

Circuit Court for Baltimore City
Case No. 24-C-22-000610

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 861

September Term, 2023

IN THE MATTER OF THE PETITION OF
THE YORK ROAD PARTNERSHIP, ET AL.

Graeff,
Berger,
Albright,

JJ.

Opinion by Graeff, J.

Filed: July 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from a decision of the Baltimore City Board of Municipal Zoning and Appeals (the “Board”), approving the application filed by M&G Property Management Two, LLC (“M&G”), appellee, for authorization to install a crematorium in a funeral home pursuant to Baltimore City’s Zoning Code. The Board approved M&G’s request to modify the existing conditional use granted for the funeral home in 2009. Appellants, The York Road Partnership, et al., filed a petition for judicial review in the Circuit Court for Baltimore City, which affirmed the decision of the Board.

On appeal, appellants present the following questions for this Court’s review, which we have modified slightly, as follows:

1. Did the Board err as a matter of law in concluding that crematoria are not incinerators under Baltimore City Code, Zoning (“Zoning Code” or “ZC”), Article 32 § 1-209(b)(2), and therefore, fail to properly apply the tie-breaking provision found in § 1-203(b), which dictates that a more restrictive provision applies?
2. Did the Board improperly abdicate its duties under ZC §§ 5-404(a) and 5-406 to evaluate the impact of the conditional use on the health of the community to the Maryland Department of the Environment?
3. Did the Board fail to properly interpret and apply the standard outlined in *Schultz v. Pritts*, 291 Md. 1 (1981)?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Property

M&G is the owner of real property located in Baltimore City on the Southeast corner of York Road and Rossiter Avenue (the “Property”). Most of the property is located in a

Commercial C-2 Zoning District, a district “intended for areas of small to medium-scale commercial use, typically located along urban corridors, that are designed to accommodate pedestrians and, in some instances, automobiles.” ZC § 10-204(a).¹

M&G acquired the Property in 2000. Vaughn C. Greene Funeral Services, P.A. (“Greene Funeral Services”) operates the funeral home. The prior owners also operated a funeral home on the property, and a funeral home has been in continuous use there since the 1960s. In 2009, the Board granted a conditional use approval for the funeral home to make improvements to the Property, including adding a fence and off-street parking. The Property has been used as a funeral home since that time.

II.

Crematorium Proposal

On March 20, 2020, Greene Funeral Services applied to the Maryland Department of the Environment (“MDE”) for a permit to construct a human crematory on the Property. The Code of Maryland Regulations (“COMAR”) requires a person desiring to operate a crematorium to first obtain a State permit to operate. *See* COMAR 26.11.02.13(A). In its application, Greene Funeral Services noted that the equipment to be installed was a Matthews Environmental Solutions PPII Plus (3.0 MMBTU/hr) / Multi-Chamber Cremation Unit. As part of its application, an Estimated Emission Calculation document

¹ In 2022, the Baltimore City Council amended Article 32 of the City’s Zoning Code. *See* Balt. City Ord. 22-181 (Dec. 22, 2022). The amendments did not make substantive changes as relevant to the issues before us. In land use cases, we apply the law as it is in effect on appeal. *See Layton v. Howard Cnty. Bd. of Appeals*, 399 Md. 36, 65 (2007). Accordingly, references in this opinion are to the current Zoning Code.

identified the cremation unit as a “crematory Incinerator Model IE43-PPII Plus.” The application included required emissions related reports to comply with federal and state regulations.

The MDE asked for a letter “from the zoning” Board to process the application. M&G obtained a letter from the Zoning Administrator stating that “the subject property is located in a C-2 Commercial District and authorized for use as a funeral home.” The MDE deemed that sufficient to proceed until there was opposition presented. The MDE then requested further information from the zoning office, and M&G then decided to file a positive appeal.²

On July 9, 2021, M&G filed a Notice of Appeal with the Board, seeking approval to modify its present conditional use by installing a crematorium on the Property. M&G proposed placing the crematorium within an existing one-story garage and storage building located on the Property. The local community strongly opposed M&G’s proposal. As a result, the Board scheduled multiple hearings to hear testimony from M&G and opponents to the crematorium.

² Rules of the Baltimore City Board of Municipal and Zoning Appeals (“BMZA Rules”) state that “[a]ppeals on applications for permits that have been disapproved and applications which have been referred to the Board by the Zoning Administrator shall be known as ‘Positive Appeals.’” BMZA Rules B.2. Available at, <https://perma.cc/WQ8X-7JJQ>.

III.

Board of Municipal and Zoning Appeals Public Hearings

A.

August 10, 2021

On August 10, 2021, the Board held its first public hearing on M&G’s proposal.³ Counsel for M&G and Greene Funeral Services called several witnesses to testify regarding M&G’s proposal to expand its current conditional use by adding a crematorium to its property. The witnesses testified to a variety of matters related to M&G’s proposal, including environmental and health impacts, and the evaluation criteria that the Board is required to use when approving a conditional use. *See* ZC § 5-406.

Vaughn Greene testified that he was a part-owner of M&G and the founder of Greene Funeral Services. Mr. Greene founded his business in 1996, and by 2005, he had expanded it to four locations in the Baltimore area. He testified “to the history and operation of the existing funeral home and the increased need for crematory services in the Baltimore area.” He explained that, when families entrust their loved ones to his care for cremation services, he must “outsource the decedent to a third party vendor” located outside of Baltimore City. He wanted to provide his clients, who primarily were African-American, with affordable services in the community where they lived, without having to pay increased third-party fees. Most of Mr. Greene’s cremation requests came from the

³ To accommodate the large number of exhibits and testimony from M&G and others, the Board scheduled two additional hearings, which were held on August 24, 2021, and September 16, 2021.

Govans community, and he selected the York Road location for the proposed crematorium “[b]ecause [that] location was where most of the need was.”

Dr. Carla Kinslow, a toxicologist with a Ph.D. in biomedical sciences and the Director of Toxicology and Food Safety for Rimkus Consulting, was accepted as an expert in the field of toxicology. Dr. Kinslow testified regarding the health concerns raised by the community with respect to M&G’s application to install a crematorium as a conditional use. She stated that the proposed air emissions presented in M&G’s application were below the “MDE regulatory threshold limits,” and these values were below the threshold values that would have an increased risk of an adverse effect, even for a population whose health is compromised. The proposed air emissions could not be “expected to . . . unreasonably endanger human health.” Moreover, the emissions would be released from a vent stack 40 feet above the ground, where they would mix with the surrounding air, and they would be further diluted as they mixed with the air before falling to breathing level. Dr. Kinslow distinguished the proposed emissions from “ground level emissions,” i.e., cars or trucks, that are “very close to where someone might be inhaling them.”

Dr. Kinslow then addressed community concerns related to disparate rates of pediatric asthma. She stated that, although Baltimore City does have “a disparity in the number of asthma-related issues” when compared to the rest of Maryland, the study cited by opponents to M&G’s application related to indoor environmental issues. That study did not address “ambient air issues or crematoriums” as a causative factor in the asthma-related disparity in Baltimore City; instead, the report focused on “indoor allergens such as tobacco

smoke.” Dr. Kinslow testified that “crematoriums have not been identified as a factor in the literature that would increase overall community asthma rates.” Nor would their emissions be predicted to cause COPD in the community.

Dr. Kinslow testified regarding fears related to the spread of COVID-19 through the air, stating that the virus and any variants would “be completely destroyed under the extreme heat conditions of the cremation process.” She stated that there was “no chance that COVID-19 [could] be spread from cremation of a human being.”

Dr. Kinslow also addressed concerns related to smoke being emitted from the proposed crematorium. She stated that particulate matter is the visible component of smoke, and “Baltimore City ambient air has been in compliance with particulate matter standards that are set by the [Environmental Protection Agency].” The proposed crematorium emissions also were in compliance with MDE standards, and the MDE had determined that emissions from the crematorium would not cause a detriment to the air quality with respect to particulate matter.

Dr. Kinslow then addressed stated concerns that the crematorium would “emit 2.28 pounds per day of sulfur dioxide, 3.74 pounds per day of . . . nitrogen oxide, 4.9 pounds per day of particulate matter, and 3.12 pounds per day of carbon monoxide.” She noted that these numbers assumed that Greene Funeral Services would be operating 12 hours a day, but it actually would be operating the crematory “closer to four hours per day, and not every single day.” Accordingly, the numbers provided to the Board “overstate[d] the pounds per day emissions.” Dr. Kinslow opined that the number of emissions produced in

one day would be approximately one-third of those presented to the Board, e.g., 0.76 pounds of sulfur dioxide, 1.2 pounds of nitrogen oxide, 1.6 pounds of particulate matter, and 1.04 pounds of carbon monoxide. She conceded that exposure in high concentration of these compounds could increase risk for adverse health effects, but the MDE has rules regarding emissions, and the ones involved here would have been determined by the MDE to be below “[the] thresholds of concern.”

With respect to the community’s health concerns related to mercury emission exposure, Dr. Kinslow testified that some of the statements in appellants’ report were misleading or “flat-out wrong,” and most people have some amount of methyl mercury in their body from having mercury fillings, eating fish, or other environmental exposure. Nevertheless, it was a “moot point” because Mr. Greene had committed to removing mercury from teeth, prior to cremation. Dr. Kinslow concluded her testimony by noting that both the EPA and MDE consider vulnerable citizens and high-risk groups when generating threshold limits related to emissions and their hazardous effects. She agreed that emissions that meet or are below regulations are not hazardous to a person’s health, again noting that the proposed crematorium would result in no increased risk for adverse effect.

Bruce Doak, a licensed property surveyor, testified as a land use expert. He was responsible for preparing the site plan that M&G submitted with its application. The Property was located in a mixed-use area consisting of residential (both single-family and row homes), retail, and commercial properties. The crematory would change very little

with respect to the Property because Greene Funeral Services would be utilizing an existing garage to house the crematory. He noted that the Board previously approved the conditional use funeral home, and based on his knowledge, the proposed crematorium was allowed under the definition of a funeral home under the Zoning Code.

With respect to standards the Board was required to consider under ZC § 5-406, Mr. Doak testified that, in his opinion, a crematorium would not “be detrimental to or endanger the public health, safety, or general welfare of [the] community.” In his expert opinion, a crematorium would not be contrary to the public’s interest, and the addition of a crematorium would be in harmony with the purpose and intent of the Zoning Code because “funeral homes have always been put in neighborhoods.” Because a crematorium is part of a funeral home, it “fits right into the intent of the Zoning Regulations.” The crematorium would not alter the essential character of the neighborhood.

Mr. Doak opined that a crematorium on-site would result in less traffic because Greene Funeral Services would no longer have to transport the deceased to and from an offsite location to facilitate cremation and services. The crematorium would allow Greene Funeral Services to provide all of the necessary services in-house. Addressing accessibility for emergency vehicles, Mr. Doak stated that “[t]here will be nothing occurring there with [a] crematorium that’s not already occurring.” Mr. Doak testified that the crematorium would not impair the present or future development of the area, noting that “most people are not even going to know that . . . a crematorium is offered at Vaughn Greene until they either hear about it or they need it.” He stated that “the only thing that’s going to change

is loss of the garage doors, and a few windows and doors changed out, and a . . . [smokestack] that looks in keeping with the building.” The crematorium would “not have an adverse impact” on adjoining properties, including “churches, schools, public structures or gathering places.” There would be no impact on the accessibility to light and air, and the crematorium would have no negative impact on utilities, access roads, or drainage because the Property would utilize existing infrastructure to operate. Mr. Doak did not believe that a crematorium would have a negative impact on the preservation of cultural and historical landmarks or structures in the community. In his expert opinion, the proposed crematorium would satisfy the standards and requirements of the Zoning Code, as well as its intent and purpose.

B.

August 24, 2021

On August 24, 2021, the second day of hearings, M&G and Greene Funeral Services called several witnesses to testify regarding M&G’s proposal to expand its conditional use authorization by adding a crematorium to its property. Jeff Barron, an employee in the Crematory Division of Matthews International, testified that he had been involved with M&G’s application from the start. Mr. Barron stated that Maryland was “easily the most stringent and thorough regulatory body” among various states with respect to obtaining approvals for crematoriums. M&G’s proposal was for what his company referred to as a “PowerPak II PLUS,” which contained controls to “safeguard against potential pollution,”

including an internet-connected “pollution monitoring system” that allows for offsite monitoring.

With respect to projected emissions, Mr. Barron testified that M&G’s application to the MDE specified that the crematorium “would run or operate 12 hours a day, 7 days a week” because it is common practice to “err on the side of caution,” and give “the maximum amount of run time” because, even at those levels, “the emissions are so far below what would be allowable . . . there should be no question that [it] is safe for the environment” and the community.

Richard King was accepted as an expert appraiser in the real estate business. He was familiar with the Property and M&G’s conditional use application. To address community concerns with respect to the proposed crematorium’s impact on real-estate values, Mr. King conducted a study to determine what effect, if any, crematoria in Baltimore City had on property values. Based on MDE records, there were only three other crematories located in Baltimore City. Looking at property values in those areas in the four years “after [a] crematory was constructed,” Mr. King concluded that average real-estate values went up following construction.⁴

Becky Witt, on behalf of the Community Law Center, stated that she opposed M&G’s “application for an incinerator so close to a residential neighborhood.” As further discussed, *infra*, she noted that the Board would have the opportunity to hear from people

⁴ Mr. King noted one exception in which the average property value decreased from \$36,778 to \$34,781.

who live in Baltimore City and “understand and know the neighborhood that [would] be affected” by adding a crematory in the neighborhood.

Lisa Polyak, an environmental engineer, was accepted as an expert in the field of air quality and public health and environmental engineering. Ms. Polyak testified that, based on her personal observations, she was able to identify several emission sources in the area surrounding the Property, including a post office across the street with “several dozen postal vehicles” and “lots of customer traffic,” as well as two fast-food restaurants, both which operated drive-through lanes. There were several additional sources of emissions within a two-block radius surrounding the Property, including two gas stations with a combined 18 gas pumps, and two MTA bus stops, one of which received 206 buses each day. Based on Maryland Department of Transportation data, approximately “19,734 vehicles travel York Road at that intersection every day of the year.” She also noted that York Road is a truck route, which allows “not just passenger cars, but things like light duty, mixed duty, and diesel trucks to pass.” Ms. Polyak testified that these sources of emissions are “called mobile sources” and can be distinguished from “stationary sources like power plants or factories or incinerators.” She estimated that emissions from just the vehicles on the road amounted to more than “50,000 pounds of harmful air pollutant,” although she did not testify whether the estimated emissions exceeded regulatory thresholds. She also stated that the MDE “only issues permits to stationary sources,” and mobile sources are “allowed to proliferate without any kind of scrutiny or control in the same way that stationary sources do because [stationary sources] have to get permits.”

With respect to particulate matter, which is the “pollutant [] produced in the greatest abundance by the crematorium,” Ms. Polyak testified that PM 2.5 particles are dangerous because they defeat the body’s defense mechanisms by getting caught in the mucus of a person’s nose or throat and can end up in a person’s bloodstream. Regarding Dr. Kinslow’s testimony that, there was “no additional risk to citizens,” because Baltimore was “in compliance with the fine particulate matter standard,” Ms. Polyak made two points. First, she stated that the only official PM 2.5 monitoring station in Baltimore City was three and a half miles away from the Property, so it did not represent “what’s going on” with the air quality where the Property was located. Second, the EPA has changed air quality standards as science advances, and there have been controversial decisions regarding these standards. Thus, even if the area complied with the 2012 standards in effect at the time, those standards “may not be properly protective of human health, based on current scientific knowledge.” Ms. Polyak then pointed to a study showing a “statistically significant relationship between communities that have chronic exposure to particulate matter, even at levels below the standards.” Ms. Polyak testified that a “crematorium is really just an incinerator for human remains,” asserting that crematorium emissions are “interchangeable with those produced by a medical waste incinerator.”

City Councilmember Mark Conway testified that a major consideration with respect to M&G’s application was environmental concerns. He stated: “I can’t really justify continuing to add . . . additional pollution in [an] already bad area when it comes to air pollution.” Councilmember Conway recognized that Greene Funeral Services was “a

valued part of the community,” but he stated that “the location and the health risks” associated with the proposed crematorium, including “increased rates of respiratory illness such as asthma,” were “deal breakers for [him].” In his view, a crematorium was not “in the best interest of the community.”

The York Road Partnership presented several witnesses in opposition to M&G’s application. Jackie Williams testified: “I am not against cremation, but I am against an incinerator in the midst of our neighborhood.” Anne Lansey testified that she completed a survey of the Kimberly Road Neighborhood Association, and “all of [the] neighbors . . . are adamantly opposed to the building of a crematorium.” As a child, Ms. Lansey was asthmatic and moved away. When she returned to Baltimore 13 years later, her “health problems reoccurred.” Chris Forrest, the president of the Winston-Govans Neighborhood Association, testified that an “incinerator in a dense community area is not viewed as an asset.” Although there was a benefit to the City for a crematorium, the community he represented “requested that Vaughn Greene seek another location.”

Annick Barker testified that she had “serious concerns about the impact of a crematorium,” which she equated to “an industrial incinerator with no external pollution controls.” She noted concerns related to children in the community who have asthma and the risks associated with “adding more pollution to [an] already stressed area.” Moira Horowitz testified that she planned to live in the area for the remainder of her life, but she did not “want to do [so] with a crematorium at the end of the street.” Cindy Camp testified that she lived in a large home with 11 family members residing there, and that her

“grandson [] has chronic asthma.” Her brother suffered from chronic bronchitis. She opposed a crematorium in her back yard because she did not want the “pollutants in [her] neighborhood to cause [her] to lose another loved one.”⁵

C.

September 16, 2021

On September 16, 2021, the Board held its final public hearing on M&G’s proposal. Several witnesses testified in opposition, and counsel for M&G called Mr. Greene, Dr. Kinslow, and Michael Tricoche, a representative from Matthews Environmental Solutions, to rebut or clarify testimony taken during previous hearings.

Maryland State Senator Mary Washington testified in opposition to M&G’s application, stating that the proposed “site would have significant impact on public health, business, and the residential and economic community.” She noted the city’s “absolute prohibition against incineration within city limits” and stated: “Crematoriums are incinerators for human remains.” Senator Washington expressed concerns with respect to placing another source of pollution in the community, particularly with respect to mercury and neurotoxic effects on “children with developing nervous systems.” Although she “value[d] the presence of Vaughn Greene Funeral Homes,” they had another location in a less densely populated area where they could consider placing the crematorium. Jeffrey

⁵ William Douglas Beims, admitted as an architect, also testified generally to his role in preparing the architectural design plans related to M&G’s proposal.

Tompkins, Jonathan Merch, Laine Scott-Nelson, and Leila Kohler-Fruch, members of the community, each testified in opposition to M&G's application.

Mr. Greene testified again on rebuttal. He acknowledged that incinerators were not permitted in Baltimore City, but he stated that there were three crematories in Baltimore City, and "a crematory is not an incinerator because we don't cremate trash." He stated:

What I do provides not only value for the people that call my services, but I return value to them. You don't take trash on [the] ninth hole on Mount Pleasant and Clifton Park and pour it out on the ninth green, and then celebrate it later. You don't do that with trash. You don't take trash to church, and bring people in to celebrate their life.

Mr. Greene testified that it was insulting to refer to his lifetime of work as an incinerator, a trash disposal company.

Mr. Greene spent significant time serving the community, supporting little leagues and other community events and projects. He believed his business for the crematory fell within the goals of the "York Road plan," noting that he was a minority business owner providing a service that people requested. Mr. Greene wanted to be a good neighbor and give value. He stated that he would comply with any limits or conditions that MDE placed on his air quality permit, if issued.

Michael Tricoche, an electrical engineer for Matthews Environmental Solutions, was admitted as an expert in electrical engineering. He noted that, although the air quality permit application here indicated a crematory operating 12 hours a day, 6 days a week, the "unit does not run continuously." Cremation is an intermittent process that involves preheating of the machine, loading the machine with a body, the cremation time, cooling

time, and then removal of the remains. The process is repeated for each body cremated in the machine. Listing twelve hours per day on the air quality permit application to the MDE was to allow MDE “to calculate potential emission[s] . . . of the machine,” but “[t]hat does not mean the machine will run 12 hours a day continuously because the machine doesn’t do that.”

Mr. Tricoche explained that the exhaust gases from the machine are monitored continuously. If the monitoring system detects an issue, an alarm is activated and certain components of the machine are systematically shut-down, while others are “maintained at the operating temperature” required by the MDE. He stated that the crematory that M&G is seeking approval for has a “self-regulation component,” which ensures the emissions are within MDE specified opacity levels.

Dr. Kinslow testified again, noting that the critical question that the Board was being asked to consider was whether “this crematorium’s air emissions will put the surrounding community in unreasonable danger?” She stated that the answer was no, explaining:

[A]ll the air emission modeling data indicates that the proposed crematorium will be well below the state and federal allowable limits [and therefore], will not result in ambient air concentrations that will adversely impact the health of the surrounding community.

And being compliant with the National Ambient Air Quality Standards, the NAAQS, as well as those set out by the Maryland Department of Environment, MDE, the public health is protected.

Dr. Kinslow stated that the “crematory is a minor emission source, and [it] is not expected to put the community’s health in unreasonable danger.” Mr. Greene had agreed to “restrict

dental amalgams” to eliminate community concerns regarding mercury emissions from fillings.

Addressing the opposition, Dr. Kinslow noted that Ms. Polyak agreed that there was “no scientific data, air data, to support that there’s any health concern currently in the community in the vicinity of the Vaughn Greene Funeral Home.” She also noted Ms. Polyak’s agreement that the nearest PM 2.5 monitor was in compliance with EPA NAAQS PM standards. Dr. Kinslow reiterated that the MDE guidelines are designed to protect the health of citizens.

D.

October 19, 2021, Deliberations

On October 19, 2021, the Board held the first of two days of deliberations on M&G’s application. It started deliberations by discussing the terms “incinerator” and “funeral home.” The Board then turned to the limited criteria for denial under ZC § 5-406 of the Zoning Code. The Board first concluded that under ZC § 5-406(b)(2), there was no urban renewal plan at issue in M&G’s application. It then addressed whether the general prohibition on incinerators under ZC § 1-209(b) was applicable. It concluded that a crematory is not an incinerator under the Zoning Code, and the city council did not intend “to include crematorium within the definition of an incinerator.”

The Board then addressed whether its authorization of M&G’s application would be contrary to the public interest or detrimental to the public health and welfare. The Chairman of the Board noted, and other members agreed, that there was a need for the

crematorium, and it was in the public interest to have it in the community. The Chairman stated that M&G satisfied its burden to show that the use of the Property for a crematorium would be in “harmony . . . with the purpose and intent” of the Zoning Code.

The Board then turned its attention to ZC § 5-406(b)(1), addressing whether the “establishment of the location, construction, maintenance, [or] operation of the conditional use would not be detrimental to or endanger the public health, safety, or welfare.” One member of the Board stated that this was “the hard one.” The Chairman noted that M&G established that the proposed crematorium was “within the guidelines established by the MDE,” and these guidelines protect “the State’s most vulnerable citizens,” such as Baltimore City residents with a weakened health status.

Referencing Ms. Polyak’s testimony, the Chairman noted that, although MDE’s guidelines may be reviewed in the future, no action had been taken yet to “invalidate the standards that the MDE has established.” He questioned whether the Board was “in a position to second-guess the MDE in establishing th[e] guidelines,” questioning how the Board could conclude that the operation of the crematorium was unsafe if the proposed emissions were within the guidelines. The other members agreed, and by a vote of four to one, the Board approved the conditional use to operate the crematorium, with conditions to be determined after giving the parties an opportunity to create a list of conditions acceptable to both parties.

E.

November 30, 2021, Deliberations

On November 30, 2021, the Board met for its final deliberations. The Chairman began by noting that the parties had not come to an agreement on conditions with respect to M&G’s operation of the crematorium. He reiterated the Board’s prior ruling that “Vaughn Greene meets the standards for approval,” and it had granted approval for the crematorium. The Chairman noted that the Board had received four requests from the community, and a response from M&G’s attorney. The Chairman stated: “[W]e wanted to give the parties an opportunity to come together and see what they could agree upon But they haven’t, . . . gotten there.” Following a brief discussion, and based on M&G’s letter and “parameters that [Mr. Greene] agreed to do,” the Board placed the following conditions on M&G’s application:

- (1) Only human remains from funeral homes owned, operated, or controlled by Vaughn Greene Funeral Services may be cremated on the premises;
- (2) Vaughn Greene Funeral Services will remove any and all teeth containing mercury amalgams prior to cremation; and
- (3) Vaughn Greene Funeral Services will comply with all applicable federal, state, and local laws.

F.

Board Decision

On January 4, 2022, the Board issued a Resolution granting M&G’s request as a modification to its existing conditional use, subject to the conditions noted above. In support of its decision, the Board set forth the following findings of fact:

The Appellant, Vaughn Green[e] testified to the history and operation of the existing funeral home and the increased need for crematory services in the Baltimore area. Along with the submission of many documents, the Appellant also provided testimony from a land use expert, appraiser, architect, air quality toxicologist, engineer, and a representative from the crematorium's manufacturer.

The Opposition testified that the location, maintenance, and operation of a crematorium would be: 1) detrimental to and endanger the public health, safety, and welfare; 2) contrary to the public interest; 3) not in harmony with the purpose and intent of the Zoning Code—and thus, in violation of article 32, § 5-406. The Opposition offered testimony from their own air quality expert. In addition, the Opposition likened the operation of the crematorium to that of an incinerator and alleged that such a use, as defined in the Zoning Code, would be prohibited.

The Board heard lengthy testimony from both the Opposition and the Appellant, including from multiple air quality experts. During testimony, both parties conceded that the crematorium would produce some emissions, though they disagreed to what degree, as well as what the overall impact would be on nearby residents. In addition, witnesses for the Opposition testified to the elevated risks of asthma, heart disease, and chronic lung disease experienced by members of the Winston-Govans community.

The Board explained that, under ZC § 1-306(u), “a funeral home is an establishment for preparing deceased individuals for burial *or cremation* and for conducting rituals before burial *or cremation*.” (Emphasis added). It noted that “funeral homes” are permitted as a conditional use in a C-2 Zoning District under the Zoning Code. Under the Zoning Code, any conditional use granted prior to 2017 remains effective, and in 2009, it had issued a conditional use authorization. It noted its authority to approve conditional uses “under the standards set for by [ZC] §§ 5-405 and 5-406.”

With respect to ZC § 5-406(a), conditional use approval standards, the Board concluded, in relevant part, as follows:

Based on the evidence before it, the Board finds that while the crematorium will add to overall emissions within the zone; however, it does not find that those emissions will be above and beyond those associated with other similar uses. The Board finds that to allow fast-food restaurants and other polluting businesses to continue to operate in the area, while restricting Appellant's use of its property would not be in harmony with the purpose and intent of Article 32. Indeed, the scope of commercial activity supported in the C-2 Zoning District is intended for areas of small to medium-scale commercial use, typically located along urban corridors, such as the York Road Corridor, *see Article 32, § 10-204*.

The Board also recognizes the community's objections and concerns regarding air pollution and public health. However, testimony leads the Board to conclude that these concerns will be addressed as part of the Appellant's air permit application process with the Maryland Department of the Environment ("MDE"). Until MDE issues a permit, the Appellant may not provide any cremation services. The Board heard testimony from expert witnesses that MDE only will issue its permit after it determines that the crematorium will not produce air emissions that MDE considers dangerous. Indeed, the Board does not wish to substitute its own judgment for that of a state agency tasked with protecting the health and safety of its citizens by regulation air pollution.

The Board also made conclusions of law with respect to ZC § 1-204(b), which states, in relevant part:

If any condition or requirement imposed by this Code is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this Code or of any other law, rule, or regulation of any kind, including an applicable Urban Renewal Plan, the condition or requirement that is more restrictive governs.

The Board noted that the Zoning Code prohibits the use of incinerators, but to adopt the Opposition's view that incinerators include crematoria would require the Board to "find that human remains fall under the definition of solid waste." It concluded that human remains are not "solid waste," and the "Zoning Code does not contain a contradiction."

Accordingly, the Board found that the use of a crematorium “is not precluded by any law, including any applicable Urban Renewal Plan.”

The Board then addressed the factors set forth in ZC § 5-406(a). It stated that, based on its comprehensive review of the evidence, “the proposed crematorium will not have adverse effects above and beyond those inherently associated with crematoriums irrespective of its location within the zone because the funeral home stands in the same position as all other businesses on York Road that contribute pollution in the community.” The Board found that Greene Funeral Services’ funeral home was “located along a busy commercial strip along the York Road Corridor,” and “[a]ny future development in the area would be impacted by the entire corridor, not just the funeral home and its cremation services.” The Board noted that those opposed to the proposed crematorium did not provide credible evidence that its presence “would impact nearby home values or cause harm to . . . nearby community gathering areas.” Instead, the Board found credible the testimony that a crematorium would provide “a much-needed service” to the community, and its proposed use was not out of character from what was described in the York Road Corridor Vision and Action Plan.

In its conclusion, the Board noted the following:

After a complete and comprehensive review of all the evidence, the Board finds by competent evidence that the establishment, location, construction, maintenance, and operation of the proposed crematorium would not be detrimental to or endanger the public health, safety, or welfare; the proposed use is not precluded by any other law, including any applicable Urban Renewal Plan; this authorization is not contrary to the public interest; and this authorization and proposed use is in harmony with the purpose and intent of this Code. In consideration of these standards[,] including those imposed

by [ZC § 5-406(b)], and on review of the file, testimony, and evidence submitted in support of this conditional use application, the Board finds by competent evidence that [M&G’s] request meets the requirements of Article 32, the Zoning Code of the City of Baltimore.

The Board stated that appellants failed to meet their “burden under the *Schultz* standards for rebutting the presumption of validity.” It recognized the community’s interest in clean air, and it had “asked both parties to come up with a set of conditions that they would be willing to agree to, which would allow Vaughn Greene to operate its crematorium, while providing some additional assurances to the Community.” As indicated, the Board had been presented with a set of conditions, which were incorporated within its resolution.

On January 4, 2022, appellants filed a petition in the Circuit Court for Baltimore City seeking judicial review of the Board’s decision. On July 12, 2022, the court held a remote hearing. On May 16, 2022, in a lengthy Memorandum and Opinion, the circuit court summarized the procedural history and facts associated with M&G’s application and the community’s opposition thereto. The court first explained that crematoria are permitted as conditional use as part of a funeral home, and it concluded generally that a “crematorium functionally is a type of incinerator.” It noted, however, that the Board correctly interpreted the Zoning Code “to harmonize the specific approval of crematoria, on the one hand, with the general prohibition on incinerators, on the other hand.” The court credited Mr. Greene’s testimony that people “generally attach significant value to [cremated] ashes even [where] that value is largely emotional or symbolic.” It concluded that the “special features [of crematoria] lend support to a construction of the Zoning Code that recognizes that the City Council simultaneously meant to limit industrial-scale solid waste incinerators in the

City while also permitting the specialized and much more limited functioning of crematoria ancillary to funeral home businesses.”

With respect to Baltimore City’s general prohibition on incinerators, the court stated that the provision was “inapplicable” in the context of this matter. It stated that the provision did not apply “because the prohibition on incinerators does not apply to override the explicit permission given for establishment of crematoria as a feature of a funeral home.” The court concluded that the Board “did not err as a matter of law[,] and that its decision that the proposed crematorium will not have adverse effects at this location above and beyond the effects inherent in the operation of a crematorium [was] supported by substantial evidence in the [record].” Accordingly, the court affirmed the Board’s decision.

This timely appeal followed.

STANDARD OF REVIEW

We recently explained the standard of review of an administrative agency’s zoning decision as follows:

When reviewing a decision by an administrative agency, this Court “looks through” the decision of the circuit court, applying the same standards of review to determine whether the agency itself erred. *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210, 184 A.3d 48 (2018). “We are limited to evaluating whether there is substantial evidence in the record as a whole to support the agency’s findings and conclusions and to determining whether the administrative decision is premised upon an erroneous conclusion of law.” *Id.* (citing *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 949 A.2d 85 (2008)). “In this context, substantial evidence, as the test for reviewing factual findings of administrative agencies, has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Piney Orchard Cmty. Ass’n v. Md. Dep’t of Env’t*, 231 Md. App. 80, 91–92, 149 A.3d 1175 (2016) (quoting *Tomlinson v. BLK York LLC*, 219 Md. App. 606, 614, 101 A.3d 539

(2014)). “Furthermore, not only is the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.” *Brandywine Senior Living at Potomac LLC, supra*, 237 Md. App. at 211, 184 A.3d 48 (quoting *Pollock v. Patuxent Inst. Bd. of Rev.*, 374 Md. 463, 477, 823 A.2d 626 (2003)).

In re Homick, 256 Md. App. 297, 307–08 (2022).

“Although this Court defers to the factual findings of agencies, we review their decision regarding matters of law *de novo*, while still proving a degree of deference on some legal issues in accordance with the position of the agency.” *Id.* at 308. “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.* (quoting *Willow Grove Citizens Ass’n v. Cnty. Council of Prince George’s Cnty.*, 235 Md. App. 162, 168–69 (2017)).

DISCUSSION

Appellants contend that the Board erred in approving M&G’s conditional use request for several reasons. First, they argue that the use is precluded by another law, i.e., ZC § 1-209(b)(2), which “prohibits incinerators citywide.” They assert that a crematorium is an incinerator. Acknowledging that crematoria are authorized as conditional uses, they argue that the Zoning Code’s “tie-breaking provision” controls and the most restrictive provision, precluding incinerators and therefore crematoriums, controls. Second, appellants assert that the Board failed to evaluate the impact of the conditional use on the health of the community, and instead shifted responsibility in that regard to the MDE. Third, appellants contend that the Board erroneously applied *Schultz*, by neglecting to

provide a location-specific analysis, improperly weighing the potential for adverse effects against the limited benefits to the community and failing to follow its legal obligations to consider the intent of the Zoning Code. Before addressing appellants' contentions, we discuss the provisions of the Zoning Code at issue here.

I.

Applicable Code

On December 5, 2016, the Baltimore City Council enacted TransForm Baltimore, a comprehensive zoning ordinance with the express purpose of “establishing a new Zoning Code for Baltimore City.” Balt. City Ord. 16-581 (Dec. 5, 2016). TransForm Baltimore (the “Zoning Code”) “was [the] first comprehensive rezoning plan” enacted in Baltimore City “since 1971.” *Floyd v. Balt. City Council*, 241 Md. App. 199, 203 (2019). The City Council of Baltimore enacted the Zoning Code to serve the following purposes:

(1) to execute the powers and duties vested in the City of Baltimore by the State Land Use Article; (2) to promote and protect public health, welfare, and quality of life for current and future generations; (3) to ensure that the visions set forth in the City’s Comprehensive Master Plan are implemented by land use regulations consistent with the goals set forth; (4) to promote the principles and standards enacted in the Baltimore City Sustainability Plan; (5) to protect the physical environment and public natural resources for all residents; (6) to preserve and enhance the value of structures, communities, and neighborhoods; (7) to preserve, protect, and promote the City’s employment base; and (8) to provide oversight and planning to sustain the healthy growth of the City’s employment centers.

ZC § 2-101.

To carry out its purpose, the legislature divided Baltimore City into various zoning districts, e.g., open-space and environmental districts, detached and semi-detached

residential districts, rowhouse and multi-family residential districts, commercial districts, industrial districts, and special purpose districts. *See* ZC §§ 6-201–207. Each category of districts contains sub-districts. *Id.* Relevant here, the stated purpose under the Zoning Code’s “Commercial Districts” title “is to set out the use regulations . . . for Commercial Zoning Districts.” ZC § 10-101. Within the Zoning Code’s commercial districts there are seven sub-districts. *See* ZC § 6-205. “The C-2 Community Commercial Zoning District is intended for areas of small to medium-scale commercial use, typically located along urban corridors, that are designed to accommodate pedestrians and, in some instances, automobiles.” ZC § 10-204(a). C-2 District standards exist to: “(1) ensure compatibility among neighboring residential, commercial, and entertainment uses; (2) maintain the proper scale of commercial use; and (3) maintain a balance between high traffic volume and pedestrian circulation.” ZC § 10-204(b)(1)–(3).

Within each of the zoning districts, the Zoning Code provides for “permitted” and “conditional” uses. *See* ZC, Table 10-301 (*Commercial Districts—Permitted and Conditional Uses*). A “permitted” use is “allowed in a zoning district without the need for special administrative review and approval, as long as it conforms to all the applicable requirements and standards of th[e] Code.” ZC § 1-314(l).

“A conditional use allows a particular use on a property that is not granted to a property owner by right.” *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210, *cert. denied*, 460 Md. 21 (2018). It “is a valid zoning mechanism that delegates to an administrative Board limited authority to allow enumerated uses which the

legislature has determined to be permissible absent any fact or circumstance negating the presumption.” *Mayor and Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 541–42 (2002) (quoting *Schultz*, 291 Md. at 11). A conditional use is presumed to be “in the interest of the general welfare, and therefore, valid.” *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 540 (2017) (quoting *Anderson v. Sawyer*, 23 Md. App. 612, 617 (1974)).

Under the Zoning Code, a “funeral home” is designated as a “conditional use” in a C-2 District, subject to approval by the Board. *See* ZC, Table 10-301 (“Funeral Home”).⁶ The Zoning Code defines “funeral home” as “an establishment for preparing deceased individuals for burial or cremation and for conducting rituals before burial or cremation.” ZC § 1-306(u)(1). Crematoria are included within the definitions of “funeral home,” ZC § 1-306(u)(2)(ii), and “cemetery.” *See* ZC §§ 1-303(u)(2)(i).

The Board may not approve a conditional use unless it finds that:

- (1) the establishment, location, construction, maintenance, or operation of the conditional use . . . would not be detrimental to or endanger the public health, safety, or welfare;
- (2) the use . . . would not be precluded by any other law, including an applicable Urban Renewal Plan;
- (3) the authorization would not be contrary to the public interest; and
- (4) the authorization would be in harmony with the purpose and intent of this Code.

ZC § 5-406(b).

With that background in mind, we address appellants’ contentions.

⁶ A conditional use requiring approval by the Board of Municipal and Zoning Appeals is designated in ZC, Table 10-301 by the symbol “CB.” *See* ZC § 1-205(b)(1)(ii).

II.

Crematorium / Incinerator

Appellants contend that the Board erred in granting M&G’s conditional use for a crematorium because it is precluded by another law. They assert that, by “it’s plain and ordinary meaning, a crematorium is an incinerator,” and ZC § 1-209(b)(2) bans incinerators within city limits. Because there is a conflict between the ban on incinerators in the city and “Table 10-301 (which conditionally allows funeral homes, defined by § 1-306(u)(2)(ii) to include crematoria, in C-2 districts),” appellants argue that the Board failed to apply ZC § 1-203(b), which requires that, in the event of conflicting provisions, the most restrictive provision—the city’s ban on incinerators—governs.⁷ Accordingly, appellants argue that crematoria are not allowed within city limits.

Appellees contend that “the plain and unambiguous language of” ZC § 1-306(s) and Table 10-301 “reflects the legislative intent that crematoriums are allowed as conditional uses in C-2 (community commercial) zoning districts.” They assert that there is no conflict with the provision prohibiting incinerators in the city because a crematorium is not an incinerator. In that regard, they note that ZC § 1-307(s)(1) defines incinerator as a

⁷ ZC § 1-203(b) states, in relevant part:

If any condition or requirement imposed by this Code is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this Code or of any other law, rule, or regulation of any kind, including an applicable Urban Renewal Plan, the condition or requirement that is the more restrictive governs.

combustion unit that provides for “thermal destruction of solid waste,” but “the focus of cremation is the thermal destruction of ‘deceased individuals,’ not solid waste.”

In assessing the parties’ claims, we must apply well-settled rules of statutory construction. “The cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the [legislative body] in enacting the law under consideration.” *Cherry v. Mayor and City Council of Balt. City*, 475 Md. 565, 597 (2021) (quoting *In re Collins*, 468 Md. 672, 689 (2020)) (alteration in original). “A court’s primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). *Accord Cherry*, 475 Md. at 597. “If the statutory language ‘is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction.’” *Cherry*, 475 Md. at 597 (quoting *Lockshin*, 412 Md. at 275). We do not, however, “analyze statutory language in a vacuum.” *Collins*, 468 Md. 689–90. *Accord Cherry*, 475 Md. at 597. Instead, “statutory language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.” *Collins*, 468 Md. at 690 (internal quotation marks and citation omitted). *Accord Cherry*, 475 Md. at 597.

With respect to an appellate Court’s interpretation of the legislative intent of a statute, the Supreme Court has stated:

We presume that the legislature “intends its enactments to work together as a consistent and harmonious body of law, and, thus, we seek to reconcile and

harmonize the parts of a statute to the extent possible consistent with the statute’s object and scope.” [Collins, 468 Md. at 690] (internal quotation marks and citation omitted); see also *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 302–03, 783 A.2d 667 (2001) (“[W]hen interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme.”). Where statutory language is ambiguous and thus subject to more than one reasonable interpretation, or where the language is unambiguous when read in isolation, but ambiguous when considered in the context of a larger statutory scheme, “a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process. In resolving ambiguities, a court considers the structure of the statute, how it relates to other laws, its general purpose, and the relative rationality and legal effect of various competing constructions.” *Lockshin*, 412 Md. at 276, 987 A.2d 18 (citations omitted).

Cherry, 475 Md. at 597–98.

“We construe local ordinances and charters under the same canons of statutory construction as we apply to statutes.” *Id.* at 598. “The plain language of the local ordinance is the primary source of legislative intent.” *Id.* Accord *O’Connor v. Balt. Cnty.*, 382 Md. 102, 113 (2004). “In determining the legislative intent of a local ordinance, we assign the words of the ordinance ‘their ordinary and natural meaning and avoid adding or deleting words to impose a meaning inconsistent with the plain language’ of the measure.” *Id.* at 598 (quoting *120 W. Fayette St., LLLP v. Mayor and City Council of Balt. City*, 413 Md. 309, 413 (2010)). “Moreover ‘a court must read the language of the charter or ordinance in context and in relation to all of its provisions.’” *Id.* (quoting *Howard Rsch. Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 364 (1983)).

We begin our analysis by noting that a funeral home, with a crematorium, is authorized as a conditional use. See ZC, Table 10-301 (listing “funeral home” as a

conditional use in a C-2 District); ZC § 1-306(u)(1) (“‘Funeral home’ means an establishment for preparing deceased individuals for burial or cremation.”); ZC § 1-306(u)(2)(ii) (Funeral home includes a crematorium.). Appellants do not take issue with that fact. The issue raised by appellants is whether a crematorium, despite these provisions, is actually an incinerator, which is a prohibited use pursuant to ZC § 1-209.⁸

The term “crematorium” is not defined in the Zoning Code. The Zoning Code provides: “Terms not defined in this Code are to be interpreted in accord with their ordinarily accepted meanings, as their context implies.” ZC § 1-206.

This Court has noted that, “[i]n determining the plain meaning of statutory language, reference to dictionaries is appropriate.” *Mungo v. State*, 258 Md. App. 332, 365 (2023) (quoting *In re Abhishek I.*, 255 Md. App. 464, 473 (2022)), *cert. denied*, 486 Md. 158 (2023). *Merriam-Webster Dictionary* defines the term “crematorium” as “an establishment or structure in which the bodies of the dead are cremated.” *Crematorium*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/crematorium> (last visited July 15, 2024). Cremation has been defined as “the process of reducing a dead body to mostly tiny bits of bone resembling ash that involves exposing the body to flame and intense heat followed by pulverization of bone fragments.” *Cremation*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cremation> (last visited July 15, 2024). *Accord* Md. Code Ann., Health – General (“HG”) § 5-508(c) (2023 Repl. Vol.)

⁸ Under the Zoning Code, the use of an incinerator is “prohibited in all zoning districts of the City.” ZC § 1-209(b)(2).

(“‘Cremation’ means the disposition of a dead human body by means of incineration.”). *See also* COMAR 26.11.8.01(B)(9-1) (Defining a “crematory” as “a furnace where a human . . . is burned.”). Thus, we interpret the word crematorium in the Zoning Code as a place, such as a funeral home, where a dead body is cremated.

We turn next to the term incinerator. As indicated, we look at the language of the ordinance to determine the legislature’s intent. *Cherry*, 475 Md. at 598. An incinerator is defined as “a combustion unit that uses controlled flame combustion for the thermal destruction of solid waste, including municipal waste, industrial waste, hazardous waste, special medical waste, or sewage sludge.” ZC § 1-307(s)(1). The terms “solid waste,” “municipal waste,” “industrial waste,” “hazardous waste,” “special medical waste,” and “sewage sludge” are not defined in the Zoning Code. *See* ZC §§ 1-301 thru 1-315.

Solid waste is defined, however, in Baltimore City’s Sanitation Article (the “Sanitation Article”). *See Cherry*, 475 Md. at 598 (“In resolving ambiguities, a court considers the structure of the statute, how it relates to other laws, its general purpose, and the relative rationality and legal effect of various competing constructions.”) (quoting *Lockshin*, 412 Md. at 276). The Sanitation Article defines “solid waste” as: “garbage, rubbish refuse, hazardous waste, asbestos, medical waste, rubble, incinerator ash, ash, trash, and other material generated by commercial, industrial, institutional, and residential establishments.” Balt. City Code, Sanitation, Art. 23 § 11-1(i)(1) (2020).

Looking at the definitions of the terms, we agree with the Board that the city council did not intend “to include crematorium within the definition of an incinerator.” Cremated

human remains are not solid waste; they are not garbage or trash. The Board properly determined that a crematorium was not precluded by the ban on incinerators.

III.

Abdication of Duty

Appellants contend that the Board erred as a matter of law when it “improperly abdicated its duties to the MDE.” They assert that the Board failed to evaluate the impact of the conditional use on the health of the community and instead shifted responsibility in that regard to the MDE. This contention is based on the following portion of the Board’s resolution:

The Board also recognizes the community’s objections and concerns regarding air pollution and public health. However, testimony leads the Board to conclude that these concerns will be addressed as part of the Appellant’s air permit application process with the Maryland Department of the Environment (“MDE”). Until MDE issues a permit, the Appellant may not provide any cremation services. The Board heard testimony from expert witnesses that MDE only will issue its permit after it determines that the crematorium will not produce air emissions that MDE considers dangerous. Indeed, the Board does not wish to substitute its own judgment for that of a state agency tasked with protecting the health and safety of its citizens by regulating air pollution.

Appellants argue that it is the Board’s duty to evaluate the impact of emissions to neighboring properties, a finding that is not the responsibility of the MDE. They assert that the “MDE reviews only the emissions of a proposed installation; it is insensitive to the overall air pollution in a community,” and the Board erred in shifting its responsibility.

Appellees disagree. They argue that the Board considered the evidence and the “public health issues related to the crematorium’s emissions,” and it rejected appellants’

contentions, separate from relying on the MDE's future review of M&G's application. They assert that the Board considered Dr. Kinslow's testimony, which "indicate[d] that emissions of the proposed crematorium [would] be well below the MDE and federal allowable limits[,] and that the public health would be protected by compliance with MDE standards and federal standards." Appellees contend that the "Board not only considered this evidence independent of any action that MDE would take but considered and required that the crematorium operated in compliance with applicable state and federal law."

At the outset, we note that, crematoriums must have a State issued permit to operate. *See* Md. Code Ann., Environment ("EN") § 2-401 (2013 Repl. Vol.); COMAR 26.11.02.13(A)(1). "Before accepting an application for a permit," the MDE must ensure that the "proposal has been approved by the local jurisdiction for all zoning and land use requirements." EN § 2-404(b)(1). "Taken together, these provisions indicate a clear intent on the part of the General Assembly to locate environmental permitting with the MDE, and zoning with local government." *Md. Reclamation Assocs., Inc. v. Harford Cnty.*, 414 Md. 1, 40 (2010). "There is no reasonable way to construe these provisions of the Maryland Code as doing anything other than complementing local government's role in planning and zoning." *Id.*

During deliberations, the Board discussed the testimony that the MDE guidelines protected vulnerable citizens, that the Board was not "in a position to second-guess the MDE in establishing [emission] guidelines," and that, if it were to grant M&G's application, the grant "would be approved expressly contingent upon being in accordance

with the MDE guidelines.” In its decision, the Board stated that concerns regarding air pollution and public health would be addressed by the MDE as part of the air permit application process, and crematory services could not be provided until MDE issued a permit. The Board’s decision in this regard, conditioning its approval on M&G’s compliance with MDE regulations, was consistent with its obligation to ensure that the crematorium be operated within applicable state regulations.

Moreover, the record demonstrates that the Board independently satisfied its obligation to consider whether M&G’s conditional use application would be detrimental to or endanger the public health, safety, or welfare as part of its role in planning and zoning. First, the Board recognized Dr. Kinslow’s testimony that M&G’s proposed crematorium was “within the guidelines established by the MDE,” and that those guidelines are designed to protect “the State’s most vulnerable citizens.” The Board concluded that, after “a complete and comprehensive review of all the evidence,” M&G’s proposed crematorium “would not be detrimental to or endanger the public health, safety or welfare.” The contention that the Board abdicated its authority to address the concerns regarding air pollution on health in the community is without merit.

IV.

Application of the *Schultz* Test

Appellants next contend that the Board erroneously applied *Schultz* by neglecting to provide a location-specific analysis, improperly weighing the potential for adverse effects against the limited benefits to the community, and failing to follow its legal

obligations to consider the intent of the Zoning Code. They assert that “[t]he adverse effects of a crematorium within such close proximity to residences, schools, and community gardens far outweighs the benefits of moving cremation services in-house.”

Appellees contend that M&G presented substantial evidence to meet its burden of proof under *Schultz* and ZC § 5-406(b), and appellants failed to present credible evidence of unique adverse effects. They assert that the Board credited Dr. Kinslow’s testimony on the potential public health issues and properly found that appellants “did not present ‘credible evidence . . . that the crematorium’s emissions would be above and beyond those normally associated with such a use in a C-2 district.’”

In addressing those issues, we look to the standard set forth in *Schultz*, which “is widely considered to be the bellwether case regarding conditional uses and special exceptions in the [S]tate of Maryland.” *Clarksville*, 453 Md. at 540.⁹ In that case, the Court explained that, when the legislative body has made a judgment that a use is conditionally permitted, there is a presumption of validity, and the use should be denied only where there is evidence of “an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” *Schultz*, 291 Md. at 15. *Accord People’s Counsel for Balt. Cnty. v. Loyola College in Maryland*, 406 Md. 54, 84 (2008) (“The conditional use or special exception is part of the

⁹ The terms “special exception use” and “conditional use” are understood in “Maryland land use law to be interchangeable.” *Montgomery Cnty. v. Butler*, 417 Md. 271, 275 n.1 (2010). *Accord Schultz v. Pritts*, 291 Md. 1, 3 n.1 (1981).

comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid.”) (quoting *Anderson*, 23 Md. App. at 617). “If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, [it] has met [its] burden.” *Schultz*, 291 Md. at 11. As the Supreme Court of Maryland has explained:

Schultz and its progeny established that if a conditional use applicant demonstrates compliance with the prescribed standards and requirements set forth in the relevant statute or regulation, then there is a presumption that the use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects. Absent such probative evidence, it is arbitrary, capricious, and illegal for the Board to deny the conditional use application. See *Schultz*, 291 Md. at 15, 22–23, 432 A.2d at 1327, 1331 (citations omitted).

Clarksville, 453 Md. at 543.

As indicated, *supra*, in Part I, a crematorium is permitted as a conditional use of funeral homes in C-2 Districts under the Zoning Code. See ZC, Table 10-301 (“Funeral Home”). Thus, use as a crematorium “is part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid.” *Clarksville*, 453 Md. at 541 (quoting *Anderson*, 23 Md. App. at 617). *Accord In re Homick*, 256 Md. App. at 319.

Appellants contend that the Board erred in its analysis of the crematorium’s adverse effects on the community. ZC 5-406(b) provides that the Board may not approve a conditional use unless it finds that: (1) the conditional use “would not be detrimental to or endanger the public health, safety, or welfare”; (2) the use is not prohibited under any other

law, including a relevant Urban Renewal Plan; (3) the use is not “contrary to the public interest”; and (4) “authorization would be in harmony with the purpose and intent of [the] Code.” We have already disposed of the argument that the use is prohibited under another law (the law prohibiting incinerators). We now address whether a crematorium use would be “detrimental to or endanger the public health, safety, or welfare” or “contrary to the public interest.”

Appellants contend that there was insufficient “evidence to refute the Community’s contention that the installation of a crematorium in this neighborhood is incrementally detrimental to the safety and welfare of its residents because of the *unique attributes of this location and its population*,” including that children and older adults who live within 150 feet from the proposed crematorium, and that there were schools within a quarter mile of the proposed use. The Board found, however, that M&G’s proposed crematorium would “not have adverse effects above and beyond those inherently associated with crematoriums.” This conclusion is adequately supported by the testimony of Dr. Kinslow and Ms. Polyak. Dr. Kinslow testified that emissions from “the proposed crematorium w[ould] be well below the state and federal allowable limits” and “w[ould] not result in ambient air concentrations that w[ould] adversely impact the health of the surrounding community.” She stated that readings from the nearest ambient air pollution monitor “ha[d] progressively dropped to values well below [National Ambient Air Quality Standards],” despite an increase in commercial business and population increases in the

surrounding area.¹⁰ She testified that the proposed crematorium “is a minor emission source” and could not be “expected to put the community’s health in unreasonable danger.” Dr. Kinslow equated the emissions to other minor sources such as dry cleaners and barbecue restaurants.

Although Ms. Polyak testified in opposition, the Board stated that it “did not hear any credible evidence from [her] to suggest that the crematorium’s emissions would be above and beyond those normally associated with such a use within a C-2 district.” Ms. Polyak conceded that, if the air quality is meeting standards published by the EPA and adopted by Maryland, “then citizens should be protected from negative health problems due to poor air quality.”

Appellants contend further that “the Board failed to consider the cumulative impact of the unique types of emissions caused by crematoriums on the already poor air quality and health outcomes of the surrounding neighborhoods.” They argue that “the cumulative effect of the additional and unique pollution of a human incinerator to a historically disadvantaged neighborhood replete with health issues would present uniquely adverse effects not in harmony with the general purpose and intent of the [Zoning] Code.” They contend that, when considering issues of public health, safety, welfare, and the public

¹⁰ Dr. Kinslow’s testimony addressed the Board’s obligation to consider Baltimore City’s 2019 Sustainability Plan (the “Plan”) as part of the Zoning Article’s general intent. *See* ZC § 2-101. The Plan directs agencies to “[a]ssess and monitor how air quality varies across the city to identify neighborhoods in greatest need of improvement, and increase community awareness of how air quality impacts the health of children, the elderly, low income communities, and communities of color.”

interest, the Board must consider “the principles and standards enacted in the Baltimore City Sustainability Plan.”

Appellees contend that the Board is not required to contemplate the “cumulative effect of additional, similar source[s] of emissions” when considering a conditional use application. Instead, they argue, “disapproval is appropriate only where there is evidence of an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from such a special exception.”

At the outset, we note that one of the many purposes of the Zoning Code is “to promote the principles and standards enacted in the Baltimore City Sustainability Plan.” ZC § 2-101(4).¹¹ With respect to the Plan’s Clean Air goals, the plan seeks to expand access for Baltimore City residents to “breathe clean air.”

As indicated, Dr. Kinslow provided uncontroverted testimony that “all [of] the air emission modeling data indicates that the proposed crematorium will be well below the state and federal allowable limits,” and therefore, it “will not result in ambient air concentrations that will adversely impact the health of the surrounding community.” She also testified that “state and national air [quality] data indicate that there has been a constant reduction in particulate matter . . . at the Old Town Fire Station monitor in Baltimore City.” Dr. Kinslow stated that M&G’s proposed crematorium would “be in line with

¹¹ On March 18, 2019, the Baltimore City Council approved the 2019 Baltimore Sustainability Plan. *See* BALT. CITY OFFICE OF SUSTAINABILITY, 2019 BALTIMORE SUSTAINABILITY PLAN (2019), available at <https://perma.cc/5S93-8KJA>.

environmental goals set forth in the Baltimore City Sustainability Plan with regard to climate resilience.”

The Board further found credible the testimony that the funeral home “would be providing a much-needed service,” and it found that “restricting [M&G’s] use of its property would not be in harmony with the purpose and intent of Article 32.” As the circuit court correctly noted:

By allowing crematoria as a permitted feature of funeral homes and then making funeral homes permitted of right in some zoning districts and a conditional use in C-2 districts, the City Council has already made a legislative judgment that these levels and types of emissions are not inconsistent with those districts, absent unusual circumstances.

Mem. Op. at 35. The Board added conditions to the approval to address the communities’ needs, including the condition that the funeral home remove any teeth containing mercury amalgams prior to cremation.

Based on our review of Board’s decision and the record before it, we cannot conclude that the Board erred in granting M&G’s conditional use application. Accordingly, we will affirm the judgment of the circuit court affirming the Board’s decision.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**