Circuit Court for Baltimore County
Case No. C-03-CV-20-003922

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2025

September Term, 2021

DONNA CARTER, ET AL.

v.

NEPALI AMERICAN CULTURAL CENTER OF BALTIMORE

Kehoe,
Zic,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Wright, J.

Filed: January 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a decision by the Circuit Court for Baltimore County affirming a decision of the Baltimore County Board of Appeals that granted a special exception use petition with conditions. The case began when Nepali American Cultural Center ("NACC"), appellee, filed a petition for a special exception pursuant to the Baltimore County Zoning Regulations for the purpose of allowing a church or other building for religious worship on property located at 12331 Harford Road in Baltimore County ("the Property"). Morgan Miner, David Poehler, DeWitt Clark, Patricia Garner, Bruce Morgan, Doug Behr, David Hartman, Joyce Mason, Donna Carter, the Greater Kingsville Civic Association, and the Gunpowder Falls Watershed Preservation Association, opposed the grant of the special exception. All of those individuals and entities, with the exception of DeWitt Clark, are appellants herein.[1]

After a multi-day public hearing on the petition for a special exception, an Administrative Law Judge ("ALJ") in the Baltimore County Office of Administrative Hearings granted the special exception subject to seven conditions. That decision was appealed to the Baltimore County Board of Appeals ("the Board").[2] A hearing was held over the course of 11 days between July 2018 and February 2019. On January 9, 2020, the

[1] DeWitt Clark was included as a party in the petition for judicial review in the circuit court but was not identified as an appellant on the notice of appeal to this Court.

[2] The Board joined the special exception appeal with another case that involved communications with the ALJ wherein the petitioner sought to clarify whether it could hold a fundraiser on the Property. The Board dismissed that case as moot. Appellants do not present any argument here challenging that decision.

Board issued a 62-page Opinion and Order by which it granted the petition for special exception to allow a temple for religious worship on the Property subject to 13 conditions.[3]

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[3] The Board granted the petition for special exception subject to the following conditions:

> 1. Petitioner shall confine its hours of operation for non-religious events from 8:00 a.m. to 9:00 p.m.
> 2. The exit from the Property shall be right-turn only. Petitioner shall post and maintain proper signage indicating the exit is right-turn only at all times.
> 3. Prior to the issuance of any permits, Petitioner shall obtain from State Highway Administration (SHA) an access permit authorizing ingress and egress from the Property. Petitioner shall comply with SHA's access permit for the proposed entrance and exit. Petitioner also shall comply with the SHA requirements and recommendations. Petitioner shall also maintain the vegetation around the entrance and exit in strict conformity with required sight and stopping distances.
> 4. Petitioner shall submit all landscaping plans and all lighting plans to Baltimore County for approval.
> 5. Any tree(s) required to be removed for any improvement or construction of an improvement, Petitioner shall replace the removed tree with per-diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. The replacement trees shall be planted in an area onsite that will increase the buffer density along the Property's border with the Poehler property in order to help screen the Property from the Poehler house and its curtilage.
> 6. Petitioner shall add landscaping to serve as an additional light and sound buffer between Petitioner's property and the Poehler property to increase the buffer density along the Property's border with the Poehler property in order to help screen the Property from the Poehler house and its curtilage. Petitioner shall add additional landscaping particularly at the Harford Road side (western side) of the multipurpose court to serve as an additional light and sound buffer between Petitioner's property and the Clark property and/or others in that area. All landscaping for these purposes is required to be approved by Baltimore County.
> 7. Any and all plantings, whether part of Condition No. 5, No. 6, or otherwise, shall consist of native species only, subject to approval by Baltimore County's landscape architect, with the sole exception for any plantings required for onsite for [sic] religious use.

(continued…)

Appellants filed a timely motion for reconsideration, which the Board denied. Thereafter, appellants filed a timely petition for judicial review in the Circuit Court for Baltimore County. In a written Memorandum Opinion dated January 28, 2022, the circuit court found that there was substantial evidence in the record as a whole to support the agency's findings and conclusions and that the Board did not commit error in granting the petition for special exception use. This timely appeal followed.

ISSUES PRESENTED

Appellants present the following eight issues for our consideration:

> I. Whether the Board erred when it determined that the proposed use will not be detrimental to the health, safety or general welfare of the locality involved;
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> II. Whether the Board erred when it determined that the proposed use will not tend to create congestion in roads, streets or alleys therein;

> 8. Prior to the issuance of occupancy permits, Petitioner must demonstrate to DEPS that the well and septic systems will be sufficient to serve the proposed use. Prior to the issuance of permits, Petitioner shall also comply with any and all ZAC comments.
> 9. The outdoor amplification of sound shall not be permitted.
> 10. Petitioner shall obtain any and all necessary permits to have the pool and pool house demolished and removed prior to any demolition or removal. Any and all demolition or activity related to the removal of the pool and pool house shall only take place between 8:00 am and dusk.
> 11. Petitioner shall not organize, host, invite, conduct, or participate in any athletic program, league, or tournament on site. This condition does not preclude Petitioner from using the multipurpose court for athletic games or contests, only athletic programs, leagues, and/or tournaments.
> 12. Petitioner shall not use the Property as a community center, unless such community center-type activity is in furtherance of the exercise of religion and/or operation of the temple. Cultural activities and/or other activities with a non-religious purpose shall take place offsite.
> 13. Petitioner otherwise shall comply with the Baltimore County Code and Zoning Regulations at all times.

III. Whether the Board erred when it determined that the proposed use will not create a potential hazard from fire, panic or other danger;

IV. Whether the Board erred when it determined that the proposed use will not tend to overcrowd land and cause undue concentration of population;

V. Whether the Board erred when it determined that the proposed use will not be inconsistent with the purposes of the property's zoning classification nor in any way inconsistent with the spirt [sic] and intent of these Zoning Regulations;

VI. Whether the Board erred when it determined that the proposed use will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in R.C.2, R.C.4, R.C.5 or R.C.7 Zone;

VII. Whether the Board erred when it failed to find that appellee did not prove that the proposed use will not be detrimental to the primary agricultural use in its vicinity; and,

VIII. Whether the Board erred when it failed to examine the veracity of the testimony of the appellee with comparison to the evidence provided by appellants.

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Kris Ghimire, a founder and member of the Board of Trustees of NACC, testified that NACC's mission was to establish a Hindu temple in Baltimore County. NACC acquired the Property with the intent of using it for that purpose. The Property consists of approximately 30.8 acres in a Resource Conservation-2 zone ("RC-2) located outside Baltimore County's Urban Rural Demarcation Line. It includes a large abandoned dwelling, sometimes referred to in the record as a mansion, and other structures including a caretaker's house, a pool, a pool house, a barn, and a tennis court. NACC planned to renovate the large dwelling building to be a worship space and the caretaker's house to be

used by a priest who would be the only person who might live on the Property. The second floor of the large dwelling building would be used for office space. NACC planned to add a parking lot to provide 38 parking spaces and to retain the existing tennis court to be used as a multi-purpose court for recreational purposes. At the time of the hearing before the Board, the pool was not in usable condition. Mr. Ghimire testified both that NACC would do what was necessary to make the pool safe and that "[t]he pool will not be there." The barn, which was listed as a historical structure, would be preserved. No new buildings were proposed. There were no public water or sewer utilities at the property, but the existing well and septic system would be replaced or upgraded as needed pursuant to Baltimore County's development review and permitting process. NACC sought a special exception pursuant to § 1A01.2C.6 of the Baltimore County Zoning Regulations ("BCZR")[4] to use the Property for the purpose of religious worship.

Mr. Ghimire explained that there was no specified day of the week when individuals would gather to worship at the property. Rather, congregants would utilize the temple to pray on their own schedule. He anticipated that on a typical day, ten to twenty people would worship at the temple, but not all at the same time. The temple would not include permanent pews or seating, but only temporary seating such as folding chairs to be used when needed. Religious celebrations would be held at the Property throughout the year

[4] BCZR § 1A01.2C.6 provided that "[c]hurches or other buildings for religious worship" "may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity[.]" Certain portions of BCZR § 1A01.2C have been renumbered. The subject provision is currently codified at BCZR § 1A01.2C.7.

including three to four annual festivals. Due to religious prohibitions, neither alcohol nor meat would be permitted on the Property. Mr. Ghimire explained that receptions or celebrations following a religious ceremony would occur off-site. No commercial kitchen, day school, or childcare would be provided on the Property and the temple would not be rented out to third-parties for non-temple activities.

In support of its case, NACC presented testimony from three expert witnesses: John Motsco, a professional engineer with Little and Associates, who prepared a site plan and testified as an expert in Baltimore County zoning regulations; Joseph Caloggero, a traffic engineer and vice president of The Traffic Group, who testified as an expert in traffic issues relating to the project; and, James Powell, a consultant and licensed environmental health specialist who testified as an expert on the feasibility of a septic system to serve the Property.

NACC presented testimony from several lay witnesses in addition to Mr. Ghimire, including: Ida Twining, a resident who lived about a mile and a half south of the Property; Daniel Montague, the pastor at Fork United Methodist and Waugh United Methodist churches, which were each located approximately two miles from the Property; Binod Upreti, a member of NACC; and, Marcia Barton, who lived about eight to ten miles from the Property. All of those witnesses testified in favor of the proposed use of the Property as a temple.

Appellants presented testimony from one expert witness, Christopher Jakubiak, who was accepted as an expert in land planning and zoning. They also called Mr. Ghimire as an adverse witness. In addition, appellants offered testimony from several area residents.

Mary and DeWitt Clark, who lived across the street from the Property, testified in opposition to the proposed special exception. DeWitt Clark also appeared on behalf of another protestant, the Gunpowder Falls Watershed Preservation Association. Joyce Mason, who lived about a mile away from the property, David Poehler, who lived next to the Property, and Bruce Morgan, who lived in Kingsville, testified about the negative impacts of the proposed use of the Property. Because the testimony offered over the 11 days of the hearing in this case was extensive, and as explained, *infra,* our review is limited, we shall not set forth in detail the evidence presented at the hearing before the Board. Instead, we shall discuss specific testimony and other evidence as necessary in addressing the questions presented and determining whether there was substantial evidence to support the Board's findings and conclusions.

STANDARD OF REVIEW

The factors to be considered with respect to a request for a special exception are set forth in BCZR § 502.1.[5] In *Schultz v. Pritts*, 291 Md. 1 (1981), the Court of Appeals[6] established the appropriate standard for approval of a special exception use in the absence of a different legislative standard. The Court explained that a special exception is "a part of [a] comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid." *Id.* at 11. The job of a local zoning board is,

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[5] BCZR § 502.1 provides:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
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> A. Be detrimental to the health, safety or general welfare of the locality involved;
> B. Tend to create congestion in roads, streets or alleys therein;
> C. Create a potential hazard from fire, panic or other danger;
> D. Tend to overcrowd land and cause undue concentration of population;
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
> F. Interfere with adequate light and air;
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C.3, R.C.6, and R.C.8 Zones.

[6] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

therefore, "to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." *Id.* (emphasis omitted). Acknowledging the presumption that a special exception use is compatible with the general welfare in the zone at issue, the Court held that the appropriate standard for reviewing an application for such an exception is "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 22-23.

When reviewing an agency decision, including a decision to approve a special exception use of land, we look through the circuit court's decision and evaluate the agency's decision. *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 532 (2017); *Bayly Crossing, LLC v. Consumer Prot. Div.*, 417 Md. 128, 136 (2010); *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018). Our role "is narrow; it is limited [usually] to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determin[ing] if the administrative decision is premised upon an erroneous conclusion of law." *Montgomery Cnty. v. Butler*, 417 Md. 271, 283 (2010) (quotation marks and citation omitted) (alterations in original); *see also Montgomery v. E. Corr. Inst.*, 377 Md. 615, 625 (2003); *United Parcel Serv., Inc. v. People's Couns. for Baltimore Cnty.*, 336 Md. 569, 577 (1994). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Maryland State Police v. Warwick Supply &*

Equipment Co., Inc., 330 Md. 474, 494 (1993) (quotation marks and citation omitted). The substantial evidence test "requires us to affirm an agency decision, if, after reviewing the evidence in a light most favorable to the agency, we find 'a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Montgomery Cnty., v. Rotwein*, 169 Md. App. 716, 727 (2006) (citations omitted). In other words, the relevant inquiry is whether the issue decided by the administrative body is "fairly debatable." *Mills v. Godlove*, 200 Md. App. 213, 223 (2011) (quotation marks and citation omitted). When applying this test, we do "not engage in an independent analysis of the evidence." *Butler*, 417 Md. at 284 (quotation marks and citations omitted). We "proceed from the premise that the agency's decision is *prima facie* correct and presumed valid . . . if reached in accordance with the applicable and valid regulatory scheme." *Id.* We also accord "a degree of deference" to an "administrative agency's interpretation of a statute that the agency administers[.]" *Brandywine Senior Living*, 237 Md. App. at 211 (quotation marks and citation omitted).

DISCUSSION

Appellants maintain that the evidence they presented established that the proposed special exception would "violate a number of conditions set forth in BCZR § 502.1[,]" that NACC's case "was deficient and flawed[,]" and that NACC failed to "demonstrate that the impact of the operation of the proposed temple is no different at the present location than it would be experienced in other parts of the zone." Appellants point to conflicting testimony on the part of NACC's lay witnesses and argue that NACC's "site planner ultimately admitted the plan presented was at best a concept and their traffic expert could

not even accept he was wrong in his knowledge about the speed limit on Harford Road." In addition, appellants take issue with the testimony of NACC's expert witnesses, stating:

> Not one of [NACC's] expert witnesses visited the subject property to observe how it was actually used. Mr. Motsco admitted he knew of large events but refrained from visiting. Yet he asserted he knew enough to testify that his parking plan was sufficient and that the "vegetative buffer" provided adequate sound mitigation. For both Mr. Motsco and Mr. Caloggero, who are Professional Engineers, to not determine how the property was actually used in preparation of their testimony rises to nothing short of "willful ignorance." Both used the defense that they relied on the representations of [NACC] without an effort at independent verification.

It is worth repeating that our role is limited to determining whether there was substantial evidence in the record as a whole to support the agency's findings and conclusions. We do not engage in an independent analysis of the evidence and our job is not to conduct a rehearing or to re-weigh the evidence and determine the credibility of the various witnesses who testified before the Board. *Butler*, 417 Md. at 284 (quoting *Armstrong v. Mayor of Baltimore*, 410 Md. 426, 444 (2009)). With the appropriate standard of review in mind, we turn to the specific issues presented by appellants.

I. BCZR § 502.1A – Detriment to Health, Safety or General Welfare of Locality

Appellants' first argument is that "[t]he Board of Appeals erred in failing to find that [NACC] did not prove 'NO IMPACT' to BCZR § 502.1A: Be detrimental to the health, safety or general welfare of the locality involved." Specifically, appellants challenge the evidence pertaining to noise and sound emanating from the use of the Property as a temple, light intrusion from headlights into a home directly across from the entrance to the

Property, road and parking conditions,[7] the location of the entrance to the Property, water runoff, the lack of "adequate sanitary facilities[,]" and fire hazards. In support of their contentions, appellants take issue with the testimony of NACC's expert witnesses including, but not limited to, the methodology used by Mr. Caloggero and the weight given to Mr. Motsco's testimony, much of which they assert was uncorroborated. Again, the issue for us to resolve is whether there was substantial evidence in the record as a whole to support the agency's conclusion that the use of the Property as a temple would not be detrimental to the health, safety or general welfare of the locality involved. As set forth below, we find that there was substantial evidence to support the Board's conclusion.

1. Noise

The Board interpreted "noise as being included within the 'health, safety or general welfare,' factor." Appellants' evidence with respect to noise, or the preservation of "solitude" as they sometimes referred to it, was presented primarily through the testimony of DeWitt and Mary Clark, Mr. Poehler, Ms. Mason, and affidavits from other individuals in the neighboring area. That evidence included audio and video recordings made by DeWitt Clark. The testimony and evidence referenced specific events that had been held at the Property that involved amplified music, other atypical noises, and recreational noise from volleyball games.

[7] We shall discuss arguments pertaining to road and parking conditions and the entrance to the Property when we discuss Issue II, which involves issues of the tendency to create congestion in roads, streets or alleys. Potential fire hazards will be addressed in our discussion of Issue III and sanitary/septic facilities will be addressed in our discussion of Issue IV.

The Board determined that the noise associated with the operation of the proposed temple "is no different at the present location than it would be experienced in other parts of the zone." In reaching that conclusion, the Board noted that there was a substantial tree and vegetative buffer on the Property, although it was "somewhat less" for the Poehlers than for the Clarks, that activities at the Property were "largely confined to the main building area," which was a distance from neighboring residences, and that there was no evidence to establish "any exacerbation or amplification caused by the Property's elevation compared to the surrounding properties." The Board did not credit audio evidence presented by appellants because it failed to show "overly invasive noise emanating from the Property, which sits higher than the Clarks' property." The Board also noted that the potential for noise to emanate from the Property "exists today without the granting of the" petition for special exception.

The Board's determination was supported by the testimony of Mr. Ghimire, who described the anticipated use of the Property, and NACC's expert, Mr. Motsco, who opined that the proposed use of the Property would not be detrimental to the health, safety, and general welfare of the locale. Mr. Motsco's opinion was based on the size of the Property, the minimal scope of work to be done at the Property, and the low intensity use of the Property as a Hindu temple. With respect to noise, Mr. Motsco noted the general area in which the Property is located and its rural nature. He testified that the Property had a substantial buffer of trees and vegetation. There were woods along Harford Road that, at its narrowest point, were approximately "60 or 50 feet," and on the "westerly side of the property," there was a "patch of thick trees . . . approximately 100-feet wide." The site

plan also showed other wooded areas on portions of the Property. Mr. Motsco stated that although the dwelling that would be converted to a temple is visible at some spots along Harford Road, it is generally screened by trees and "extreme topography" along Harford Road. According to Mr. Motsco, NACC did not anticipate clearing any of the wooded areas on the Property.

The Board recognized "that larger events could generally be more intrusive" with respect to noise. To address that issue, the Board imposed several conditions including "that additional landscaping be planted at the border with the Poehler house and its curtilage, as well as on the west side of the multi-purpose court to increase the buffer density in those areas." In granting the petition for a special exception, the Board also imposed conditions 5 and 6, *supra*, which specifically addressed screening and sound buffers. In addition, the Board ordered that there "be no outdoor amplification of sound" and limited the hours for non-religious events to between 8 a.m. and 9 p.m. Conditions 11 and 12 prohibited NACC from using the Property for athletic programs, leagues, tournaments, and/or as a community center for activities with a non-religious purpose. Lastly, condition 13 required compliance with the Baltimore County Code and Zoning Regulations.

We do not engage in an independent analysis of the evidence. *Butler*, 417 Md. at 284. Our review of the record reveals that the Board's decision with respect to noise was supported by substantial evidence, specifically the testimony of Mr. Ghimire and Mr. Motsco. Moreover, the Board addressed its finding "that larger events could generally be more intrusive" by imposing several conditions on the grant of the special exception.

2. Light Intrusion

Appellants assert that the use of the Property as a Hindu temple will have a direct impact upon the well-being of Ms. Foxworthy, the owner of the property directly across from the entrance to the Property, "due to light intrusion from headlights and noise." They also complain that Mr. Caloggero, NACC's traffic expert, "[f]ailed to analyze the impact of headlight intrusion onto the Poehler . . . and Foxworthy . . . properties." The Board acknowledged that headlights from vehicles turning left when exiting the Property would sweep across Bonaparte Avenue. The Board also acknowledged that Mr. Calogerro did not conduct a study to analyze that issue. The Board recognized, however, that the exact locations for the entrance and exit to the Property had not been determined and that the State Highway Administration would "be providing additional input at the time of the access permit." For those reasons, the Board imposed condition 2, which required all traffic exiting the Property to turn right. The Board explained that imposition of that condition addressed several issues:

> (1) avoiding headlight intrusion upon the Bonaparte Avenue properties; (2) prevent blinding or distracting drivers driving north on Harford Road when coming around the blind curve; and (3) as discussed in greater detail below, improving safety and helping to prevent traffic congestion on Harford Road at or near the Property. Doing so will not cause an undue hardship on the visitors to the Property as the Mount Vista/Glen Arm/Harford Road roundabout is close to the Property.

Appellants do not present any challenge to the conditions imposed by the Board. As the Board agreed that there was an issue with headlights sweeping across Bonaparte Avenue and imposed a condition to address that issue, reversal is not warranted.

3. Water Runoff

In its statement of facts, appellants asserted that their witness, DeWitt Clark, testified that the current Harford Road runoff floods onto the yard of Ms. Foxworthy, who lives across Harford Road from the Property. Appellants contend that Mr. Motsco "[f]ailed to address increased sheet flow with evidence or data onto the Foxworthy Property (E820, *Appellants Exhibit 65)* upon which the SHA has installed a reverse osmosis treatment system to mitigate water quality problems arising from the flow of contaminated water from ACROSS Harford Road." To the extent that this adequately sets forth an issue for our consideration, our review of the record reveals that appellants failed to establish that conditions on the Property were causing runoff to drain onto Ms. Foxworthy's property. Nor did they establish that the proposed use of the Property would exacerbate any existing drainage issue or cause additional runoff.

Nevertheless, Mr. Motsco testified that runoff from the house would flow towards Harford Road, that Harford Road "actually sloped away from Ms. Foxworthy's property and back toward" the Property, and that there was a culvert and storm drain inlet on the Property-side of Harford Road. From that evidence, the Board inferred that runoff from the Property to Harford Road would be "more likely to drain to and run along the culvert on the south side of Harford Road (the Property side) rather than travel over Harford Road to the Foxworthy property." It is also worth noting that the Board recognized that NACC would be required to submit a storm water management plan and would "be required to comply with the applicable regulations and requirements at all times like any other property located in the County." Thus, if there was "a subsequent determination that some

improvement from the Property may cause or exacerbate the runoff issue, mitigating measures will be required by the County." The Board's conclusion was based on substantial evidence.

II. BCZR § 502.1B - Tend to Create Congestion in Roads, Streets or Alleys Therein

Appellants did not present any expert testimony with respect to traffic issues. On appeal, they challenge the factual correctness of the testimony of NACC's traffic expert, Mr. Caloggero, and argue that the traffic study he prepared was inadequate, stating:

> The fact the report did not include weather conditions, vehicle types, (such as farm equipment or 18 wheelers, which lower the range of speeds measured) make it impossible to arrive at a meaningful interpretation of the results reported. The traffic study was conducted in a time of year (October) when this road is not used by bicyclists, motorcycles or "Sunday drivers" out for a ride. The study failed to account for numerous hazards along this rural stretch of road, which may have in fact impacted the data collected during the traffic count study (no observers or cameras were used).

The Board properly stated the relevant questions before it: "(1) will the proposed use cause traffic congestion, and if so (2) how at this location is that congestion worse than other locations in the RC-2 Zone[?]" Ultimately, the Board determined that NACC met its burden of establishing that the special exception requested would not tend to create congestion in roads, streets, or alleys that would be worse than in other locations in the zone. The Board noted that it was "undisputed that there will be an increase in traffic volume caused by the typical use" and that it was "undisputed that the capacity of Harford Road in and around the Property can easily handle the expected increase" in traffic. In reaching those conclusions, the Board acknowledged appellants' concerns about additional traffic volume and congestion on Harford Road and safety due to increased traffic volume,

but also recognized that appellants did not present sufficient evidence to contradict Mr. Caloggero's expert testimony. The Board noted that appellants "relied upon undermining Mr. C[a]l[o]ggero's testimony and supplementing the record via lay witness testimony rather than through the use of an expert to address the studies and opinions by Mr. C[a]l[o]ggero." As a result, Mr. Caloggero's "calculations and opinions are the only evidence in the record on this issue." Mr. Caloggero testified that during the weekdays, the additional trips added to the roadway network would be "di minimus" and that there would be "little-to-no impacts" on the ability of the road system to handle the additional traffic. The Board found Mr. Caloggero's testimony on traffic congestion to be "credible, convincing, and unrebutted."

Again, we point out the limited issue before us, which is whether there was substantial evidence in the record as a whole to support the agency's findings and conclusions. We do not engage in an independent analysis of the evidence. The Board was free to credit Mr. Caloggero's testimony, as it did, and to give little or no weight to the evidence presented by appellants. As the issue was fairly debatable and a reasonable mind reasonably could have reached the factual conclusions reached by the Board, reversal is not warranted.

III. BCZR 502.1(C) - Create Potential Hazard from Fire, Panic or Other Danger

Appellants contend that the Board failed to recognize the potential hazard from the unsafe use of open fire in a tent. They point to testimony by DeWitt Clark that "Appellee" was "swirling fire on 4 plates around in a tent filled with what appears to be 100's of people in flowing gown type clothing[.]" Appellants note that the Property is wooded and "the

neighbor's garage is only approximately 60' from property line." Contrary to appellants' contention, the Board made specific reference to the evidence presented through "video clips of events at the Property of certain fire code violations and the use of fire at an event." The Board determined that none of the video clips or other evidence presented by appellants posed a "sufficient challenge to the presumption afforded to [NACC], let alone causes the Board to conclude the proposed use creates a hazard of fire, panic, or danger." In addition, the Board found that there was "no evidence at all that suggests any risk of fire, panic, or danger is greater with the proposed use at this location."

The Board's findings were supported by the testimony of Mr. Motsco who stated that NACC would be "reusing an existing structure[,]" that the structure was made of concrete, and that it was "located a significant distance from any other structures that could be consumed, if there were to be a fire." Mr. Motsco noted that interior improvements such as new electrical and plumbing systems would have to be built to meet the requirements of the Baltimore County Code and that permits, inspections, and an occupancy permit would be required. For those reasons, we reject appellants' contention that the Board failed to recognize the prior use of fire and we conclude that the Board's finding that there was no greater risk of fire, panic, or danger at the Property as compared to any other location in the zone, was supported by substantial evidence.

IV. BCZR § 502.1(D) - Tend to Overcrowd Land and Cause Undue Concentration of Populations

BCZR § 502.1(D) addresses the tendency to overcrowd land and cause undue concentration of population. In their brief, appellants assert that NACC "held 5 large

attendance events in 2017 and 10 large attendance events in 2018 resulting in cars parked all over the grassy fields and 100's of people at the events and in many cases, multiple days." The Board found that appellants did not present any meaningful evidence with respect to § 502.1(D) to sufficiently challenge the presumption in favor of NACC. The Board recognized, however, that appellants had complained that there was not a functioning septic system to handle large festivals. The Board addressed that complaint, stating that "the use complained of by Protestants has been represented, and accepted, as atypical." Specifically, the Board recognized that overflow parking was associated with special events and was not required on a continuous basis.

In addition, the Board referenced the testimony of Mr. Powell, NACC's licensed environmental specialist, whose "testimony was unrebutted." Mr. Powell testified that there was plenty of room on the property for a septic system and that the septic system would not affect adjacent property. In addition, he testified that depending on the type of septic system installed, cars would be able to park on the grassy area over the septic reserve area. He stated that when NACC applies for a building permit, it will be required to identify where the overflow parking will be located. The Baltimore County Department of the Environment would likely include a comment that parking should be kept out of the septic area if possible. If that could not be done, the septic system could be engineered to accommodate parking over it.

In addition to Mr. Powell's testimony, Mr. Motsco opined that due to the large size of the Property, "the small [size of the] congregation, the relatively small structure[,]" there would be no undue crowding of the land. He also noted that no regular events would

involve large numbers of cars leaving the parking lot at the same time. Thus, the Board's determination that there was no greater tendency to overcrowd land and cause undue concentration of populations as compared to another location in the zone, was supported by substantial evidence.

V. BCZR § 502.1(G) - Inconsistency with Purposes of Property's Zoning Classification or Spirit and Intent of Zoning Regulations

The Board determined that NACC met its burden of showing, under BCZR § 502.1(G), that their proposed use of the Property was not inconsistent with the purposes of the property's zoning classification or the spirit and intent of the zoning regulations. Appellants challenge that determination by directing our attention to the testimony of Mr. Caloggero and Mr. Motsco. Specifically, appellants argue that NACC's traffic engineer, Mr. Caloggero, "provided testimony that was marred by falsified assumptions and failures to adequately address the needs of this Board with accurate data." They maintain that Mr. Caloggero:

> Failed to inform this Board of the historic nature of the roadbed or the presence of a historic monument (E746-747, *Appellants Exhibits 40 and 41*), which will impact Appellee's ability to meet SHA Highway Access Permit requirements.

Appellants also argue that Mr. Motsco, NACC's site engineer, "provided testimony that was flawed by his overreach in testifying on issues outside his credentials" and that "much of his testimony was uncorroborated by data even though [NACC] had ample opportunity to obtain and provide those data." Appellants suggest that the "testimony and opinions he did provide must therefore be viewed with skepticism." They note that they objected to Mr. Motsco's qualification as an expert witness based on his "lack of

experience/training." With respect to Mr. Motsco's testimony, appellants assert that he failed to inform the Board "of the historic significance and presence of historic monuments" and "[a]ttempted to minimize the impact on the National Historic District by testifying [that] the 'mansion' was only visible sparingly from the south on Harford Road[.]" Appellants assert that photographic and video evidence they presented contradicted that testimony and "raise[d] additional questions about [Mr. Motsco's] ability to provide accurate testimony and defensible professional opinions."

Appellants were free to, and did, challenge the testimony of Mr. Caloggero and Mr. Motsco at the hearing. As we have repeatedly noted, our review is limited to determining whether the Board's decision with respect to the BCZR § 502.1(G) factor was based on substantial evidence. The record makes clear that it was. In reaching its determination that the BCZR § 502.1(G) factor had been satisfied, the Board recognized that buildings for religious worship are permitted in the RC-2 Zone as a special exception use and that at least one other religious institution already existed near the Property.[8] Those findings were not in dispute. In addition, the Board found that agricultural land would not be removed or changed as a result of the proposed use of the Property. That finding was supported by the testimony of Ms. Twining, who testified that the Property was "not an appropriate piece

[8] The Board found that "one religious institution is adjacent to the Property." That finding was not supported by the evidence. The evidence established that the Church of the Redeemer and its school were not adjacent to the Property. As discussed *infra* in our analysis of Issue VII, that erroneous finding was harmless. It did not have any effect on the Board's determination with respect to BCZR § 502.1(G) because although the Church of the Redeemer and its school were not adjacent to the Property, there was no dispute that they were located near it.

of land for farming[,]" and that she did not "believe the house and the land has ever been farmed."

We take note that the Board considered appellants' arguments that the proposed use was inconsistent with the Baltimore County Master Plan 2020 because the Property was located in a Scenic Corridor. The Board recognized that the Master Plan 2020 provided, "as a policy action for protecting scenic corridors[,]" that "(9) For properties along scenic routes or within scenic view sheds, variances, amendments, and special exceptions should be granted *sparingly*. (emphasis added)." The Board determined that the "Master Plan 2020 cannot be reasonably interpreted as precluding all special exception uses, and specifically, the proposed use, even if in a RC-2 zone and along a Scenic Corridor." Appellants did not assert that the Master Plan 2020 precluded all special exception uses. Further, Mr. Motsco opined that the proposed use was consistent with the Property's zoning classification and the spirit and intent of the zoning regulations because places of religious worship are permitted by special exception.

We also take note of the Board's determination that the "only proposed change that will be observable along the scenic corridor will occur at the entrance and exit, which is a minimal disruption, and the appearance will be consistent with other driveways or private roads in the nearby area." The Board went on to observe that, "[n]otably, there is already a driveway present, but with this approval and the conditions imposed, the entranceway will be split to address safety concerns, which, of course, is of paramount importance." That determination was supported, in part, by Mr. Caloggero's testimony. He stated that the driveway entrance to the Property was sufficient and safe, but the State Highway

Administration asked him to look at relocating the exit point where the driveway would meet Harford Road. Various photographs, maps, and other exhibits were admitted to show the proposed new exit point. According to Mr. Caloggero, both the original driveway and the proposed relocation would be safe although the relocated exit point would have an increased sight distance. If the sight distance was deemed safe, it would be safe regardless of the number of vehicles exiting the Property. Mr. Caloggero also explained that in terms of access to the Property, NACC would have to work with the Access Management Division of the State Highway Administration to obtain permits and approvals.

Lastly, the Board recognized that the Property was within the borders of the Greater Kingsville Area Community Plan, which was adopted by the Baltimore County Council in 1996 and included in the Master Plan. There was no dispute that the Community Plan provided for special kinds of development including churches and stated that they "should be located in close proximity to major roadways such as Harford and Bel Air Roads, and provide a suitable buffer commensurate with size and usage from neighboring properties." The Board's determination with regard to BCZR § 502.1(G) was based on its review of the zoning classification and regulations, the Master Plan 2020, and the Greater Kingsville Area Community Plan, and was supported by substantial evidence concerning the nature of the land, the existence of other religious institutions in the area, and the proposed change to the existing driveway.

VI. BCZR § 502.1 I - Detriment to the environment and natural resources

Appellants assert that the Board erred in failing to find that NACC "did not prove 'NO IMPACT' to BCZR § 502.1I[,]" which addresses detriment to the environmental and

natural resources of the site and vicinity. In support of that assertion, appellants argue that: (1) Mr. Motsco's testimony must be viewed with skepticism; (2) appellants objected to the "use of Mr. Motsco as an expert due to lack of experience/training[;]" and (3) Mr. Motsco testified that there was not any agricultural uses immediately adjacent to the Property but failed to "do his due diligence to know" that the Property bordered "Leonard Hutschenreuter Farm of 97.07 acres of Agricultural Land on the Southeast side property border for approximately 1770 ft."

Again, we point out that an appellate court does not re-weigh the testimony of expert witnesses. *Moseman v. Cnty. Council*, 99 Md. App. 258, 267 (1994). At the hearing before the Board, appellants objected to Mr. Motsco's qualification as an expert witness. Counsel explained that he wanted to avoid having Mr. Motsco's testimony "exceed his ability as an expert to testify" and "to avoid extension of his testimony into areas that he personally is not qualified for." The Board accepted Mr. Motsco as an expert witness and stated that "the issues raised by [counsel for appellants] go to the weight of the testimony, which is a matter for the merits of the testimony to come."

The Board properly concluded that the objections raised to Mr. Motsco's qualification as an expert witness went to the weight of his testimony. There was ample evidence presented to support the Board's decision to admit Mr. Motsco as an expert witness. As to Mr. Motsco's failure to take note of the Hutschenreuter Farm, we point out that appellants failed to direct us to the page(s) in the transcripts where that particular property was raised during the hearing. Even assuming that issue was raised below, issues regarding the depth of Mr. Motsco's knowledge went to the weight of his testimony, not

the admissibility of his testimony. *In re Adoption of Tatianna B.*, 417 Md. 259, 268 (2010) (citing *Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 623-24 (2006)). Appellants were free to present testimony from their own expert witnesses and to present other evidence to refute Mr. Motsco's testimony. We shall not reassess the credibility of the expert witness nor the weight given to his testimony by the Board. *Leavy v. Am. Fed. Sav. Bank*, 136 Md. App. 181, 199-200 (2000).

VII. BCZR § 1A01.2(C) - Detriment to the Primary Agricultural Use in Vicinity

Appellants again assert that Mr. Motsco "did not do his due diligence to know that subject property borders the Leonard Hutschenreuter Farm (Property ID: 1119073450) of 97.07 acres of Agricultural Land on the Southeast side property border for approximately 1770 ft. resulting in the Board's error." They further contend that the Board erred in stating that the Property was adjacent to a religious institution.

With respect to Mr. Motsco's testimony, we have already stated that the depth of his knowledge went to the weight of his testimony, not the admissibility of his testimony. *In re Adoption of Tatianna B.*, 417 Md. at 268 (citing *Terumo Med. Corp.*, 171 Md. App. at 623-24). Appellants were free to present testimony from their own expert witnesses and to present other evidence to refute his testimony. We shall not reassess the credibility of this expert witness nor the weight given to his testimony by the Board. *Leavy*, 136 Md. App. at 199-200.

In its written opinion, the Board stated that "[o]ther religious institutions exist in the RC-2 Zone" and that "[i]n fact, one religious institution is adjacent to the Property." The Board's statement that the Property was adjacent to a religious institution, was factually

erroneous, but that error was harmless. Ordinarily in a civil case, an appellant must prove not only that the trial court erred but also that the error was prejudicial. *See Zook v. Pesce*, 438 Md. 232, 252 (2014) ("[I]n a civil case, a petitioner must not only show error but must demonstrate that the error was prejudicial."); *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) ("'[A]ppellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show *prejudice* as well as *error*.'" (quoting *Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987))). It is absolutely clear that whether a religious institution was adjacent to the Property or nearby would have no impact on the Board's ultimate determination. Neither party disputed the fact that there were other religious institutions, such as the Christian Redeemer church and school, located not far from the Property. Further, churches and other buildings for religious worship are permitted by special exception within an RC-2 Zone. BCZR § 1A01.2(C)(6).[9]

Without any citation to the Joint Record Extract, appellants also maintain that "Appellee repeatedly referred to a fictional 'Beachmont/Redeemer Complex'" and "attempted to create an image that these separate entities were acting in concert while in fact one organization is incorporated and permitted to operate as a recreation center and the other is permitted as a school." Appellants point out other differences between the various properties. Even assuming that any of NACC's witnesses repeatedly referred to Beachmont or the Church of the Redeemer in an erroneous or misleading way, appellants were free to raise that issue below and challenge the weight to be given to the witnesses'

[9] The applicable section is currently codified, without amendment, at BCZR § 1A01.2(C)(7).

testimony. We shall not engage in an independent analysis of the evidence. *Butler*, 417 Md. at 284 (quoting *Armstrong v. Mayor of Baltimore*, 410 Md. 426, 444 (2009)). Our job is not to conduct a rehearing or to re-weigh the evidence and determine the credibility of the various witnesses who testified before the Board.

VIII. Examination of Veracity of Certain Testimony

Appellants contend that the Board erred in relying on the testimony of Mr. Ghimire because "in a number of instances" his testimony did not match the documentary and video evidence presented. They argue that the inconsistencies in Mr. Ghimire's testimony point "to a pattern of misrepresentation by" NACC "to the community and to Baltimore County, and to their own Counsel and expert witnesses." In addition, appellants assert that the testimony of NACC's witnesses was "not internally consistent[,]" was "rife with logical fallacy[,]" and that the comparisons to other "religious institutions" was "invalid." They assert that "[p]ast, proposed and future activities" at the Property show that NACC intends to use the Property for "non-religious uses." Appellants also reference the "Kotroco/Beverungen letter of July 2, 2018" which they maintain "clearly shows [NACC] intends to expand their use of the property."

The Board, in its role as factfinder, was responsible for assessing and weighing the evidence presented by the parties. Determining credibility was "exclusively the function of the agency" and we may not substitute our judgment for that of the agency when, as in the instant case, there was substantial evidence supporting the Board's decision. *E. Outdoor Advert. Co. v. Mayor and City Council of Baltimore*, 146 Md. App. 283, 301-02

(2002) ("[T]he tasks of drawing inferences from the evidence and resolving conflicts in the evidence are exclusively the function of the agency.").

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