UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2235

September Term, 2015

SHANNON P. SALMON, ET AL.

v.

JOHN R. EVANS, ET UX.

Eyler, Deborah S.,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 27, 2017

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The appellees, John R. Evans, Jr., and his wife, Paige Barton Evans, applied to the Queen Anne's County Board of Appeals ("the Board") for a special events conditional use of their property as a wedding and party venue. The appellants, Shannon Salmon and eighteen other people who own property in the immediate vicinity of the Evanses' property, appeared before the Board as protestants.[1] Following an evidentiary hearing, the Board approved the Evanses' application, subject to eleven conditions. The appellants petitioned for judicial review in the Circuit Court for Queen Anne's County, without success.

In this Court, the appellants pose five questions, which we have combined and rephrased as one: Is the Board's decision legally correct and supported by substantial evidence in the record?[2] We answer that question in the affirmative.

[1] In addition to Ms. Salmon, the appellants are: Robert Byrne, Edward Nielson, Anne Nielson, Stephen Bisciotti, Renee Bisciotti, David Reese, Alden Reese, W. Calvin Gray, Jr., Constance Gray, Calvin Gray, III, Frances Williams, Scott Williams, Peter Tattle, Marlene Tattle, C. Christian Franck, Cynthia Franck, Joseph Maurelli, and Linda Maurelli.

[2] The questions as posed by the appellants are:

> 1. Is the Board of Appeals' interpretation that only "compensated" events are subject to County review, oversight and conditions of approval erroneous as a matter of law?
> 2. Was the Board of Appeals' finding that the proposed use at the subject property will not cause a substantial and undue adverse effect on traffic conditions erroneous, unexplained and unsupported by substantial evidence?
> 3. Are the Queen Anne's County Special Events noise regulations void for vagueness where they do not provide sufficient guidelines to permit them to be enforced?

(Continued…)

FACTS AND PROCEEDINGS

Section 18:1-95T of the Queen Anne's County Code ("QACC") creates a conditional use for special events.[3] Section 18:1-95T "establish[es] criteria and requirements for holding special events at bed-and-breakfasts, on farms, and on single-family residential properties in the County in the Agricultural (AG) and Countryside (CS) Zones." QACC section 18:1-95T (1). A "special event" is a

> [p]ersonal or business social engagement or activities conducted at a bed-and-breakfast, single-family residence, or on a farm where quests [sic] assemble for parties, wedding events, reunions, birthday celebrations, or similar uses for compensation, during which food and beverages may be served to guests and music and other entertainment is provided to quests [sic].

QACC § 18App-1. The criteria for the grant of a special events conditional use, which we shall discuss in greater detail, *infra*, include that the parcel of land be at least 20 acres in area; that the special event location be at least 250 feet from the nearest residence on an adjacent property; that outdoor amplified music for the special event not exceed 65

(…continued)

> 4. The Ordinance expressly limits Special Events to properties with direct access to a public or private road. Is the Board's interpretation of that limitation erroneous as a matter of law?
> 5. Did the Board of Appeals leave a critical issue of fact unresolved when it simply observed that the "Applicants are required to provide proof that [the Maryland Environmental Trust ("MET")] has reviewed and approved the use" without making MET approval a condition of the Board's approval?

[3] The special events conditional use was enacted by the Board of County Commissioners in March of 2013, by Ordinance No. 01-13.

decibels, as measured from the adjacent properties; and that there be "direct access to a public or private road." QACC § 18:1-95T(2).

By deed dated March 24, 2014, the Evanses purchased from Mr. Evans's parents five contiguous tracts of land north of Centreville, abutting the Corsica River. The five tracts comprise more than 100 acres and are subject to a Maryland Environmental Trust ("MET") easement requiring that they remain in common ownership. Tract 1 is the subject of the instant appeal ("the Property"). It is 21.536 acres located at 220 Possum Point Farm Lane and is improved with the Evanses' primary residence, an in-ground pool, two tenant houses, and several small outbuildings. The Property is in the Countryside ("CS") zoning district and has a Resource Conservation Area ("RCA") Critical Area Designation.

On June 20, 2014, the Evanses applied to the Board for a conditional use of the Property for special events. Because the Property is in an RCA and is less than 40 acres in area, the Evanses were limited to a maximum of 20 events per year.[4] QACC § 14:1-39[21][d]. They proposed a maximum of 160 guests per event. An attached site plan showed that the Property is bordered to the east by a parcel of more than 200 acres, owned by appellant W. Calvin Gray, Jr. ("the Gray Property"); to the north, beyond two tracts owned by the Evanses, by Emory Hill Farm, LLC, which is in turn owned by Roydon N. Powell, IV, and his sister, Jane Coppage ("the Powell Property"); to the west,

[4] An event may last a "maximum of two consecutive days consisting of 48 hours." QACC § 14:1-39[21][d].

beyond another tract owned by the Evanses, by a parcel owned by appellant Salmon ("the Salmon Property");[5] and to the south by the Corsica River.

The Evanses' house is situated in the southwest corner of the Property. The in-ground pool is immediately south of the house, in the front yard, facing the Corsica River. The Evanses proposed using a grassy area just north of the in-ground pool for wedding ceremonies and receptions. They did not propose any improvements to the Property. Instead, they planned to use temporary tents and portable bathrooms to accommodate the guests. The site plan depicted 54 parking spaces in an area of the Property northwest of the house, in between and around the existing tenant houses and other outbuildings. That area is covered in grass and gravel. The Evanses did not propose altering the surface.

On August 26, 2014, the Board held a hearing on the Evanses' application. Holly Tompkins, the Senior Planner for the County's Department of Planning and Zoning ("the Department"), presented the staff report on behalf of the Department. Ms. Tompkins gave the details of the application, explained the requirements of the ordinance, and stated that the application had been reviewed and approved by the County Health Department, the County Fire Marshall, the County Environmental Health Office, and the Department of Public Works. She testified that the Property was more than 20 acres; the events location was more than 250 feet from any adjacent residences and was outside the critical area buffer; the events and guest limits were within the numbers permitted by the

[5] Ms. Salmon's husband, Robert Byrne, M.D., also is an appellant.

ordinance and approved by the County agencies; and light pollution was not a concern given the natural vegetation screening on the Property. Ms. Tompkins pointed out topics the Department sought the Evanses to clarify during the hearing, such as how they intended to enforce the guest limits, the time limits, and the sound limits for events; what traffic controls they intended to put in place to deal with the narrow private road leading to the Property; whether the 54 proposed parking spaces were sufficient, given the 160 guest limit, and the specific locations for tents within the lawn area.[6]

In their case, Mr. and Mrs. Evans testified and called four witnesses. Six community members, including Mr. Powell, also testified in support of the application. In their case, the appellants called eight witnesses, including six individual appellants. Two other community members also testified in opposition to the application. Mrs. Evans testified in rebuttal and one of the appellants testified in surrebuttal. The evidence adduced at the hearing showed the following.

Possum Point Farm Lane ("the Farm Lane") is an approximately half-mile-long private, paved, single-lane right-of-way. It begins northeast of the Property, at Spaniard Neck Road, a two-way paved county road with a 40 mph speed limit. It runs in a southwesterly direction from Spaniard Neck Road. The first 990 feet cuts through a heavily wooded area that is bordered by drainage ditches on either side, filled with large

[6] Ms. Tompkins noted that the MET also would need to approve the use, but the Evanses had not provided the Department with an approval letter. As we shall discuss, *infra*, the appellants take the position that the Board should have conditioned approval of the application on MET approval. The Evanses take the position that MET approval, while necessary, was not part of the proceeding before the Board.

rocks. It tracks the eastern border of the Powell Property for 556 feet and continues along the eastern border of a tract owned by the Evanses for another 434 feet. The Evanses have an easement over the portion of the Farm Lane on the Powell Property. The easement agreement provides that the right-of-way is 20-feet wide, but that the paved portion of the right-of-way may not exceed 11 feet in width. Consistent with this agreement, the paved roadway on the Powell Property is ten and one-half feet wide at its widest point.[7] The roadway narrows to 10 feet 2 inches at a one-lane bridge that crosses a stream located approximately 375 feet southwest of Spaniard Neck Road. The paved bridge is bordered by 1.3-foot concrete shoulders on either side. There is no guardrail or other signage identifying the bridge. There is a 6-foot drop-off beyond the concrete on either side of the bridge.

Beyond the wooded portion of the Farm Lane, the road widens and is bordered by fields on either side as it runs along the eastern border of another tract owned by the Evanses. At the northern boundary of the Property, the Farm Lane intersects Fourever Lane. The Farm Lane continues beyond Fourever Lane for approximately 450 feet along the eastern border of the Property before terminating at a driveway leading north onto the Property. That driveway and connecting gravel roads serve the Evanses' house and other buildings on the Property.

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[7] The appellants' traffic engineer testified that the Farm Lane is 10 feet 3 inches wide at its widest point in the wooded section.

Fourever Lane is a ¾ mile long, 10-foot wide, paved, single lane private road. It runs in a northwesterly direction from the Farm Lane along the northern boundary of the Property and across another tract owned by the Evanses, before turning to the southwest. Fourever Lane serves four existing homes, including the Salmon Property. The other three homes are owned by individual appellants. The community served by Fourever Lane is designed to accommodate up to ten homes.

William Davis, Jr., the professional engineer who prepared the site plan for the Evanses, testified that the 990-foot wooded stretch of the Farm Lane will accommodate two-way travel if both cars slow down and use the shoulder areas to pass. Two photographs were introduced into evidence showing a pickup truck and an SUV passing on that section of the Farm Lane, with the passenger side tires of each vehicle being on the rocky shoulder area.

Mr. Davis did not conduct a traffic study because the "project [was anticipated to have a] low impact on the area, given the limited number of events at 20 per year[.]" He sought advice from a traffic consultant on the project, however. The traffic consultant advised that "trip generation" for wedding facilities ordinarily is calculated as "one trip per every two [attendees]." Thus, the proposed wedding events would be expected to generate 80 trips onto the Property and 80 trips off of the Property if the maximum number of guests were in attendance.

The intersection of the Farm Lane and Spaniard Neck Road is midway through a sharp turn in Spaniard Neck Road. Mr. Davis conducted an analysis of the site distances

on Spaniard Neck Road approaching the turn-off onto the Farm Lane and approaching Spaniard Neck Road from the Farm Lane. He determined that the site distances all exceed the required guidelines of the American Association of State Highway and Transportation Officials ("AASHTO").

Sgt. Earl Johnston, with the County Sheriff's Office, and Alan Wysong, a disc jockey, testified about a noise meter test they conducted at the Property on July 22, 2014, at the request of the Evanses. The Evanses planned to use Mr. Wysong as the DJ for all wedding events on the Property. He set up two elevated sub-woofers in the area of the Property where a tent would be located during a wedding, pointing in the direction of the Corsica River. Sgt. Johnston performed noise meter tests at three different locations along the shoreline on the Property: at the southwest corner; the southeast corner; and at the midpoint between those points, directly across from the wedding site location. Those tested revealed "A-weighted" decibel readings of 47 decibels (southwest corner), 50.7 decibels (southeast corner), and 60.5 decibels (midpoint). Sgt. Johnston explained that "A-weighted" noise meters measure ambient sound, whereas "C-weighted" noise meters measure "constant sound" at high and low pitches. The Sheriff's Office uses A-weighted noise meters because COMAR regulations implementing the Environmental Noise Act of 1974 require that that measure be used. He acknowledged that the County Code does not specify whether A-weighted or C-weighted measurements should be used. Mr. Wysong testified that during the noise meter test, he had played the music at a higher volume than he would play during a wedding.

Todd Mohn, the Director of the County Department of Public Works ("DPW"), testified about events at Conquest Beach, an outdoor venue on a peninsula northeast of the Property that was owned by Queen Anne's County ("the County"). He explained that the location averaged 38 events per year, including weddings, family reunions, and company events. At least 80 percent of the events took place on weekends. The access road for Conquest Beach is a 12-foot wide single lane unpaved road. He said the County had not received any complaints about "ingress or egress" regarding those events. Mr. Mohn also testified generally about trip generation calculations. He explained that a single-family home averages 5 round trips per day.

Mrs. Evans testified that she and her husband held their own wedding on the Property in 2013. They had 300 guests, an eight-piece band, a large tent that could accommodate 1,000 people, catering stations, portable restrooms, and a photo booth. They hired a valet service to park the guests' cars on the grass at the Property. There were no issues with ingress or egress on the Farm Lane because the guests all arrived and departed around the same time.

Mrs. Evans explained that she planned to use the same valet service for events on the Property. In addition, valets would be stationed at the intersection of the Farm Lane and Spaniard Neck Road and at the intersection of the Farm Lane and Fourever Lane to direct guests and to ensure that there was no two-way traffic on the wooded section of the Farm Lane. The Evanses intended to create a "pull off" on the Farm Lane within the wooded section, over land they own, to allow for passing.

Mrs. Evans met with the MET staff at the Property to discuss the application. They had no objections to the planned events, but did not want the Evanses to make changes to the Property, such as paving or adding septic tanks. The Evanses did not plan to do so. According to Mrs. Evans, the MET was awaiting action by the Board on the application before issuing its formal approval.

Mrs. Evans expected that wedding ceremonies would be scheduled during the spring, summer, and early fall months at 4 p.m., with receptions ending by 10 p.m., and all guests and staff off of the Property by 11 p.m. Amplified music would be turned off at 10 p.m. These times would be specified in the Evanses' contracts with their customers. Ordinarily, tents would be set up the day before an event and taken down the following day. Other clean up at the site would be completed by noon the day after the event.

Mrs. Evans testified that she anticipated that many guests would take buses or shuttles to the Property from local hotels, cutting down the number of cars traveling on the Farm Lane. She did not expect that there would be any traffic issues, particularly because none of the homeowners on Fourever Lane are Maryland residents and, as such, they are not "here that much." There was adequate parking on the Property to accommodate buses and shuttles as well as the other vehicles.

Finally, Mrs. Evans testified that she and her husband intend to host their own parties and fundraisers on the Property, but those events will not be for compensation and therefore will not count toward the 20-event maximum permitted under the County Code.

Mr. Evans testified that he had spent considerable time at the Property since 1992, when his parents bought it. He and his parents had hosted many events on the Property, including weddings of friends, a 40th anniversary party for his parents, pig roasts, and other parties. He had never experienced "any real traffic issues" on the Farm Lane. Tractors and combines routinely traverse the Farm Lane without difficulty. Two cars usually can "pass . . . relatively easily," but if not, one car simply "back[s] up a little bit."

The appellants called Robey Hurley, a former natural resources planner with the Chesapeake Bay Critical Area Commission, to testify about the history and purpose of the special events ordinance. He took the position that a scaled drawing the Evanses had submitted was not accurate, in that it used outdated terminology and did not properly show vegetative cover and was incomplete in other ways. In his opinion, the Critical Areas Commission should not have approved the application.

Neil Parrott, a professional engineer and professional traffic operations engineer, testified about a traffic report he had prepared for the appellants. He calculated the existing trips generated by the seven single-family detached houses currently served by the Farm Lane.[8] He determined that, on average, the houses generate four outbound and one inbound trips during the peak morning hour, and four inbound and three outbound trips during the peak evening hour. He calculated that, if the application were approved,

[8] We surmise that these houses are the four properties off of Fourever Lane; the Evanses' house; and the two tenant houses on the Property. There was no testimony at the hearing with respect to whether those houses were occupied. The Powell Property and the Gray Property are not served by the Farm Lane.

there would be an additional 61 cars entering the Farm Lane during the peak period at the start of the event and an additional 7 cars exiting in that time period. The reverse would be true at the peak period at the end of each event.

Mr. Parrott measured sight distances at the intersection of the Farm Lane and Spaniard Neck Road and the intersection of the Farm Lane and Fourever Lane. In his view, the sight distances were adequate at the latter intersection. At the Spaniard Neck Road intersection, however, the intersection sight distance looking south from the intersection was 441 feet, which was less than the 445 feet sight distance required under AASHTO guidelines for a road with a 40 mph speed limit. Mr. Parrott also measured the stopping sight distance for northbound vehicles on Spaniard Neck Road approaching the Farm Lane if cars were stopped there preparing to turn left onto the Farm Lane. He determined that the sight distance was "severely blocked by the horizontal curve, [allowing] only 244 feet of sight distance . . . for oncoming motorists." This was less than the 305 feet necessary under AASHTO standards. In Mr. Parrott's opinion, these inadequate sight distances were dangerous and could lead to accidents on Spaniard Neck Road, especially given that out-of-town guests would be unfamiliar with the area.

Mr. Parrott also expressed concern about the lane width along the wooded stretch of the Farm Lane. In his opinion, that width was inadequate to permit two cars to pass each other, especially at the bridge. He recommended guardrails and signs with reflectors to identify the bridge as a one-lane bridge. On cross-examination, he was asked if the proposed valet parking attendants would alleviate his concerns about two-

way traffic on the Farm Lane. He replied that because the speed limit on the Farm Lane is just 10 mph, a parking attendant at Spaniard Neck Lane will not be able to ensure that no cars will turn onto the lane before a vehicle traveled from Fourever Lane to Spaniard Neck Road. He acknowledged, however, that there is an area on the right side of the Farm Lane at its intersection with Spaniard Neck Road to "stack one or two vehicles" until vehicles leaving the Property emerge from the wooded section.

Appellants W. Calvin Gray Jr. and Calvin Gray, III, testified in opposition to the application. They both live on the Gray Property, which, as mentioned, is located to the immediate east of the Property. The Gray Property has its own private access road that connects to Spaniard Neck Road. Mr. Gray, Jr., voiced concern over amplified music at the events. Mr. Gray, III, expressed similar concerns about the noise levels and the number of events proposed in the application.

Appellants Salmon and Byrne, both of whom reside at the Salmon Property five months out of the year, in the spring and summer, also testified in opposition to the application. (They live in Florida the rest of the year.) They were concerned about two-way traffic on the Farm Lane, particularly if an ambulance or fire engine needs access to the Property or any of the houses off of Fourever Lane. Dr. Byrne testified that he encounters another vehicle on the wooded section of the Farm Lane at least "two or three times a week"; when this happens, one of the vehicles must back up.

Appellant Edward Nielson testified that he lives in a house directly across the Corsica River from the Property. He expressed concern about the noise from wedding

events traveling across the waterway and about the commercialization of the shoreline. Finally, appellant Aldan Reese, who lives with her husband off of Fourever Lane, testified in opposition to the application because of concerns about traffic on the Farm Lane; disruption to the wildlife; and disturbances of the peace, quiet, and privacy of the small rural community.

Mrs. Evans was recalled in rebuttal. She testified that she and her husband were willing to limit the use of amplified music to ten events per year, as she did not anticipate hosting more than ten weddings per year.

On January 16, 2016, the Board issued its final decision approving the application, subject to eleven conditions. It summarized the testimony and other evidence before it. It then turned to the general requirements for approval of any conditional use, as enumerated at QACC section 18:1-94. It found that the Evanses' proposed conditional use of the Property as a special events venue was "consistent with the general purpose, goals, objectives, and standards of the Comprehensive Plan," QACC § 18:1-94A, which include the goal of promoting the County as a wedding destination.

Pursuant to QACC section 18:1-94B, the Board found that the proposed use would "not result in a substantial or undue adverse effect 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"; and there was no "specific credible evidence" that the proposed use would negatively affect property values or the environment. The Board emphasized that the evidence before it

largely pertained to noise and traffic. With respect to noise, the Board was persuaded by the testimony of Sgt. Johnson that the sound levels, even when music is played at a higher volume than it ordinarily would be played at a wedding, fall below the maximum decibel levels under the State noise pollution COMAR regulations. On that basis, the Board found that the noise would not unduly disturb neighboring property owners. It conditioned approval of the application upon the Evanses' monitoring the noise levels during two of the first five events held (Condition 2). It further limited the Evanses to no more than twenty events per year, beginning no earlier than 10 a.m. and ending by 10 p.m., with "a further limitation that only 10 of those events have amplified sound or music." (Conditions 10 and 11.)

The Board found that the traffic problems identified by the appellants and their expert witness—such as the narrow width of the Farm Lane and the limited sight distances at the intersection with Spaniard Neck Road—were not "insurmountable." It emphasized that most of the vehicles for each special event would arrive at the same time and leave at the same time, "avoiding many two way traffic situations." The Board imposed three conditions to alleviate other traffic related concerns. First, it required the Evanses to send notice to neighboring property owners, including all the neighbors who use the Farm Lane, one week prior to any event (Condition 6). Second, it required the Evanses to provide "traffic control personnel" on the Farm Lane at Fourever Lane and at Spaniard Neck Road (Condition 8). Finally, it required that the one-lane bridge on the Farm Lane be "marked with object markers during events" (Condition 9). The Board

concluded that with these conditions in place, the proposed use would not "cause a substantial and undue adverse effect on traffic conditions."

Because the Evanses did not propose any improvements to the Property, the Board found that the proposed use would not impose an undue burden on utilities or other facilities. QACC § 18:1-94C.

The Board then turned to the criteria for approval of a special events conditional use set forth at QACC section 18:1-95T. It found that the Evanses' application satisfied all the criteria including, as relevant to the issues on appeal, that the "outdoor amplified music will not exceed 65 dB level as measured from adjacent properties or residences" and that the Property has "direct access to a private road."

The Board also was required to determine if the application satisfied criteria for approval of a special event conditional use within an RCA pursuant to QACC section 14:1-39.B(3)(e)[21]. It found that the proposed use was outside the critical area buffer; and that the Evanses had submitted a scaled drawing detailing the locations of tents and other temporary structures and "demonstrat[ing] how the special events use will minimize impacts to natural resources and protect the defined land uses in [the] RCA." The Board noted, moreover, that the Critical Area Commission had reviewed the application and had no comments and that the Evanses' application also was being reviewed by the MET subject to the land conservation easements. The application otherwise complied with lot coverage and clearing limits and as proposed all special events activities would occur in close proximity to the existing structures on the Property.

As noted, the Board imposed eleven conditions, six of which we already have mentioned. The other five conditions are: that the Evanses submit a "revised scaled drawing . . . showing all agreed revisions . . ." for approval by the Department (Condition 1); that there be no fireworks at any events (Condition 3); that portable restrooms be used for all events and be removed the day after the event "or as soon as the weather permits" (Condition 4); that tents be set up and removed within 1-2 days of each event unless weather conditions require early set up or removal (Condition 5); and that all events have paid security (Condition 7).

On February 13, 2015, the appellants petitioned for judicial review in the circuit court. On December 4, 2015, the circuit court entered a judgment upholding the Board's decision. This timely appeal followed.

STANDARD OF REVIEW

Our standard of review is well-established:

> When we review the decision of an administrative agency or tribunal, "we [assume] the same posture as the circuit court . . . and limit our review to the agency's decision." *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244, 935 A.2d 746 (2007) (internal citation omitted). The circuit court's decision acts as a lens for review of the agency's decision, or in other words, "we look not at the circuit court decision but through it." *Emps. Ret. Sys. of Balt. Cnty. v. Brown*, 186 Md. App. 293, 310, 973 A.2d 879 (2009), *cert. denied*, 410 Md. 560, 979 A.2d 708 (2009) (emphasis in original) (internal citations omitted).
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> We "review the agency's decision in the light most favorable to the agency" because it is "prima facie correct" and entitled to a "presumption of validity." *Anderson v. Dep't of Pub. Safety & Corr. Servs.*, 330 Md. 187, 213, 623 A.2d 198 (1993) (internal citation omitted).
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> The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made "in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley*

> *Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 274, 47 A.3d 1087 (2012) (internal citation omitted). With regard to the agency's factual findings, we do not disturb the agency's decision if those findings are supported by substantial evidence. *See id*. (internal citations omitted). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749 (1998) (internal citations omitted) (internal quotation marks omitted). We are not bound, however, to affirm those agency decisions based upon errors of law and may reverse administrative decisions containing such errors. *Id*.

Sugarloaf Citizens Ass'n v. Frederick Cty. Bd. of Appeals, 227 Md. App. 536, 546 (2016). Thus, we review the decision of the Board to grant the Evanses' application for a special events conditional use of the Property, not the decision of the circuit court.

DISCUSSION

The appellants contend the Board erred by approving the Evanses' application for a special events conditional use for five reasons. First, the Board's interpretation of the definition of "special events" as only including events for compensation was legally incorrect. Second, the Board also committed legal error by concluding that the requirement that the site of the proposed use have "direct access to a public or private road" will be satisfied even if the private road does not meet certain County roads standards. Third, the Board's finding that the proposed use will not cause a substantial and undue adverse impact on traffic on the Farm Lane is not supported by substantial evidence in the record. Fourth, the noise regulations under QACC section 18:1-95T are unconstitutionally vague, rendering the special events conditional use ordinance unenforceable. Fifth, and finally, the Board "left a critical issue of fact unresolved" by

requiring that the Evanses receive MET approval for the proposed use but not conditioning the grant of their application on that approval.

The Evanses respond that the Board did not commit legal error by determining that the special events ordinance only regulates compensated events or by determining that the Farm Lane is a "private road" within the meaning of the Code. They maintain that the Board's finding that the grant of their application will not have a substantial and undue adverse effect on traffic was supported by substantial evidence in the record; that the noise limitations are not unconstitutionally vague; and that the Board was not empowered to condition approval of the application on MET approval, and thus did not err by refusing to do so.

a.

As noted above, as relevant here, the County Code defines a "special event," as a "[p]ersonal or business social engagement or activit[y] conducted at . . . a single-family residence, or on a farm where quests [sic] assemble for parties, wedding events, reunions, birthday celebrations, or similar uses ***for compensation*** . . . ." QACC § 18App-1 (emphasis added). Mrs. Evans testified that she and her husband were applying for the conditional use so the Property could be used for weddings and other social events for compensation. Quite apart from that, they also planned to hold family and "non-profit events" on the Property, not for compensation. Mrs. Evens understood that the latter events are not covered by the ordinance and that she may "have as many of those as I want, according to the ordinance."

During Mr. Evans's testimony, a Board member asked the Evanses' counsel whether a private, uncompensated bull roast for 200 people or a retirement party for a family member would "count towards the 20 events?" Counsel replied that he read the ordinance to mean that a conditional use approval only is required for compensated events. At that point, the Board Chairman turned to Steve Cohoon, the Director of the Department of Planning and Zoning, and asked whether the ordinance covers non-compensated events. Mr. Cohoon explained that it does not, stating:

> The purpose of this ordinance was, honestly, to address an issue we had on Kent Island where a residence was created as a wedding venue. This ordinance was not to preclude the use of people's property as they would on a regular basis for, maybe, political fundraisers where they would have a large event and have people there and it was not to preclude family weddings or weddings of friends that may occur on a [sic] basis. What this ordinance—this ordinance was created to put specific standards and regulations in place when somebody is trying to rent a wedding venue. That's what it was, so if its [sic] a rental situation, it would count towards the 20 events. If its [sic] donated to a charity for an event, as anybody could do with their property, it would not be. That was the intent of the creation of this ordinance.

The appellants argue that the Board's interpretation of the ordinance is legally incorrect and, because the Board did not consider the unlimited, uncompensated events that could be held on the Property in assessing the impact of the proposed use, its decision must be reversed. The Evanses respond that uncompensated events are "inherent to home ownership" and are not subject to the special events conditional use ordinance. We agree with the Evanses.

The definition of "special events" expressly states that such events are "for compensation." Thus, the plain language of the ordinance makes clear that a conditional

use approval only must be obtained when a property owner intends to hold special events for compensation, *i.e.*, to make a commercial use of the Property. In addition, Mr. Cahoon explained to the Board that the purpose of the ordinance is to regulate the use for compensation of property for weddings and other events; and Mr. Hurley, one of the appellants' experts, stated so as well. In relating the history of the ordinance, with which he was familiar due to the planning positions he held at the time, Mr. Hurley explained that the concern was focused on "commercial uses in the Resource Conservation Area." He noted that "part of the intent was to allow these special events so that rural land owners would have another source of revenue."

The language of the ordinance and the agency's interpretation of the ordinance it administers, which is entitled to deference, *see Md. Aviation Admin. v. Noland,* 386 Md. 556, 571 (2005) ("an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts"), support the Board's legal conclusion that the ordinance only applies to events held for compensation. Moreover, the appellants' argument that the ordinance must have been intended to regulate special events "for compensation" *and* private uncompensated events (birthday parties, cookouts, family weddings, etc.) that are held every day at homes throughout the County simply makes no sense. That these uses are not listed in the Code as "permitted uses" in the CS Zone (or in any other zone) does not render them prohibited uses. As the Evanses point out, the owner of a residence does not need government permission to engage in ordinary and incidental (or ancillary) uses to

the principal use as a residence—such as for a birthday party or a family wedding. Generally applicable regulations, such as noise limits, apply but special land use permission need not be granted. The special events conditional use approval only applies to commercial use of property. The Board did not err by assessing the Evanses' application based upon their proposed use of the Property for compensation.

b.

The Board also did not err in concluding that the Property meets the requirement of QACC § 18:1-T(2)(i), that it have "direct access to a public or private road." Section 18App-1 of the Ordinance defines a "private road" as "[A]n improved road or right of way held and/or maintained in private ownership and which is not a component of the County, state, or federal road systems."

The appellants argue that QACC § 18:1-T(2)(i) must be read to incorporate standards for private roads constructed after 1987 and serving seven or more lots. Specifically, QACC section 18:1-89 requires that a private road constructed after 1987 and serving more than 7 subdivided lots be "constructed to public roads standards," *i.e.*, a minimum right-of-way of 40 feet and a 16-foot paved surface.

This argument lacks merit. The Farm Lane was constructed *before* 1987, and it *does not* serve a subdivision. Accordingly, QACC section 18:1-89 does not apply. Had the County intended to incorporate specific roads standards into the special events ordinance, it could have and would have done so. The evidence established that the Farm Lane is a private road, under Section 18App-1, that is owned by the Powells and the

Evanses and provides access to the Property from Spaniard Neck Road. The Board did not err by concluding that this private access road satisfied QACC § 18:1-T(2)(i).

c.

The appellants contend the "only 'evidence' on traffic issues presented by [the Evanses] was argument by their attorney and testimony of their project engineer," all of which was insufficient to support the Board's findings that the proposed use of the Property would not have a deleterious effect on traffic on the Farm Lane and at that road's intersection with Spaniard Neck Road. They maintain that Mr. Parrott's testimony about the dangerous intersection and one-lane bridge and other traffic issues likely to arise if the application were granted was unrebutted. Therefore, the Board's findings about traffic were conclusory and unsupported by substantial evidence in the record.

The Evanses respond that there was substantial evidence in the record supporting the Board's findings that the Farm Lane, and particularly its intersection with Spaniard Neck Road, could safely handle the additional traffic load caused by the proposed use and that the use of strategically located traffic attendants and markers on the one lane bridge would alleviate the concerns about the wooded section of the Farm Lane.

The evidence about traffic was not unrebutted. There was conflicting evidence presented about the sight distances at the intersection of Spaniard Neck Road and the Farm Lane. The Evanses, through Mr. Davis, presented evidence that the sight distances, although reduced as a result of the curve, were nevertheless sufficient under AASHTO standards. The appellants' witness, Mr. Parrott, reached the opposite conclusion. The

Board reviewed the testimony about traffic in its opinion and was free to find more persuasive the Evanses' evidence on this point.

The Board noted that there was conflicting evidence as to whether two vehicles could pass at the narrowest points on the Farm Lane. To the extent that a vehicle might be forced to back up, however, it found that the proposed use was unlikely to increase these incidences. This finding was supported by substantial evidence. The residences served by the Farm Lane generate just 5 morning trips and 7 evening trips each day. Ms. Evans testified that she never had been forced to back up on the Farm Lane to pass an oncoming vehicle. The Board emphasized that almost all of the event traffic would be "arriving and leaving around the same time." It noted that the Evanses had agreed to create a pull-off within the wooded section of the Farm Lane on their Property. The Board was persuaded that the pull-off, coupled with the conditions that traffic attendants be posted at Spaniard Neck Road and Fourever Lane, that neighbors be given advance notice of all of the events, and that object markers be placed at the bridge prior to each event, were sufficient to prevent the increase in traffic associated with events from having a substantial and undue adverse influence on traffic conditions. This finding was supported by substantial evidence in the record.

d.

QACC § 18:1-95T(2)(c) requires that any "[o]utdoor amplified music" at a special event "shall not exceed 65 dB (decibel) level as measured from adjacent properties or residences." As discussed, the Evanses presented evidence that music played at a louder

volume than would be used at an event resulted in A-weighted noise meter readings below that level.

The appellants contend that because the special events ordinance does not specify whether the noise limit is to be measured by use of an A-weighted (ambient) or C-weighted (constant) sound test, it is unconstitutional because it is void for vagueness. This argument lacks merit.

A statute is void for vagueness when it does not give fair notice of what is prohibited, contrary to basic principles of due process, or does not provide fixed standards so as to be capable of enforcement that is not arbitrary, selective, or discriminatory. *Blaker v. State Bd. of Chiropractic Exam'rs.*, 123 Md. App. 243, 255–56 (1998).

The State enacted the Environmental Noise Act of 1974, which is codified at Title 3 of the Environment Article. Pursuant to that Act, the Maryland Department of the Environment ("DOE") has adopted noise standards set forth in COMAR. These regulations require noise limits to be measured by A-weighted tests. *See* COMAR 26.02.03.02A (establishing A-weighted noise standards). Under Md. Code (1982, 2013 Repl. Vol., 2014 Supp.), section 3-401(c)(1) & (2) of the Environment Article, political subdivisions such as the County may adopt noise control rules and regulations that are "consistent with the environmental noise standards adopted by the [DOE]." Queen Anne's County did not do so. Therefore, the State regulations control. Sgt. Johnson

testified at the hearing before the Board that he had been trained to use A-weighted measurements based upon the COMAR regulations.

The special events conditional use ordinance is not vague as the means to measure noise limits is easily ascertained by reference to the governing State standards.

e.

Finally, the appellants maintain that the Board should have conditioned approval of the Evanses' special events conditional use application on proof that the MET had approved the proposed use. The conservation easement over the Property was entered into between Mr. Evans's parents, the MET, and the Eastern Shore Land Conservancy, Inc. ("ESLC"), in 1999. By its terms, the easement prohibited non-agricultural commercial activity on the Property (and the Evanses' other four tracts) unless the "activities" could be "conducted in existing structures without alteration of the external appearance therof" and so long as the activity was "*de minimis*."

We agree with the Evanses that the Board was not empowered to interpret or enforce the MET easement. The MET easement is a private agreement entered into between the Evanses' predecessors in interest, the MET, and the ESLC. The Board was required to review the Evanses' application consistence with the requirements for conditional uses and uses in an RCA, generally, and for special event conditional uses, specifically. It is between the Evanses, the MET, and the ESLC to address whether the Evanses' approved conditional use complies with the conservation easement and State regulations pertaining to it.

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