UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 2009
September Term, 2013

EDWARD C. WILLIS, ET AL.
v.
1422 BLOOMINGDALE ROAD, LLC

No. 1653
September Term, 2014

EDWARD C. WILLIS
v.
BOARD OF APPEALS OF QUEEN ANNE'S COUNTY

Berger,
Reed,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 7, 2015

This appeal arises from two decisions of the Board of Appeals of Queen Anne's County ("the Board"), approving a conditional use application submitted by 1422 Bloomingdale Road, LLC ("the Applicant"). The Applicant sought to construct a concrete batching/mixing facility on property located in the Suburban Industrial zoning district. The Board approved the Applicant's conditional use request on November 16, 2012.

Appellants[1] filed a petition for judicial review of the Board's decision in the Circuit Court for Queen Anne's County. Following a hearing, the circuit court affirmed the Board's approval but added a condition limiting the maximum number of truck trips per day. Appellants filed a notice of appeal to this court. The Applicant filed a motion to alter or amend judgment, arguing that the condition limiting the maximum number of truck trips was improper. Subsequently, the circuit court remanded the matter back to the Board, solely for the consideration whether a condition should be imposed limiting the number of truck trips per day. The appeal before this Court was stayed pending the outcome of the remand proceedings.

On remand, the Board held a hearing on January 23, 2014 and issued its decision on March 5, 2014, which added an additional condition concerning the number of truck trips per day to the original approval. Appellants again sought judicial review in the Circuit Court for Queen Anne's County. The trial court affirmed the Board's approval of the Applicant's

[1] The Appellants are Edward C. Willis and Martha S. Willis, Trustee of the Martha A. Willis Real Estate Trust dated June 2, 2008; Richard K. Potter; Michael Jordan and Nicole Jordan; Ralph A. Kirchner, II and Karen Kirchner; Joseph A. Lathan; LACO Properties, LLC; and Queen Anne's Conservation Association.

application for a conditional use. Appellants filed a second notice of appeal. The two appeals were subsequently consolidated.

Appellants present three questions for our review, which we have consolidated and rephrased as two questions:[2]

1. Whether the Board erred in approving the Applicant's conditional use application.

2. Whether the Board erred when it imposed, as a condition of its approval, a requirement that the Applicant comply with State Highway Administration ("SHA") and Department of Public Works ("DPW") requirements by making necessary roadway improvements along the frontage of the property.

For the reasons that follow, we find no error and, therefore, affirm.

[2] The questions, as posed by Appellants, are:

1. Did the Board err in failing to sufficiently articulate its findings of fact as well as the reasoning behind its conclusions of law?

2. Did the Board err in failing to consider unrebutted testimony offered by Appellants against the Project's approval, thus rendering the Board's decision arbitrary and capricious?

3. Did the Board err in abdicating or delegating its authority with regard to conditional use applications when it adopted *as a condition* of the Project approval the Departments of Public Works' request that the State Highway Administration *investigate* road improvements at and leading up to the intersection of Bloomingdale Road and U.S. 50?

FACTUAL AND PROCEDURAL BACKGROUND

The Applicant owns a five-acre parcel ("the Property") of land located on the west side of Bloomingdale Road near the easternmost boundary of the town of Queenstown, in Queen Anne's County. The Property has 200 feet of road frontage along Bloomingdale Road. Bloomingdale Road is a county owned and maintained road that connects U.S. Routes 50 and 301. The Property is located in the Suburban Industrial ("SI") zoning district, the one zoning district in Queen Anne's County in which "heavy industrial" uses can be located. The SI district allows uses that are classified as "heavy industrial" on a "conditional use" basis. Queen Anne's County Code ("QACC") § 18:1-23C.

Immediately north of the Property are other SI zoned parcels with uses such as electrical contractors, a storage facility, and a currently closed poultry processing plant. The closest residence to the Property is a distance of 0.15 miles. Another residence is located 0.3 miles from the Property, and a subdivision is located approximately 0.75 miles from the Property. The area around the Property is largely rural.

The Property is currently improved with industrial office uses with approximately 9,653 square feet of floor area. The Applicant seeks to build a 624 square foot ready-mix concrete batching/mixing plant and ancillary materials, storage, and staging area on the Property. The maximum permitted floor area for the Property is 87,932 square feet, or 40% of the site. The Property does not have any area within the 100 year flood plain, has no

hydric soils, no steep slopes, no streams, no wetlands, no habitat for threatened or endangered species, and is not within the Chesapeake Bay Critical Area.

The Board is required to follow a specific procedure prior to approving any conditional use, which includes the submission of various documents, a public hearing, and the receipt of written reports from various agencies. QACC § 18:1-93. A "concrete mixing" or "concrete batching" plant is defined as a "heavy industrial use," QACC § 18 App. A, and accordingly, requires Board approval.

On April 20, 2012, the Applicant submitted an application for conditional use approval in order to proceed with the construction of the batching facility. The application was reviewed by the Queen Anne's County Planning Commission during a public hearing on June 14, 2012. The Planning Commission made a favorable recommendation to the Board, recommending that the Board approve the Applicant's conditional use application but suggesting that the Board consider lighting, noise, and traffic turning eastbound from Bloomingdale Road onto U.S. Route 50.

The Board held a hearing on August 23, 2012, which was continued to September 18, 2012. At the hearing, the Board received recommendations from the County Department of Planning and Zoning and from the Department of Public Works. The Board also heard testimony from various individuals, including the Appellants.

Testimony in Support of the Applicant

Harry A. Smith, a licensed surveyor for over twenty-five years in Queen Anne's County, testified about the existing site conditions and proposed improvements. Mr. Smith testified that the site's well could accommodate 30,000 gallons of water per day but that actual usage would be significantly lower than that amount. Mr. Smith explained that cut off angles would prevent lighting from extruding off the Property. He detailed the proposed plan for the Property, which would contain a street buffer, a zoning boundary buffer, and a bioswale. Smith estimated that fifteen trucks per day would use the proposed plant.

The Applicant, through its manager, testified regarding the function of the cement plant. The testimony included discussion of the inner workings of the batching operation, the type and number of truck trips expected each day, the hours and days of operation, anticipated water use, and the source of sand and other materials used to produce concrete.

Sound engineer Josh Curley testified regarding a noise assessment he had performed. He recommended that a ten-foot high berm be constructed to reduce the effects of sound on the surrounding properties. Mr. Curly explained that with the berm, sound emanating from the plant would not exceed standards established by the Maryland Department of the Environment. Mr. Curly further testified that, from a sound standpoint, there were no unique characteristics about the site that would result in greater impacts from the proposed batching facility.

Traffic operations engineer Michael Lenhart testified about projected traffic impacts of the batching facility. Mr. Lenhart determined that there would be fifteen round-trips by trucks per day. At peak times, there would be four truck trips per hour, twelve in the morning and twelve in the evening. Mr. Lenhart explained that "[t]he intersection of [Bloomingdale Road and Route 50] would operate at a level of service 'A' both today and if you add these 12 peak hour trips."[3] Mr. Lenhart specifically addressed the issue of left-hand turns from Bloomingdale Road onto eastbound Route 50, as requested by the Planning Commission. Mr. Lenhart explained that a typical wait at the intersection is twenty to thirty seconds, but that based upon his analysis, a truck would have to wait one to two minutes to make the left-hand turn. Mr. Lenhart compared the estimated wait time with most of the traffic signals on Route 50, which he explained have a two to three minute cycle length.

Mr. Lenhart further testified regarding the nature of Bloomingdale Road, explaining that it is a typical county road that is frequently traveled by trucks and farm equipment. Mr. Lenhart explained that he had conducted truck trip analyses of various other uses that are permitted in the SI zoning district without conditional approval and that there were other uses that would generate more truck trips per day than the proposed batching plant. Mr. Lenhart

[3] The "A" level of service was based upon the Maryland State Highway Administration methodology.

further explained that there are no restrictions on trucks using Bloomingdale Road or turning onto eastbound Route 50.

Todd Mohn, Director of Public Works for Queen Anne's County, testified that Bloomingdale Road is "a typical [c]ounty road" which is "not in poor condition, not in great condition." Mr. Mohn concluded that Bloomingdale Road is "satisfactory for the nature of truck traffic" generated by the proposed batching facility. Mr. Mohn testified that that required improvements to the site would include "frontage improvements," "asphalt overlay," and widening of the deceleration area.

Barry Griffith, a land use planner, testified regarding the 2010 Queenstown Community Plan. He testified that the 2010 County Comprehensive Plan Land Use Map LU-5 identified the Property as being industrially zoned. Mr. Griffith explained that County Land Use Map 7-A identified the Property within the Queenstown planning area but not as an area that would be annexed by the Town of Queenstown. Rather, the map indicated that the Property would stay under county jurisdiction. Based upon his analysis, Mr. Griffith concluded that nothing about the proposed batching facility was inconsistent with the Queenstown Community Plan. Mr. Griffith further concluded that due to the Property's "pretty rural location" there were "minimal opportunities for negative impacts to surrounding residents" due to the proposed batching facility.

Testimony in Opposition to the Applicant

Ten individuals testified in opposition. Jay Falstad, Executive Director of the Queen Anne's Conservation Association, testified that the proposed batching facility is not consistent with the November 23, 2010 Queenstown Community Plan. Mr. Falstad was not identified or qualified as a professional planner. Mr. Falstad interpreted the Queenstown Community Plan as contemplating light industrial uses but not heavy industrial uses. Mr. Falstad emphasized that there should be a green belt[4] around Queenstown.

Edward Willis and his wife, Martha Willis, reside across the street from the Property. Mr. Willis testified regarding his concerns about the proposed batching facility and increased truck traffic on Bloomingdale Road. Mr. Willis expressed particular concern that truck traffic on Bloomingdale Road would cause the road to deteriorate.

Fred Kirsch testified that the eight jobs that would be created by the proposed batching facility would not have a significant impact. Mr. Kirsch expressed concern that additional truck traffic from the batching facility could lead to fatal accidents at the corner of Bloomingdale Road and Route 50. Mr. Kirsch further testified that he believed the batching facility would have a negative impact on property values. Mr. Kirsch acknowledged that he could not see the Property from his home.

[4] A "green belt," also spelled "greenbelt," is "a belt of parkways, parks, or farmlands that encircles a community." "Greenbelt," Merriam-Webster.com (Merriam-Webster 2015), http://www.merriam-webster.com/dictionary/greenbelt. Archived at http://perma.cc/UVL6-J2YH.

Donald Walls, who had previously been employed by the State Highway Administration for forty years, expressed concerns about the condition of Bloomingdale Road. Mr. Walls expressed the opinion that the Applicant should be required to perform patch work on Bloomingdale Road because otherwise it would "cost the [c]ounty a huge sum of money."

Pauline White, a nearby resident, expressed concerns about traffic on John Brown Road, which she described as a quiet residential street. Ms. White wanted to guarantee that there would be no truck traffic using John Brown Road. Ms. White expressed further concern about increased truck traffic on Bloomingdale Road.

Donald McClyment, another resident of John Brown Road, echoed Ms. White's concerns about trucks using John Brown Road. Mr. McClyment further testified that Bloomingdale Road has two dangerous curves and expressed concern about the intersection at Bloomingdale Road and Route 50.

Elizabeth Beckley, Eastern Shore field director for Preservation Maryland, testified that she was concerned about the proposed batching facility's impact on "rural, cultural [] resources in the area." Ms. Beckley further testified that there were "insufficient roads and a general lack of infrastructure" to support the proposed batching facility. Ms. Beckley emphasized that heavy industrial use was not appropriate for the location.

Chuck Powers, a resident of Bloomingdale Road, testified that he had lived on Bloomingdale Road for over thirty years. He further testified that he had recently retired and

planned to remain in his home for the remainder of his life. Mr. Powers testified that he would be negatively affected by the increased truck traffic. Mr. Powers described Bloomingdale Road as "poorly kept" and expressed concerns about safety due to increased truck traffic. Mr. Powers expressed further concern about the batching facility operating twenty-four hours per day.

John Adcock testifying in opposition, explained that his major concerns were road safety and water. Mr. Adcock emphasized that Bloomingdale Road was "in horrible" condition and expressed that a traffic light would be necessary at the intersection of Bloomingdale Road and Route 50. With respect to water, Mr. Adcock questioned the amount of water the proposed batching facility would use and expressed concern that the aquifers were getting lower.

Peggy Richardson, a resident of Bloomingdale Road, testified that her family had recently moved to Bloomingdale Road "because of the quietness, the farm atmosphere." Ms. Richardson expressed concerns about increased traffic and safety at the intersection of Bloomingdale Road and Route 50, particularly for children waiting at bus stops.

Following the close of testimony, the Board recessed. The Board reconvened on September 18, 2012 and issued its findings and decision orally, approving the conditional

use. The Board issued its written Findings and Decision on November 16, 2012, approving the application subject to seven conditions.[5]

Appellants appealed to the Circuit Court for Queen Anne's County, and, after a hearing, the circuit court affirmed the Board's approval with one modification. Specifically,

[5] The conditions were:

> A. Between sunset and sunrise, loading equipment would use backup strobes rather than backup beepers to the extent that is legally compliant.
>
> B. That there will be controls put in place to assure that the commercial vehicles that are taking supplies into and out of and the concrete into and out of this facility will not make left turns onto or off of U.S. Route 50 at Bloomingdale Road.
>
> C. That these commercial vehicles will not use John Brown Road.
>
> D. That the Applicant comply with, and provide the necessary roadway improvements along the frontage of the property per the SHA and DPW requirements.
>
> E. That the Applicant provide a lighting plan in compliance with all County codes and consistent with the plan Mr. Smith discussed.
>
> F. That the Applicant establish a system for recycling of rinse water per their proposal.
>
> G. That Applicant establish appropriately landscaped berms on three sides around the concrete plant area. The height of the berms is to be 10'. An appropriate mixture of trees is to be planted on top of the berms for further screening.

the circuit court added a condition limiting the maximum number of truck trips to thirty per day. The Appellants filed a notice of appeal to this Court. The Applicant filed a motion to alter or amend judgment, arguing that the modification was improper. Subsequently, the circuit court remanded the matter back to the Board, solely for the consideration of the issue which the circuit court had modified in its original order. The appeal before this Court was stayed pending the outcome of the remand proceedings.

On remand, the Board held a hearing on January 23, 2014 and issued its decision on March 5, 2014, which added a condition limiting the number of truck trips per day to thirty trips into the site and thirty trips out of the site. Appellants again sought judicial review in the circuit court. The trial court affirmed the Board's approval of the Applicant's conditional use request. Appellants filed a second notice of appeal. The two appeals were subsequently consolidated.

Additional facts shall be included as necessitated by our discussion of the issues.

STANDARD OF REVIEW

In reviewing the decision of an agency, we "look[] through the circuit court's . . . decision[], although applying the same standards of review, and evaluate[] the decision of the agency." *People's Counsel v. Surina,* 400 Md. 662, 681 (2007). We are "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." *Hamza Halici, et al. 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).

"We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the [applicable] statutes, regulations, and ordinances . . . . " *People's Counsel, supra,* 400 Md. at 682 (internal quotations omitted). "When determining the validity of those legal conclusions reached by the [administrative] body, however, 'a degree of deference should often be accorded the position of the administrative agency' whose task it is to interpret the ordinances and regulations the agency itself promulgated." *Id.* (internal citations omitted). Thus, "[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be

taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was 'premised upon an erroneous conclusion of law.'" *Id.* at 682-83 (internal citations omitted). Finally, in an administrative appeal, the appellant bears the burden of establishing an error of law or that the agency's final decision was not supported by substantial evidence. *Taylor v. Harford Cnty. Dep't of Soc. Servs.*, 384 Md. 213, 222-23 (2004).

When reviewing the approval or denial of a conditional use (also referred to as a "special exception use"), "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied 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." *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981).

DISCUSSION

I.

Appellants' first contention is that we should reverse the Board's approval of the Applicant's condition use because the Board failed to sufficiently articulate its findings of fact and the reasoning behind its conclusions of law. Appellants further contend that the Board failed to consider certain testimony offered by various Appellants. We are unpersuaded.

In its decision approving the Applicant's conditional use, the Board made the following specific findings:

> 1. The Board finds that proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Queen Anne's County Comprehensive Plan. The Board accepts Ms. Tompkins' report, in which the property is identified on Map LU-4 as Commercial and on Map LU-5 under Current Generalized Zoning Areas as industrial. The proposed heavy industrial use of a cement batching plant is consistent with these land use classifications. Map LU-6 identifies the property as a Priority Funding Area. LU-7B identifies the property as an Industrial Business Park. Map ESA-6 identifies the property for Sanitary Service Areas, Tier II. Map CF-5-W5 Service looks at service beyond 20 years.
>
> 2. The Board finds that proposed use at the proposed location is consistent with the general purpose, goals, objectives, and standards of Chapter 18:1. The proposed concrete batching plant is a heavy industrial use. The property is located in the SI (Suburban Industrial) zone.
>
> 3. The Board finds that the proposed concrete batching plant will be consistent with any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County. Other than the Comprehensive Plan and the Zoning Ordinance there is no evidence of any other laws or proposals by Queen Anne's County.
>
> 4. The Board finds that the proposed use at the proposed location will not result in a substantial or undue adverse effect on adjacent property. There is no evidence that the effect of the proposed concrete batching plant on the subject property would be different from what it would be somewhere else. The only adjacent property owner who testified was Mr. Latham whose testimony seemed to address the extent to which MDE would regulate the

proposed use. It appears that there will not be any particular impact to Mr. Latham's property. The Applicant is proposing an industrial use in an industrial zone. There is no evidence regarding an impact that would be different elsewhere in the zone. There was no expert testimony on the condition of the road, on the impact to the road, on the intersections. There was no expert testimony provided to contradict the testimony provided by Mr. Mohn that Bloomingdale Road is a typical County road. Mr. Kirchner said that traffic would be directed away from turning left at the intersection of U.S. Route 50 and Bloomingdale Road. The Applicant has proposed two options: traveling to U.S. Route 301 or to go right out onto U.S. 50 down to the overpass at Nesbit Road and then come back eastbound from there. Or else go all the way out to U.S. Route 301 northbound and take a right off from there. The Applicant stated that there would be no use of John Brown Road. The Applicant testified that it was not going to use the crossover at U.S. Route 50 and Bloomingdale Road to make a left turn to go eastbound.

There will be occasions during which the Applicant will be batching at night. However, [t]he lighting design for the property would use 20' poles with cutoff angles so not to extrude light off of the property. The glare and the light will be minimal to the surrounding area.

The[] site plan indicates that there is sufficient parking for the proposed use.

The proposed berm would minimize any impact of the proposed use on surrounding properties. It would be 10' in height, and trees on the berm should be at least 10' in height.

5. The Board finds that the proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in Chapter 18:1, Part 7. In the context of this Application, this provision primarily embraces water and sewer. There was testimony that the water would be recycled. There is a

holding tank for 30,000 gallons of water. The height of the plant would not exceed 40'.

6. For the reasons set forth above, the Board finds that the conditions concerning that conditional use as detailed in this Chapter 18:1 exist.

7. For the reasons set forth above, the Board finds that the proposed use at the proposed location conforms with the Queen Anne's County Comprehensive Plan.

8. For the reasons set forth above, the Board finds that the proposed use at the proposed location is compatible with the surrounding neighborhood.

Appellants contend that although the Board's decision outlined testimony from each side on certain issues, it failed to make explicit findings as to the credibility of testimony. Appellants further assert that because the Board failed to make clear factual findings, its legal conclusions consist of conclusory statements. In support of this assertion, Appellants point in particular to conflicting testimony about the projects conformity with the Queenstown Community Plan, as well as testimony about the project's effect on neighboring properties and the surrounding community.

Pursuant to the Queen Anne's County Code, the Board must make certain specific findings before approving an application for a conditional use. Section 18:1-94 of the Queen Anne's County Code provides:

> An application for a conditional use may not be approved unless the Board of Appeals specifically finds the proposed conditional use appropriate in the location for which it is proposed, based on the following criteria:

> A. The proposed use at the proposed location shall be consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan, this Chapter 18:1, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County.
>
> B. The proposed use at the proposed location will not result in a substantial or undue adverse impacts on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety, and general welfare.
>
> C. The proposed use at the proposed location will be adequately served by, and will not impose an undue burden on, any of the required improvements referred to in this Chapter 18:1, Part 7. Where any such improvements, facilities, utilities, or services are not available or adequate to service the proposed use at the proposed location, the applicant shall, as part of the application and as a condition of approval of the conditional use, be responsible for establishing ability, willingness, and binding commitment to provide such improvements, facilities, utilities, and services in sufficient time and in a manner consistent with the Comprehensive Plan, this Chapter 18:1, and other plans, programs, maps, and ordinances adopted by the County.

Appellants assert that the Board's decision is not sustainable based upon its findings. Appellants contend that the trial court, in both of its decisions affirming the Board's approval of the conditional use, inappropriately considered the record as a whole when determining whether there was substantial evidence to support the Board's decision.

To be sure, judicial review of an administrative decision differs from appellate review of a trial court judgment. *Walker v. Dept' of Hous. & Cmty. Dev.*, 422 Md. 80, 107 (2011) (quoting *United Steelworkers of America v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)). When reviewing a trial court's decision, we will "search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court." *Id.* When reviewing administrative actions, however, we "may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.*

Appellants contend that because the appellate court will not search the record for evidence to support the judgment, the Board was required to make specific findings with respect to contrary evidence presented. Appellants assert that the Board failed to adequately articulate "how it weighed relevant evidence and resolved factual conflicts." In support of this assertion, Appellants rely upon our decision in *Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md. App. 650, 662 (1986). In that case, we addressed whether a local zoning board made the findings of fact that were required by a local zoning ordinance in approving a request to build a 17 story building at the Ocean City Boardwalk. *Id.* The relevant ordinance required the board to "render a finding of fact on each of the nine (9) standards stated . . . above" and provided that the board may grant a special exception if "in its opinion . . . such exceptions will not substantially affect adversely the uses of the adjacent and neighboring property." *Id.* at 655. We reversed the board's decision, emphasizing that

the board had "state[ed] its conclusions under each of the nine categories without any factual findings whatsoever." *Id.* at 659. We commented that each conclusion contained "nothing more than a positive statement of each of the conditions precedent to the approval by the Board of the special exception." *Id.*

Appellants reliance upon *Ocean Hideaway* is misplaced. We have explained that the specific types of findings the administrative agency is required to make is dependent upon the relevant statute or ordinance. In *Mid-Atl. Power Supply Ass'n v. Maryland Pub. Serv. Comm'n*, 143 Md. App. 419, 437-39 (2002), we rejected a similar attempt to extend the reasoning of *Ocean Hideaway* to a situation in which specific factual findings were not required by the relevant statute. In *Mid-Atl. Power Supply*, we held that a statute which provided that an administrative agency "shall consider" various factors before issuing a decision did not require the agency to make specific factual findings or explain its reasoning with respect to each factor. 143 Md. App. at 438-39. We explained:

> Attempting to apply [the *Ocean Hideaway*] reasoning to this case, appellant argues that the circuit court failed to adequately address the statutory factors of [Md. Code (1998)] § 7-513(e) [of the Public Utilities Company Article ("PUC"] "[g]iven the conclusory (and incomplete) reference" to specific PUC § 7-513(e)(1) factors, and the "complete absence of reference to specific § 7-513(e)(2) factors." Because the Commission, according to appellant, "failed to analyze and consider each of these factors in detail," appellant urges this Court to reverse the decision of the circuit court and remand this matter for the development of an appropriate record. Given the differences between the governing regulation in *Ocean Hideaway* and the governing statute here, however, the applicability of *Ocean Hideaway* to the instant case is problematic.

> The ordinance at issue in *Ocean Hideaway* required the zoning board to "render a finding of fact on each . . . standard." [68 Md. App.] at 655, 515 A.2d 485. In marked contrast, PUC § 7-513(e) does not state that the Commission is to render a finding as to each of that subsection's factors in determining stranded costs. Rather, PUC § 7-513(e) only requires that the Commission "shall consider" certain enumerated factors in determining stranded costs. *See supra* page 170 of text for statute. Nowhere does the Act require that the Commission state its findings as to each of these factors. In fact, this Court held in *Lussier v. Maryland Racing Commission*, 100 Md.App. 190, 213, 640 A.2d 259 (1994), that the words "shall consider" in an administrative statute "only require[s] [an agency] to consider the listed factors" of the statute. *Id.* at 213, 640 A.2d 259. "[I]t is not required," we stated, "to make written findings or findings on the record." *Id.*

Mid.-Atl. Power Supply, 143 Md. App. at 437-38.

Unlike the ordinance at issue in *Ocean Hideaway*, the relevant ordinance in the present case did not require the Board to make any specific factual findings. Rather, pursuant to QACC § 18:1-94, the Board was required to "find[] the proposed conditional use appropriate in the location for which it is proposed." Although QACC § 18:1-94 required the Board to consider various criteria when determining whether the proposed use was appropriate, the Board was not required to make specific findings with respect to the criteria. As in *Mid-Atl. Power Supply*, *supra*, "[n]owhere does the [relevant ordinance] require that the [Board] state its findings as to each of these [criteria]." 143 Md. App. 438.

Our review of the Board's comprehensive fifteen-page Findings and Decision demonstrates that the Board considered the criteria set forth in QACC § 18:1-94 prior to determining that the proposed batching facility was appropriate for the location for which it

was proposed. Accordingly, the Board's decision, which "ma[d]e meaningful findings of fact and conclusions of law," *see Mehrling v. Nationwide Ins. Co.*, 371 Md. 40 (2002), provides a sufficient basis for meaningful judicial review. As such, we are "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*, *supra*, 180 Md. App. at 248. When applying the substantial evidence test, we consider "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Layton*, *supra*, 399 Md. at 49.

The Board heard and considered testimony from a professional traffic operations engineer, who addressed traffic safety and road conditions. The Board further heard and considered testimony from a surveyor, who testified regarding the site plan, nighttime lighting levels, and the height of an appropriate berm around the perimeter. Moreover, the Board heard and considered testimony from a noise control engineer, who testified that noise levels with or without the berm would be below the maximum level allowed. This testimony, among other evidence received by the board, provides substantial evidence to support the Board's conclusion. It is apparent from the Board's written Findings and Decision that the Board carefully considered the evidence presented. The Board imposed various conditions on the approval of Applicant's conditional use, such a prohibition of industrial vehicles on John Brown Road, a requirement that the Applicant construct a ten-foot berm, and the requirement that industrial vehicles make only right-hand turns on to and off of

Bloomingdale Road. Furthermore, on remand, the Board explained in detail why it determined that a maximum of thirty truck trips into the facility and thirty truck trips out of the facility per day was an appropriate limit. The imposition of such conditions indicates that the Board considered the testimony presented from both proponents and opponents of the Applicant's conditional use.

Contrary to Appellants' contention, the Board was not required to explicitly resolve each and every instance of conflicting testimony offered by the Applicant and the Appellants. Appellants point to various instances of conflicting testimony, including conflicting testimony about whether the proposed use was consistent with the Queenstown Community Plan, impacts to neighboring properties and their values, the character of the neighborhood, and the safety of those who travel in and around the Property. Appellants assert that certain testimony is "[t]roublingly absent" from the Board's summary, and that other testimony is "mischaracteriz[ed] and vast[ly] oversimplifi[ed]." The Board, however, is not required to summarize every piece of information presented before it. We have explained:

> That the [administrative agency] did not address the testimony of [certain witnesses] in the [written decision] does not mean that the [agency] acted arbitrarily or capriciously. The [agency] was free to accept or reject any witness's testimony. Nor can we conclude from the mere failure of the [agency] to mention a witness's testimony that it did not consider that witness's testimony.

Mid-Atl. Power Supply, *supra*, 143 Md. App. at 442. We cannot and will not assume that, because the Board failed to mention certain testimony or specifically resolve certain conflicts, that the Board did not consider the testimony presented.

With respect to the Queenstown Community Plan in particular, we reject Appellants' contention that the Board was required to expressly resolve the conflict between the testimony by Barry Griffith and Jay Falstad. Mr. Griffith testified that nothing about the proposed use was inconsistent with the Queenstown Community Plan, while Mr. Falstad testified the proposed use was not consistent with the Queenstown Community Plan. The Board was permitted to accept the testimony of Mr. Griffith and reject the testimony of Mr. Falstad. *See id.* at 442. In its written Findings and Decision, the Board found that the proposed location was consistent with the Queen Anne's County Comprehensive Plan and "the proposed concrete batching plant will be consistent with any other plan." The Board's failure to elucidate its reasoning more fully does render its decision arbitrary or capricious.

Accordingly, the Board did not err by approving Applicant's conditional use application.

II.

Appellants' further contend that the Board erred when it imposed, as a condition of its approval, a requirement that the Applicant comply with State Highway Administration and Department of Public Works requirements by making necessary roadway improvements along the frontage of the property. Specifically, Appellants claim that Condition "D" is an

impermissible delegation of authority to the State Highway Administration and the Department of Public Words. As we shall explain, we hold that no such impermissible delegation occurred.

In its written Findings and Decision, the Board included the following condition ("Condition D") on its approval of the Applicant's conditional use request:

> D. That the Applicant comply with, and provide the necessary roadway improvements along the frontage of the property per the SHA and DPW requirements.

This condition referred to testimony from the Department of Planning and Zoning, as summarized in the Findings and Decision, that "both SHA and DPW will require extensive roadway improvements along the frontage of the entire property, installing a commercial A grade entrance." Condition D clearly referred to the specific requirements testified to by Todd Mohn, Director of Public Works for Queen Anne's County, which included references to "frontage improvements," "asphalt overlay," and "a widening of [the] deceleration area." The specific requirements testified to by Mr. Mohn were known to, and approved by, the Board, and incorporated by the Board into Condition D. As such, the imposition of Condition D was not an impermissible delegation of the Board's authority.

Because there is substantial evidence to support the Board's findings approving the Applicant's conditional use application for heavy industrial use, and because the Board's

decision was not arbitrary or capricious, we shall affirm the decision of the Board of Appeals for Queen Anne's County and the decisions of the Circuit Court for Queen Anne's County.

JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.