Circuit Court for Baltimore County
Case No. 03C15013832

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1753

September Term, 2016

ROCKAWAY BEACH IMPROVEMENT ASSOCIATION, INC., ET AL.

v.

GLEN ARM HOMES, LLC, ET AL.

Woodward, CJ,
Kehoe,
Nazarian,

JJ.

Opinion by Kehoe, J.

Filed: November 16, 2018

The primary issue in this judicial review proceeding is whether a proposed sixteen lot residential subdivision located in the Lower Back River Neck area of Baltimore County complies with local land development and subdivision regulations. A Baltimore County administrative law judge concluded that the proposal did. His decision was affirmed by the County Board of Appeals. The Board's decision was affirmed by the Circuit Court for Baltimore County. The appellants are a neighborhood association and neighbors who oppose the project. The appellees are Glen Arm Homes, LLC and Craftsmen Developers, LLC (collectively "Glen Arm"), who seek to develop the property in question.

Appellants raise seven issues, which we have consolidated and reworded:

> 1. Did the Baltimore County Planning Board err when it found that the proposed subdivision did not conflict with the Baltimore County Master Plan?
>
> 2. Was the Planning Board's decision vitiated by procedural error?
>
> 3. Did the Board of Appeals err in concluding that the project qualified for a waiver from the County's open space dedication requirements?
>
> 4. Did the Board of Appeals err in concluding that the project would not result in impermissible classroom overcrowding?
>
> 5. Did Baltimore County Council Bill No. 67-08 violate (a) appellants' substantive due process rights, or (b) Baltimore County Charter § 308?

We will affirm the judgment of the circuit court and, by doing so, the decision of the Board of Appeals.

Background

A. The County Review Process

In Baltimore County, development plans of the sort involved in this appeal are approved by multi-step review process that culminates in a quasi-judicial hearing before

an administrative law judge, which is itself subject to review by the County's Board of Appeals. In summary:

(1) The developer submits a conceptual proposal to the County planning staff, which analyzes it for compliance with relevant regulations and land use policies, elicits comments from other agencies as well as the public, and then submits a written report summarizing the project, agency and public comments, and setting out a recommended disposition.[1]

(2) The proposal, together with the staff recommendation, is subject to a public hearing before a county administrative law judge.[2]

(3) After the hearing is concluded, the ALJ shall approve the application if he or she finds from the evidence that the project complies with all applicable rules, requirements, and regulations.[3]

(4) The ALJ's decision is based upon the evidence presented at the hearing. There is one exception: if the ALJ concludes that there is a potential conflict between the proposal and the County's Plan 2020 or a relevant community action plan, the ALJ must refer that issue to the County Planning Board for resolution.[4]

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[1] *See* Baltimore County Code ("BCC") §§ 32-4-32-4-211 through -217.

[2] *See* BCC §§ 32-4-227 through -229.

[3] *See* BCC § 32-4-229(b)(1).

[4] *See* BCC § 32-4-231.

(5) If the ALJ refers this issue to the Board, then the Planning Board permits interested parties to submit oral or written comments to it;[5] and resolves the question of plan compliance by written decision.[6]

(6) The Planning Board then transmits its decision to the ALJ and the County Council, which may overturn or modify the Planning Board's decision;[7]

(7) Assuming that the County Council does not do so (and the County Council did not in the present case), the Planning Board's decision is binding upon the ALJ, who must incorporate the Planning Board's decision as part of his or her own disposition of the case.[8]

(8) The ALJ's decision may be appealed to the County Board of Appeals. The Board does not conduct a de novo hearing; instead, it reviews the records generated by the hearing before the ALJ. The Board may reverse the ALJ's decision if it is based upon or affected by an error of law, is unsupported by substantial evidence, or is otherwise arbitrary or capricious.[9]

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[5] *See* BCC § 34-4-(a)(2).

[6] *See* BCC § 32-4-232(c).

[7] See BCC § 32-4-232(f).

[8] *See* BCC § 32-4-232(f).

[9] *See* BCC § 32-4-281(e); *Monkton Preservation Association v. Gaylord Brooks Realty,*107 Md. App. 573, 581 (1996) ("[A]t least with respect to development plans, [the Board of Appeals] it is not vested with broad visitatorial power over other county agencies, but acts rather as a review board, to assure that lower agency decisions are in conformance with law and are supported by substantial evidence.").

B. The Project

Glen Arm submitted a development plan for a subdivision consisting of 16 free-standing single family homes on a 6.8 acre parcel of land located on Turkey Point Road in the Back River Neck area of Baltimore County. The property is located within a designated priority funding area, is on the urban side of the County's "Urban-Rural Demarcation Line,"[10] is located within a designated community conservation area,[11]and is located within the "T-3 Sub-Urban transect."[12] The property is classified as "DR-3.5," which permits a maximum of 3.5 dwelling units per acre, or a maximum of 23.8 dwelling units. The property is currently undeveloped, and consists largely of woodland.

An administrative law judge ("ALJ") held a two day hearing on the development proposal. County agencies weighed in, as did appellants. Items discussed included several matters before us in this appeal, including the County's decision to accept the payment of

[10] Baltimore County's comprehensive plans have divided the County into urban and rural areas since 1967. The distinction is intended to assist the County "in conserving its urban and rural communities by revitalizing existing communities and directing new development into the County's two designated growth areas." *Baltimore County Master Plan 2020* ("Plan 2020") at 2.

[11] Community conversation areas are intended accommodate "rational, aesthetic, and environmentally sustainable growth." Plan 2020 at 2.

[12] Even though this designation appears to be of significance in this case, neither brief explains what a "transect" is, but the County Planning Board stated that the classification calls for "low density detached single family homes on landscaped lots[.]" We glean information where we can find it.

a fee in lieu of requiring designated open space in the development, the impact the development would have on area schools, and whether the plan complied with Baltimore County's Master Plan 2020, and the Lower Back River Neck Community Action Plan (the "Community Action Plan"). These issues will be addressed later in this opinion. For now, we note that the ALJ referred the issue regarding conflicts with the County's Master Plan and the Community Action Plan to the Baltimore County Planning Board. After considering the issue at three meetings, the Planning Board decided that the plan conforms to the Master Plan 2020 and the Community Action Plan. Shortly thereafter, the ALJ issued an opinion approving the Development Plan. Relevant to the issues on appeal, the ALJ found that: (1) the proposed development would not cause unacceptable overcrowding in the County public school system; and (2) a waiver of the County's requirement for a dedication of open space was appropriate.

Appellants challenged the decision, and the matter went to the Baltimore County Board of Appeals. The Board of Appeals affirmed the ALJ's decision. Relevant portions of that decision will be address below.

The appellants sought judicial review. The Circuit Court for Baltimore County affirmed the Board's decision.

Two Standards of Review

In a judicial review proceeding, the issue before an appellate court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (citations, internal quotation marks, and brackets omitted). For this reason, we will "look through" the circuit court's decision in order to evaluate the decision of the Board of Appeals. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

In quasi-judicial proceedings, administrative agencies typically perform three functions: (1) making findings of fact; (2) identifying and interpreting the relevant legal standards; and (3) applying the law to the facts. Courts accept an agency's factual findings if they are supported by substantial evidence, that is, if there is relevant evidence in the record that logically supports the agency's factual conclusions. *Bayly Crossing*, 417 Md. at 139. An agency's application of the law to the evidence presents a mixed question of law and fact. If the agency has correctly identified the applicable legal standard, courts of review defer to the agency's application of the law to the facts before it, as long as the findings are supported by substantial evidence. *See Baltimore Lutheran High School Assoc. v. Employment Security Administration*, 302 Md. 649, 662 (1985). Although a reviewing court is not bound by the agency's legal conclusions, we "frequently give weight to an agency's experience in interpretation of a statute that it administers." *Schwartz v. Maryland Department of Natural Resources*, 385 Md. 534, 554 (2005). Finally, "[a]n agency's decision is to be reviewed in the light most favorable to it and is presumed to be valid."

Assateague Coastal Trust v. Schwalbach, 448 Md. 112, 124 (2016) (citation and quotation marks omitted).

This case is complicated because appellants take issue with the Planning Board's decision that the project complied with Plan 2020 and the Community Action Plan. Glen Arm asserts that the Planning Board was acting in a quasi-legislative capacity when it made this decision. If Glen Arm is correct on this point—and, as we will explain, it is— then our review of the Planning Board decision is limited to "assessing whether the agency was acting within its legal boundaries." *Lewis v. Gansler*, 204 Md. App. 454, 476–77 (2012).

1. Compliance with Plan 2020 and the Community Action Plan

The degree to which the project complied with Plan 2020 and the Community Action Plan was an issue at the hearing before the ALJ. Pursuant to BCC § 32-4-231,[13] the ALJ referred the question to the Planning Board. The Board considered the issue at three separate meetings, and after hearing comments from Lloyd Moxley, a member of the

[13] BCC § 32-4-231 states in pertinent part:

> (a) In general. The Hearing Officer shall refer the Development Plan to the Planning Board when:
> (1) The Development Plan conflicts with the Master Plan;
> * * *
> (b) Review by the Planning Board at next meeting. The Planning Board shall review a referred plan at its next scheduled meeting.
> (c) Continuation of hearing. A hearing may be continued by the Hearing Officer.
> (d) Final action. When applicable, the final action of the Hearing Officer is subject to action by the Planning Board and the County Council.

County planning staff, counsel for appellees, Peter Max Zimmerman, Esquire, the Baltimore County People's Counsel, and members of the public, the Board decided that the proposed development plan "conforms to the Master Plan 2020 and the adopted community action plans." [14] The decision was documented by a letter from Andrea Van Arsdale, the Director of the County's Department of planning to the ALJ, with a copy sent to the County Council. The letter explained the reasons for the Board's decision. They included:

> (1) The property is located within the Priority Funding Area, the URDL, and a Tier I mapping area,[15] thus ensuring that the property will be served by public water and sewer through "the most efficient use of tax monies spent in terms of infrastructure."
>
> (2) The project will not require a major expansion of road networks or otherwise overburden existing services.
>
> (3) The project will provide housing opportunities outside of the Coastal Rural Legacy Area, thus relieving development pressures on that area.
>
> (4) The property is located entirely outside of the Chesapeake Bay Critical Area.
>
> (5) The design of the subdivision is consistent with the standards of the T-3 Sub-Urban transect.

[14] The community plan in question is the Lower Back River Neck Community Action Plan (the "CAP").

[15] A "Tier I area "is served by public sewerage systems and mapped locally [as a] growth area[]." Land Use Article § 1-508(a)(1)(i).

To this Court, appellants argue that the Board's decision was substantively and procedurally flawed. We will deal with appellants' contentions separately.

Appellants' substantive contention pertains to the number of approved units, i.e., 16. They assert that development at this density is permitted only if wetlands, buffer areas, and other unbuildable land located on the Property is included for purposes of calculating maximum density. They argue that this is contrary to a provision in the Community Action Plan.

By way of background, in addition to county-wide master plans, Baltimore County has from time to time adopted community plans to address local issues. In 2010, the County adopted a Community Action Plan for the Lower Back River Neck area. Plan 2020 explains the relationship between the master plans and community plans:

> Community plans are adopted under previous master plans to deliver specific responses to issues unique to the many distinct communities that define our county. The Baltimore County Office of Planning has identified and gained understanding of these communities through collaborative efforts engaging all facets with the community. . . . The plans address goals and provide guidance in a responsive and detailed fashion that augments the broader goals of the Master Plan. . . . *To the extent there are no conflicts with this Master Plan, existing community plans will be carried forward in Master Plan 2020*.

Plan 2020 at 177–78 (emphasis added).

Plan 2020 does not specifically state whether environmentally sensitive land should be included or excluded from density calculations. Appellants point to language in the Community Action Plan, which in their view requires such land to be excluded. They argue

that this provision is not in conflict with any part of Plan 2020 and therefore is "carried forward" by the current master plan. This argument is unpersuasive.

The Court of Appeals has noted that there is a distinction between provisions in master and comprehensive plans that are advisory and those that are regulatory:

> As a general rule, comprehensive plans which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning. Where the latter exists, however, they serve to elevate the status of comprehensive plans to the level of true regulatory devices.

HNS Devopment v. Baltimore County, 425 Md. 436, 457–58 (2012) (quotation marks omitted; citing *Mayor & Council of Rockville v. Rylyns*, 372 Md. 514, 530 (2002)). Determining whether a specific provision in a planning document is advisory or regulatory is a matter of statutory interpretation. *Maryland-Nat. Capital Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 101 (2009); *Richmarr Holly Hills v. American PCS*, 117 Md. App. 607, 636 (1997). Our approach to such issues is well-established:

> We assume that the legislature's intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly.
>
> We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends.

Brown v. State, 454 Md. 546, 550–51 (2017) (quoting *Phillips v. State*, 451 Md. 180, 196–97 (2017)) (internal quotation marks omitted).

When courts construe statutes, courts treat the terms "shall" and "must" as mandatory; in contrast, "may" and "should" are not. *See Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 327–28 (2006) ("When the Legislature commands that something be done, using words such as 'shall' or 'must' rather than 'may' or 'should,' the obligation to comply with the statute or rule is mandatory.") (citation omitted).

We now turn to appellants' specific contention, which is based on the following passage from the Community Action Plan (emphasis added):

> The zoning classifications currently used in this sensitive area permits the inclusion of wetlands, buffer areas and other normally unbuildable land when calculating density. The potential increase in human activity in this region is not in keeping with the intent of the Chesapeake Critical Bar Area law. All density calculations in the district *should* have this unbuildable square footage removed from the density calculation.

Community Action Plan at 7.

This is one of seven recommendations, explicitly identified as such by the Community Action Plan, for County Council action to address community concerns about development and environmental protection. Community Action Plan at 6–7.[16]

[16] The other recommendations address open space preservation in areas outside of the URDL (the Property is within the URDL); disposition of publicly-owned land in the Lower Back River Neck (the Property is privately owned); development restrictions on land located within the Chesapeake Bay Critical Area (the Property is not located within the Critical Area); prohibiting planned unit development projects in those parts of the Neck that are within the URDL (the project is not a PUD); and expressing concerns about the possible construction of a bridge across the upper portion of the Chesapeake Bay.

Appellants assert that all but 3.8 acres of the Property are "wetlands, buffers or other normally unbuildable areas," and that including them in the parcel size for the purposes of calculating the permitted number of dwelling units "is in direct conflict with the language of the [Community Action Plan] and, therefore, the Master Plan 2020." The flaw in this argument is the language in the plan itself. The recommendations in the Community Action Plan are just that, recommendations, and do not rise to "the level of true regulatory devices." *HNS Development*, 425 Md. 457–58.[17] The Community Action Plan's use of the auxiliary verb "should" underscores this conclusion.[18] The Planning Board did not err when it concluded that Glen Arm's development proposal conformed to Master Plan 2020 and the Community Action Plan.

Appellants also contend that the Planning Board committed several procedural errors. Specifically, they assert that the Planning Board failed to provide a legally sufficient basis for its decision, that the form of its decision was defective as a matter of law because it was not signed by the members of the Board, and that not all of the Board members attended

[17] Appellants' density contention has another difficulty. In their brief, they assert that, if the Community Action Plan's recommendation is treated as a regulation, the number of units permitted on the Property would be reduced to 13. However, Lloyd Moxley, one of the members of the County planning staff, testified that, when he applied the Community Action Plan's concept of "unbuildable land" to the property, the net buildable area would be 5.3 acres, which would support 18 dwelling units. Glen Arm proposes to build 16.

[18] Glen Arm asserts that the County has not changed its regulations regarding density calculations to conform to the recommendation in the Community Action Plan, and appellants do not disagree.

each meeting during which the referral from the ALJ was considered. None of these contentions are persuasive.

All of these arguments are based on the premise that the Planning Board was acting in a quasi-judicial capacity. An agency acting in such a role must provide a decision that makes clear not only its ultimate conclusions but the factual basis of those conclusions as well. *See, e.g., Critical Area Comm'n v. Moreland*, 418 Md. 111, 134 (2011). For its part, Glen Arm contends that the Planning Board was acting in a quasi-legislative capacity and so it was not required to hold an evidentiary hearing, or to issue a decision that meets the standards set out in *Moreland* and similar decisions. Glen Arm is correct.

The Court of Appeals has long recognized that the distinction between quasi-judicial and quasi-legislative administrative proceedings is not easily drawn. *Talbot County v. Miles Point Properties*, 415 Md. 372, 387 (2010) (citing *Montgomery County v. Woodward & Lothrop*, 280 Md. 686 (1977)). The leading cases on this issue in the context of land use proceedings are *Miles Point* and *Bucktail v. Talbot County Council*, 352 Md. 530, 545 (1999). In *Miles Point*, the Court cited *Bucktail* for the principle that:

> The determination of whether a local zoning authority is acting in an adjudicative or legislative manner is dependent upon the nature of the particular act in which it is engaged. This determination is not based on whether the zoning decision adversely affects an individual piece of property but whether the decision itself is made on individual or general grounds.

415 Md. at 387.

At the risk of over-simplifying a complex area of the law, an important factor in deciding whether an administrative decision is quasi-legislative or quasi-judicial is not

whether the decision impacts one parcel, but rather upon the criteria relied upon to make the decision. "Generally, adjudicative facts concern questions of 'who did what, where, when, how, why, [and] with what motive or intent,' while legislative facts 'do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.'" *Miles Point*, 415 Md. at 387-88 (quoting 1 Kenneth C. Davis, Administrative Law Treatise § 7:02 (1958)). Put another way, where the decision is based not on a particular feature of the property in question but rather on a more general policy basis that "could easily have applied to any property [similarly] classified," the decision is quasi-legislative. *Id.* at 391; *see also Lewis v. Gansler*, 204 Md. App. 454, 476 (2012) (A Critical Area Commission action was quasi-legislative because "the Commission's decision to suspend the County's authority to grant Critical Area variances was not based upon any peculiarity of Phillips Island but rather on a broader policy concern that could have arisen in connection with any property in the County containing a portion of the County's Critical Area buffer.").

Returning to the case before us, the Planning Board concluded that the development plan conforms to the Master Plan 2020 and the adopted community plans. Ms. Van Arsdale's letter explained the bases of the Board's decision; each of those reasons could apply to any property in the Back River Neck. The Planning Board pointed to the development's location within areas targeted for growth, based on its Growth Tier I designation, location within the Urban-Rural Demarcation Line, and within a Priority Funding Area. These designations meant that the development would make efficient use

of preexisting infrastructure and minimize the impact on the Chesapeake Bay. The Planning Board also noted that the site is within the T-3 Sub-Urban Transect, making the density of the single family home development appropriate. Additionally, the property is not within the Chesapeake Bay Critical Area or the Coastal Rural Legacy Area, which means that the development meets the Master Plan's environmental protection requirements and will not increase development pressure on rural areas. In short, the Planning Board's decision was based on broad-reaching planning considerations and not on facts that were unique to the Property.

In this instance, the legal authority for the Planning Board's decision was B.C.C. § 32-4-231(a)(1),[19] which requires an ALJ to refer a question about a possible conflict between the development plan and a plan to the Planning Board for resolution. The Code provides the following requirements for the Planning Board's decision in such cases:

> (b) Master Plan conflicts; required procedures. With respect to an issue referred to the Planning Board under § 32-4-231(a) of this Subtitle, the Planning Board shall:
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> (1) Act in accordance with Title 2, Subtitle 3 of this article;[20]

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[19] B.C.C. § 32-4-231(a)(1) provides:

> (a) In general. The Hearing Officer shall refer the Development Plan to the Planning Board when:
> (1) The Development Plan conflicts with the Master Plan[.]

[20] Article 32, Title 2, Subtitle 3 of the Baltimore County Code sets out a procedure by which the County Council, upon the recommendation of the Director of Planning after review by the Planning Board, may impose temporary development restrictions on privately owned property pending its acquisition by the County or other public agency.

> (2) File a written decision with the Hearing Officer that includes the reasons for the decision; and
>
> (3) File a recommendation with the County Council at the same time its decision is filed with the Hearing Officer.

The Planning Board complied with these procedural requirements. We hold that: (1) the Planning Board was acting in a quasi-legislative capacity when it addressed the ALJ's referral as to the project's compliance with Plan 2020 and the Community Action Plan; and (2) The Planning Board operated within the legal scope of its authority in reaching its decision.[21]

3. The Board of Appeals did not err when it concluded that the project qualified for a waiver from the County's open space dedication requirements

B.C.C. § 32-6-108(c) requires developers to provide a minimum of 1,000 square feet of open space per residential dwelling for recreational purposes.[22] However, "[i]f it is not

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Appellants do not assert that the Planning Board's processing of the ALJ's referral violated any of the procedural requirements in Subtitle 3.

[21] Appellants' remaining contention of procedural error is that the Planning Board's decision was not final until it was ratified by the County Council. This contention is meritless. The controlling statutory provision is BCC § 32-4-232, which states that the Planning Board's decision is not binding on the ALJ if it "is overruled by action of the County Council." BCC § 32-4-232(f)(2). There is no requirement for any affirmative action by the Council if the Council agrees with the Planning Board's decision.

[22] Open space is a term defined in B.C.C. § 32-6-108(a)(5):

> (5) "Open space" means a parcel or parcels of land that is a minimum average of 75 feet wide or has an average grade of no more than 15 percent, except the minimum width and maximum grade is not required in order to accommodate greenways that will allow connectivity in and throughout the greater Towson area; and
> (i) Is unimproved; or

feasible to meet the open space requirement on-site or off-site, the applicant shall submit a fee in lieu proposal and pay a fee to Baltimore County." B.C.C. § 32-6-108(f)(1). The Department of Recreation and Parks recommended to the ALJ that a waiver was appropriate. The ALJ, and ultimately, the Board of Appeals, agreed. Appellants argue that the ALJ's statement summarizing approval of the waiver was insufficient and should have been accompanied by further findings of fact. We find no such error.

At the ALJ's hearing, Jean Tanzi, a representative for the Department of Recreation and Parks, testified that the Department approved a fee in lieu of open space, as the required open space allocation would be less than half an acre. The substance of her testimony was that the benefits of such a small amount of open space would be small compared to the expense of maintaining it, and it would not provide the type of recreational space in which the County is interested.[23] Appellants argue that the ALJ's analysis of her testimony was inadequate. The problem with appellants' argument is that we are reviewing the decision of the Board of Appeals. *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, 107 Md. App. 627, 637–38 (1995). The Board of Appeals' decision contains

(ii) Contains one or more amenities.

[23] This preference for fees over tiny allocations of Open Space is reflected in County documents. The County Development Management website provides a form for Request for Waiver of Local Open Space. One of the reasons listed for requesting a waiver is because the "Local Open Space required is less than 20,000sf[.]"

a detailed analysis of Ms. Tansey's testimony and concluded that the ALJ's decision to approve the waiver was supported by substantial evidence. Appellants do not contest the legal adequacy of the *Board's* decision.

4. Substantial evidence supported the Board of Appeals' finding that the project would not result in impermissible classroom overcrowding

As part of the application process, developers must submit a school impact analysis, which the Department of Planning takes into consideration when reviewing the development plan. *See* B.C.C. § 32-6-103(d) and (g). Development approval may not be granted where the school district is already overcrowded, or if the addition of the projected school age population in the development would cause the school district to become overcrowded. B.C.C. § 32-6-103(e).[24] There are exceptions to this rule, however. One is that approval may be granted in an overcrowded district "[i]f any school in a district adjacent to the overcrowded school district has sufficient capacity to render the overcrowded school [at] less than 115% of the state-rated capacity[.]" B.C.C. § 32-6-103(f)(3).

Glen Arm submitted a school impact report, which projected that a total of four elementary school students, three middle school students, and three high school students would be added by the development. The report indicated that the local elementary school, Middleborough Elementary, was already over capacity. At the hearing before the ALJ, Mr.

[24] An overcrowded school district in this context is one "where the enrollment of the school in the district exceeds 115% of the state-rated capacity." B.C.C. § 32-6-103(a)(3).

Moxley, a member of the County's planning staff, testified that there was available capacity in surrounding districts. Therefore, the Department of Planning found that although the elementary school that would serve the proposed development was overcrowded, there was sufficient capacity in neighboring schools to accommodate the projected student population. In his opinion, the ALJ summarized the relevant testimony on the school capacity issue, writing that Moxley "presented a school analysis . . . indicating that while the elementary school in the district (Middleborough Elementary School) is currently operating above State Rated Capacity (SRC), there is sufficient capacity at several adjacent elementary schools, such that the school analysis was acceptable."

The Board of Appeals affirmed the ALJ's conclusion on this issue. The Board summarized Mr. Moxley's testimony about school district capacity, and noted that appellants did not challenge it. The Board concluded, as do we, that B.C.C. § 32-6-103(f)(3)[25] permits project approval in precisely this circumstance, and that the development's detractors did not seriously challenge Moxley's conclusions. Therefore, the Board of Appeals found that his "recitation of supporting testimony for his decision is both appropriate and sufficient to affirm his findings."

[25] BCC § 32-6-103 states in pertinent part:

> (f) Exception. Development approval may be granted in overcrowded school districts:
>
> * * *
>
> (3) If any school in a district adjacent to the overcrowded school district has sufficient capacity to render the overcrowded school less than 115% of the state-rated capacity[.]

Appellants now assert that the ALJ failed to make adequate findings as to whether the development would result in school overcrowding. They describe his statement that there is sufficient capacity at adjacent schools as "conclusory," and continue "[i]f the ALJ grants such permission, he should indicate findings of fact in his decision that would justify an exercise of such discretion." However, as we have discussed previously, we are reviewing the decision by the Board of Appeals and not the decision by the ALJ. *Beachwood I*, 107 Md. App. at 637–38.

In any event, the ALJ was presented with uncontested evidence and an unambiguous statute. It is difficult to imagine what further analysis would be possible, let alone necessary.

5. Appellants' arguments that Baltimore County Council Bill No. 67-08 violates their rights to substantive due process and was illegally enacted are not persuasive.

The appellants present two grounds on which they find fault with Baltimore County Council Bill No. 67-08, which amended § 4A03.4A of the Baltimore County Zoning Regulations. In brief summary, before Bill No. 67-08 was enacted, § 4A03.4A permitted single family homes to be built on recorded lots in the Back River Neck area, but prohibited further subdivisions except for minor subdivisions. Bill 67-08 amended the regulation to permit further subdivisions on property that is zoned DR 3.5. Appellants assert that the legislation violated their substantive due process rights as well as the requirements of Section 308(c) of the Baltimore County Charter.

Appellants contend that the bill singled out land zoned D.R. 3.5 to allow for development, even though development on surrounding, differently zoned land was subject to more stringent restrictions. This, they protest, was an excessive exercise of police power, as well as arbitrary, oppressive and unreasonable. Appellants assert that this regulation "bears no real or substantial relation to public health, morals, safety and welfare of the citizens" and is therefore unconstitutional. This argument is a non-starter.

In order to succeed on their substantive due process claim, appellants must first show that they "possess[] a cognizable property interest, rooted in state law" that was injured by the Council's enactment of Bill 67-08. *Security Management Corp v. Baltimore County*, 104 Md. App. 234, 247 (1995) (citation and quotation marks omitted). A property owner has no cognizable property interest in a particular zoning classification for his or her own parcel. *Id.* Because appellants do not have a constitutionally protected interest in the zoning classifications of *their own* properties, it is difficult—actually, it is impossible—to conjure up a legal theory as to how they could have had such an interest in the zoning regulations pertaining to *Glen Arm's* property. *See Feldman v. Star Homes*, 199 Md. 1, 7 (1951) (A person does not have a property interest in a neighbor's property.); *Johnson v. Consolidated Gas, Electric Light & Power*, 187 Md. 454, 472 (1947) (same). We now will address appellants' final argument.

Section 308 of the County Charter states:

> Every copy of each bill shall bear the name of the county council member(s) introducing it and the date of introduction to the council. Each law enacted by the county council shall embrace but one subject, which shall be described

> in its title; and no law, or section of law, shall be revived or amended by reference to its title or section only.

Appellants take the position that Bill No. 67-08 violated the requirements of § 308(c), but they are wrong. The bill identified the member of the County Council who introduced it, as well as the date of its introduction. The title of the bill was (formatting altered):

> An act concerning Back River Neck Area for the purpose of authorizing building permits on unimproved lots in the Back River Neck Area in certain cases; and generally relating to the Growth Management Plan for the Back River Neck Area.

Appellants provide no specific argument as to why the title of Bill No. 67-08 fails to comply with the requirements of the County Charter. We decline to consider the matter further. *See, e.g.*, *Anne Arundel County v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015).

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.