

Circuit Court for Howard County
Case No. C-13-CV-20-000975

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 605

September Term, 2021

BRADLEY KLINE, *ET AL.*

v.

HOWARD COUNTY BOARD
OF APPEALS, *ET AL.*

Nazarian,
Friedman,
Ripken,

JJ.

Opinion by Nazarian, J.

Filed: March 23, 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 involves challenges to a preliminary equivalent sketch plan for a subdivision development within the Lawyers Hill Historic District in Howard County. Edmund M. Pollard and Joyce E. Adcock (collectively, the “Applicants”) petitioned for approval to develop their Elkridge property under the applicable zoning regulations. Their first submission, a Preliminary Equivalent Sketch Plan, was approved by the Howard County Planning Board. Bradley Kline and other nearby residents (collectively, the “Citizens”) appealed first to the Howard County Board of Appeals, which upheld the Planning Board’s decision. The Citizens sought judicial review in the Circuit Court for Howard County, which affirmed the Board of Appeals’s decision. The Citizens appeal again, and in light of the narrow task delegated to the Planning Board at this preliminary stage of subdivision approval, we affirm.

I. BACKGROUND

A. Overview Of The Subdivision Approval Process In Residential: Environmental Development Zoned Parcels Within The Lawyers Hill Historic District.

At the outset, it helps to have an overview of the subdivision approval process in Howard County. The subject property is zoned Residential: Environmental District (“R-ED”), controlled by section 107 of the Howard County Zoning Regulations (“HCZR”), and has status as a historic district. In essence, development plans for these types of parcels must survive two stages: (1) preliminary plan review and (2) final plan review. Only after clearing these hurdles is a developer eligible to apply for building permits.

But first, we backtrack to the purpose of R-ED zones. R-ED parcels are “areas with a high proportion of sensitive environmental and/or historic resources” created “to

accommodate residential development at a density of two dwelling units per net acre . . . by minimizing the amount of site disturbance and directing development to the most appropriate areas of a site, away from sensitive resources.” HCZR § 107.0.A. The tighter clustering of homes allows for more open space within a subdivision and enhances sensitive resource protection. The zoning regulations thus encourage “site planning flexibility and require that development proposals be evaluated in terms of their effectiveness in minimizing alteration of existing topography, vegetation and the landscape setting for historic structures.” *Id.*

The property at issue also is located within the National Lawyers Hill Historic District and the Lawyers Hill Historic District. When a property has status as a historic district, it overlays the area with historic district guidelines in addition to zoning regulations. *See* Howard County, Md., Lawyers Hill Historic Design Guidelines (April 6, 1995) (the “Guidelines”). Here, it adds an extra step to the zoning process—the designation grants the Howard County Historic Preservation Commission (the “Commission”) the chance to review preliminary subdivision applications and issue Advisory Comments to the Planning Board. Howard County Code of Ordinances (“HCCO”) §§ 6.324, 16.600. The Commission helps oversee development and, guided by the Guidelines, seeks to preserve the historic character of the community. But the Commission’s role in zoning approval, under the HCCO, HCZR, and Guidelines, is advisory only and does not supersede zoning regulations. The HCCO provides explicitly that “[t]he Zoning Regulations of Howard County, as amended, shall remain in full force and effect within any historic district

hereafter established” § 16.602(b); *see also* Guidelines at 5 (“Guidelines do *not* dictate specific solutions that must always prevail; they are not regulations. Their purpose is to provide consistent ground rules for residents and the . . . Commission, while allowing creativity and individual solutions.”).

Preliminary plan review, the stage at issue in this appeal, involves an initial assessment that the plan conforms with all applicable laws. The developer submits its preliminary equivalent sketch plan (“PESP”) to the Howard County Department of Planning and Zoning (the “Department”). A PESP initiates the subdivision process in a R-ED District. HCCO §§ 16.133, 16.144. At this stage, the plan includes lot and road layouts, forest conservation, and environmental impacts, among other things. HCCO § 16.144. Its purpose “is to indicate to the County the intent, scope and timing of the subdivision and to familiarize the developer with County and State plans which may affect the subdivision.” HCCO § 16.145(a). The Department makes an initial recommendation on the PESP in a Technical Staff Report before turning it over to the Planning Board for a more in-depth analysis of whether the plan comports with zoning regulations.

In R-ED zoned sites, the Department delegates PESP zoning review to the Planning Board, and that’s the phase before us here. *See* HCCO § 16.144(f); HCZR § 107.0.E. The Planning Board conducts its review pursuant to section 107.0.E.4 of the HCZR. Subsection F.3 enumerates the eight categories of features that the Planning Board considers:

3. A [PESP] submitted for review shall include all of the information required by the Subdivision and Land Development Regulations of the [HCCO] as well as the following information:

- a. The existing environmental and historic resources of the site, including: streams, wetlands and their buffers; extent and quality of existing vegetation, especially tree cover, steep slopes; historic structures and their landscape setting; and the scenic qualities of the site.
- b. The location of proposed improvements in relation to the resources cited above.
- c. The location and amount of sensitive areas which will be disturbed by structures, paved surfaces, and infrastructure, if any, and plans for minimizing such disturbances.
- d. The location and amount of grading and clearing.
- e. Plans for minimizing site disturbance and preserving the existing topography, vegetation and landscape character.
- f. Documentation indicating how the proposed development will comply with the requirements of the Howard County Forest Conservation Program.
- g. The proposed construction practices and post-construction site maintenance strategies to minimize development impacts on forest and other resources.
- h. Proposed open space, easements, and other forms of permanent protection for sensitive areas, forest conservation areas, or other on-site resources such as historic structures and settings.

The regulation provides further that “The Planning Board’s decision shall be based upon the criteria given in Subsection F.6 below,” which states:

6. The following criteria shall be used in evaluating [PESPs]:
 - a. The proposed lay-out of lots and open space effectively protects environmental and historic resources.
 - b. Buildings, parking areas, roads, storm water management facilities and other site features are located to take advantage of existing topography and to limit the extent of clearing and grading.
 - c. Setbacks, landscaped buffers, or other methods are

proposed to buffer the development from existing neighborhoods or roads, especially from designated scenic roads or historic districts.

The Planning Board’s approval of a PESP indicates only that the plan conforms with zoning requirements. It’s not a full zoning approval—the developer then must submit a final plan to the Department that meets other technical requirements and is subject to further review and approval. HCCO §§ 16.144(k); 16.145(a).

B. The Property And Proceedings.

On December 11, 2018, the Applicants petitioned the Department for preliminary plan approval to subdivide their 8.76-acre parcel (the “Property”) into “Lawyers Hill Overlook,” a development consisting of seventeen single-family detached lots and one open space lot in accordance with R-ED zoning regulations. The PESP included the construction of a public road, Rose Garden Lane, to provide access to the homes from scenic Lawyers Hill Road. Adjacent to the property is a historic home called the Gables House, but the Property has no historic structures on site.¹ The Property contains twenty-three specimen trees² (twelve would be subject to removal under the plan) and wetlands in

¹ There is a small well house that was built in the early 20th Century, located on the southern portion of the lot, that would be unaffected by the proposed development. The ruins of a historic home built in 1911 also are located in the central portion of the property, and the parties agree that they have no historical value or significance.

² A “specimen tree” is a technical term used throughout the HCCO that refers to trees requiring conservation. Howard County defines specimen trees as: “State Champion trees, trees 75% of the size (diameter) or greater of State Champion trees of the same species, and trees 30” in diameter or larger.” Howard County Forest Conservation Manual § 2.2.2.2 (adopted Feb. 3, 2011). Howard County also defines “historic trees” as “trees that are part of an historic site or that are associated with an historic structure.” *Id.*

the southeastern portion of the site.

The Commission convened a public hearing and issued its Advisory Comments to the Department on April 4, 2019. After identifying trees as historic resources, the Department concluded that the Applicants' PESP was "incompatible with the historic nature of the Property and the subdivision is far too dense to be compatible with the Lawyer's Hill Historic District." In response, the Applicants made several changes to the PESP:

- They relocated the Open Space Lots to provide enhanced screening of the neighboring historic home known as The Gables.
- They relocated several buildable lots to save more specimen trees.
- They modified the garage location to be either side loaded or detached and located behind the homes.
- They selected street tree species, location, and sizes to replicate the patterns found in the Lawyers Hill Historic District.
- They located the existing historic well house on a proposed Open Space Lot to help protect and buffer it.

After considering these revisions, the Department concluded, in its Technical Staff Report dated May 23, 2019, that the requirements of section 107.0.F.6 of the zoning regulations had been met and recommended approval of the PESP "subject to complying with [Subdivision Review Committee] comments and any conditions by the Planning Board." The Department indicated that the Applicants' forest conservation obligation would "be fulfilled partially by retaining existing trees and planting new ones on-site, and partially via a fee-in-lieu payment." The forest conservation plan, with proposed variances, remained to be finalized by the Department after the final plan submission.

The Planning Board held public hearings—they began on June 6, 2019 and

continued into September 2019—to consider the Applicants’ PESP against the three criteria in the HCZR. J.J. Hartner, a staff planner with the Department, presented the Technical Staff Report on behalf of the Department. He testified that with respect to the Planning Board’s first criteria of protecting environmental and historical resources, “[t]he layout of the proposed development protects environmental resources by placing buffers around existing wetland areas and streams.” He stated that the Applicants “relocated buildable lots to help preserve specimen trees,” that “there are only twelve specimen trees actually being proposed to be removed[,] . . . [a]nd each specimen tree that is removed will be replaced with two native trees” He described the PESP’s protections for historic resources:

The layout of the proposed development protects historic resources by relocating open space lots to provide enhanced screen of a neighboring historic home, modifying the garage locations on the proposed homes, ensuring the street trees replicate the patter[n]s found in the Lawyers Hill historic district and by protecting and buffering the historic well house on the property.

And he recommended approval of the PESP because it complies with applicable law and “also appears to comply with all Planning Board review criteria”

Frank Manalansan, the professional land surveyor who led the team that produced the PESP, testified next on behalf of the developer. He stated that environmental resources were protected adequately by moving “lots away from the wetlands and plac[ing] the wetlands in open space as well with the forest conservation easement.” The plan involved removing twelve specimen trees, six of which were in good condition, but also planting

many more trees than required.

Dr. Michael Hornum testified as an expert in cultural resources management. He conducted an archaeological survey of the site and testified that “there are no archaeological sites on the property that we would consider to be historic properties” under federal regulations. Dr. Hornum only considered the site itself and whether there was anything of archaeological significance to contribute to the eligibility of the area as a historic district.

Stephanie Tuite, a registered landscape architect and civil engineer with the developer, also was involved in preparing the PESP for the Property. She testified that with respect to tree plantings in the PESP, the developer worked with the Department to plant trees in a way to “to keep more in line with the historic district” and to “make it look more natural and native” Ms. Tuite discussed the need to remove specimen trees to gain access to the Property, and noted that many of them were tulip poplars that are undesirable because they are “weak wooded,” “shallow rooted,” and therefore “susceptible to falling.”

In opposition, the Citizens first offered testimony from Dr. Matthew Baker, a professor of environmental science at the University of Maryland, Baltimore County and an ecologist and hydrologist. Dr. Baker walked the perimeter of the Property, examined the PESP, and concluded that “tree plantings do[] not mean the same thing as forest. So, it’s my expectation that if the site is developed as planned, much of the forest resources on the site will be destroyed and eliminated.” He also testified that the Property is “especially vulnerable,” despite compliance with local legal requirements, and development would

cause higher erosion, site degradation, and runoff to the wetland with a substantial environmental impact.

Lisa Wingate, a historic preservation professional who co-authored the Lawyers Hill Historic Guidelines, argued that the Planning Board should consider the development's impact off-site. Ms. Wingate stated that “this is not just about what’s happening on the [Property], it is how what is happening on the [Property] will affect the surrounding district.” She pleaded with the Planning Board to consider the historic district as a whole a “[h]istoric resource,” stating, “what happens on the [Property] will impact the environmental setting of this very notable historic resource.” Ms. Wingate also considered trees as “historic environmental resources” “if they are located within a historic district and if they are associated with the period of significance of the property.” She explained that taking down trees “severely impact[s] the integrity of the site,” adding that “[i]f you remove the trees you are taking away historic resources.”

Brenda Schweiger, the president of the Lawyers Hill Association, which represents the community of fifty-seven homes in the area, testified that the association opposed the PESP. She argued that water runoff from the project would affect surrounding property owners. She argued that the “historic value” of the area would be lost because the PESP “is not in line with the Lawyers Hill historic district.” Several other nearby residents also testified, voicing their opposition to construction of Lawyers Hill Overlook and echoing the Commission’s Advisory Comments that the subdivision is incompatible with the rest of the historic district and the proposed lots are too dense and too uniform for the area.

The Planning Board briefly questioned Valdis Lazdins, the Department Director at the hearings. When asked “the difference between a contributing and non-contributing building in the historic district,” he stated that a contributing building “adds to the value to the benefit of the historic district,” but the Department looks only at the buildings located on the site itself. He explained that subsection F.3.A requires “the applicant . . . to submit the existing environmental and historic resources *of the site*. It doesn’t reference the district at all, but it does talk about historic structures and their landscape settings.” (Emphasis added.) Mr. Lazdins explained that this was the Department’s interpretation. He also explained that the Department interprets historic resources to mean structures on the site, an interpretation based on the submission requirements from section 107.0.F.3.A, HCCO references to historic resources, the Guidelines’ definition of historic resources as “historic buildings, structures, and the landscape features that are integral to the historic setting,” and the scenic road provisions referencing views of historic properties from its “primary façade.”

During the Applicants’ rebuttal, Mr. Joe Rutter, a former Department Director who served during the time that the Lawyers Hill historic registers were created, discussed two other subdivisions within the historic district developed under R-ED regulations, Claremont Overlook developed in 2010 and Cypress Springs in 2014. Together the subdivisions take up seventy-six acres in ninety-two lots and are “substantively similar to the subject proposal.” Neither development has been raised as threatening the historic district’s status as a National or local historic district. He testified that it was the policy of

the Department at the time the historic district was created to allow any properties to opt out of the historic designation. Mr. Rutter explained that the Subject Property was zoned R-ED “[w]ith the large open space requirement [where] the lots get clustered down to a smaller size because it’s supposed to be the most environmentally sensitive way of developing land.” He explained that if residents wanted to restrict the density for larger lot sizes, they should have asked the County Council to amend their zoning to Rural Residential.

Donald Reuwer, President of Land Design and Development, helped guide the Applicants through the development process. Mr. Reuwer stated that they “put trees in every possible place on the plan they [could],” planning to plant 241 trees rather than the 124 trees required. He also said that they increased the sizes of the trees to exceed legal requirements, adding that “the day this subdivision opens, it’s going to look like it’s ten years old. We are spending a significant amount of money to comply with the requirement that we really are not visible from our neighbors.” He explained that the developer worked with the Department to amend the PESP and to provide for increased open space and save more trees, in particular between the subdivision and the Gables House and other neighboring properties. Mr. Reuwer testified at length about the efforts the developer made to save as many trees as possible:

[MR. REUWER]: The whole concept of identifying specimen trees is to say, okay, here they are, how do you design this project to save as many as possible. . . . Trees are expensive to remove. I always tell people, you don’t take down trees just for the fun of it. It costs about \$5,000 to \$10,000 per acre. It’s not something you want to do. . . . As I said, we had numerous

meetings with [the Department]. Once we identify these trees and decide which ones should stay and which ones had to go.

[COUNSEL FOR APPLICANTS]: And, so [the Department] has signed off on your forest conservation plan?

[MR. REUWER]: Correct.

[COUNSEL FOR APPLICANTS]: This is the preliminary equivalent sketch plan, is that correct?

[MR. REUWER]: Correct.

[COUNSEL FOR APPLICANTS]: And, so, is it fair to say that the treatment of specimen trees on this property is subject to further review going forward?

[MR. REUWER]: Yes.

[COUNSEL FOR APPLICANTS]: Is there an occasion during final plan where you would revisit this issue?

[MR. REUWER]: Absolutely. But again, knowing the sensitivity of this one, we've had an arborist . . . on board since day one

[COUNSEL FOR APPLICANTS]: And if you do get to a point where a tree, one of the specimen trees you have represented will be saved, if for some reason is not able to be saved, can you just not save it?

[MR. REUWER]: No. . . . We'd have to go to [the Department] and say, this tree can't be saved, and we'd have to explain why and they have to agree. And if they didn't agree, you know, theoretically we could lose lots. It's just the way it works.

[COUNSEL FOR APPLICANTS]: And, have you gone through that process?

[MR. REUWER]: That will be part of the final plan. At this stage, you are just not that detailed on the engineering where you can make sure. . . .

We've never had an issue where we haven't been able to save the ones we said we were going to save. We are forced to be fairly conservative. We think there is actually some of the other specimen trees that we may be able to save, but we have to, kind of, present the worst case at this point.

He also discussed pursuing alternatives in the final plan to allow sidewalks to begin further up Rose Garden Lane, where they would not be visible from Lawyers Hill Road.

The Planning Board voted to approve the PESP and issued its Decision and Order approving the PESP on January 24, 2020. The Board adopted the Department’s Technical Staff Report and found that the proposed subdivision protected historic and environmental resources adequately:

This is shown by the record as a whole, in particular the exhibits of the development, and the testimony of Mr. Hartner, Mr. Manalansan, Ms. Tuite, and Mr. Reuwer. The development includes extensive tree plantings to shield the property from the scenic road, the Gables, and the surrounding district. The lots have been laid out to take advantage of and avoid problematic impact upon environmentally sensitive areas including the wetlands. The County code compliant roadway is located and to be constructed such that trees may be preserved and views remain undisturbed. The only remaining historic resource on site, the pump house, will be preserved in open space.

The Planning Board relied on the testimony of Mr. Lazdins in its interpretation of the Section 107.0.F.6 criteria, holding that it looks only at the site itself and not the Historic District as a whole in evaluating the PESP.

The Citizens appealed to the Howard County Board of Appeals, which issued a decision on November 20, 2020 upholding the Planning Board’s approval of the PESP. It stated that the zoning regulations “provide[] only three criteria the Planning Board is permitted to use,” quoting Section 107.0.F.6. The Board of Appeals reasoned that “the Lawyers Hill Historic District is not an Historic Resource because such an interpretation would improperly require the Planning Board to extend its evaluation under [HCZR]

Section 107.0.F.6.a. to off-site historic resources.” The Board of Appeals discussed Section 107 at length and agreed that the plan only needed to address historic resources on the site itself:

[O]ne must examine Section 107.0.F. in its entirety, particularly subsection 3 thereof which delineates the information required to be submitted with the [PESP] for the Planning Board’s consideration in connection with its decision-making criteria pursuant to subsection 6. Section 107.0.F.3.a. requires that the information shall include “the existing environmental and *historic resources of the site . . . historic structures and their landscape setting; and the scenic qualities of the site.*” Section 107.0.F.3.h. requires that the information include “proposed open space, easements and other forms of permanent protection for . . . *on-site resources such as historic structures and settings.*” . . . [T]he Planning Board interpreted the historic resources to be protected by the subdivision layout in the decision-making section to be the on-site ones for which information was required in the information section.

(Emphasis in original.) (Cleaned up.) The Board of Appeals also agreed with the Planning Board that landscaping and specimen trees do not qualify as historic resources, and thus that the Planning Board had determined properly that the PESP protected environmental and historic resources under Section 107.0.F.6.a effectively. “To expand the scope of this review as Appellants propose,” the Board of Appeals held, “would ignore the statutory limits of the role delegated to the Planning Board and intrude into a role fulfilled by the [Commission] and the [Department].” The Board of Appeals also addressed the Citizens’ concerns over alternative compliance and compliance with forest conservation regulations. The Board of Appeals, agreeing with Applicants, stated that the Citizens had equated the approval requirements for a final subdivision plan falsely with the approval requirements

for a PESP.

The Citizens petitioned the Circuit Court for Howard County for judicial review and the court issued an order affirming the Board of Appeals on June 4, 2021 for the same reasons. This appeal followed.

II. DISCUSSION

We adopt the Applicants’ question presented, which is whether the Planning Board’s approval of the PESP was legally sufficient and supported by substantial evidence.³ The Citizens assert two main legal errors in the Planning Board’s approval of the PESP: *First*, they argue the Planning Board relied on an erroneous definition of “historic resources” under the HCZR. *Second*, the Citizens attack the approval under the local and state forest conservation statutes, arguing that the Planning Board’s findings were

³ The Citizens framed their Questions Presented as follows:

1. Whether the Planning Board adequately analyzed whether the PESP effectively protected environmental and historic resources after deciding not to consider the Lawyers Hill Historic District or the Subject Property’s specimen trees as historic features.
2. Whether the Planning Board’s findings of sufficient environmental and historic resource protection were legally sound when based on an insufficient local forest conservation statute.
3. Whether the Planning Board needed alternative compliance approval of Applicants’ forest conservation plan before approving the PESP.

The Howard County Planning Board framed its Question Presented as: “Whether the Planning Board’s approval of the Preliminary Equivalent Sketch Plan (“PESP”) was supported by substantial evidence in the record as a whole and free of any erroneous conclusions of law?”

based on an “insufficient local forest conservation statute” and that the Planning Board needed alternative compliance approval of the Applicants’ forest conservation plan before approving the PESP. The Citizens argue that these errors prevented the Planning Board from analyzing whether environmental and historic resources were adequately protected under HCZR § 107.0.F.6.

The facts of this case are not in dispute, so we review the Planning Board’s interpretation and application of applicable law. The parties agree, as do we, that we look through the Board of Appeals and circuit court rulings and review the decision and analysis of the Planning Board. Our review of an administrative agency decision is narrow. *Marzullo v. Kahl*, 366 Md. 158, 171 (2001). The “review of an administrative agency decision is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised on an erroneous conclusion of law.” *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 532–33 (2017) (internal quotations omitted). The record contains substantial evidence supporting the decision if “a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.*

An agency’s decision is presumed valid and given deference unless its decisions are based on an error of law. *Id.* However, “[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency” due to its expertise in its own field. *Marzullo*, 366 Md. at 172. “Thus, an administrative agency’s

interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Id.* (citing *Lussier v. Md. Racing Comm’n*, 343 Md. 681, 696–97 (1996)).

A. The Planning Board Did Not Err In Its Interpretation Of Historic Resources.

The Citizens contend that the Planning Board erred when it considered only on-site resources as historic resources rather than looking to the subdivision’s effect on the Lawyers Hill Historic District as a whole. They point to various sections of the HCCO and argue the Planning Board’s Section 107.0.F.6.a analysis was flawed legally. We hold, however, that the Planning Board carried out its duty to consider the subdivision’s zoning compliance appropriately, and that the Board approved the PESP by applying the precise criteria outlined in section 107.0.F.6 properly.

1. Off-site resources

The Citizens argue that “[w]ithout considering the impacts on the Lawyers Hill Historic District, the Planning Board’s decision leaves vulnerable the entire Historic District itself.” They identify various sections of the HCCO and contend that the Planning Board’s § 107.0.F.6.a analysis was legally flawed, arguing that “the HCZR itself is only drafted pursuant to, and in furtherance of, the direction of the Howard County Code.” Thus, by failing to address and account for these Code provisions, the Planning Board undertook an “artificially narrow[]” application of § 107.0.F.

We find that the Planning Board and Department interpreted and applied the HCZR appropriately. *First*, we give weight to the Department’s interpretation of the applicable

HCCO and HCZR provisions. *See Marzullo*, 366 Md. at 172. The Planning Board relied on the expertise of the Department’s then-Director, Mr. Lazdins, who testified that the Planning Board looks only to the site itself:

[A]s Mr. Lazdins advised, the Planning Board is not looking at the Historic District in evaluating the Petition, but is only looking at the site itself, including the historic resources on the site, all of which will be preserved in open space and otherwise appropriately protected based upon all of the testimony and exhibits.

The Planning Board and Mr. Lazdins have special expertise to carry out the zoning review and evaluate the meaning of “historic resource” with respect to R-ED zoned sites. *See* HCCO § 16.801(b) (“Qualifications of Director of Planning and Zoning. The Director of Planning and Zoning shall be a trained planner with wide and varied experience in the fields of Planning and Zoning. The Director shall have ten years of experience in urban and regional planning and shall have held a position of administrative leadership and responsibilities for at least five years.”); § 16.900(d) (the Director or the Director’s designee “shall serve as Executive Secretary of the Planning Board”).

Second, the Planning Board’s interpretation is supported by the HCZR itself. Section 107.0.F.3 lists the information that the Planning Board must consider, including on-site resources, and limits the review specifically to the site:

- a. The existing environmental and historic resources *of the site*, including: streams, wetlands and their buffers; extent and quality of existing vegetation, especially tree cover, steep slopes; historic structures and their landscape setting; and the scenic qualities *of the site*.

- h. Proposed open space, easements, and other forms of

permanent protection for sensitive areas, forest conservation areas, or *other on-site* resources such as historic structures and settings.

(Emphasis added.) These provisions demonstrate that the R-ED regulations intend for the Planning Board to consider on-site resources only. A specific statutory provision governs over a general one, *Lumberman’s Mut. Cas. Col. v. Ins. Comm’r*, 302 Md. 247, 268 (1985), and § 101.0.A of the HCZR titled “Rules of Construction” provides that “[t]he particular shall control the general.” The broad intent provisions the Citizens reference don’t control.

Other parts of the zoning regulations support the Planning Board’s interpretation of § 107.0.F further. Compare the R-ED approval process with that of a Residential: Historic-Environmental District (“R-H-ED”) parcel. Under HCZR § 111.1, R-H-EDs are “established to provide requirements for single-family attached dwelling units on certain properties determined to contribute to the historic character of areas designated on the National Register of Historic Places.” These zones undergo approval of PESPs by the Planning Board, as R-EDs must. But PESPs are also subject to evaluation by a “Design Advisory Panel” that creates “integrated” plans “suitable for the site *and surrounding area*” HCCO § 16.503(a)(2) (emphasis added). The Design Advisory Panel’s recommendations *must* be included in the Department’s Technical Staff report. *See* HCZR § 111.1.F.2. In contrast, R-ED zoned parcels are subject to Planning Board approval, but the Planning Board is not required to consider the surrounding area. We interpret the HCCO “from a common sense perspective, seeking to give the statutory language its ordinary meaning. In furthering the identified legislative objectives, we avoid giving the

statute a strained interpretation or one that reaches an absurd result.” *Huffman v. State*, 356 Md. 622, 628 (1999) (citations omitted). Reading the regulations to require the Planning Board to look off-site in this case would nullify the conscious distinction they make between R-H-EDs and R-EDs. And if the Council intended the Planning Board to consider off-site resources in its analysis, it would have made this requirement explicit, as it did with R-H-ED parcels.

Third, the Planning Board has limited its review of environmental and historic resources to on-site resources in at least two prior cases. In *In the Matter of Greg Care, et al.*, Planning Board Case No. 428 (Feb. 7, 2018) (“*Oak Hill*”), the Planning Board refused to consider certain evidence of off-site resources during its R-ED PESP application for a subdivision within a historic district. The Planning Board ruled that “it would be beyond the Planning Board’s authority to consider that information at this stage of the approval process”:

[T]he Board finds that the intent of the R-ED Sketch Plan criteria which the Board is charged with applying, pertains only to the proposed subdivision layout’s effective protection of on-site environmental and historic resources, not off-site environmental and historic resources. The Board finds and concludes that the opposition’s proposed evidence in this regard is immaterial and irrelevant under Section 107.0.F.6.a of the Zoning Regulations.

Oak Hill at 12. Also, *In the Matter of Charles T. Lacey, et al.*, Planning Board Case No. 418 (Mar. 2, 2017) (“*Lacey*”), involved another Planning Board review within a R-ED historic district where nearby residents objected that the PESP was “incompatible with the Historic District.” *See also Oak Hill* at 12. The Planning Board rejected the argument that

it was required to look to broader standards, including historic district guidelines, § 100(a)(7) of the HCZR, the Howard County General Plan and the Howard County Historic Preservation Plan, and the definition of “Historic District” in the National Register. *Lacey* at 20–21.

The Planning Board has held itself consistently to the R-ED criteria listed in the zoning regulations. And “[w]hen an agency clearly demonstrates that it has focused its attention on the . . . provisions in question, thoroughly addressed the relevant issues, and reached its interpretation through a sound reasoning process, the agency’s interpretation will be accorded the persuasiveness due a well-considered opinion of an expert body.” *Baltimore Gas & Elec. Co. v. Pub. Serv. Comm’n of Md.*, 305 Md. 145, 161–62 (1986) (citation omitted). In all these cases, opponents to a PESP attacked the fact that the PESP lots were too close together and too uniform. However, as the Planning Board recognized, compatibility and integration are not proper criteria for Planning Board review at this stage.

2. *Trees as historic resources*

Relatedly, the Citizens argue that the Planning Board erred as a matter of law when it failed to include the Property’s specimen trees as historic resources. They argue that “[s]pecimen trees are considered by both the Historic Preservation Commission and the HCCO to be historic resources,” as opposed to merely environmental resources, in the Planning Board’s § 107.0.F.6 review. The Planning Board relied on the expertise of Mr. Lazdins, who advised that the Planning Board viewed only the two buildings on the Property as historic resources because the Department “interprets the regulations to mean

that an historic resource is a building, based on the use of the word ‘façade’ to describe the view of historic resources”

The Planning Board interprets its statutory criteria to include trees only when the trees are connected to an on-site historic structure. Its decision in *Lacey* reveals its history of evaluating trees generally as environmental rather than historic resources:

[T]here are no historic structures on the subject property, and with no historic structures, no settings for any structures to protect, and therefore no historic resources to protect in terms of layout of lots or open space pursuant to Section 107.0.F.6.a of the HCZR. The trees and other natural features are to be protected [] as environmental, not historic, resources.

Lacey at 16. And we see no legal error in the Planning Board’s decision not to consider the specimen trees as historic resources. As discussed above, the Planning Board has applied a consistently narrow interpretation of its task under the zoning regulations. The Department, as the agency with approval authority over forest conservation, is the appropriate department to determine, at the final submission stage, whether protection of specimen trees meets the technical requirements of the forest conservation regulations—the forest conservation regulations aren’t being ignored, but they’re not within the universe of authorities that the Planning Board considers at this preliminary stage of the process. “The Planning Board shall make decisions *with respect to matters submitted to it* pursuant to the laws, rules, regulations, and ordinances of the County,” HCCO § 16.900(j)(2)(i) (emphasis added), and this was a zoning decision limited properly to an analysis of the zoning regulations.

B. The Planning Board Did Not Err When It Relied On The Department Analysis Of Forest Conservation.

The Citizens argue *next* that the Planning Board erred as a matter of law when it determined, based on the old Forest Conservation Act, that the PESP would protect environmental and historic resources effectively. Between the Planning Board’s approval of the PESP and this appeal, the Howard County Council enacted a new forest conservation act that brings the County’s law into compliance with the Maryland Forest Conservation Act. HCCO § 16.1216. The Citizens argue that under the language of the new law, the alternative compliance requested by the Applicants is improper as a matter of law and the Planning Board’s approval was improper. They contend that “an administrative body cannot determine that a PESP adequately protects environmental or historic resources if its determination runs contrary to a controlling state statute.”

Again, we give deference to the Planning Board’s interpretation of its task under the HCZR. *Marzullo*, 366 Md. at 172; *Baltimore Gas & Elec. Co.*, 305 Md. at 161. And again, the Planning Board historically has limited its analysis to the specific criteria outlined in section 107.0.F.6 of the Zoning Regulations. In *Oak Hill*, nearby residents argued that the Planning Board was required to deny the PESP because there were numerous alternative compliance waivers pending with the Department. The Planning Board found that “it could not find any authority that these standards or criteria are applicable to the Planning Board’s decision-making responsibilities in this matter.” *Oak Hill* at 12. The Planning Board added in that case that “the Board only has authority to apply the R-ED criteria given to it for application in the Zoning Regulations.” *Id.* The Planning Board also approved a

subdivision for zoning in *Lacey* despite pending waiver applications for forest conservation.

This is a PESP approval—nothing more. The Planning Board does not have authority at this stage of the process to determine whether a technical variance (*i.e.*, “alternative compliance”) is permitted. Under HCCO § 16.1216(c), only the Department has the authority to grant waivers from strict compliance of the forest conservation ordinance, and only then after making a fact-specific determination that an applicant has demonstrated “unwarranted hardship.” The Planning Board’s zoning decision merely allows for the plan to proceed to the subdivision and land use phase of review in a final plan—all of those other issues, and all of the Citizens’ arguments, remain for that later stage. Mr. Reuwer’s testimony explains why: the engineering data and review at the PESP stage of review is not detailed enough to know whether alternative compliance is warranted. There otherwise is no evidence to support the Citizens’ assertion that the Department had to determine forest conservation compliance before approving the PESP. The forest conservation issue will still go before the Department, and the Citizens will have a chance to make their arguments there.

C. The Planning Board Had Substantial Evidence That The Proposed Layout Of Lots Effectively Protected Environmental And Historical Resources For Zoning Purposes.

In light of the legal definitions above, the Planning Board had sufficient evidence on which to ground its determinations that the proposed development protected “environmental and historic resources” effectively for zoning purposes and that the

Applicants could proceed to the next step of review. The Planning Board considered tree planting and landscaping, including the off-set of the roadway through the development, and tree preservation, and it found no evidence of any historic structures that would be disturbed by the development of the site.

With respect to the PESP's protection of environmental resources, Mr. Manalansan testified before the Planning Board that the Applicants would remove twelve specimen trees, most of which are tulip poplars or are in poor condition. He stated that although "several specimen trees have critical root zones that extend into the limit of disturbance," the development would not affect the trees because the disturbance was "shallow." Ms. Tuite testified that despite the specimen trees' size and age, certain specimen trees (the tulip poplars) were "undesirable" because they were "susceptible to falling and lightning strikes." The lots have been laid out to take advantage of and avoid problematic impact on environmentally sensitive areas, including wetlands. And Mr. Reuwer stated that the Applicants "put trees in every possible place on the plan they [could]," and were planning to plant 241 trees rather than the 124 trees required. He also stated they increased the sizes of the trees to exceed legal requirements.

As for historic resources, Dr. Hornum testified that there was nothing of archaeological significance that contributed to the area's eligibility for historic district treatment. The parties agree that the only remaining building of any arguable historical significance is a well/pump house that is being preserved in open space within the subdivision. Mr. Hartner and Mr. Manalansan testified that offsite views would be screened

from traffic passing the property on the adjacent road.

The record of the hearing before the Planning Board supports its decision that environmental and historic resources are protected adequately under the zoning regulation criteria. The dispute about the scope of the Planning Board’s task is understandable—there is ample discussion in the record of the PESP’s broader compliance with applicable law, and each stage of review involves interrelated criteria with areas of overlap. But the Planning Board’s delegated task, the one we review here, was narrow: to determine a PESP’s compliance with specific criteria under the zoning regulations.

Under § 107.0.F of the zoning regulations, the Planning Board’s decision-making authority was constrained properly to the specific criteria provided within that section. The Planning Board doesn’t have authority to consider off-site resources, to change the zoning requirements of a given parcel, or to require compliance with technical forest conservation requirements. Those tasks remain with the County Council and the Department. At this stage, the Planning Board’s approval of the PESP was appropriate, and substantial evidence supports its conclusion.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**