UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1783

September Term, 2013

LISA BOYLE, *et al.*

v.

CITY OF FREDERICK ZONING BOARD OF APPEALS, *et al.*

Eyler, Deborah S.,
Woodward,
Wright,

JJ.

Opinion by Woodward, J.

Filed: August 18, 2016

This case arises out of a dispute between appellee, Wormald Development Company ("Wormald"), the developer of the Worman's Mill Planned Neighborhood Development ("the PND") located in the City of Frederick, Maryland, and appellants, Lisa Boyle, *et al.*, a group of property owners within the development. The original master plan for the PND was approved in 1986. In 2012, the Planning Commission of the City of Frederick ("the Planning Commission") unconditionally approved Wormald's application to revise the PND. Appellants opposed the application and appealed the Planning Commission's decision to appellee, the Zoning Board of Appeals ("the ZBA"). The ZBA affirmed the Planning Commission's decision. Appellants filed a petition for judicial review in the Circuit Court for Frederick County, which affirmed the ZBA's decision.

On appeal, appellants raise four issues for our review, which we have condensed and rephrased as three questions:[1]

[1] Appellants' issues, as stated in their brief, are:

> 1. Whether the trial court erred when it found that the ZBA's review of issues on appeal from the FcPc were restricted to an on-the-record review, where state law requires *de novo* review?
>
> 2. Whether the trial court erred as a matter of law when it affirmed the ZBA's determination that the burden of proof was on the opponents of an application for amendments to a planned neighborhood development master plan?
>
> 3. Whether the trial court erred as a matter of law in finding that the FcPc holds "implied powers" to ignore statutory requirements?

(continued...)

1. Did the ZBA[2] err in conducting an on the record review of the Planning Commission's decision to unconditionally approve Wormald's application?

2. Did the ZBA err in holding that the Planning Commission properly accepted Wormald's application as submitted, executed only by Wormald?

3. Did the ZBA err in finding that the Planning Commission's decision to approve the development type designation for Parcel A, Block H was supported by substantial, competent evidence, and that the Planning Commission sufficiently articulated its findings?

For the reasons set forth below, we will uphold the decision of the ZBA, and thus affirm the judgment of the circuit court.

BACKGROUND

In 1986, Wormald submitted an application for the original master plan for the PND. The PND was located on 306.8 acres of land in the City of Frederick, Maryland. The Planning Commission approved the master plan under the 1986 Zoning Ordinance ("the 1986 Ordinance"). The original master plan created a mixed-use residential and commercial

[1](...continued)

4. Whether the trial court erred as a matter of law in affirming the decision of the FcPc where it failed to state the basis for its decision and the statutory criteria on which it relied?

[2] Both parties submitted questions on appeal regarding whether the circuit court erred in upholding the ZBA's decision. As explained *infra* in the Standard of Review, we review only the agency's decision, which in the instant case is the decision of the ZBA.

development, including eight residential sections, a Village Center, a Town Center,[3] a city park, and a private recreation area. The approved application provided for 1,497 dwelling units on 306.8 acres, which meant the overall density was 4.88 units per acre.

In 1992, Wormald submitted an application to the City to revise the PND master plan to increase the number of dwelling units in the Village Center, thereby raising the residential density to 9.64 units per acre within the Village Center. The application was approved under the 1986 Ordinance.

In 2005, the City adopted the Land Management Code ("LMC") to replace the 1986 Ordinance. The LMC, which was effective August 15, 2005,

> applies to all properties within the corporate limits of the City of Frederick, Maryland. Except as hereafter specified, no land, building, structure or premises shall be used, no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations specified for the district in which it is located and with the regulations pertaining to all districts as set forth herein.

LMC § 103.

The regulations referred to in Section 103 include the standards of the 1986 Ordinance for all plans approved under that ordinance, as well as the current standards set forth in certain sections of the LMC.[4] LMC § 910(e)(1), (e)(2)(A).

[3] Appellants state that "Town Center" and "Village Center" are used interchangeably, but the application lists them separately.

[4] Those sections of the LMC are 405, 407, 410, and 604. LMC § 910(e)(2)(A).

In 2007, Wormald submitted a second application to the City to revise the PND's master plan, which would increase the Village Center to 11.12 acres and 122 residential units, for a residential density of 10.97 units per acre within the Village Center. The second application was approved in 2008.

On August 11, 2011, Piedmont Design Group, LLC filed an application on behalf of Wormald to revise the PND's master plan ("the application" or "Wormald's application"). The application requested approval to use the standards set out in Section 16.10.5 of the 1986 Ordinance and those set out in Section 410(e)(1) of the LMC. The requested standards included the following:

> 1. Under the 1986 Ordinance: a 12' street setback from the face of the curb for nonresidential and mixed uses within the Village Center as permitted under Section 16.10.5.
>
> 2. Under the 1986 Ordinance: a 0' side setback for those nonresidential and mixed uses that abut parcels within the Village Center as permitted under Section 16.10.5.
>
> 3. Under the LMC: a 12' street setback from the face of the curb for multifamily uses in accordance with [Section] 410(e)(1) of the LMC.
>
> 4. A zero (0') setback along adjoining property lines of parcels within the Village Center as permitted under Section 410(e)(1) of the LMC.

The application also requested approval of the following amendments to the PND's master plan:

A. **Increase the residential density in the Village Center to 171 units.**

B. **Decrease the residential density of Section 8 by 34 units.**

C. **Decrease the residential density of Section 10 by 15 units.**

D. Rename the Village Center "Town Center."

E. **Change the use of Block H, Parcel A from residential only to mixed use.**

F. **Change the land uses and structures of Block H, Parcel A from low profile to high profile.**

G. Decrease Block D, Parcel A (private park) from 0.98 acres to 0.73 acres.

H. Create Block D, Parcel C with a designation of mixed use.

I. Create Section 9, with 20 high profile units transferred from Section 8.

J. Create Section 10 with 15 high profile units, 10 high profile units transferred from the previously approved Village Center and 5 low profiles transferred from Section 7.

K. Create a 0.80 acre private park within Section 10.

(Emphasis added).

The application was signed by Edward Wormald, on behalf of Wormald, which owned property within the PND. At the time of the application, Wormald had sold 1,091 of the 1,497 units in the PND. Between September 2011 and January 2012, the Planning Commission held workshops and field trip meetings to discuss the application. The Planning

Commission also held two public hearings on the application and received testimony and written comments from the public.

On January 9, 2012, the Planning Commission approved Wormald's request to modify the front and side setbacks as proposed under the authority of the 1986 Ordinance and the LMC. The Planning Commission also voted four to one to unconditionally approve Wormald's request to amend the PND master plan.

On February 8, 2012, appellants filed an appeal of the Planning Commission's decision to the ZBA. The Rules of Procedure that had governed the ZBA since 1998 (and were in effect when the appeal was filed in this case) did not include procedures regarding an appeal to the ZBA under Section 315(d) of the LMC. Appellants' case was the first appeal of a decision of the Planning Commission to the ZBA under the LMC. On February 28, 2012, the ZBA adopted the "Special Rules of Procedure for Appeals from Decisions of Planning Commission" ("Special Rules") to govern the appellate process under the LMC.

Wormald and the Planning Commission moved to dismiss the appeal for lack of standing, and appellants moved for *de novo* review of the Planning Commission's decision. After a hearing, the ZBA denied both preliminary motions.

On August 28, 2012, the ZBA held a hearing on appellants' appeal, governed by the recently adopted Special Rules. Pursuant to those rules, the ZBA heard oral argument, but

took no new evidence; the appeal was heard on the record. Appellants objected to the Special Rules as violating the Maryland Rules.

On October 9, 2012, the ZBA issued its decision, holding that (1) the ZBA did not err in adopting the Special Rules; (2) the Planning Commission did not err in allowing the setbacks as set out in its January 9, 2012 decision; and (3) the Planning Commission did not err in unconditionally approving the revised PND master plan.[5]

On November 1, 2012, appellants filed a petition for judicial review of the ZBA's decision in the Circuit Court for Frederick County. Wormald also filed a cross-petition for judicial review regarding the ZBA's denial of its motion to dismiss for lack of standing. After a hearing, the circuit court affirmed the decision of the ZBA in a written opinion filed on October 4, 2013. This timely appeal followed.

STANDARD OF REVIEW

Our review of an administrative appeal is limited to reviewing the administrative agency's decision to determine whether there is substantial evidence in the record to support the agency's findings and conclusions. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cty.*, 336 Md. 569, 577 (1994). "Our obligation is 'to review the agency's

[5] Because Section 312(d)(2) of the LMC required four affirmative votes to reverse the Planning Commission's decision, and only three members of the ZBA found that the Planning Commission erred ("the Failing Majority"), the ZBA did not reach the supermajority required by the LMC. The remaining two members ("the Prevailing Minority") affirmed the Planning Commission's decision. It is the Prevailing Minority's opinion that we review here.

decision in the light most favorable to the agency, since their decisions are *prima facie* correct and carry with them the presumption of validity.'" *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009) (quoting *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998). This Court may not substitute its own judgment for that of the agency "unless the agency's conclusions were not supported by substantial evidence or were premised on an error of law." *Montgomery Cty. v. Rotwein*, 169 Md. App. 716, 727 (2006).

With regard to questions of law, the court's review is expansive and "owe[s] no deference" to the administrative agency. *Cinque v. Montgomery Cty. Planning Bd.*, 173 Md. App. 349, 360 (2007) (citation omitted). The court must review whether the agency interpreted and applied the correct principles of law governing the case and owes no deference to a decision based solely on an error of law. *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 727 (2009).

However, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999); *see also McCullough v. Wittner*, 314 Md. 602, 612 (1989) ("The interpretation of a statute by those officials charged with administering the statute is . . . entitled to weight."). The expertise of the agency in its own field should be respected. *Fogle v. H&G Rest.*, 337 Md. 441, 455 (1995); *Christ v. Md. Dep't of Nat. Res.*, 335 Md. 427, 445 (1994) (legislative delegations

of authority to administrative agencies will often include the authority to make "significant discretionary policy determinations"); *Bd. of Educ. for Dorchester Cty. v. Hubbard*, 305 Md. 774, 792 (1986) ("[A]pplication of the State Board of Education's expertise would clearly be desirable before a court attempts to resolve the matter."). Only when a statute is entirely clear, with no ambiguity whatsoever, should a reviewing court give no weight to an agency's interpretation and application of the statute it administers. *Macke Co. v. Comptroller of the Treasury*, 302 Md. 18, 22-23 (1984).

DISCUSSION

De Novo or On the Record Review by the ZBA

Appellants contend that the ZBA erred as a matter of law when it conducted an on the record review of the Planning Commission's decision. According to appellants, the ZBA was required to review the Planning Commission's decision *de novo*, pursuant to Section 4-306(f)(2) of the Land Use Article and Section 312 of the LMC. Appellees argue in response that appeals of decisions of the Planning Commission regarding an "administrative development approval" are specifically provided for in Sections 301 and 315 of the LMC, and the broad powers set forth in Section 4-306 of the Land Use Article are not inconsistent with on the record review as set forth in those sections.

To determine the scope of the ZBA's appellate review, we turn first to the authority of the ZBA under the LMC. The City adopted the LMC pursuant to the general authority granted by Section 4-101, *et seq.*, of the Land Use Article. The LMC was "established in

accordance with the provisions of Article XV, Section 175 of the Charter of the City of Frederick and . . . Art. 66B, § 4.01 et seq. [of the Annotated Code of Maryland]."[6] LMC § 102.

Under the LMC, the ZBA shall hear any appeal of a Planning Commission decision on a master plan. LMC § 301(e). Section 301(e) of the LMC, entitled "Post-Decision Proceedings," provides:

> **Any person**, including any officer or agency of the City **aggrieved by a final decision relating to a** development permit or **administrative development approval by the** Zoning Administrator or **final decision-maker may appeal such final determination to the appellate body designated by this Code, in the manner provided in § 315.** Unless a different appellate body is designated by this Code, the Zoning Board of Appeals shall have jurisdiction to hear any appeals from a decision of any officer, official or agency in the administration of this Code.

(Emphasis added).

We thus turn to the relevant portions of Section 315 of the LMC to determine the "manner" in which the appeal shall be heard.

> **Sec. 315 Appeals to the Zoning Board of Appeals**
>
> **(a) Applicability**
>
> **This section applies to any application for an appeal of a decision made by the Zoning Administrator or Planning Director that is subject to the jurisdiction of the Zoning Board of Appeals.** An appeal to the Board may be made by

[6] Article 66B, § 4.01, *et seq.*, was recodified as the Land Use Article, Section 4-101, *et seq.*, effective October 1, 2012.

any person aggrieved or by any officer, department, or board within the jurisdiction affected by the decision of the Zoning Administrator.

(b) Initiation

In addition to the requirements of § 312, such appeal shall be made within 30 days of the decision of the Zoning Administrator by filing a notice of an appeal on the forms provided by the Department. Such notice shall specify the nature and grounds of the appeal and shall contain such additional information as may be needed to explain the appeal. The appeal shall contain a written statement of the reasons for which the appellant claims the final decision is erroneous. The appeal shall be accompanied by the fee established by the Board of Alderman. Fees associated with the appeal shall be paid at the time of the filing in accordance with the fee schedule established in Article 11, § 1103.

(c) Procedures

The procedures for processing an appeal are established in § 312, and as follows:

(1) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that, by reason of facts stated in the certificate, such stay will cause imminent danger to life or property. In such case, proceedings shall not be stayed except by a restraining order granted by the Board or by a Court of Record on application by the applicant after notice to the Zoning Administrator and with due cause shown.

(2) In exercising its powers, the Board may, in conformity with the provisions and limits of the Charter and of this Code, reverse or affirm, in whole or in part, or may modify the decision of the Zoning Administrator appealed from and

may make such decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(d) Decision-making Criteria, Appeals

In considering the appeal, the Zoning Board of Appeals shall determine whether the action of the Zoning Administrator was arbitrary, capricious, discriminatory, or illegal, or whether they have properly applied the governing law to the facts. In determining the decision of the Zoning Administrator, the Board shall consider:

(1) **whether the Zoning Administrator recognized and applied the correct principles of law governing the case, including whether this Code was properly interpreted; and**

(2) **if the decision was not in error, whether the decision was supported by substantial competent evidence**, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. **The Board shall resolve any conflicting evidence, and, where inconsistent inferences can be drawn from the same evidence, draw the inference that it believes is correct based upon evidence presented in the record**; and

(3) **how the Zoning Administrator applied the law to the facts**; and

(4) **whether the zoning restriction is constitutional or validly applied**.

(e) Appeal of Zoning Board of Appeals Decisions

An appeal from a Zoning Board of Appeals decision shall be filed by any person aggrieved, or by an officer, department,

> board or bureau of the City, with the Circuit Court within thirty (30) days of the decision.

(Emphasis added).

Section 315(d) clearly provides for only an on the record review. In an appeal, the ZBA "shall determine whether the action of the Zoning Administrator was arbitrary, capricious . . . ." LMC § 315(d). Under Section 315(d), "Zoning Administrator" includes the Planning Commission, because Section 301(e) expressly provides for an appeal of a "final decision" regarding an "administrative development approval by the Zoning Administrator *or final decision-maker*" "*in the manner provided in § 315*." (Emphasis added). *Cf. Wharf at Handy's Point, Inc. v. Dep't of Nat. Res.*, 92 Md. App. 659, 672-73 (1992) (holding that "administrative official" in Art. 66B, § 4.07(d), now Land Use Article § 4-305(1), includes the Kent County Planning Commission). Further, when determining the decision of the Planning Commission, the ZBA shall consider "whether the [Planning Commission] recognized and applied the correct principles of law governing the case," "whether the decision was supported by substantial competent evidence," and "how the [Planning Commission] applied the law to the facts." LMC 315(d)(1-3). *De novo* review, which permits the introduction of evidence not considered by the Planning Commission, is by definition not a determination of the legal propriety of an action of the Planning Commission. A decision based on *de novo* review is an independent decision of the ZBA. Finally, and most importantly, there is no language in Section 315(d) that provides for a "*de novo* review" by the ZBA.

Section 4-304(a) of the Land Use Article requires that the ZBA adopt rules in accordance with the provisions of any local ordinance adopted under that article. The Rules of Procedure adopted by the ZBA in 1998 did not include any specific provisions to govern appeals from the decisions of the Planning Commission. As previously stated, on February 8, 2012, appellants filed a notice of appeal of the Planning Commission's decision to the ZBA. The ZBA subsequently adopted the Special Rules, which were retroactively applied to this appeal.[7] The Special Rules state that their purpose is to "fairly and efficiently govern the appeal of [the Planning Commission's] decisions."

The ZBA's Special Rules are consistent with our interpretation of the language of Section 315(d). The Special Rules expressly state that, during the hearing before the ZBA, "[t]he appellant has 45 minutes to stress the key points made in the notice of appeal and memorandum or motion, as applicable. *No new evidence is allowed.*" (Emphasis added.) The Special Rules further provide that "ZBA members may ask questions during oral argument to help them understand the case. Spectators may attend. However, only parties who have submitted written briefs may participate in oral argument. *The ZBA will not hear any additional evidence in support of or against the Planning Commission's decision.*" (Emphasis added). As previously stated, an agency's "interpretation and application of the

[7] Appellants do not argue that the ZBA did not have the authority to adopt the Special Rules, only that it was impermissible for the Special Rules to provide that no new evidence will be allowed.

statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Banks*, 354 Md. at 69.

Appellants, nevertheless, point to Section 312 of the LMC to support their argument that *de novo* review is required. Specifically, appellants assert that

> LMC 312(a) applies to "*any appeal*, variance, conditional use, or any other action subject to the Zoning Board of Appeals." (Emphasis added). LMC 312(d)(1) further provides that "[a]ny person may appear and testify at the hearing." LMC 315(c)(2) affirms that the ZBA "may make such decision as ought to be made, and to that end shall have the powers of the officer from whom the appeal is taken." LMC 315(c)(2).

We disagree and shall explain.

Section 312, entitled "Zoning Board of Appeals Decisions," states, in relevant part:

> **(a) Applicability**
>
> > **This section applies to any appeal, variance, conditional use, or any other action subject to the jurisdiction of the Zoning Board of Appeals.**
>
> **(b) Initiation**
>
> > (1) **An application for a development order pursuant to this Section shall be filed** only by a person or persons with a financial, contractual or proprietary interest in the property in questions or by his or her authorized agent.
> >
> > (2) A filing fee shall be charged in accordance with the fee schedule contained in Article 11 of this Code.
>
> **(c) Notice**
>
> > See § 301(b).

(d) Decision

(1) Public Hearing

Before making a decision, the Board shall hear the case in public session consistent with the adopted rules of the Zoning Board of Appeals. Any person may appear and testify at the hearing. The Board shall decide the matter within a reasonable time and may continue the hearing to a specific future date for a specified reason.

(2) Action by the Board

The concurring vote of at least four members of the Board shall be necessary to reverse any decision of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Code.

(e) Decision-making Criteria, Generally

This Code requires the Zoning Board of Appeals to approve certain uses or to make particular findings before a building permit and/or zoning permit may be issued. In those cases, the Board shall study the specific property involved and the neighborhood, cause the property to be posted in a conspicuous place, hold a public hearing, and **consider all testimony and data submitted, and shall hear any person for or against the matter**. However, the application for building permit and/or zoning certificate shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use, or change of use would adversely affect the public health, safety, security, morals, or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. . . .

(Emphasis added).

As previously indicated, the instant case involves an appeal to the ZBA of a "final decision" of the Planning Commission regarding an "administrative development approval." LMC § 301(e). Section 301(e) expressly provides that appeals of such decisions are to be decided "in the manner provided in § 315." Nowhere in Section 312, relied upon by appellants, is there any reference to an appeal of a final decision of the Planning Commission (or "final decision-maker") regarding an "administrative development approval." Appellants rely exclusively on the word "appeal" in Section 312(a), which states that "[t]his section applies to any *appeal*, variance, conditional use, or any other action subject to the jurisdiction of the Zoning Board of Appeals." (Emphasis added). We agree with appellees' construction of Section 312(a) that the term "jurisdiction" of the ZBA refers to the ZBA's original jurisdiction, not its appellate jurisdiction. As explained by appellees:

> The ZBA performs two separate functions: it has original jurisdiction to hear "appeals" involving applications for development orders (conditional uses and variances); and it also has jurisdiction to hear appeals from final decisions of the Zoning Administrator or the final decision-maker (the Planning Commission in this case) relating to an administrative development approval. Section 312 of the LMC, entitled "Zoning Board of Appeals Decisions," applies to applications for development orders such as conditional uses and variances, which are originally filed in the ZBA. *See* LMC, § 312(b) ("*An application for a development order pursuant to this Section* shall be filed only by a person or persons with a financial, contractual or proprietary interest in the property in question or by his or her authorized agent.") (emphasis added); *see also*, LMC § 312(e) ("This Code requires the Zoning Board of Appeals to approve certain uses or make particular findings before a building permit and/or zoning permit may be issued. *In those cases*, the Board shall . . . consider all testimony and data submitted, and shall hear any person for or against the matter.") (emphasis added). Thus, in cases before the ZBA involving

> applications for conditional uses or variances, which are original applications and not "appeals," Section 312 of the LMC requires the ZBA to conduct a public hearing and consider all of the evidence presented, including testimony for and against the application. The Planning Commission has no role in a conditional use or variance proceeding. Thus, the ZBA holds the evidentiary hearing as the original trier of fact.

(Emphasis in original) (footnote omitted).

Appellants also rely on Section 315(b), entitled "Initiation," and Section 315(c), entitled "Procedures," wherein "the requirements of § 312" and "[t]he procedures for processing an appeal [as] established in § 312," respectively, are expressly incorporated into the appeals to the ZBA under Section 315. There is, however, no incorporation of any part of Section 312 into Section 315(d), wherein, as discussed above, on the record review is established. Consequently, Section 315's incorporation of Section 312 is limited to (1) initiation of the appeal, (2) notice, (3) public hearing, and (4) voting.

Finally, we reject appellants' argument that *de novo* review is required by Section 4-306(f)(2) of the Land Use Article, which states that "[t]he board of appeals shall have all the powers of the administrative officer or unit from whose action the appeal is taken." There is no language in Section 4-306(f)(2) that establishes the standard of review for the ZBA, nor does that section authorize the ZBA to ignore Section 315(d) or its Special Rules. In its opinion, the circuit court cogently addressed this point:

> The language of § 4-101 et. Seq. [sic] of the Land Use Article stating that a board of appeals shall have all powers of the person from whom the appeal is taken similar to the language which exists in

> the LMC in § 315(c), but it is not exactly the same. LMC § 315(c) states:
>
> > In exercising its powers, the Board may, **in conformity with the provisions and limits of the Charter and of this Code**, reverse or affirm, in whole or in part, or may modify the decision of the Zoning Administrator appealed from and may make such decisions as ought to be made, **and to that end** shall have all the powers of the officer from whom the appeal is taken.
>
> The language in LMC § 315(c) clearly describes the appellate powers of the ZBA and the language of LMC § 315(d) limits those powers to a record review.

(Emphasis in original). In sum, the grant of powers by the Land Use Article does not preclude the limitation of those powers by a local statute.

In support of their argument, appellants cite to *Bd. of Cty. Comm'rs for St. Mary's Cty. v. S. Res. Mgmt., Inc.*, 154 Md. App. 10 (2003) and *Grasslands Plantations*, 410 Md. 191. In both of these cases, the reviewing court found no error in the agency conducting a *de novo* review. Therefore, appellants argue, *de novo* review by the ZBA is required. These cases are clearly distinguishable from the case *sub judice*.

In *Grasslands Plantation*, the Court of Appeals reviewed the decision of the board of appeals in Queen Anne's County where a landowner challenged the Planning Commission's approval of the construction of a subdivision adjacent to the landowner's property. 410 Md. at 194-95. The Court concluded that the board of appeals was required to conduct a "purely *de novo* review" by Section 18:1-120 of the Queen Anne's County Code, which stated that the board "shall have all powers of the person from whom the appeal is taken and may make

such order, requirement, decision, or determination as ought to be made in conformity with Article 66B of the Annotated Code of Maryland and this Chapter." *Id.* at 205 n.7, 212. The Queen Anne's County Code, however, contained no provision that directed the board of appeals to conduct an on the record review.

In *S. Res. Mgmt.*, this Court upheld the exercise of *de novo* review by the St. Mary's County Board of Appeals. 154 Md. App. at 31. We explained that St. Mary's County, as a commissioner county, is governed by Article 25 of the Maryland Code. *Id.* at 30. Land use provisions for counties governed by Article 25 are contained in Article 66B of the Maryland Code, which authorizes the establishment of the board of appeals but does not directly address the board's standard of review. *Id*. at 30-31. The St. Mary's County Board of Appeals, "by statute, was given broad powers, its standard of appellate review was not restricted by statute, and it was not restricted by ordinance or rule." *Id.* at 31. Consequently, we concluded that "the Board's review was appropriately *de novo* with respect to the issue being contested." *Id.*

The circuit court properly summarized the distinction between *Grasslands* and *S. Res. Mgmt.* and the instant case:

> LMC § 315(d) describes the entire scope of review the ZBA is entitled to pursue, and there is no statute of reference of intent to allow a *de novo* review. In neither *Grasslands* nor *S. Resources Mgmt,* did a local statute limit appellate review to the record, as the LMC does in this case.

For the foregoing reasons, we hold that in an appeal from a decision of the Planning Commission regarding an "administrative development approval," the ZBA is required by Sections 301(e) and 315(d) of the LMC and by the Special Rules to conduct an on the record review of that decision. Accordingly, the ZBA did not err when it conducted an on the record review of the Planning Commission's approval of Wormald's application.

Application as Submitted

Appellants next argue that the ZBA erred when it ruled that the Planning Commission properly considered Wormald's application as submitted. Appellants' argument is essentially two parts: first, the Planning Commission should have required Wormald's application to be signed by all of the landowners in the PND; and second, because Wormald's application was to revise the master plan, the Planning Commission did not have the authority to grant a density higher than the ten percent threshold allowed by Section 310(f) of the LMC and the 1986 Ordinance.

1.

Relevant to the first part of appellant's argument are the following provisions of the LMC:

> **Sec. 910 Existing Development Approvals**
>
> ***
>
> **(b) Generally**
>
> ***

> (6) **Any new application submitted after August 15, 2005 for a property regardless of receiving a prior development approval shall to [sic] adhere to the procedural requirements of Article 3**, and the submission requirements of Article 11.

(Emphasis added).

> **Sec. 310 Master Plans**
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> ***
>
> **(b) Initiation**
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> ***
>
> **(3) All owners of property comprising the Master Plan must sign the application.**
>
> ***
>
> **(f) Amendment of Master Plan**
>
> ***
>
> (3) **Any amendment to the Master Plan** that exceeds the thresholds prescribed in this section **shall be processed in accordance with the procedures for approval of the original Master Plan**.

(Emphasis added).

Appellants contend that Section 910 of the LMC governs any PND master plan approved before August 15, 2005 (the date that the LMC became effective), while applications submitted after August 15, 2005, "shall adhere to the procedural requirements of Article 3, and the submission requirements of Article 11." LMC § 910(b)(6). Appellants

maintain that Wormald was required to submit a new application, which, pursuant to Section 310(b)(3), requires that all property owners sign the application. Appellants also argue that the 1986 Ordinance requires that the application be signed by all owners.

The ZBA analyzed appellants' argument as follows:

> **The "procedural requirements of Article 3" refers to the general procedural requirements contained in LMC § 301, including the requirement for a pre-application meeting, submission of a complete application, public notice, mailings, a neighborhood meeting, and public hearings.** In this case, there is no dispute that Wormald complied with the procedural requirements of LMC § 301 relating to master plans. Notably, nowhere in LMC § 301 is there any provision relating to the signatures on an application. Nor is there any such provision in Article 11. Appellants seem to rely on interpreting Sec. 310(f)(3) - "Any amendment to the Master Plan that exceeds the thresholds prescribed in this section shall be processed in accordance with the procedures for approval of the original Master Plan" to require all property owner signatures, as required under "Initiation", Sec. 310(b)(3). **However, we do not have to read procedures for approval to require the signatures on the application; there is no explicit definition of "procedures" and no reference to the specific sections requiring signatures.** Moreover, even if we are reviewing this under the 1986 Ordinance, nothing therein addresses how an application to amend a master plan shall be filed other than "at the request of the applicant". We do not read "applicant" to require the signatures of all property owners within the PND. **Finally, we conclude that if the intent of the Board of Aldermen was to require an extraordinarily high hurdle–i.e., that all property owners within a PND sign an application for a master plan amendment–that the aldermen would have been explicit in doing so.** The LMC is vague on this point, and again, the Planning Department and Planning Commission have been interpreting it this way (i.e., not requiring all owners to sign the application) without challenge or reversal for years.

(Emphasis added).

We agree with the ZBA. Section 310(b)(3) only requires the signature of all property owners on the *original* master plan. Section 310(f) details the requirements for amendments to the master plan. Section 310(f)(3) requires compliance with the "procedures for approval" of the original master plan for amendments to the master plan, like the application in the instant case. Appellants assume, however, that "procedures for approval" under Section 310(f)(3) mean signatures of all property owners in the PND. As stated by the ZBA, however, "procedures" could mean the procedures identified in Section 301 of the LMC. Moreover, the 1986 Ordinance does not address the issue of signatures, requiring only that the amendment be filed "at the request of the appellant."

In addition, we "approach our analysis from a common sense perspective, seeking to give the statutory language its ordinary meaning. In furthering the identified legislative objectives, we avoid giving the statute a strained interpretation or one that reaches an absurd result." *Huffman v. State*, 356 Md. 622, 628 (1999) (citations omitted). To read the statute as appellants suggest would halt virtually all amendments to a master plan. If all owners were required to sign the application, any one of the 1,091 property owners could veto the application by refusing to sign. As the ZBA points out, requiring all property owners within a PND to sign an application for a master plan amendment would be an "extraordinarily high hurdle." We agree with the ZBA that, if this were the intent of the Board of Aldermen, the Board would have made this requirement explicit.

2.

Regarding the second part of appellants' argument, Section 910(e)(1) of the LMC is pertinent:

> **(e) Revisionary Powers**
>
> > (1) Upon application of the developer, the Planning Commission may revise a previously approved plan, as provided in subsection § 910(c) above. Notwithstanding the foregoing, **the Planning Commission may not approve any revision that will allow the project as a whole to exceed the density allowed under the 1986 Frederick City Zoning Ordinance in effect on July 21, 2005**. Except as otherwise provided in subsection 910(e)(2), in its review of an application for a revision, **the Planning Commission shall use the standards of the 1986 Frederick City Zoning Ordinance in effect on July 21, 2005**.

(Emphasis added).

Appellants argue that the Planning Commission had no authority to approve the kinds of changes sought in Wormald's application, because any amendments that exceed the thresholds prescribed in Section 310(f) require the submission of a new application. Because Wormald's application sought to change the residential density by more than ten percent, appellants argue, the Planning Commission erred by treating Wormald's application as an amendment instead of a new application. We disagree.

Section 910(e)(1) grants express authority to the Planning Commission to revise a previously approved master plan. The sole restriction on the Planning Commission's authority is that the "density" for "the project as a whole" may not exceed that allowed under

the 1986 Ordinance. Neither party has suggested that the overall density of the application exceeds that threshold. Under Wormald's application, the number of residential units in the PND remained the same. Therefore, the Planning Commission had the authority to approve the application as submitted.

Section 910(e)(1) also provides that, "in its review of an application for a revision, the Planning Commission shall use the standards" of the 1986 Ordinance. The only standard that appellants refer us to is the standard in Section 16.07.2, which limits approval *by the Planning Department* to certain thresholds. Nothing in Section 16.07.2 precludes *the Planning Commission* from exceeding those thresholds, as long as the overall density is not exceeded, as provided in Section 910(e)(1). Moreover, to conclude that the Planning Commission is constrained by the Section 16.07.2 limitations would render Section 910(e)(1) meaningless, because all approvals or nonapprovals would be decided by the Planning Department.

Parcel A, Block H

Finally, we address appellants' contention that the ZBA erred by affirming the Planning Commission's unconditional approval of the modifications to Parcel A, Block H. Appellants argue that the Planning Commission failed to undertake the required analysis, did not make specific findings, and failed to articulate a basis for granting unconditional approval of the change. Specifically, appellants contend the Planning Commission failed to consider all of the criteria identified in both the 1986 Ordinance and Section 410(b) of the

LMC. Appellees disagree, asserting that the Planning Commission provided the facts on which it relied to reach its decision through the Staff Report entered into the record during the January 9, 2012 hearing.

We review the evidence to determine "if there is substantial evidence in the record as a whole to support the agency's findings and conclusions." *United Parcel Serv., Inc. v. People's Counsel for Balt. Cty.*, 336 Md. 569, 576-77 (1994). The Court of Appeals has explained that "findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 64 (2002).

The ZBA found that "over the course of several months which included field trips, workshops, and public and written testimony, the Planning Commission's decision was supported by substantial competent evidence." We agree.

It is clear from the record that there was ample evidence supporting the changes to Parcel A, Block H. Based on information gathered from the Staff Report, workshops and field trips, the Planning Commission engaged in a detailed evaluation during the January 9, 2012 hearing regarding the change sought with regard to Parcel A, Block H from residential low profile to mixed use high profile. For example, the Staff Report provides:

> Other changes to the Village Center from the previous approval are the inclusion of Block "H", Parcel "A" as part of the mixed use designation and changes to the size and use of Block "D", Parcel "A". Block "H", Parcel "A" was previously designated as Town Center residential only and was to be developed as a low profile land use. **The applicant intends to utilize this parcel as part of the mixed**

> **use concept in conjunction with the remainder of the Village Center and making high profile buildings permitted on this parcel**.

(Emphasis added).

During the course of the hearing before the Planning Commission, Chairwoman Meta Nash confirmed that a high profile development type would allow a building height of up to sixty feet, whereas a low profile development type would only allow a building height of up to forty feet. Commissioner Joshua Bokee expressed his concerns with regard to the change to high profile and the potential height of the assisted living facility in close proximity to a space allocated for a private park. A debate ensued among the commissioners regarding the proposed change. Jeff Love confirmed for Chairwoman Nash that the three-story assisted living facility as proposed would be fifty-two feet in height to the top of the cornice, and there was discussion regarding that height of the assisted living facility in relation to the height of nearby townhouses. Love confirmed for Commissioner Elizabeth Fetting that the townhouses would be capped at a height of forty feet. Ed Wormald explained that Wormald preferred a high profile development type for the assisted living facility, because of the architectural design of the facility's roof. Commissioner Gary Brooks agreed with Wormald, stating, "Yea, I'd rather not see a flat commercial looking roof in that neighborhood, so I'm ready to make a motion again." The Planning Commission then voted to unconditionally approve Master Plan PC11-493PND by a vote of five to one, with only Commissioner Bokee voting against the approval.

Our review of the record of the hearing before the Planning Commission leads us to agree with the summary articulated by appellees:

> The Planning Commission fully considered the issue of the change in development type for Parcel "A," Block "H" from residential low profile to mixed use high profile, heard from Commissioner Bokee regarding his concerns, considered Wormald's response to those concerns, and ultimately decided that the architectural value of the roof of the assisted living facility trumped any concerns regarding building height. . . . [T]he Planning Commission did discuss and consider the impact of an assisted living facility on traffic flow, and the desirability of the development in relation to its location and surroundings. The Planning Commission was well within its discretion to approve the change relating to Parcel "A," Block "H," and the Planning Commission more than adequately stated the basis for its discretion in that regard.

With regard to appellants' argument that the Planning Commission did not consider the criteria set out in the 1986 Ordinance and Section 410(b) of the LMC, we look first at the applicable statutory language. Section 910(e), which governs the Planning Commission's authority to revise a previously approved plan, provides that "the Planning Commission may revise a previously approved plan to utilize or incorporate one or more of the current standards set forth in" Section 410 of the LMC. LMC § 910(e)(2)(A). The language of Section 410 of the LMC is nearly identical to the language of Section 16.06 of the 1986 Ordinance, listing the criteria that the Planning Commission "shall consider." The statutes require the Planning Commission to *consider*, not articulate, its findings as to each factor identified. The record demonstrates that the Planning Commission did just that.

We conclude, therefore, that the evidence in the record and the transcript of the Planning Commission's discussion are sufficient to demonstrate that "there is substantial evidence in the record as a whole to support the agency's findings and conclusions." *E. Outdoor Advert. Co. v. Mayor & City Council of Balt.*, 128 Md. App. 494, 514 (1999), *cert. denied*, 358 Md. 163 (2000).

For these reasons, we uphold the decision of the ZBA, and thus affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; APPELLANT TO PAY COSTS.