

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0262

September Term, 2015

THOMAS M. STORK, ET AL.

v.

TALBOT INTERFAITH SHELTER, INC.

Eyler, Deborah S.,
Graeff,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 15, 2016

*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.

Appellants, Thomas M. Stork, along with others,¹ (“Stork” or “opponents”), appeals the Easton Board of Zoning Appeals’s (“the Board’s”) approval of appellee Talbot Interfaith Shelter, Inc.’s (“TIS’s”), application for a special exception² to operate a homeless shelter within the Central Business Commercial District (“CR District”) of Easton.

Stork presents two questions for our review:

1. Did the Board commit reversible error when it completely disregarded the Homeless Shelter Ordinance, Ordinance No. 555, and did not address the necessary elements set forth?
2. Did the Board commit reversible error when it approved the application for a special exception for a homeless shelter without substantial and credible evidence to satisfy the general requirements set forth in §1303.5(B)(6) of the Zoning Ordinance?

For the reasons that follow, we affirm the judgment of the circuit court.

¹ The Petition for Judicial Review of the Decision of the Easton Board of Zoning Appeals lists the following persons as petitioners: Thomas L. and Jacqueline F. Stork; Harriet W. Claggett; William and Georgia Tangires; Robert G. Shannahan; David and Patricia H. Rasmussen; Andrew Koslow and Lauren Bennett; Lorraine T. Claggett and Laurence G. Claggett, III; Christie and Jason B. Rottman; Randy Staats; Kurt Petzold; Richard Covell; John W. Dodson; Tim Quinn; Nancy L. Trippe, Catherine T. McCarty, and William Lane, Jr.; Anthony Principi; Carla Starkey and Raymond Grodecki; Easton Business Alliance; Kevin Bateman; Alvin and Paulette Lawling; Eileen Deymier; Lynn L. Mielke; Richard J. and Mary-Anne Schoeb; Ian Ferrier and Jill Nayers Ferrier; and Patrick G. Startt.

² The terms “conditional use” and “special exception” are used interchangeably in various zoning ordinances to describe uses that can be permitted in a zoning district subject to certain conditions. *See People’s Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 71 n.19 (2008) (citation omitted) (“The terms ‘special exception’ and ‘conditional use’ are essentially interchangeable.”).

FACTUAL AND PROCEDURAL BACKGROUND

At a March 19, 2009 meeting, the Easton Planning and Zoning Commission (“Comission”), in response to a letter from a TIS volunteer, decided to consider at its next meeting the addition of “homeless shelter” as a special exception use to the Town of Easton Zoning Ordinance (“TEZO”).³ On April 16, 2009, the Commission considered a draft of amendments to the TEZO presented by Lynn Thomas, the Town of Easton Long Range Planner. The final draft of the amendments included the following: (1) the addition to Article I Section 114 of the definition “**Homeless Shelter** - A temporary place to stay on a single night basis, generally in dormitory-style facilities, with very little privacy, for people who may have no permanent housing;” (2) the revision of the Table of Permissible Uses in Article II to include “Homeless Shelter” as a special exception use in several districts including the Central Business Commercial District (“CR district”);⁴ and

³ Article I Section 114 of the Town of Easton Zoning Ordinance (“TEZO”) defines special exception as follows:

Special Exception - A grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in this Ordinance exist, that the use conforms to the Comprehensive Plan for the Town of Easton and is compatible with the existing neighborhood.

⁴ According to the TEZO Article IV Section 405.1, the purpose of the Central Business Commercial District is

to provide appropriate locations for select commercial activities within the Town of Easton's Central Business District. Provision is made for the accommodation of a wide range of business pursuits, retail sales and office and service activities which serve the needs of citizens of the region. The district is designed to preserve, and to encourage the continued development of the Central Business Area consistent with the unique land use mix which currently exists.

(3), the addition of the following supplemental standards for homeless shelters in Article X Section 1008.1 A:

(4) Homeless Shelters

- a. Homeless shelters shall be supervised by individuals with appropriate training covering such topics as First Aid Emergency procedures, etc.
- b. The proposed homeless shelter must comply with all applicable building, fire, and safety and health codes and regulations.
- c. Residents of the homeless shelter shall be referred to the facility by the Talbot County Department of Social Services or local law enforcement officials.

TIS requested that the proposed “homeless shelter” use be allowed in the CR District because “the residents that inhabit the shelter often need to visit establishments that are not in residential areas but in the CR District.”⁵ TIS also requested that “local law enforcement agencies” be permitted to make referrals “when the Department of Social Services would not be working to get folks placed in the shelter as needed.”

Mr. Thomas introduced the proposed amendment, identified as Ordinance 555, at a Town Council meeting on July 6, 2009, and Council President John Ford stated that the zoning ordinance “need[ed] to be amended.” He then opened the floor for public comment until the close of business on July 10, 2009. On July 20, 2009, “Ordinance [555] was passed by a yea and nay vote of the [Town] Council” and approved by the

⁵ According to Julie Lowe, testifying at the special exception hearing, the executive director of TIS, the proposed location for the homeless shelter is within ten minutes walking distance of “the Talbot County Department of Social Services and Workforce Training offices, the Talbot County Free Library, [and] the Housing Commission of Talbot.”

mayor of Easton the next day. Apart from the changes to the Table of Permissible Uses, Ordinance 555 was not incorporated into the published version of the TEZO.

On March 25, 2014, TIS applied to the Board for a special exception to operate a “homeless shelter/transitional housing” at 107 Goldsborough Street in Easton, (“the Property”), in accordance with the TEZO. The Board heard testimony and considered evidence related to TIS’s application on May 13, 2014.⁶ The Board deliberated on June 11, 2014, and issued its written decision granting the special exception on July 29, 2014 that concluded:

As was evidenced by the large number of people who attended and spoke at the hearing, this issue is very emotional for many people. However, the Board’s responsibilities are not to decide this case based on their personal views and emotions, but rather the Board needs to objectively apply the criteria set forth in the Town of Easton Zoning Ordinance. A special exception use is presumptively valid. It is a use that the legislature, in this case, the Town Council, has predetermined to be conditionally compatible with the uses permitted by right in a particular zone, if the conditions set forth in the ordinance are satisfied. As noted above, the Board finds that the Applicant has satisfied the required findings set forth in the Town of Easton Zoning Ordinance for special exceptions.

The Board also notes that it is inherent that special exception uses may have adverse effects. The appropriate legal standard is whether there are facts and circumstances that show that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with the use at other locations within the zone. The Board finds that there were not facts and circumstances presented that indicated that a homeless shelter at this location would have unique and different adverse effects over and above a homeless shelter at other locations in the CR zone.

⁶ The evidence considered by the Board included letters from individuals in support of the Board granting the special exception, letters from individuals opposed to the Board granting the special exception, maps, a picture of the Property, and the application materials from the previous special exception for a bed and breakfast for the Property.

A lot of the findings above were based on this particular Applicant considering how it has performed in the past. Upon consideration of the testimony given, and upon motion by Mr. Molchan, seconded by Ms. Mason, the Board voted 2-1 to grant the application of Talbot Interfaith Shelter, Inc. for a special exception, subject to the condition that the approval of the application is particular to the Applicant, Talbot Interfaith Shelter, Inc., and does not run with the land in perpetuity to successors in interest.

In accordance with 1303.5.B(5) the Board shall prescribe a time limit within which the action for the special exception is required to begin or be completed, or both. Given that no remodeling or substantial renovations are required for the use to begin, the Board believes that it is appropriate to impose a time limit of six (6) months from the date of this decision, or after the decision becomes final through an appeal process for [TIS], to begin using the Property as a homeless shelter.

It is, therefore, this 29th day of July, 2014, by the Easton Board of Zoning Appeals, ordered that the special exception requested be, and the same hereby is, GRANTED:

On August 22, 2014, Stork, along with other opponents, petitioned the Circuit Court for Talbot County for judicial review, contending that they had been “aggrieved by the Board’s July 29, 2014, decision.” They requested that the court “schedule a hearing,” and “reverse the Board.” In support of the petition, they argued that the “Town Council of Easton passed Ordinance 555 [the ‘Homeless Shelter Ordinance’] on July 20, 2009, which was approved by the Mayor of Easton . . . on July 21, 2009.” In their view, the Board was required to “address the issues set forth in the Homeless Shelter Ordinance when it rendered its decision,” even though “the Zoning Ordinance was amended to include ‘Homeless Shelter*’ as a special exception use in the Table of Permissible Uses

in the CR Zone, [but] the remaining provisions . . . were never incorporated into the Code of the Town of Easton as directed by the Ordinance.”⁷

TIS responded on September 9, 2014. In support of its opposition to the petition for judicial review, TIS argued that Stork may not raise the issue of non-compliance with Ordinance 555 for the first time on judicial review. According to TIS, the “Board was not asked to determine compliance with . . . Ordinance 555,” and the opponents “made no effort to attempt to show that TIS would not comply with requirements of the Ordinance.” In its view, compliance with Ordinance 555 “comes after an applicant has received permission to use a property for a particular purpose.”

The circuit court heard the petition for review on March 13, 2015, and on April 16, 2015, issued its order stating:

Upon consideration of the memoranda filed by the parties to this matter; upon consideration of the record established before the Easton Board of Zoning Appeals; having heard oral arguments presented by counsel for the parties; and having determined at the hearing on March 13, 2015, that there is substantial evidence in the record to support the Easton Board of Appeals decision and the decision complies with the requirements of the Zoning Ordinance of the Town of Easton, it is hereby this 16th day of April, 2015,

ORDERED that:

1. The decision of the Easton Board of Zoning Appeals, which granted the application of Talbot Interfaith Shelter, Inc. to operate a homeless shelter at [the Property], pursuant to Section 1303.5B of the Zoning Ordinance of the Town of Easton, is hereby AFFIRMED.

⁷ The “Notes” section following Article II Table 2.1 titled “Table of Permissible Uses” provides the following “* - DENOTES A USE SUBJECT TO SUPPLEMENTAL STANDARDS (SEE SECTION 1008).”

2. [Stork] shall pay the costs of this proceeding.

Stork filed this timely appeal on May 4, 2015.

DISCUSSION

Standard of Review

“On appellate review of the decision of an administrative agency, this Court reviews the agency’s decision, not the circuit court’s decision.” *Long Green Valley Ass’n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012) (quoting *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008)). In our review, we “determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Prigel Family Creamery*, 206 Md. App. at 274 (quoting *Md. Dep’t of the Env’t v. Ives*, 136 Md. App. 581, 585 (2001)). “[I]f the issue before the administrative body is ‘fairly debatable’, . . . the courts will not substitute their judgment for that of the administrative body.” *Tabassi v. Carroll Cty. Dep’t of Soc. Servs.*, 182 Md. App. 80, 86 (2008) (quoting *Eger v. Stone*, 253 Md. 533, 542 (1969)).

In our analysis, “[w]e review local laws and ordinances under the same principles that govern our construction of State statutes.” *F.D.R. Srouer P’ship v. Montgomery Cty.*, 179 Md. App. 109, 122 (2008), *aff’d*, 407 Md. 233 (2009). If the issue is one of ordinance or regulatory construction our starting point is the plain language of the provision. *See 120 W. Fayette St., LLLP v. Mayor & City Council of Balt. City*, 413 Md. 309, 331 (2010) (“We construe local ordinances and charters under the same canons of statutory construction as we apply to statutes.”). If the regulatory language is “clear and

unambiguous, we ordinarily ‘need not look beyond [its] provisions and our analysis ends.’” *Opert v. Criminal Injuries Comp. Bd.*, 403 Md. 587, 593 (2008) (alteration added) (quoting *Barbre v. Pope*, 402 Md. 157, 173 (2007)). Nevertheless, “[t]he meaning of the plainest language is controlled by the context in which it appears.” *Kaczorowski v. Mayor & City Council of Balt.*, 309 Md. 505, 514 (1987) (citation omitted) (internal quotation marks omitted). And, “even when the language of a statute is free from ambiguity, in the interest of completeness we may, and sometimes do, explore the legislative history of the statute under review.” *Mayor & City Council of Balt. v. Chase*, 360 Md. 121, 131 (2000) (citation omitted) (internal quotation marks omitted).

Did the Board Err by Failing to Address Ordinance 555

The Contentions

Stork asserts that the Board committed an error of law when it approved TIS’s application for a special exception use for a homeless shelter because it “completely overlooked, and made no reference to the Town of Easton’s Homeless Shelter Ordinance.” In Stork’s view, the Board’s decision “must be reversed where [it] does not address all of the requirements set forth in the law.” As it did in the circuit court, TIS responds that the “issues relating to Ordinance No. 555 cannot be heard on appeal” because they were not raised below, and therefore not preserved for our review. And even if the Ordinance No. 555 issues were preserved, the requirements in TEZO Section 1303.5B(6) are the only provisions to be considered in applications for special exceptions, and “the Board reviewed the evidence and thoroughly discussed” those

provisions. In other words, the Supplemental Standards for homeless shelters adopted in Ordinance 555, only come into play “after approval of the proposed use.” (Emphasis in original).

Ordinarily, an appellate court will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court.” Md. Rule 8–131(a). This proposition applies equally to appeals from administrative agencies. *Thana v. Bd. of License Comm’rs for Charles Cty.*, 226 Md. App. 555, 576 (2016). Thus, it is well settled that “[a] party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.” *Colao v. Maryland-National Capital Park & Planning Comm’n*, 167 Md. App. 194, 201 (2005) (quoting *Cicala v. Disability Review Bd. for Prince George’s Cty.*, 288 Md. 254, 261-62, (1980)). The primary purpose of this rule is to give the administrative agency the opportunity to decide an issue first, so as not to deprive it of that opportunity by substituting the judgment of the court. *Meadowridge v. Howard Cty.*, 109 Md. App. 410, 421-22 (1996).

We have not found in the record where issues relating to compliance with Ordinance No. 555 “were expressly raised,” but substantive aspects of the supplemental standards, such as staff supervision, resident referrals, and health and safety regulations, were testified to during the hearing and considered by the Board, which based its findings on “how [TIS] has performed in the past” and limited its approval not to “run with the

land” or to “successors in interest.” Rule 8-131 provides some discretion and, in this case, to avoid a possible remand and further appeal we are persuaded that it is desirable to address the issue in this appeal.

Analysis

Under Maryland law, local municipal governments are delegated a variety of powers, including the authority to “adopt ordinances to: (1) assure the good government of the municipality; (2) protect and preserve the municipality’s rights, property, and privileges; (3) preserve peace and good order; (4) secure persons and property from danger and destruction; and (5) protect the health, comfort, and convenience of the residents of the municipality.” Md. Code (2013), § 5-202 of the Local Government Article (“Local Gov’t § 5-202”).

The Charter of the Town of Easton,⁸ provides the Town Council with

the power to pass all such ordinances not contrary to the Constitution and laws of the state of Maryland or this Charter as it may deem necessary for the good government of the town; for the protection and preservation of peace and good order; for securing persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and employees of the town and visitors thereto and sojourners therein.

The Local Government Article defines an “ordinance,” as “a legislative enactment of general application and continuing force for a municipality.” Local Gov’t § 4-110. Under

⁸ This authority was delegated by an act of the General Assembly, 1906, ch. 458, sec. 69, which states in relevant part “The Mayor and Council shall have power to pass all such ordinances as are herein directly or impliedly authorized, and not contrary to the Constitution and laws of this State, as they may deem necessary for the good government of the town.”

the Constitution of Maryland, a municipal corporation “shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.” Md. Const. art. XI-E. § 3.

Specifically delegated to local governments is the power to “adopt zoning regulations.” Local Gov’t § 5-213. Incidental to that power is the authority to comprehensively regulate “the orderly development and use of land and structures” through the implementation of “planning and zoning controls.” Md. Code (2012), § 4-101 of the Land Use Article (“Land Use § 4-101”). To that end, local governments must “provide for the manner in which [their] zoning regulations and the boundaries of districts and zones shall be established, enforced, and amended.” Land Use § 4-203.

The Town of Easton Town Council passed and the mayor approved “Amended Ordinance No. 555” to address the use of “Homeless Shelters” within certain zoning districts, including the CR District. For reasons not explicated in the record, a portion of Ordinance 555 related to the “supplemental standards” for homeless shelters was not published in the updated TEZO. That does not mean, however, that the ordinance provision was not in effect at the time of the Board’s decision.

Article II Section 9 of the Charter of the Town of Easton, titled “Ordinances - Passage; publication; effective date,” provides the timeframe for which an Ordinance passed by the Town Council takes effect:

Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which subject shall be clearly expressed in its title. The enacting clause shall be “The Town of Easton hereby ordains”

No ordinance shall be passed at the meeting at which it is introduced. At any regular or special meeting of the council held not less than six nor more than sixty days after the meeting at which an ordinance was introduced, it shall be passed, or passed as amended, or rejected, or its consideration deferred to some specified future date. In case of emergency the above requirement may be suspended by the affirmative votes of four members of the council. *Every ordinance, unless it be passed as an emergency ordinance, shall become effective at the expiration of twenty calendar days following approval by the mayor or passage by the council after his veto.* A fair summary of each ordinance shall be published at least once in a newspaper or newspapers having general circulation in the Town of Easton. An emergency ordinance shall become effective on the date specified in the ordinance, but no ordinance shall become effective until approved by the mayor or passed over his veto by the council.

(Emphasis added). In addition, the Maryland Code provides that “[e]ach year, if a municipality enacts any ordinance appropriate for codification during the year, the governing body of a municipality *shall* provide for the preparation and distribution of a supplement to or new edition of its code of ordinances.” Local Gov’t § 4-110(b) (emphasis added).

It is undisputed that the Town of Easton failed to distribute “a supplement to or new edition of its code of ordinances” that contained all of the provisions of Ordinance

555.⁹ But, we have not been directed to a case in Maryland holding that the failure to supplement or to issue a new edition of the code of ordinances invalidates an amendment, nor have we found one. Other jurisdictions have construed publication provisions to be directory in the absence of language that the ordinance should not take effect until after its publication. *See Hollander v. Denton*, 69 Cal. App. 2d 348, 352 (1945) (finding that despite the use of the word “shall,” provisions of a city charter related to publication of ordinances at least once every two years were merely directory). To conclude otherwise would bestow added significance upon the publication requirement and provide “a practical veto power not conferred or contemplated by the charter.” *Vernakes v. City of S. Haven*, 186 Mich. 595, 598 (1915) (citation omitted) (internal quotation marks omitted).

It is well settled that an administrative agency cannot waive, suspend, or disregard rules, regulations, or other relevant law “as long as [the law] remain[s] in force.” *See Maryland-National Capital Park & Planning Comm’n v. Friendship Heights*, 57 Md. App. 69, 80 (1984); *see also State Dep’t of Assessments & Taxation v. Glick*, 47 Md. App. 150, 153–54 (1980). The justification behind this rule is the concept that government agencies must scrupulously observe established rules, regulations, and procedures. *See Hopkins v. Md. Inmate Grievance Comm.*, 40 Md. App. 329, 335-36 (1978) (citing *United States v. Heffner*, 420 F.2d 809 (4th Cir. 1970)).

⁹ We note that the “homeless shelter” provisions added by Ordinance No. 555 are absent from the 2013 Edition of the TEZO that is available on the Town of Easton’s website. The 2014 Edition, which is not provided on the website, contains the missing provisions.

That said, we do not read the “supplemental standards” as conditions or issues required to be expressly addressed by the Board in rendering the decision to approve a special exception at a particular location. Section 1008 of the TEZO provides that “[c]ertain uses may be permitted in the various zoning districts subject to specific development and/or performance standards as specified by this Ordinance and as determined by the . . . Board of Zoning Appeals” It further provides that in planned developments “the Town Council may approve alternate methods of complying with any of these supplemental standards during the appropriate review process.” Rather than conditions to be imposed by the Board as part of the special exception approval process on a case by case basis, they are conditions or “performance standards as specified by this Ordinance” that relate to supervision of residents, safety based on the requirements of other codes, and referral of residents by certain agencies, and they apply to any homeless shelter, in any location, and in any zoning district in Easton. Nor are they conditions that can be modified by the Board in granting a special exception use.

Was the Board’s Decision Supported by Evidence in the Record?

The Contentions

Stork contends that “the Board incorrectly approved the requested special exception because the evidence offered to satisfy the Zoning Ordinance [special exception requirements] was lacking—even without consideration of the Homeless Shelter Ordinance.” In Stork’s view, “the Board ignored any evidence of the impact that a homeless shelter would have on the surrounding neighborhood.” TIS responds that the

“Board’s thorough and comprehensive written decision manifests that its ultimate conclusion to grant the requested special exception is supported by substantial evidence.” And, TIS further asserts that “the Board addressed each of the seven required criteria under Section 1303.5B(6) of the Zoning Ordinance.” We agree.

Analysis

Under the TEZO, an applicant before the Board for a special exception use has “the burden of proof on all points material to the application which shall include the burden of presenting credible evidence as to each material issue and the burden of persuasion on each material issue.” TEZO § 1303.5B(7). A petitioner in a zoning case has satisfied those burdens when “there [i]s substantial evidence to support the Board’s finding” *Clark v. Cty. Bd. of Appeals for Montgomery Cty.*, 235 Md. 320, 323 (1964). Substantial evidence exists when “reasoning minds could reasonably reach [the Board’s] conclusion from facts in the record.” *Cremins v. Cty. Comm’rs of Wash. Cty.*, 164 Md. App. 426, 438 (2005) (quoting *Stansbury v. Jones*, 372 Md. 172, 182–83 (2002)).

The relevant TEZO provisions material to TIS’s application state:

(6) When hearing evidence necessary for granting of any special exception, the Board shall consider all pertinent facts in the case, and render a decision in accordance with the following principles:

- a. the proposed use conforms in all aspects to minimum requirements of the district in which it is located;
- b. the proposed use is not adversely affecting the health, safety, and general welfare of residents of the area;
- c. the proposed use will not interfere with the adequate and orderly provision of public facilities necessary to service the area or the proposed special exceptions;

- d. the proposed use will not create congestion in the streets or undue traffic hazards, and that adequate egress and ingress are provided;
- e. the proposed use will not adversely affect the area and surrounding property due to adverse environmental characteristics including undue smoke, odor, noise, improper drainage, or inadequate access;
- f. the proposed use will not adversely affect the established character of the area.
- g. the proposed use shall be in conformity with the provisions of the Easton Comprehensive Plan including those provisions of the Comprehensive Plan relating to design and performance standards for the development or redevelopment of land. In addition to the criteria set forth elsewhere herein when considering an application for additional principal uses upon an approved lot, the proposed additional uses shall be compatible and complimentary and uses customarily found near or in conjunction with one another. This provision may not be used to permit shopping centers which are governed by other provisions of this Ordinance.

When hearing any application for a special exception, the Board may consider the design of the proposal, site plans, feasibility studies, or construction drawings, as an integral part of the application.

TEZO § 1303.5B(6).

In its some twenty-seven page decision, the Board explained its findings related to each “principle” enumerated in Section 1303.5B(6) of the TEZO:

Conformance with Minimum Requirements of the CR Zone

The Board finds that use of this Property as a homeless shelter was already specifically enunciated by the Town Council as a special exception use within this zoning district. The Board also finds that there were no requirements which the use specifically did not meet. The CR District does not have parking requirements, and there are no setback issues. The Property is already developed, and no change is proposed to the structure itself. The structure was built prior to the enactment of the zoning ordinance so standards for minimum lot size, minimum frontage, height of structures, building or structure size, building envelope, and lot coverage

are grandfathered. The Board also finds that the Property has previously been approved for a special exception which provided overnight lodging.

Adverse Effects on the Health, Safety, or General Welfare of Nearby Residents

The residents neighboring the homeless shelter thought that the use would negatively affect the safety and welfare of the surrounding community particularly the property values. Testimony was given that at least two offers on neighboring properties were withdrawn as a result of this proposed use. However, the Board believes that those instances were isolated instances that were spurred by the publicity that the public hearing generated. The Board does not believe they are a reflection of a long term effect on property values for the future. The Board finds that there will be no way for individuals to know that the Property is being used as a homeless shelter, as there will be no signage or other outside indication. The only way that individuals will know the Property is being used as a homeless shelter will be through word of mouth. The Board finds that if there is any effect on property values, those effects would be similar at other locations in the CR zoning district. No facts were presented that the effect on property values at this location were unique and different from the effect on property values at other locations in the CR zoning district.

Regarding the safety concerns, the Board finds [TIS's] testimony that the property will be maintained to comply with the Historic District standards to be credible. The Board finds that there is not a safety concern for residents of the shelter given the track record of [TIS]. [TIS] has operated a shelter within churches for a number of years. Many of the churches are located in the downtown Historic District area, and some are even in similar residential areas. There was certainly a substantial amount of testimony from hosts of the shelter and volunteers that [TIS] has not had any safety issues. [TIS] will be providing 24 hour a day monitoring of its guests, which is more than other properties in the area have.

Interference with the Provision of Public Facilities in the Area

The Board finds that the Property is located in an existing neighborhood with public facilities that already exist. The Property was previously used as a Bed and Breakfast hosting overnight guests. The public facilities have been proven to be adequate for that type of use so they should be adequate for the proposed use as well. The Property will be receiving standard Town services. There is nothing that indicates that additional public facilities will be required.

Congestion, Traffic Hazards, and Adequate Ingress and Egress

The Board finds that there is nothing abnormal about this area or this use which could create a traffic problem. The area is a not a high speed traffic area. There is not a lot of regular traffic congestion that exists in the area. Adding 10-20 people to the area would not create additional traffic issues. The Board also finds that there are public parking facilities within a few blocks of the Property. While there is no on street parking directly in front of the Property, there is on street parking in close proximity to the Property. The Board also finds that the proposed use will not require much parking, and that there is no requirement in the CR Zoning District that parking be provided or made available. Several witnesses testified that many of the guests of the shelter do not have their own automobiles, but even if they do, the maximum occupancy of the shelter is 6 families for a total of 12-15 people, which even considering staff, can be accommodated by the off street parking and public parking opportunities in close proximity to the Property. Therefore, adequate ingress and egress are provided.

Adverse Environmental Factors

The Board finds that the use will operate similarly to the now existing Bed and Breakfast in terms of any impact on environmental characteristics such as smoke, odor, noise, improper drainage, or inadequate access. A homeless shelter would not increase those environmental characteristics. [TIS] indicated that they have a strict policy on levels of music and television and a lights out policy. There was no persuasive testimony of adverse environmental characteristics.

Adverse Effect on the Established Character of the Area

There was a lot of discussion on this issue. The Board finds that the area is very diverse with many different types of buildings including both single and multi-family residences, government offices, commercial buildings and churches. The level of maintenance of the properties in the neighborhood varies greatly, with some properties meticulously maintained and others in varying states of disrepair. There was substantial testimony about the rehabilitation that has been done to properties in the area. However, as a whole the neighborhood is still very diverse with different levels of property maintenance. The testimony from [TIS] regarding their ability and plans to maintain the Property was persuasive. The fact that [TIS] has lots of volunteers that have skills such as painters, carpenters, landscaping, etc. will be a benefit in assisting with maintenance of the

Property. [TIS] does not plan to change the character of the Property, but rather they intend to maintain it similar to its present condition. With respect to the lost contract mentioned, the testimony was that the property had been on the market for 7 years. During that time, a Bed and Breakfast was next door, and it did not sell in those conditions either. Accordingly, the Board finds that the proposed homeless shelter will not adversely affect the character of the area.

Conformity with the Provisions of the Easton Comprehensive Plan

While there are certainly statements in the Easton Comprehensive Plan that can be read out of context to support many different theories, when read in total, the Board finds that the proposed homeless shelter is in conformity with and supported by the Easton Comprehensive Plan. There is an entire chapter of the Comprehensive Plan devoted to housing. (Town of Easton 2010 Comprehensive Plan p. 132-142). The Housing Chapter begins with the following statement: “Perhaps the most basic need of any community is housing. The provision of safe, decent, sanitary housing for all Town residents is a paramount concern.” (Town of Easton 2010 Comprehensive Plan p. 132). The Housing Chapter supports having a diversity of housing types and supports the Town working with public and private agencies to meet the housing needs of low income families to provide safe, decent and affordable housing in Easton, which this application proposes to do. The Community Character chapter of the Easton Comprehensive Plan also supports having a diversity of housing types. Principle #7 of the Community Character chapter is “Neighborhoods Should Contain a Diversity of Housing Types.” In the discussion of Principle #7, the Comprehensive Plan states that “[i]t is important to provide a diversity of housing types to enable people from a broad spectrum of economic levels (as well as age groups) to live within the same neighborhood.” (Town of Easton 2010 Comprehensive Plan P. 108).

In reaching its findings, the Board considered testimony from proponents and opponents, as well as letters submitted on their behalf, and it accepted the testimony of certified real estate appraiser Patty Diamond—the only expert who testified—that “other similar group homes have had no adverse effect on nearby property values.” The Board

also reviewed its previous decision regarding the approval of the special exception allowing the Property to operate as a bed and breakfast.

Much of Stork’s argument relates to the Board’s view of a homeless shelter as “sufficiently comparable” to a bed and breakfast, which was the prior special exception use approved for the Property. In suggesting that the “Board’s repeated analogy” was inappropriate, Stork contends that the prior bed and breakfast use was subject to compliance with “fire, safety, health and similar regulations,” which the Board in this case “overlooked” by “require[ing] no proof of compliance before granting the application.” But, as discussed above, such regulations are included in the supplemental standards that apply, as a matter of law, to *all* homeless shelters, including this one, and, therefore, did not require an express condition or “specific consideration” from the Board in its special exception decision. Rather than an approval issue under TEZO Section 1303.5B(6), a violation of the supplemental standards, including the referring entities to the homeless shelter, is an operational and ultimately, an enforcement issue.

As to whether a homeless shelter and a bed and breakfast are otherwise “sufficiently comparable,” both are special exception uses that provide overnight lodging and some food service. There are, of course, differences. For example, in the case of a bed and breakfast, it is the “principal residence” of the owner of the property, TEZO 1008.1 A.(2)d., and guests are limited to “15 consecutive nights.” 1008.1 A.(2)f. The definition of “homeless shelter” under Ordinance No. 555 is “a temporary place to stay

on a single night basis, *generally* in dormitory-style facilities, with very little privacy, for people who may have no permanent housing.” (Emphasis added).

One aspect of the proposed use that was discussed at the hearing is that the proposed facility, which is a six bedroom, six bath, dwelling, would provide some privacy, especially for “a mother and children.” Although the definition speaks “generally” of “dormitory-style housing,” that style of housing is not a requirement. In short, the differences between the two special exceptions is not so great, especially when they related to the same property, to conclude that consideration of the prior bed and breakfast use was inappropriate. Certainly, it is relevant to many of the required findings such as conformance with minimum requirements of the CR zone; including parking and interference with the provision of public facilities in the area; congestion, traffic hazards, and adequate ingress and egress; and adverse environmental factors. In sum, the appropriateness of the proposed special exception use at this location was an issue about which reasonable people might disagree but, at the very least, it was “fairly debatable,” and the Board’s decision was supported by substantial evidence in the record.

**JUDGMENT OF THE CIRCUIT COURT
FOR TALBOT COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**