

Circuit Court for Baltimore County
Case No. 03-C-16-9530

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1126

September Term, 2017

DEIDRE BOSLEY, ET AL.

v.

HUNT VALLEY PRESBYTERIAN CHURCH

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Berger, J.

Filed: November 14, 2018

*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.

This appeal arises from the approval of a development plan filed by Hunt Valley Presbyterian Church, Inc. (the “Church”), appellee, for the expansion of its facilities on Beaver Dam Road in Hunt Valley. The development plan (the “Plan”) was opposed by neighboring homeowners Deidre Bosley, Michael Fitz-Patrick, Mary Beth Fitz-Patrick, Marsha Gaspari, and Anthony Gaspari (collectively, the “Neighbors”), appellants, who argued that the projected volume of traffic entering and exiting the Church would lead to unacceptable delays and safety concerns. The plan was initially approved by an Administrative Law Judge (the “ALJ”). After the ALJ approved the Plan, the Neighbors appealed to the Baltimore County Board of Appeals (the “Board”), which affirmed the ALJ’s decision. Thereafter, the Neighbors filed a petition for judicial review in the Circuit Court for Baltimore County. The circuit court affirmed the Board’s decision, and the Neighbors timely appealed.

On appeal, the Neighbors present four questions for our review, which we have rephrased and consolidated as follows:

1. Whether the ALJ and/or the Board erred as a matter of law in noting that the Plan was entitled to a presumption of compliance;
2. Whether the ALJ erred as a matter of law in noting that an adverse impact on traffic volume and efficiency was not grounds for denying the Plan;
3. Whether the ALJ’s decision was supported by substantial evidence.¹

¹ The Neighbors are also concerned that the Board’s decision was based on erroneous findings, namely (1) that “ALJ made a credibility determination regarding the testimony of the parties’ traffic experts,” and (2) that “Appellants’ expert did not consider

For the reasons explained herein, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

I. Factual Background

The Church owns a 23-acre parcel of land along Beaver Dam Road in Hunt Valley. This parcel has been improved with a 16,000 square foot building that seats up to 375 people and a parking lot with 146 spaces. The entrance to the parking lot is on Old Mill Road, a private road that runs along the western boundary of the Church's property and connects to Beaver Dam Road. Old Mill Road does not connect with any other public road. To the south of the Church's property is a small community of homeowners, including the Neighbors, who rely on Old Mill Road to access the public road system.

II. Procedural Background

A. Initial Stages

In 2012, the Church successfully applied for a rezoning of the property from RC4 to RC3 during Baltimore County's 2012 Comprehensive Zoning Map Process. In an RC3 zone, churches are permitted by right rather than by special exception, and there is no limit on the total amount of impervious surface allowed on a property. In April of 2015, the Church filed plans with Baltimore County to expand the facilities on Beaver Dam Road under the new RC3 zoning classification. Pursuant to Baltimore County Code ("BCC")

the 'traffic management plan' of [the Church's] expert." We will address these issues as part of our inquiry into the evidentiary basis of the ALJ's decision.

§ 32-4-201 *et seq.*, the Church submitted a concept plan, attended a concept plan conference, and held a community input meeting.

B. Agency Review

In October 2015, the Church filed the Plan with Baltimore County. Under the Plan, the Church would expand the building on Beaver Dam Road from 16,000 square feet to 67,115 square feet and add 321 spaces to the parking lot. The proposed sanctuary would seat up to 950 congregants. Pursuant to BCC § 32-4-226, the following agencies reviewed the Plan and submitted comments: the Department of Planning (“Planning”), the Bureau of Development Plans Review (“DPR”), the Department of Environmental Protection and Sustainability (“EPS”), the Office of Zoning Review (“Zoning”), Real Estate Compliance, the Fire Marshall’s Office, the State Highway Administration (“SHA”) and the Department of Public Works (“DPW”). Thereafter, the Department of Permits, Approvals and Inspections (“PAI”) submitted comments from the agencies to the ALJ pursuant to BCC § 32-4-226(d)(1).

C. Testimony of Agency Representatives

A four-day public hearing was held before the ALJ on January 28 and February 16-18, 2016. Representatives of each of the agencies responsible for reviewing and commenting on the Plan were called as witnesses. These included Darryl Putty, Project Manager with PAI; Brad Knatz with Real Estate Compliance; Jean Tansey and Vishnu Desai with DPR; Lloyd Moxley with Planning; Donald Muddiman with the Fire Marshall’s

Office; Joseph Merrey with Zoning; and Jeffrey Livinston with EPS. The representatives all recommended approval of the Plan or declined to comment on it.

D. Testimony of the Church's Experts

The Church called six expert witnesses to demonstrate that the Plan was fully compliant with “development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code.” BCC § 32-4-229(b)(1). Among these experts was Glenn Cook (“Cook”), a traffic engineer with the Traffic Group, Inc., who had been retained by the Church to perform a Traffic Impact Analysis. Cook has over forty years of experience in traffic engineering and transportation planning in Maryland and has worked with Baltimore County on the review of traffic impacts. At the hearing, Cook introduced his Traffic Impact Analysis and confirmed that, even though the study had not been requested by the county as a requirement of plan approval, he prepared it consistent with Baltimore County’s requirements for such studies. Cook explained that he evaluated the road system that serves the project and conducted traffic counts and turning movement counts to assess existing volumes and utilization of the road system. Then, based on the anticipated use of the expanded facility, he prepared projections of future traffic and added those additional volumes to existing road conditions. He then used recognized methodologies to determine projected levels of service at area intersections.

Cook testified that the Plan would increase traffic congestion and cause delays at the junction of Old Mill Road and Beaver Dam Road preceding and following church services. Cook testified that the junction would function at a level of service “E” or “F,”

leading to delays of twenty-five to thirty minutes. Cook testified that he had devised a “transportation management plan” to ameliorate the adverse impact on traffic conditions.

Cook’s transportation management plan consisted of the following recommendations:

1. It is recommended that the access for the church be widened to provide two outbound lanes, an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle.
2. It is recommended that a police officer be available at the Beaver Dam Road access for a 25 to 30 minute period after a service is over to help direct traffic out of the subject site.
3. It is recommended that 45 minutes to an hour be provided between services to prevent the overlap of the incoming vehicles and the outbound vehicles from the church at the same time.

Cook testified that “with these enhancements . . . this project shouldn’t have a major detrimental impact on the road network.” Cook defined a “major impact” as “something that is created with undue congestion that exceeds normal levels that are normally acceptable at the time by the county or the State Highway Administration[.]”

Cook also evaluated safety concerns related to the “queuing” of vehicles attempting to turn left onto Old Mill Road from Beaver Dam Road. Cook wanted to ensure that vehicles travelling west on Beaver Dam Road would have adequate “stopping sight distance” to avoid a collision with queued vehicles. Referring to the standard for stopping sight distance established by the American Association of State Highway and Transportation Officials (“AASHTO”), Cook testified that “the requirement in AASHTO for that is 305 feet, so we’re still well under both standards for both our measurements in

the field.” Cook noted that he did not take the grade of the road into account because, based on his visual inspection, the grade was not severe enough to affect traffic. Cook testified that “the design proposed will provide safe and convenient ingress and egress to the site” and would not “create congestion in the roads, streets or alleys.”

E. Testimony of the Neighbors’ Traffic Expert

The Neighbors called their own expert witness, Christopher Tiesler (“Tiesler”), who was accepted as an expert in traffic engineering, safety, and analysis. Tiesler had taken traffic volume counts at the site and used the Institute of Traffic Engineer’s Trip Generation Manual to determine the expected increase in traffic as a result of the Plan. Tiesler testified that the proposed expansion would generate between 2.5 to 4 times more traffic during the Sunday peak hour, leading to an average delay of 15-20 minutes. Tiesler testified that the junction of Old Mill Road and Beaver Dam Road is presently operating at a level of service “C.” Tiesler testified that within ten years of the expansion the junction would be operating at a level of service “F,” and that the junction would eventually become so overburdened that his model generated an error message because “it would be nonsensical.”

Tiesler further testified that the Plan would cause dangerous traffic conditions on Beaver Dam Road. In particular, Tiesler discussed safety concerns related to the queuing of vehicles attempting to turn left onto Old Mill Road from Beaver Dam Road. Tiesler testified that, due to limited sight distance, westbound vehicles may not see the queue until it is too late to avoid a collision. Applying industry standards adopted by the AASHTO, Tiesler determined that the minimum required stopping sight distance for vehicles

approaching the junction from the west was 336 feet. Tiesler testified that he personally observed a queue of five vehicles when he visited the site, and that a five vehicle queue only provided a stopping sight distance of 296 feet. Tiesler concluded that AASHTO standards for stopping sight distance were not being met under current conditions, and that this problem would only become worse after the expansion. Tiesler predicted that the Plan could result in queues of as many as thirteen vehicles.

After Tiesler testified, Cook was called to the stand a second time. Responding to Tiesler's concerns about stopping sight distance, Cook testified that a police officer stationed on Beaver Dam Road could stop westbound traffic and allow any queued vehicles to turn. Cook also suggested that Baltimore County could add a sign on Beaver Dam Road warning westbound traffic to watch for turning vehicles. Cook testified that a warning sign "would make the motorist aware that he could encounter something and it would help keep the speeds down a little bit." When asked if the Plan would have an unacceptable impact on surrounding roads, Cook gave the following reply:

Unacceptable, well, yesterday they were talking a lot about the level of service, and when you're looking at a church or to go to an extreme, M&T Bank Stadium after a football game, you know, when you feed that much traffic into an intersection at one time, you cannot manage that traffic and maintain acceptable levels of service based on the definitions that we heard yesterday, but what you do do is you set up a traffic management plan to try to manage that traffic, to get it out of the area as quickly as possible. And the recommendations that we made is really the same thing, and the type of items that you would put into a traffic management plan to help get the traffic out of the area.

F. Testimony of the Neighbors

Michael Fitz-Patrick (“Mr. Fitz-Patrick”) testified that traffic on Old Mill Road is already “a mess” and has worsened over the past five years. Mr. Fitz-Patrick testified that he and his wife frequently experience delays of fifteen minutes or more on Old Mill Road before they can turn onto Beaver Dam Road. Deidre Bosley (“Ms. Bosley”) echoed Mr. Fitz-Patrick’s concerns about traffic on Old Mill Road and described her own experiences attempting to get out onto Beaver Dam Road. Ms. Bosley also expressed her concerns for traffic safety, including the very limited sight distance on Beaver Dam Road. The Neighbors also called Constance Newton (“Ms. Newton”), who shared her first-hand experiences regarding the speed with which motorists travel on Beaver Dam Road. Ms. Newton also testified that vehicles frequently “queue” on Beaver Dam Road waiting to enter the Church property. Ms. Newton described several traffic accidents that occurred near her house and showed photographs from those incidents.

G. The ALJ’s Decision

On March 15, 2016, the ALJ issued an opinion and order approving the Plan. In discussing the applicable burden of proof, the ALJ noted that “when agency reviewers confirm the plan satisfies all requirements, it ‘shall’ be approved by the [ALJ] unless the protestants can undermine those findings or otherwise present evidence the plan does not satisfy the development regulations.” After reviewing Tiesler’s testimony that the Plan would significantly increase traffic congestion near the Church, the ALJ declined to reject the Plan on these grounds:

While all this may be true, Baltimore County does not evaluate the efficiency, *vel non*, of unsignalized intersections in reviewing development proposals, and Protestants cite no authority or regulation for the proposition that such adverse effects could justify plan denial. Indeed, all development and permitted land uses will have at least some adverse effect upon the locality. *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981). In addition, Mr. Cook testified that a “surge” in traffic volume is inherent in the operation of a large church or sports venue where parishioners/patrons enter/exit at the same time. Thus, I do not believe the Development Plan can be rejected based on a significant increase in traffic volume.

The ALJ found that Tiesler’s testimony regarding stopping sight distance was a “closer question.” The ALJ found that Cook’s recommendations addressed the concerns raised by Tiesler, and that Tiesler “did not comment on these recommendations” or “testify that these measures would **not** be successful in improving traffic conditions.” (Emphasis in original). The ALJ further observed that DPR and DPW had reviewed the development plan and did not express any concern with the adequacy of the stopping sight distance on Beaver Dam Road. The ALJ concluded that Tiesler’s testimony “can[not] justify denial of the Plan.”

Following Cook’s recommendations, the ALJ imposed the following conditions on its approval:

1. HVC must widen the point of egress from the church to provide two outbound lanes: an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle;
2. HVC must provide police officer(s) (on-duty or uniformed secondary employment[]) to direct traffic at the church access on Sundays before and after services and during any event in which unusual traffic volume is expected;

3. On Sundays, HVC must allow 45 minutes to one hour between services to prevent the overlap of incoming and outbound vehicles from the HVC property;
4. HVC shall advocate for a sign to be installed on westbound Beaver Dam Road east of the I-83 overpass to alert travelers to the potential for vehicles turning into the HVC property.

The Neighbors filed a timely appeal to the Board.

H. The Board's Decision

Following oral argument, the Board issued an opinion and order affirming the decision of the ALJ.² The Board agreed with the ALJ that “with no ‘unresolved comments’ . . . and no challenge being made by way of cross-examination from Protestants, by the end of the Petitioner’s case, the ALJ was required . . . to find by way of presumption that the Petitioner’s Development Plan was in compliance with county regulations.” The Board, however, noted that it did not need to “examine the validity of such a presumption due to the fact that the [Church] called six expert witnesses to bolster its case before [the] ALJ and did not rely solely on the recommendations of County agencies.”

² The Board’s review of ALJ decisions in such matters is limited. The Board may reverse or modify the decision if the ALJ exceeded its authority, employed unlawful procedures, committed an error of law, or acted in an arbitrary or capricious manner. BCC § 32-4-281. The Board may also reverse or modify the decision if it was “unsupported by competent, material, and substantial evidence in light of the entire record as submitted.” In reviewing the factual basis of the ALJ’s decision, “the Board does not make independent evaluations, for to do so would require the Board to make credibility decisions without having heard the testimony.” *Monkton Pres. Ass’n v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 581 (1996).

Concerning Tiesler's testimony, the Board concluded that "in applying his discretion as fact finder and in weighing the credibility of witness testimony, [the ALJ] found Mr. Cook to be the more compelling witness." The Board further found that the ALJ "considered the traffic issues at hand and did not find an allegation of a failing intersection to be a *per se* bar of Development Plan approval." Accordingly, the Board affirmed the ALJ's decision to approve the Plan.

The Neighbors appealed the Board decision to the Circuit Court for Baltimore County. In a memorandum opinion and order dated July 18, 2017, the circuit court affirmed the decision of the Board. The Neighbors timely appealed.

DISCUSSION

I. Standard of Review

When reviewing the decision of an administrative agency, "this Court reviews the agency's decision, not the circuit court's decision." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012) (quoting *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008)); *Ware v. People's Counsel for Balt. Cnty.*, 223 Md. App. 669, 680 (2015) ("In an appeal from a judgment entered on judicial review of a final agency decision, we look 'through' the decision of the circuit court to review the agency decision itself."). Thus our review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Halici v. City*

of *Gaithersburg*, 180 Md. App. 238, 248 (2008) (internal quotation marks and citations omitted).

The substantial evidence test is defined as “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Layton v. Howard Cnty. Bd. of Appeals*, 399 Md. 36, 48-49 (2007) (internal quotation omitted). “In applying the substantial evidence test . . . [we] must review the agency’s decision in the light most favorable to the agency, since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity.” *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 476-77 (2003). “Furthermore, not only is the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.” *Id.* at 477 (internal quotations omitted).

Although we generally defer to the factual findings of an administrative agency, “[w]e review an agency’s decisions as to matters of law *de novo* for correctness.” *Wallace H. Campbell & Co. v. Md. Comm’n on Human Relations*, 202 Md. App. 650, 663 (2011). Nevertheless, “[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999)).

II. Neither the ALJ nor the Board Erred In Stating that the Plan was Entitled to a Presumption of Compliance.

The Neighbors argue that the ALJ and the Board both erred in noting that the Plan was entitled to a presumption of compliance with county regulations after the reviewing agencies all recommended approval or declined to comment. As a result of this error, the Neighbors believe that the ALJ and the Board improperly shifted the burden of proof onto the appellants to establish that the Plan was non-compliant. Based on our review of the record, we hold that neither the ALJ nor the Board erred in construing the relevant statutes and case law.

Under Baltimore County’s development plan review process, the ALJ³ “shall consider any comments and conditions submitted by a county agency . . . and make the comments and conditions part of the permanent Development Plan file.” BCC § 32-4-227(e)(1). If the ALJ does not receive any comments or conditions from the agencies, however, “the Development Plan shall be considered to be in compliance with county regulations.” BCC § 32-4-227(e)(2).

At the hearing, the ALJ “shall take testimony and receive evidence regarding any unresolved comment or condition that is relevant to the proposed Development Plan,

³ Technically speaking, the Baltimore County Code bestows these powers and duties on the “Hearing Officer,” which is defined as “the Zoning Commissioner or the Deputy Zoning Commissioner.” BCC § 32-4-101(v). Elsewhere, the Code provides that “[a]ny reference to the Zoning Commissioner [or] the Deputy Zoning Commissioner . . . shall be deemed to be a reference to the Office [of Administrative Hearings]. BCC § 3-12-104(b). The Office of Administrative Hearings “shall consist of two or more Administrative Law Judges.” BCC § 32-12-104(a).

including testimony or evidence regarding any potential impact of any approved development upon the proposed plan.” BCC § 32-4-228(a)(1). After conducting a hearing on the unresolved comments or conditions, the ALJ

shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein.

BCC § 32-4-229(b)(1).

We previously construed these sections of the Baltimore County Code in *People’s Counsel for Baltimore Cnty. v. Elm St. Dev., Inc.*, 172 Md. App. 690 (2007). In that case, the appellants argued before this Court that the Board erred in approving a development plan without requiring the reviewing agencies to lay out the “facts and reasons” behind their recommendations. *Id.* at 694. We rejected that argument, noting that the burden had shifted to the appellants to introduce evidence that the plan was non-compliant:

And, contrary to appellants’ argument, once the Directors had made their recommendations, it was not necessary for Elm Street or the agencies to produce evidence supporting those decisions. See Code §§ 32-4-227(e) and 32-4-228(a)(1); *Gough v. Board of Zoning Appeals*, 21 Md. App. 697, 704, 321 A.2d 315 (1974). Instead, it was then up to appellants to produce evidence rebutting the Directors’ recommendations. *See id.*

Under the County’s lengthy development plan review process, Elm Street’s duty to demonstrate its plan’s compliance with §§ 1A03.5(A) and (C) ended when the Directors of [Planning] and

[EPS]⁴ determined there was such compliance. Once that occurred, Elm Street could, according to Code § 32-4-227(e), simply accept those recommendations and choose not to submit any comments or conditions to the hearing officer. And this is what it did.

Id. at 703. We went on to explicitly interpret BCC § 32-4-227(e)(2) as creating a presumption of compliance for development plans at the hearing stage of review:

Moreover, the Code requires the hearing officer to consider the development plan “to be in compliance with county regulations” if “no comments or conditions are received” by him. BCC § 32-4-227(e)(2). **In other words, at this stage of the development plan review process, the development plan is deemed Code-compliant in the absence of evidence to the contrary.**

Id. (emphasis added). Noting that the appellants declined “to question the agencies as to their recommendations” or to present their own evidence of non-compliance, we concluded that “the hearing officer had to accept as established the revised red-lined plan’s compliance with county regulations and approve the plan.” *Id.*

Turning to the present case, the representatives of the county agencies all testified that the Plan was satisfactory or otherwise declined to comment. It was then up to the Neighbors to introduce evidence that the Plan was not compliant with county regulations; otherwise, in the absence of evidence to the contrary, the ALJ would be *required* under to approve the Plan. Accordingly, the ALJ was correct in stating that “when agency reviewers

⁴ When *Elm St. Dev., Inc.* was before this Court in 2007, the Department of Planning was called the Office of Planning, and EPS was called the Department of Environmental Protection and Resource Management. We have updated the names of these agencies in all quotations from *Elm St. Dev., Inc.* for the sake of clarity.

confirm the plan satisfies all requirements, it ‘shall’ be approved by the [ALJ] unless the protestants can undermine those findings or otherwise present evidence the plan does not satisfy the development regulations.” Likewise, the Board did not err in stating that “with no ‘unresolved comments’ . . . and no challenge being made by way of cross-examination from Protestants, by the end of the Petitioner’s case, the ALJ was required . . . to find by way of presumption that the Petitioner’s Development Plan was ‘in compliance with county regulations.’”⁵

The Neighbors argue that our holding in *Elm St. Dev., Inc.* is inapplicable to the present case because it “was clearly directed to those unique and specific instances in the RC4 zone . . . where the Directors of Planning and [EPS] are required to make written findings regarding a specific issue and submit those findings to the ALJ.” We disagree. To be sure, the development plan in *Elm St. Dev., Inc.* was subject to additional requirements under Baltimore County Zoning Regulations (“BCZR”). *Elm St. Dev., Inc., supra*, 172 Md. App. at 696.⁶ Nevertheless, we explicitly analyzed that case under both

⁵ Because both the Church and the Neighbors introduced expert testimony concerning the Plan’s compliance with county regulations, it is not clear that the presumption of compliance played a significant role in the ALJ’s decision. Nevertheless, we address the merits of this issue to rule out any possibility that the agency’s decision was tainted by an error of law.

⁶ Because the subject property in *Elm St. Dev., Inc.* was zoned RC4, the development plan had to “designate a ‘minimum of 70%’ of the property as a ‘conservancy area.’” *Supra*, 172 Md. App. at 696. Conservancy areas must include certain natural features and be developed according to “the standards contained in the Comprehensive Manual of Development Policies.” *Id.* The Directors of Planning and EPS were required by BCZR to determine whether the development plan met these requirements. *Id.* The property also had to be “held in unified ownership and control.” *Id.*

BCZR and the Baltimore County Code. *See id.* at 702 (“But neither the BCZR nor the Code requires that ‘findings’ be made or reasons be given by [Planning] or [EPS] in its review of Elm Street’s development plan.”).

Critically, we interpreted the same sections of the Baltimore County Code that are at issue in the case *sub judice*, namely BCC § 32-4-227 and § 32-4-228. We made no attempt to narrow the scope of our holding to development plans in RC4 areas; indeed, we concluded in broad terms that “at this stage of the development plan review process, the development plan is deemed Code-compliant in the absence of evidence to the contrary.” *Elm St. Dev., Inc., supra*, 172 Md. App. at 703. Furthermore, we are reluctant to give different constructions to the same provisions -- thereby creating separate “tracks” for review -- simply because the properties are subject to different zoning classifications. We, therefore, hold that the ALJ and the Board did not err in construing the relevant statutes and case law.

III. The ALJ Properly Considered the Potential Impacts to Traffic Volume and Efficiency.

The Neighbors argue that the ALJ “erroneously concluded that he did not have authority to deny a development plan based on concerns regarding traffic.” The Neighbors point to numerous provisions in the Baltimore County Code that would have allowed the ALJ to reject the Plan on such grounds, including BCC § 32-4-405, which requires street systems to provide “safe and convenient vehicular circulation” and provides that Baltimore County “may not approve a development plan” unless the property has access to a street

“that is or will be made adequate to carry anticipated traffic.”⁷ The Church asserts that the Neighbors have mischaracterized the ALJ’s opinion. We agree with the Church.

After reviewing Tiesler’s testimony that the Plan would significantly increase traffic congestion at the junction of Old Mill Road and Beaver Dam Road, the ALJ declined to reject the Plan on these grounds:

While all this may be true, Baltimore County does not evaluate the efficiency, *vel non*, of unsignalized intersections in reviewing development proposals, and Protestants cite no authority or regulation for the proposition that such adverse effects could justify plan denial. Indeed, all development and permitted land uses will have at least some adverse effect upon the locality. *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981). In addition, Mr. Cook testified that a “surge” in traffic volume is inherent in the operation of a large church or sports venue where parishioners/patrons enter/exit at the same time. Thus, I do not believe the Development Plan can be rejected based on a significant increase in traffic volume.

Although the ALJ’s choice of words may have been infelicitous, the intended meaning is clear: in the ALJ’s view, the Neighbors had failed to establish that the adverse impacts on traffic predicted by Tiesley constituted a *per se* violation of county regulations. In making this discretionary determination, the ALJ took into account the lack of “authority or

⁷ Additionally, BCC § 32-4-102(b) states that the intent of the development regulations is to “ensure that proposed developments are safe, adequate, convenient” and “improve[] linkage between developments to enhance circulation of motor vehicles . . . including appropriate location and design of streets . . . relative to their anticipated functions and existing facilities.” BCC § 32-4-103(a) states that the purpose of the development regulations is to “provide adequate and efficient transportation” and “avoid[] congestion in the streets and highways.” BCC § 32-4-114 provides that “all development shall comply with this title [Title 4] and all other applicable laws or regulations of the county.” BCC § 32-4-401(b) provides that “all development shall . . . conform to the policy and intent of this title [Title 4].”

regulation” presented by the Neighbors, the absence of a traffic signal at the intersection, and the inevitability of a “surge” in traffic preceding and following a service at any large church.

The Neighbors take issue with the ALJ’s statement that “all development and permitted land uses will have at least some adverse effect upon the locality.” In the case cited by the ALJ, the Court of Appeals explained that developers of “permitted uses” -- that is, uses permitted by right in the relevant zoning area -- are not required to avoid “adverse effects” with regard to zoning standards. *Schultz v. Pritts*, 291 Md. 1, 21 (1981). As an example, the Court noted that “a church may be developed even if the volume of traffic that it generates causes congestion and unsafe conditions at the particular location proposed.” *Id.* at 22.

Reading the citation to *Schultz* in context, we conclude that the ALJ simply found Tiesler’s testimony to be insufficient to establish a violation of the Baltimore County Code in light of the nature of the use and the practical considerations involved. Notably, the ALJ cited *Schultz* in another part of his opinion to establish that “the legislature, in designating the use as permitted, is presumed to have determined the benefits of the church outweigh its potential adverse effects.” Given that Baltimore County had presumably taken into account the potential for traffic “surges” before and after services in designating a church as a permitted use in RC3 areas, the ALJ was reasonably reluctant to construe the Baltimore County Code as forbidding the expansion of a church on such grounds.

Contrary to the Neighbors' assertions, the ALJ did not disregard Tiesler's testimony about the potential traffic congestion and delays that the expansion would cause. Indeed, the ALJ expressly imposed four conditions on the Plan that were designed to ameliorate the traffic impact:

1. HVC must widen the point of egress from the church to provide two outbound lanes: an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle;
2. HVC must provide police officer(s) (on-duty or uniformed secondary employment) to direct traffic at the church access on Sundays before and after services and during any event in which unusual traffic volume is expected;
3. On Sundays, HVC must allow 45 minutes to one hour between services to prevent the overlap of incoming and outbound vehicles from the HVC property;
4. HVC shall advocate for a sign to be installed on westbound Beaver Dam Road east of the I-83 overpass to alert travelers to the potential for vehicles turning into the HVC property.

The first condition specifically addresses the Neighbors' concerns that the expansion would make it harder for them to access the main road. Far from ignoring the Plan's potential impact on traffic volume, the ALJ explicitly exercised his discretionary power to minimize that impact. Accordingly, we hold that the ALJ's decision was not premised on the erroneous conclusion that he had no authority to consider the Plan's impact on traffic volume and efficiency.

IV. The ALJ's Decision Was Supported by Substantial Evidence.

At the conclusion of their brief, the Neighbors make a broad attack on the factual basis of the ALJ's decision, stating that "Mr. Cook's explanation was wholly unreasonable and not supported by competent, material and substantive evidence." The Neighbors also contend that the ALJ erred in finding that Tiesler's testimony did not take into account the "transportation management plan" proposed by Cook. Finally, the Neighbors argue that the Board's decision was "based on the erroneous conclusion that [the] ALJ made a credibility determination regarding the testimony of the parties' traffic experts[.]" We hold that the ALJ's decision was supported by substantial evidence.⁸

First, we note that the Plan was reviewed by DPR and DPW and that these agencies expressed no concerns about the potential traffic impact of the Plan. Earlier in the review process, DPR asked the Church to include "sight distance lengths at the Beaver Dam Road entrance." In an email dated June 2, 2015, an engineer in the DPW Bureau of Traffic Engineering required the Plan to show a 445 feet sight distance from the access point. After the Church addressed these requests, the agencies expressed no further concerns related to traffic either in the written comments transmitted to the ALJ or at the hearing.⁹

⁸ We will focus on the ALJ's decision because the Board does not independently evaluate the factual basis of an ALJ's approval of a development plan. *Monkton Pres. Ass'n, supra*, 107 Md. App. at 581. In reviewing the ALJ's decision, we further note that the Board did not mischaracterize the ALJ's handling of Tiesler's testimony. We will not address the Neighbors' arguments with regard to the circuit court's decision because we must "look 'through' the decision of the circuit court to review the agency decision itself." *Ware, supra*, 223 Md. App. at 680.

⁹ The Neighbors note that at an earlier stage in the review process Lloyd Moxley of Planning asked the Church to "pursue an alternative method of access and interior vehicular

Notably, DPR's written comments *did* include a requirement that the Church install streetlights pursuant to BCC § 32-4-408, a provision located in the same article and title containing the traffic standards cited by the Neighbors. These comments indicate that DPR and/or DPW reviewed the Plan for compliance with traffic regulations and found it to be acceptable. Critically, "[a]lthough appellants had the opportunity to question the agencies as to their recommendations and to point out any failings, omissions or errors, they declined to do so." *Elm St. Dev., Inc., supra*, 172 Md. App. at 703.¹⁰

The testimony of the Church's traffic expert provided an additional evidentiary basis for the ALJ's decision to approve the Plan. Cook testified that if the Church adopted his recommendations, the Plan "shouldn't have a major detrimental impact on the road network." Cook testified that a "major impact" is "something that is created with undue congestion that exceeds normal levels that are normally acceptable at the time by the county or the State Highway Administration[.]" On cross-examination, Cook testified that the Neighbors "will likely experience less delay getting out of there than they do today."

Regarding the stopping sight distance on Beaver Dam Road, Cook testified that "the requirement in AASHTO for that is 305 feet, so we're still well under both standards for both our measurements in the field." Cook went on to state that "the design proposed will

movement in order to avoid a potential choke point at the shared entrance[.]" This comment was withdrawn, however, after Planning learned that DPW did not support a second entrance.

¹⁰ Although the Neighbors cross-examined many of the agency representatives, the questions were mostly about the timeline of certain changes to the Plan and possible communications between the representatives and the Church's consultants.

provide safe and convenient ingress and egress to the site” and would not “create congestion in the roads, streets or alleys.” After Tiesler testified, Cook was called to the stand a second time. Responding to Tiesler’s concerns about stopping sight distance, Cook explained that a police officer stationed at the intersection would be able to stop westbound traffic and allow queued vehicles to turn. Cook also testified that a warning sign “would make the motorist aware that he could encounter something and it would help keep the speeds down a little bit.” We hold that Cook’s testimony and the approval of DPR and DPW provided substantial evidence to support the ALJ’s decision to approve the plan.¹¹

The Neighbors contend that that “there was no rational basis for the ALJ to have approved the development plan in light of the serious nature of the concerns raised by Mr. Tiesler regarding sight distance.” We disagree. When asked about the Church’s plan to add a dedicated left turn lane, Tiesler admitted that “the concept . . . seems to make initial sense.” Tiesler’s only substantive criticism was that the Church would not be able to control traffic on Beaver Dam Road. Tiesler apparently was unaware that Cook had recommended the placement of a police officer on Beaver Dam Road to control traffic as

¹¹ The Neighbors emphasize that the representative from DPR did not affirmatively recommend approval at the hearing, but merely declined to comment. As we have explained, if the ALJ does not receive any comments or conditions from the agencies, “the Development Plan shall be considered to be in compliance with county regulations.” BCC § 32-4-227(e)(2). Furthermore, if DPR had identified any issues with the Plan that were still unresolved, the representative presumably would have raised these concerns in his testimony. In this context, a “no comment” is tantamount to a recommendation of approval.

needed. Later, Tiesler incorrectly stated that “there’s been no suggested mitigation for that existing or future deficiency [i.e., the queuing of vehicles on Beaver Dam Road].”

On cross-examination, the only part of the transportation management plan that Tiesler could recall was the plan to add a dedicated left turn lane. When reminded of the other recommendations, Tiesler asserted vaguely that “in spite of all those improvements that [Cook] articulated there, that there’s still going to be an impact.” Tiesler went on to say, “[M]y analysis did take those recommended improvements into account in forming my opinion, and my conclusion is that even with those improvements, there are still issues that are fundamentally related to operations and safety of the transportation system that have not been addressed.” Given Tiesler’s inability to recall the recommendations, explain why they were insufficient, or quantify their effect on his predictions, the ALJ was justified in concluding that “Mr. Tiesler in his testimony did not comment upon these recommendations; in any event, he did not testify these measures would **not** be successful in improving traffic conditions.” (Emphasis in original). Accordingly, we hold that the ALJ’s decision to approve the Plan was supported by substantial evidence notwithstanding Tiesler’s testimony.

The only remaining issue is whether the Board erred in noting that the ALJ found Cook to be more credible than Tiesler. Where two well-qualified expert witnesses contradict each other, a finder of fact will often need to make a credibility determination. Although Tiesler and Cook agreed on many points, they explicitly contradicted each other on one issue, namely whether Cook’s transportation management plan was adequate to

bring the Plan into compliance with Baltimore County standards. As explained *supra*, the ALJ reasonably disregarded Tiesler's vague assertion that he had considered Cook's recommendations because that assertion was inconsistent with the rest of Tiesler's testimony. Indeed, Cook explained in detail how his recommendations addressed Tiesler's concerns, further undermining the credibility of Tiesler's conclusions. The ALJ also noted that, contrary to Tiesler's testimony that the intersection was already dangerous, "[n]o evidence or police reports were presented to show accidents have occurred at the site involving vehicles travelling west along Beaver Dam Road, where Mr. Tiesler opined their exists inadequate stopping sight distance." Consequently, we are persuaded that the ALJ reasonably found Cook's testimony to be more credible than Tiesler's.

In light of the foregoing, we conclude that the ALJ's decision to approve the Plan was supported by substantial evidence and was not premised on erroneous conclusions of law. In affirming the ALJ's decision, the Board did not misstate the burden of proof or mischaracterize the ALJ's handling of Tiesler's testimony. We, therefore, hold that the circuit court did not err in affirming the Board's decision.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**