaurant will ultimately satisfy the Zoning Chapter's definition of a standard restaurant. All parties recognize that the Board lacks authority to approve a special exception to permit service of alcoholic beverages at a restaurant that does not meet the Zoning Chapter's definition of a standard restaurant. The question here is whether the Board was permitted to ensure that its approval was limited to service in a standard restaurant by expressly conditioning its approval on exactly that, as the Developer and the Town contend, or whether the Zoning Chapter contains some implicit requirement that the Board make an advance determination that a yet-to-be-constructed restaurant will meet that definition, as the Unit Owners contend. We agree with the Developer and the Town. Although there are reasons why a Board might decline to authorize a special exception for service of alcoholic beverages as an accessory to a standard restaurant without obtaining more information about the restaurant than was available in this case, we see nothing in the Zoning Chapter that precludes the order of proceeding that the Board adopted here in light of the conditions the Board placed on its approval.

Once again, we are called upon to interpret the Zoning Chapter's regulatory scheme under ordinary rules of statutory construction. As an initial matter, the Zoning Chapter does not mandate any specific order of proceeding for the Board's consideration of a special exception in this circumstance, which is particularly noteworthy in light of the deference that is afforded to the Board's interpretation of the Zoning Chapter. *See Brandywine Senior Living*, 237 Md. App. at 211.

The scope of the Board's approval authority is particularly important to our analysis and weighs in favor of the position of the Developer and the Town. As we have already described, at bottom, the Zoning Chapter limits the Board's authority to approve a special exception for service of alcoholic beverages at a standard restaurant not by giving the Board any role in approving the restaurant itself, but by providing that the Board can approve the service of alcoholic beverages only at a standard restaurant. The Board complied with that restriction by providing its approval subject to conditions, including:

> Service of alcohol is limited only as an accessory use to a standard restaurant.
>
> . . .
>
> Alcoholic beverages may not be sold or consumed on the premises unless the restaurant is operational and the sale of alcoholic beverages remains subordinate to the primary purpose of the restaurant for the sale of food (Section 206).
>
> . . .
>
> This special exception approval for the service of alcoholic beverages as accessory to a standard restaurant shall remain effective only for so long as the restaurant remains an accessory use to the marina in which it is located, and the service of alcoholic beverages remains accessory to a standard restaurant. Prior to issuance of any zoning certificate for the service of alcoholic beverages the Director of Planning and Zoning shall

> determine that the location where alcoholic beverages will be served is part of a standard restaurant as defined in Section 9 of the Town Zoning Ordinance.

Section 57 of the Zoning Chapter expressly authorizes the Board, before granting a special exception, to impose "such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest[.]" *See Halle Cos. v. Crofton Civic Ass'n*, 339 Md. 131, 140 (1995) (stating that the authority to impose conditions "upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception"). By making its approval conditional, the Board ensured that if the yet-to-be constructed restaurant does not meet the Zoning Chapter's definition of a standard restaurant, the special exception approval terminates. The Board thus did not exceed the authority afforded it by the Zoning Chapter.

In opposing this interpretation of the Zoning Chapter, the Unit Owners attempt to graft onto the ordinance a role for the Board in approving the restaurant itself as part of its approval of a special exception for the service of alcoholic beverages. At oral argument, the Unit Owners argued that the Board should have been required to review at least a concept plan for the restaurant to verify that it would ultimately be a standard restaurant. That contention, however, is entirely untethered from the text of the Zoning Chapter, which contains no such requirement. Given the Zoning Chapter's express authorization for the Board to provide its approval of a special exception with conditions, and the absence of any provision in the Zoning Chapter that would preclude the Board from proceeding as it did here, we do not think the Board erred as a matter of law or exceeded its authority.

III. THE BOARD'S RESOLUTION ADEQUATELY ARTICULATED ITS FINDINGS IN WRITING.

The Unit Owners contend that the Board failed to adequately articulate in writing its findings justifying approval of the special exception use. They accuse the Board of merely repeating statutory criteria, failing to identify the bases for its decision in its resolution, and "completely ignor[ing] the testimony of eleven citizens, most of whom live adjacent to the Subject Property, that the proposed tiki bar[4] will endanger the public health, safety, and welfare." The Town and Developer disagree, as do we.

"[A]dministrative agencies must comport with the applicable statutory requirement to make meaningful findings of fact and conclusions of law when rendering final decisions." *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 62 (2002). Here, § 73 of the Zoning Chapter provides in pertinent part that "[a]ny decision made by the Board of Appeals regarding an appeal or variance or issuance or revocation of a special exception shall be reduced to writing" and that "[i]n addition to a statement of the Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts, whenever this Chapter requires the same as a prerequisite to taking action."

[4] The Developer's application identified the planned restaurant as "an all new small waterfront restaurant/tiki bar with a contained kitchen building in a pavilion type structure with surrounding decks." The Unit Owners subsequently seized on the words "tiki bar" as an indication that the contemplated structure would not be a standard restaurant. We need not reach any conclusion here regarding whether a restaurant containing a tiki bar is or is not compatible with the Zoning Chapter's definition of a standard restaurant. If it is not, however, and if that is what the Developer builds, then the special exception approval would no longer be effective based on the express terms of the Board's conditional approval.

Meaningful findings of fact "cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail v. County Council of Talbot County*, 352 Md. 530, 553 (1999). Thus, "the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency," *Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 667 (2021) (quoting *United Steelworkers v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)), such that one is able "to discern from the record the facts found, the law applied, and the relationship between the two," *Forman v. Motor Vehicle Admin.*, 332 Md. 201, 221 (1993). "[W]here the administrative agency has not rendered sufficient or meaningful factual findings upon which a reviewing court can undertake judicial review, we have remanded the case to the administrative agency for the purpose of having the deficiency remedied." *ProVen Mgmt.*, 472 Md. at 668.

Here, the Board's written resolution setting forth its findings is adequate to permit meaningful judicial review. The Board's resolution begins with an explanatory statement and contains 13 numbered paragraphs of findings of fact and conclusions of law, the last of which identifies the findings the Board is required to make under § 57 of the Zoning Chapter and sets forth the Board's findings on each.

The Unit Owners' contention that the Board's findings merely repeat statutory criteria and fail to identify the bases for its conclusions is focused on the Board's findings attached to the first § 57 factor, which is "[t]hat the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare." However, although that paragraph

identifies statutory criteria: (1) some statutory criteria provide appropriate, relevant findings that require no additional explanation, such as the finding that the proposed use is not within 1,000 feet of a hospital, church, or school; and (2) the Board does not simply repeat the statutory criteria that the proposed use would "not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare," but finds that the criteria will be met through satisfaction of the conditions of approval. Those conditions, which are made part of the Board's reasoning and explanation for its decision, respond to concerns raised during the hearing, including prescribing that loud music be allowed only from noon until 10:00 p.m. and not "be permitted outside the restaurant building," that alcohol be sold only between 11:00 a.m. and 10:00 p.m., that alcoholic beverages be sold or consumed only on the premises and while food is being sold, and that the restaurant operator train personnel to prevent the removal of open containers of alcohol from the premises, among other things. Moreover, we do not read the statements in any particular paragraph of the Board's explanation of its reasoning in isolation, but also consider the Board's other supportive findings, including that the Developer's work in redeveloping the Marina overall had drawn praise; that the proposed use will be "compatible with nearby residential uses"; and that because it will be accessory to a standard restaurant and is intended to be an amenity for condominium and boat slip owners, it is unlikely to send inebriated and disruptive patrons into the community. In sum, the Board's articulation of its findings is at least minimally adequate for judicial review.

We remand administrative decisions where they do not address or resolve the most significant points of controversy in the record evidence. *See Forman*, 332 Md. at 212, 222

(remanding the order of an administrative law judge where the judge failed to mention, address, and resolve the critical issue the appellant raised); *Sweeney v. Montgomery County*, 107 Md. App. 187, 198 (1995) (remanding the decision of a county board regarding an employee's disability award where the court found the board briefly addressed, but made no attempt to resolve "[t]he most significant evidentiary conflict in th[e] case"); *Mortimer v. Howard Rsch. and Dev. Corp.*, 83 Md. App. 432, 447 (1990) (remanding the circuit court's order affirming a county planning board's decision where the court would have had to speculate concerning the facts on which the board relied).

The Unit Owners argue that the Board ignored the citizen testimony presented at the hearing and so did not resolve the controversy in the evidence concerning whether allowing the special exception would endanger the public health, safety, and welfare and diminish property values. However, the Board's resolution reflects that it did not ignore the testimony of the citizens; it simply disagreed with those who opposed the special exception. For example:

- The Board discussed that "[o]pponents of the special exception application expressed concern at the public hearing about loud noise at the premises and devaluation of property values caused by the service of alcoholic beverages near residential uses." The Board concluded that the conditions it imposed on the approval of the special exception would address those concerns. The Board also concluded that the residents' testimony about an "adverse impact on property values was anecdotal," lacked expert support, and was contradicted by the Staff report and at least one other testifying witness at the hearing; and

- In response to citizen testimony about inebriated restaurant patrons, the Board found that it was "unlikely that patrons will leave the restaurant in an inebriated state and cause disruption to the surrounding residences."

Although the Board could have discussed the citizens' concerns in more detail, it did not ignore those concerns, nor did it leave contested issues unresolved. Looking at the decision as a whole, the Board provided sufficient clarity, discussed facts supporting all of its conclusions, and did not merely recite the standards and declare them met. We therefore conclude that the Board adequately articulated the basis of its findings at a level sufficient for judicial review.

IV. THE RECORD CONTAINS SUBSTANTIAL EVIDENCE TO JUSTIFY THE BOARD'S APPROVAL OF THE SPECIAL EXCEPTION USE.

The Unit Owners also assert that the record lacks substantial evidence to justify the Board's approval of the special exception use. They state that no reasoning mind could have concluded that the evidence supported a finding that the use would not be detrimental to the public health, safety, and general welfare, nor that it would not be injurious to the use and enjoyment of other nearby property. The Unit Owners also state that the record could not support certain findings required under § 57, such as that any proposed structure would not be at variance with existing structures and that adequate public facilities exist to support the proposed structure. However, under the deferential standard of review we must afford the Board's decision, there was substantial evidence in the record as a whole to support the findings and conclusions underlying the Board's approval.

We assess the Board's decision in the light most favorable to the Board, whose decision carries a presumption of validity. *Brandywine Senior Living*, 237 Md. App. at 211. Where evidence yields competing inferences, we defer to those drawn by the Board. *Id.* "Substantial evidence" is "more than a scintilla of evidence." *B.H. v. Anne Arundel*

County Dep't of Soc. Servs., 209 Md. App. 206, 227 (2012) (quoting *Turner v. Hammond*, 270 Md. 41, 60 (1973)). In a special use zoning case, "the applicant has the burden of adducing testimony which will show that [the applicant's] use meets the prescribed standards and requirements [but the applicant] does not have the burden of showing affirmatively that [its] proposed use accords with the general welfare." *People's Counsel for Baltimore County v. Loyola Coll. in Maryland*, 406 Md. 54, 83 (2008) (quoting *Turner*, 270 Md. at 55). "If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, [the applicant] has met [its] burden." *Id.*

We conclude that there was substantial evidence before the Board to support its approval of the Developer's application for a special exception, including testimony from the Developer and two other witnesses who supported the application as well as the information provided in the Staff's report. That evidence reflected generally that the Developer planned to build a modest standard restaurant that, although open to the public, was intended to serve primarily community residents and individuals using the Marina in a "laidback, relaxing environment"; that alcohol service would be an accessory to the restaurant, not vice versa, and so problems endemic to bars would not occur; that the Developer intended to work closely with the community to ensure that the restaurant did not have any adverse effects; and that the Developer had a history of working successfully with communities in other areas on similar issues.

In opposition, residents testified to concerns that the restaurant would necessarily produce noise, foul odors, disorderly and inebriated patrons, and declining property values.

However, that testimony was mostly or entirely anecdotal; much of it related to potential adverse effects from opening a restaurant, regardless of whether accompanied by service of alcohol; and much of it was controverted by evidence supporting the special exception. Regardless, although the evidence in opposition would have been sufficient to sustain a Board decision to deny the special exception, it did not negate the substantial evidence otherwise in the record supporting the Board's decision.

As examples of their claim that the record lacks substantial evidence to sustain the Board's decision, the Unit Owners point to the Board's findings that any proposed structure would not be at variance with existing structures and that adequate public facilities exist to support the proposed structure. As to the first finding, the Board observed that "[t]he service of alcohol as proposed will not necessitate a proposed new structure separate and apart from the restaurant." That finding is, of course, accurate, and highlights a disconnect between many of the Unit Owners' arguments and what the Board was charged with approving. The Developer sought the Board's approval for a special exception to permit the service of alcoholic beverages at a yet-to-be-constructed restaurant. The Developer was not seeking approval of any aspect of the restaurant itself, including its structure, which was outside of the Board's approval authority.[5] Thus, the Developer was not seeking approval for a "proposed structure" in connection with its application for a special

[5] By contrast, other special exceptions within the Board's approval authority do require the approval of new structures. For example, § 205 of the Zoning Chapter permits the Board to approve townhouses as a special exception in an RM District, with specific requirements concerning minimum lot size, fencing, common open space, and many others. Unlike a special exception for service of alcoholic beverages, a special exception for construction of a townhouse would necessarily involve review of a proposed new structure.

exception. Nonetheless, the Board noted the many approvals that would be required from other entities for the restaurant itself.

The Unit Owners also claim an absence of substantial evidence to support the Board's finding that "[a]s noted in the Staff Report, the site has access to necessary utilities, public water and sewer and access roads, and all site improvements will meet all code requirements for improvements and storm drainage." Although the Unit Owners complain that no evidence was presented at the hearing concerning such facilities, the Board had before it the Commission Staff's report itself, which concluded that the requirement was met. In the absence of any competing evidence or any suggestion that the information was inaccurate, we cannot fault the Board for relying on that determination.

Viewing the evidence in the light most favorable to the Board, a reasoning mind could conclude that the proposed special exception use would not be detrimental to the public welfare. That more—indeed, many more—residents testified against the special exception than in favor of it is not dispositive. *See Turner*, 270 Md. at 59-60 (explaining that even where a board hearing was attended almost exclusively by opponents to the proposal at issue, "these matters cannot be resolved by a plebiscite. If the residents do not want [the development] they should prevail upon the local legislature to change the ordinance."). Because we defer to the administrative agency's resolution of competing inferences and credibility determinations, we find that there was "more than a scintilla" of evidence that the service of alcoholic beverages at the proposed restaurant, under the conditions imposed by the Board, would not be harmful to the public welfare and would otherwise satisfy the criteria for approval of the special exception. Thus, there was

substantial evidence in the record to justify the Board's findings and its ultimate order for approval.

Finding no reversible error, we will affirm.

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