

Circuit Court for Calvert County
Case No. C-04-CV-20-000356

UNREPORTED
IN THE APPELLATE COURT OF
OF MARYLAND*

No. 1342

September Term, 2021

CALVERT COUNTY BOARD OF
COMMISSIONERS

v.

DAVID GILBERT

Kehoe, C.,**
Tang,
Adkins, Sally D.***
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: October 21, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** Kehoe, Christopher, now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*** Adkins, J., participated in the hearing of the case and in the conference, but did not participate in the adoption of this opinion because she was no longer serving as a Senior Judge of the Appellate Court. The remaining judges sitting on the panel constitute a quorum. Because they are in agreement as to the reasoning and outcomes of the appeal, there is a “concurrence of a majority of [the] panel.” Md. Code, Cts. & Jud. Proc., § 1-403(b); *see also Jackson v. State*, 408 Md. 231, 239-240 (2009).

In 2019, David Gilbert purchased a parcel of land located within an Agricultural Preservation District in Calvert County. He asked the County's Planning and Zoning Department if he could subdivide his property into three lots for residential development. The Department advised him that he could not. Mr. Gilbert appealed this ruling to the Calvert County Board of Appeals, which affirmed the Department's decision. Mr. Gilbert then filed a petition for judicial review. The Circuit Court for Calvert County reversed the Board of Appeals' decision. The Board of County Commissioners of Calvert County has appealed the judgment and presents one issue, which we have reworded slightly:

Did the Board of Appeals err when it upheld the Zoning Officer's decision to deny Mr. Gilbert's request to subdivide his property?¹

As we will explain, Mr. Gilbert has failed to exhaust his administrative remedies. We will reverse the decision of the circuit court and remand this case with instructions to dismiss Mr. Gilbert's judicial review proceeding.

¹ The County's articulation of the issue:

Whether the Calvert County Board of Appeals erred by upholding the Calvert County Zoning Officer's decision to deny Appellee's request to further subdivide/develop Agricultural Preservation District 95-10?

Mr. Gilbert's version:

Did the Calvert County Board of Appeals err when it upheld the Calvert County Zoning Officer's decision to deny Appellee's request to further subdivide/develop the Appellee's property?

Terminology and Acronyms

There are three Calvert County government boards involved in this case. We will refer to the Board of County Commissioners of Calvert County as the “County Commissioners” or the “Commissioners,” the Calvert County Board of Appeals as the “Board of Appeals,” and the Calvert County Agricultural Preservation Advisory Board as the “APAB.”

An important part of the County’s agricultural preservation program are areas of the County designated as “Agricultural Preservation Districts.” The parties refer to these districts as “APDs.” We will use the acronym as well.

In their briefs, the parties cite to two versions of the Calvert County Zoning Ordinance. We will refer to the 1995 version of the County Zoning Ordinance as the “1995 Ordinance,” and cite that statute as “1995 Z. O.” We will refer to the current County Zoning Ordinance as the “Zoning Ordinance” and cite it as “Z. O.”

The APAB has promulgated substantive and procedural rules for the establishment of APDs and the administration of the County’s agricultural preservation program. The rules have been amended from time to time. The 1995 version of the Board Rules are relevant to this appeal, and we will refer to them as the “1995 Board Rules.”

Finally, an important part of the County’s agricultural preservation program are transferable development rights. Like the parties, we will refer to those rights as “TDRs.”

BACKGROUND

A Statutory and Regulatory Overview

For more than forty years, it has been the public policy of this State that land used for agricultural and forestry purposes should be preserved for the benefit of future generations.² The State agency primarily responsible for the preservation of agricultural and forested land is the Maryland Agricultural Land Foundation.³ Several Maryland counties, including Calvert County, have supplemented the State's efforts with their own programs. The County's authority to do so derives from § 12-101 of the Code of Public Local Laws of Calvert County, which is codified as Article 5 § 12-101 of the Code of Public Local Laws of Maryland.⁴

² *See, e.g.*, Md. Code, Agric. § 2-501.1:

- (a) It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:
- (1) Provide sources of agricultural products within the State for the citizens of the State;
 - (2) Control the urban expansion which is consuming the agricultural land and woodland of the State;
 - (3) Curb the spread of urban blight and deterioration; and
 - (4) Protect agricultural land and woodland as open-space land.

³ *See* Agric. §§ 2-501–519.

⁴ Section 12-101 states:

Authority of County Commissioners.

(Footnote Continued)

Pursuant to this grant of authority, the County Commissioners enacted legislation that established the APAB and tasked it with the responsibility of (1) developing regulations for an agricultural preservation program and (2) administering the program after the regulations were approved by the Commissioners. The APAB formulated regulations, called “Board Rules,” that were approved by the Commissioners. The Board Rules have been revised from time to time. The parties agree that the Board Rules in effect in 1995 are relevant to this case, although they disagree as to how the 1995 Board Rules affect the outcome of their dispute.⁵

The purposes of the County’s agricultural preservation program are:

A. To offer an incentive for preservation of prime agricultural and forestry land.

Pursuant to the authority of this section and pursuant to authority under [the Land Use Article^[*]] of the Annotated Code of Maryland, the County Commissioners may:

- (1) Enact an ordinance to establish and maintain an agricultural land preservation program and to provide for the transfer of development rights within Calvert County; and
- (2) Appoint an Agricultural Preservation Advisory Board and delegate to the board the powers and duties that the County Commissioners consider appropriate to carry out the provisions of the ordinance.

* Section 12-101 references “Article 66B,” but former Article 66B was repealed and reenacted with amendments as the Land Use Article. *See* Chapter 1 of the 2012 Laws of Maryland. The current statutory authorization for local agricultural preservation programs is Md. Code, Land Use § 7-201.

⁵ The 1995 Board Rules are attached as an appendix to this opinion.

- B. To provide reimbursement to the landowner who voluntarily agrees to place agricultural and forestry use covenants on his land.
- C. To utilize the free market system for financing agricultural and forestry preservation, thus avoiding direct cost to the taxpayers.
- D. To guide development away from prime agricultural and forestry lands on which viable farming and forestry endeavors are practical.
- E. To promote and preserve the identity of intact rural agricultural communities where working farms and managed woodlands predominate.
- F. To minimize potential conflicts between agricultural and non-agricultural land use by providing for a functional separation of the two.

* * *

1995 Board Rule I.

The cornerstone of the County’s agricultural preservation program is the “Agricultural Preservation District” (“APD”), which is an “area of prime agricultural or forestry land voluntarily placed in this Program by the owner with approval of the Board.” 1995 Board Rule II.B.

Establishing an APD pursuant to the 1995 Board Rules was a multi-step process:

First, the Board was required to identify areas of the County as “Designated Agricultural Areas.” These are areas that “hav[e] the greatest potential for maintaining a viable level of agricultural or forest production.” 1995 Board Rule II.C.

Second, persons who owned land within a Designated Agricultural Area could apply to the APAB to establish an APD for their land or to join their land to an existing APD. Establishing APDs was a voluntary process. 1995 Board Rules V.B. and VII.A and C.

Applications by landowners were approved or denied by the APAB after a hearing.⁶ 1995 Board Rule XI.

Third, persons aggrieved by a decision of the APAB had the right to file a judicial review proceeding. 1995 Board Rule XII.⁷

Finally, 1995 Board Rule IX provided that, after an APD is established, subdivision of parcels within the APD must be approved by the APAB. We will discuss the relevant parts of 1995 Board Rule IX in our analysis.

⁶ 1995 Board Rule XI provided, in relevant part, that:

- (i) applicants seeking to establish an APD or to join their property to an existing APD “shall be notified of the meeting at which [their] case will be considered, and the applicant will have an opportunity to appear before the [APAB] at that time,”
- (ii) the APAB “shall consider each case on its own merits,”
- (iii) the APAB’s decision shall be documented in a resolution, and
- (iv) notification of the APAB’s decision shall be provided to the applicant, the County Commissioners, and the County’s Planning and Zoning Department among other government agencies.

⁷ 1995 Board Rule XII stated:

Any person or persons, jointly or severally aggrieved by a decision of the Board, may appeal the decision to the County Circuit Court in a manner as set forth in Chapter 1100, Subtitle B of the Maryland Rules. The decision of the Circuit Court may be appealed to the Maryland Court of Appeals.

Chapter 1100, Subtitle B of the Maryland Rules pertained to judicial review of administrative decisions. It is now codified as Title 7, Chapter 200 of the current Maryland Rules. *See Maryland Overpak Corp. v. Mayor & City Council of Baltimore*, 395 Md. 16, 45 (2006).

The current version of the Calvert County Zoning Ordinance contains provisions relating to APDs that are similar to 1995 Board Rules VII through IX. *See* Z. O. §§ 2-10.01.A – I; 5-1.02.B.⁸ With one exception, the differences between these statutes and the 1995 Board Rules are not relevant to the issues raised in this appeal.

The exception is Z. O. § 2-10.01.E.9.d, which states in relevant part:

an Agricultural Preservation District shall be governed by the Laws and Regulations in effect at the time of its creation.^[9]

We will refer to § 2-10.01.E.9.d as the “Reference Back Statute.”

⁸ Z. O. § 5-1.02.B imposes maximum residential density limitations on parcels located within Agricultural Preservation Districts. The statute states in pertinent part:

Within an approved APD, the following number of residential lots shall be permitted:

1. APDs consisting of less than 25 acres - no additional lots or houses are allowed.
2. APDs consisting of at least 25 acres but less than 50 acres - 1 lot in addition to the existing house.
3. APDs consisting of at least 50 acres but less than 75 acres - 2 lots in addition to the existing house.
4. APDs consisting of 75 acres or more - 3 lots in addition to the existing house.

This lot density may not be increased. Lots must be approved by the Agricultural Preservation Board as per the criteria in the Program Rules and Regulations.

⁹ Z. O. § 2-10.01.E.9.d is subject to an exception that is not relevant to the issues presented in this case.

Agricultural Preservation District 95-10

In December of 1995, the APAB approved the application of John T. Crane, Jr. and Janet Barnes Crane to establish agricultural preservation district APD 95-10, which consisted of twelve contiguous parcels owned by them located near Lusby, Maryland. The twelve parcels have an aggregate area of 616.62 acres. Among these parcels is one consisting of 65.7 acres located at 765 Sollers Wharf Road (the “Property”). As of 2017, all of the TDRs awarded to the Cranes for establishing the APD had been conveyed to other persons.¹⁰

Mr. Gilbert purchased the Property in 2019. At that time, the Property was improved by a single-family residence. Shortly after he acquired the Property, Mr. Gilbert contacted the County’s Department of Planning and Zoning to find out if the Property could be subdivided to establish two additional residential lots. The County official who responded to Mr. Gilbert’s request was Judy Mackall, the Deputy Director of the County’s Department of Planning and Zoning. On May 13, 2020, Ms. Mackall wrote Mr. Gilbert and informed him that the Property could not be subdivided. She explained:

The assertion made has been that subdivision/density within an APD is per parcel vs per APD/easement. Per page 10 of the 1995 Rules & Regulations APDs having 75 acres or more are entitled to a total of three (3) lots. APD 95-10 would fall into this category based on the easement acreage. The question regarding per parcel or per APD density/development had been

¹⁰ See letter dated June 19, 2017 from Mary Beth Cook, Deputy Director/Zoning Officer to John C. Prouty, Esquire, stating that all of the TDRs had been sold as of that date. This letter was introduced into evidence at the Board’s hearing.

previously asked of the APAB. At the APAB’s February 3, 2020 meeting the board voted unanimously confirming that permissible lots/residential development is per APD/easement not per parcel. The Calvert County Zoning Ordinance . . . [§] 5-1.02.B references calculating per APD as well.

Mr. Gilbert appealed Ms. Mackall’s decision to the County Board of Appeals, which held a public hearing on August 6, 2020. Normally, at this point in an opinion in a judicial review proceeding, we would summarize the relevant testimony of the various witnesses. However, and perhaps because the hearing was conducted through Zoom, the transcript contains more than its fair share of testimony attributed to “Unidentified Male” and “Unidentified Female” speakers. As a result, we know what was said, but we don’t always know who said it. Because the members of the Board of Appeals were in a far better position than we are to know who said what, we will quote from the summary of the testimony contained in the Board’s decision:

The applicant, David Gilbert, professional contractor, resident of 13540 Olivet Rd, Lusby, provided the following testimony:

- Six houses were already in APD 95-10 area when it was established. Since its establishment, three more houses were constructed in the APD. There are four remaining buildable lots in the APD.

* * *

- Mr. Gilbert argued the density laws are being interpreted inconsistently, and that if the rules are interpreted for his case as they were for the “Jimmy Smith” case, BOA case 18-3932, (that is, density calculated by parcel and not by APD), his request for a building permit would be granted.^[11]

¹¹ Mr. Gilbert’s reliance on the Jimmy Smith case may have been misplaced. In that proceeding, the Board of Appeals concluded that residential density was to be calculated (Footnote Continued)

* * *

Judy Mackall, Deputy Director of Planning & Zoning, employed at 150 Main Street, Prince Frederick, MD, provided the following testimony:

- Ms. Mackall’s job duties include reviewing permits and interpreting the Zoning Ordinance.
- The subject property is 65.7 acres in size and is a parcel of record established prior to 1967, but has an existing house. The property is zoned Farm and Forest District (FFD) with an APD overlay.
- Putting one’s property into an APD is voluntary and requires the owner and future owners to agree to limit development, especially commercial development, on the property.
- TDRs were already sold from the subject property. The entitlements of APD 95-10, including those in the four remaining lots, already exceed the residential limitations established in the agricultural regulations, so adding additional homes would not be permitted.

* * *

- The subject parcel was voluntarily preserved by a previous owner. The intent of preservation would be subverted if the applicant were permitted to further develop the property.

Mary Beth Cook, Director of Planning & Zoning, employed at 150 Main Street, Prince Frederick, MD, provided the following testimony:

- When Mr. Gilbert originally asked Ms. Cook about the possibility of developing the parcel, he did not mention the existing house on the property. Ms. Cook stated that an existing parcel of record with no house is entitled to pull one residential permit and that his property, without the existing house, would be permitted to pull this permit.

* * *

- When it is established, an APD generally contains a single property and is therefore owned by a single owner. The owner of the APD may use its

on the basis of the entire APD (which was APD 95-10), and not individual parcels within the district. Mr. Gilbert does not rely on the Smith case in this appeal.

development rights and subdivide as they wish. The subdivided pieces might not have remaining development rights. It is possible for a buyer to purchase a portion of an APD that has no remaining development rights.

Ronald Marney, Rural Planner with Planning & Zoning, employed at 150 Main Street, Prince Frederick, MD, provided the following testimony:

- The Agricultural Preservation Advisory Board (APAB) reaffirmed in February 2020 that density within an APD is allocated per district and not by parcel. The APAB affirmed this has always been the intent of the policy.
- The APAB stated that according to the Zoning Ordinance, a parcel of record is entitled to pull one building permit, but this policy is not intended to increase the density of an APD beyond the permitted density (one unit per 25 acres.)

* * *

Greg Bowen, Professional Planner, resident of 1235 Mallard Point Road, Prince Frederick, MD, provided the following testimony:

- Mr. Bowen worked in Planning & Zoning to create the land preservation program which was enacted in 1977.
- APD 95-10 was created as an aggregate of multiple parcels.
- The county's regulations regarding density have evolved over time.
- The APD should be subject to the regulations and determinations of the APAB.

* * *

FINDINGS OF FACT AND CONCLUSIONS

Based on the application and testimony and evidence presented at the hearing the Board makes the following Findings of Fact and Conclusions pursuant to Article 11-1.01.A of the Calvert County Zoning Ordinance:

While the historical application and overall appropriateness of the applicable law is contested, the density within APD 95-10 does exceed the allowable threshold prescribed by that law. The Board recommends county staff consider revising this law to avoid future confusion.

Mr. Gilbert filed a petition for judicial review. The circuit court reversed the decision of the Board of Appeals. In reaching its result, the court focused on the 1995 version of Board Rule IX.A, which we will discuss in our analysis. The court concluded that the relevant language of Rule IX.A was unambiguous and that application of the regulation to the facts of the case led to the conclusion that Mr. Gilbert “is permitted two (2) lots in addition to an existing house” on the Property.

The Parties’ Appellate Contentions

Both parties agree that the Property is located within the boundaries of APD 95-10, and that, as such the property is subject to the 1995 version of the Board Rules. *See* Z. O. § 2-10.01.E.9.d.¹² The parties also agree that the 1995 version of Board Rule IX.A, which pertains to subdivision of properties located within an APD, applies to this case. The 1995 version of Board Rule IX.A states:

IX. RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL USES IN ADPS.

A. Creation of Residential Lots in APDS.

With the exception of the following provisions, no major or minor subdivision, as defined by the Calvert County Zoning Regulations, may be created within an existing Agricultural Preservation District.

1. Before sale of all development options:

¹² Z. O. § 2-10.01.E.9.d states in relevant part:

an Agricultural Preservation District shall be governed by the Laws and Regulations in effect at the time of its creation.

a. *Per parcel described in an application and accepted by the Board*, the owners shall agree to create no more than a given number of residential lots based on the parcel size.

(1) APDs having 75 acres or more - 3 lots in addition to the existing house.

(2) APDs having less than 75 acres and at least 50 acres - 2 lots in addition to the existing house.

(3) APDs having less than 50 acres and at least 25 acres - 1 lot in addition to the existing house.

(4) APDs having less than 25 acres - no additional lots are allowed.

b. All platted lots, whether developed or not, which are included in the application, are counted against the number of lots permitted in “1” above.

c. Tenant houses are not considered as residential lots.

d. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

2. After the sale of all development options:

a. *Per parcel described in an application and accepted by the Board*, the Board may not permit the landowner’s density to exceed one dwelling per 25 acres. This includes both tenant houses and developed residential lots.

b. In no case shall the owner create more than three residential lots in addition to the existing house.

c. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

* * *

(Emphasis added.)

In its brief, the County asserts:

Section IX.A is titled ‘Creation of Residential Lots in APDS’. Both Section IX.A.1.a (before sale of all development options) and Section IX.A.2.a. (after the sale of all development options) begin with the phrase “*[p]er parcel described in an application and accepted by the Board[.]*” The “Board” is the APAB. A property owner who wishes to place their

property in an APD must submit an application to the APAB for review and approval. . . . It is apparent from the Board's^[13] record that the word 'parcel' is a standard land use term used by the APAB and DPZ staff to reference an APD or individual parcels/legally subdivided lots located within an APD.

It is clear in Section IX.A.1.a that the term 'parcel' is referencing the permitted density in an APD based on its acreage at the time of application. Section IX.A.1.a is consistent with, and essentially mirrors, the permitted density within a designated APD based on that APD's acreage as stated in Section 5-1.02.B of the Zoning Ordinance.^[14] It is consistent with the overall purpose, aim and legislative intent of the Land Preservation Program to interpret the term "parcel" in Section IX.A.2 of the APAB Regulations in the same manner. Although it may be argued that the

¹³ There is nothing in the record of this case that indicates that the APAB considered Mr. Gilbert's request to subdivide the Property. We believe that the County was referring to the Board of Appeals.

¹⁴ Z. O. § 5-1.02 states in pertinent part:

Residential Density Requirements in the Farm and Forest District

A. Purpose. The Farm and Forest District . . . is designated for farming and natural resource-related uses in the Comprehensive Plan.

B. Land in Agriculture Preservation Overlay Districts (APDs). Within an approved APD, the following number of residential lots shall be permitted:

1. APDs consisting of less than 25 acres - no additional lots or houses are allowed.
2. APDs consisting of at least 25 acres but less than 50 acres - 1 lot in addition to the existing house.
3. APDs consisting of at least 50 acres but less than 75 acres - 2 lots in addition to the existing house.
4. APDs consisting of 75 acres or more - 3 lots in addition to the existing house.

This lot density may not be increased. Lots must be approved by the Agricultural Preservation Board as per the criteria in the Program Rules and Regulations.

(Footnote omitted.)

language of Section IX.A.2. of the APAB Regulations could have been clearer, . . . Section 5-1.02.B.4 of the Zoning Ordinance, when read in conjunction with the APAB Regulations, makes it clear that APDs greater than 75 acres are only permitted 3 lots, in addition to the existing house.

(Emphasis in original.)

Mr. Gilbert sees things differently. He asserts that when the APAB approved the Cranes' application to place their property in an Agricultural Preservation District in 1995, the County Zoning Ordinance permitted the Cranes to subdivide what is now Mr. Gilbert's property into a total of fifteen residential lots. He concedes that, once APD 95-10 was established, the Cranes' ability to subdivide their property was circumscribed by 1995 Board Rule IX.A.1. However, he reads Rule IX.A differently than does the County. He asserts that when the Cranes placed their property into the APD, they

restricted the further development of the property to two additional (2) lots, in addition to the existing house/residential unit. Stated another way, in return for compensation, the landowners agreed to restrict the potential development of their parcel from fifteen (15) lots to three (3) lots.

From this premise, Mr. Gilbert argues that “[o]nce the Subject Property was accepted into the Land Preservation Program, the terms of the [1995] APAB Rules became binding contracts between the two parties and their successors in interest.” Citing *Mayor & City Council of Baltimore v. Crane*, 277 Md. 198, 207 (1976), he argues that his right to subdivide his property is a constitutionally-vested property interest.

Additionally, Mr. Gilbert argues that the Board of Appeals' decision was based on an error of law. He asserts that the 1995 Board Rules are binding and, to the extent that the

County planning staff interpreted the density limitations set forth in Rule IX.A.2 as applying to the entire APD, as opposed to each individual parcel within the APD, the staff erred.

The Standard of Review

In a judicial review proceeding, this Court “look[s] through the circuit court’s decisions, although applying the same standards of review, and evaluates[s] the decision of the agency.” *Heard v. County Council of Prince George’s County*, 256 Md. App. 586, 609 (2022) (cleaned up) (quoting *People’s Couns. for Balt. County v. Loyola Coll.*, 406 Md. 54, 66–67 (2008)).

Judicial review of the final zoning action of a local administrative body is narrow; it is limited usually to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determining if the administrative decision is premised upon an erroneous conclusion of law.

City of Hyattsville v. Prince George’s County Council, 254 Md. App. 1, 23 (2022) (cleaned up).

Our analysis will require us to interpret statutes and regulations. In deciding what a regulation means, we focus on the plain language of the regulation because “a regulation’s plain language is the best evidence of its own meaning.” *Bd. of Liquor License Comm’rs v. Kougl*, 451 Md. 507, 515 (2017) (cleaned up). Courts “conduct this plain language inquiry within the context of the regulatory scheme, and our approach is a

commonsensical one designed to effectuate the purpose, aim, or policy of the enacting body.” *Id.* at 516 (cleaned up).

“When we construe an agency’s rule or regulation, the principles governing our interpretation of a statute apply.” *Concerned Citizens of Cloverly v. Montgomery County Plan. Bd.*, 254 Md. App. 575, 605 (2022) (cleaned up).

Statutory construction involves:

an examination of the statutory text in context, a review of legislative history to confirm conclusions or resolve questions from that examination, and a consideration of the consequences of alternative readings. “Text is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity. Legislative purpose, either apparent from the text or gathered from external sources, often informs, if not controls, our reading of the statute. An examination of interpretive consequences, either as a comparison of the results of each proffered construction, or as a principle of avoidance of an absurd or unreasonable reading, grounds the court’s interpretation in reality.”

Blue v. Prince George’s County, 434 Md. 681, 689 (2013) (quoting *Town of Oxford v. Koste*, 204 Md. App. 578, 585–86 (2012)).

ANALYSIS

We will not address the merits of the parties’ contentions. This is because Mr. Gilbert failed to exhaust his administrative remedies before he filed his petition for judicial review. Before we explain why we have reached that conclusion, we will provide some context.

A.

The doctrine of exhaustion of administrative remedies is a fundamental principle of Maryland administrative law:

“[E]xhaustion of administrative remedies[] is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. ‘Exhaustion’ applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course.”

Carter v. Huntington Title & Escrow, LLC, 420 Md. 605, 614 n.7 (2011) (cleaned up) (quoting *Arroyo v. Bd. of Educ. of Howard County*, 381 Md. 646, 658 (2004)); see also *Long Green Valley Ass’n v. Bellevalle Farms, Inc.*, 205 Md. App. 636, 690 (2012), *aff’d*, 432 Md. 292 (2013).¹⁵

¹⁵ The leading academic scholar on Maryland administrative law has summarized the doctrine of exhaustion and the policy reasons for the doctrine’s existence as follows:

An important doctrine regarding the availability of judicial review is the exhaustion doctrine. The basic exhaustion doctrine is that a court will not grant review of an agency action unless the party seeking judicial review has gone through, i.e., exhausted, the available agency process and procedures.

Arnold Rochvarg, *PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW* 192 (2011).

Professor Rochvarg identified three policy justifications for the exhaustion doctrine:

1. *Expertise*. Agencies possess expertise in the subject area beyond that of the courts. Agencies should be allowed to apply their expertise prior to judicial involvement.
2. *Agency integrity/legislative choice*. The legislature made the decision to delegate to an administrative agency the power to regulate certain matters.

(Footnote Continued)

We are aware that the issue of exhaustion of administrative remedies was neither presented to the circuit court nor raised by either party to this Court. This does not matter. As our Supreme Court explained in *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 487 (2011):

This Court has pointed out, time after time, that because of the important public policy involved, the Court will address *sua sponte* the related issues of primary jurisdiction, exhaustion of administrative remedies, finality of administrative decisions, and the availability of declaratory judgment actions. These are threshold issues which the Court will consider regardless of the positions that have been taken by the parties and regardless of what has been raised by the parties.

See also Priester v. Baltimore County, Maryland, 232 Md. App. 178, 190 (2017) (“The Court of Appeals has instructed that exhaustion of administrative remedies is a threshold issue that we treat like a jurisdictional issue. Consequently, exhaustion of administrative remedies will be addressed by this Court *sua sponte* even though not raised by any

The agency should be given the opportunity to handle these matters. By requiring exhaustion of the administrative process before permitting judicial intervention, the legislature’s decision to create the agency and delegate powers to it is respected. . . .

3. *Judicial economy*. Legislatures create administrative agencies in part to relieve the workload of the courts. Judicial economy is furthered by the exhaustion doctrine

The exhaustion argument can be raised by a court *sua sponte* even when not raised by any party.

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party.”) (cleaned up) (quoting *Renaissance Centro*, 421 Md. at 487, and *Bd. of Educ. for Dorchester County v. Hubbard*, 305 Md. 774, 787 (1986)).

B.

Administrative remedies are exhausted when the decision of the agency is “final.” A decision by an administrative agency:

is final if it determines or concludes the rights of the parties, or if it denies the parties means of further prosecuting or defining their rights and interests in the subject matter in proceedings before the agency, thus leaving nothing further for the agency to do.

Priester, 232 Md. App. at 196 (quoting MARYLAND ADMINISTRATIVE LAW at 190). Put another way, “[a]n agency order is not final when it is contemplated that there is more for the agency to do.” *Id.* at 195 (quoting *Kim v. Comptroller of Treasury*, 350 Md. 527, 533–34 (1998)).

In the present case, the parties are acting on the implicit assumption that the decision of the Board of Appeals determined the right of Mr. Gilbert to subdivide the property. They are incorrect.

Our analysis begins with the Reference Back Statute, which states:

an Agricultural Preservation District shall be governed by the Laws and Regulations in effect at the time of its creation.

Z. O. § 2.10.01.E.9.d.

We interpret the Reference Back Statute according to its “plain language.” *Blue*, 434 Md. at 689. It is clear to us that “Laws” in the statute includes the County’s Zoning

Ordinance and its Subdivision Regulations because both were enacted by the County Commissioners in the exercise of their legislative authority. *See* Land Use §§ 4-102 and 5-104 (authorizing a county’s legislative body to adopt zoning ordinances (§ 4-102) and subdivision regulations (§ 5-104)). It is equally clear that the 1995 Board Rules are “regulations” because the APAB is a regulatory authority established by the County Commissioners.¹⁶

The outcome of this appeal depends upon the proper interpretation of 1995 Board Rule IX.A. The rule states (emphasis added):

IX. RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL USES IN ADPS.

A. Creation of Residential Lots in APDS.

With the exception of the following provisions, no major or minor subdivision, as defined by the Calvert County Zoning Regulations, may be created within an existing Agricultural Preservation District.

1. *Before sale of all development options:*

a. *Per parcel described in an application and accepted by the Board*, the owners shall agree to create no more than a given number of residential lots based on the parcel size.

(1) APDs having 75 acres or more - 3 lots in addition to the existing house.

(2) APDs having less than 75 acres and at least 50 acres - 2 lots in addition to the existing house.

(3) APDs having less than 50 acres and at least 25 acres - 1 lot in addition to the existing house.

¹⁶ See Z. O. § 12-01 (defining “regulation” as: “a rule or order, including maps and plans, having the force of law issued by an executive authority of a government.”)

(4) APDs having less than 25 acres - no additional lots are allowed.

b. All platted lots, whether developed or not, which are included in the application, are counted against the number of lots permitted in “1” above.

c. Tenant houses are not considered as residential lots.

d. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

2. *After the sale of all development options:*

a. *Per parcel described in an application and accepted by the Board*, the Board may not permit the landowner’s density to exceed one dwelling per 25 acres. This includes both tenant houses and developed residential lots.

b. In no case shall the owner create more than three residential lots in addition to the existing house.

c. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

* * *

The first step in construing a statute or a regulation is to focus on the “plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole [regulation.]” *Blue*, 434 Md. at 689 (cleaned up). The plain meaning of the 1995 version of Board Rule IX.A is that, in order to obtain permission to subdivide property within an APD, there must be an *application* by the owner of the property and the application must be *accepted* by the Board. In this context, “application” means: “[a] request or petition.” *Application*, BLACK’S LAW DICTIONARY 123 (12th ed. 2024). “Accept” means “to receive [something offered] willingly” or “to give admittance or approval to.” *Accept*, MERRIAM-WEBSTER COLLEGIATE DICTIONARY 7 (11th ed. 2020).

Based on the plain meaning of the relevant language in 1995 Board Rule IX, we conclude that an owner of land within an APD established in 1995 who wishes to subdivide their property must submit a request to do so to the Board. If the Board denies the request, the owner can file a proceeding for judicial review of the Board’s decision. *See* 1995 Board Rule XII.

There is nothing in the record of this case that suggests that Mr. Gilbert filed an application with the APAB before he contacted the County’s Department of Planning and Zoning to find out if the Property could be subdivided. We are aware that members of the County’s planning staff testified that the APAB “reaffirmed in February 2020 that density within an APD is allocated per district and not by parcel.” But the APAB’s 2020 policy notwithstanding, it is the 1995 version of Rule IX that is applicable to this case.¹⁷

Because Mr. Gilbert did not initiate, much less exhaust, the administrative process by which he could obtain the APAB’s permission to subdivide the Property pursuant to the 1995 Board Rules, his judicial review proceeding “was not properly before the circuit

¹⁷ We recognize that, even if he obtained permission from the APAB to subdivide his property, there might be other administrative approvals that Mr. Gilbert might be required to obtain before subdividing his property. We express no views as to what these approvals might be.

court and the court should have dismissed his petition without considering the merits.”

Priester, 232 Md. App. at 218.¹⁸

We reverse the judgment of the circuit court and remand this case with instructions to dismiss the judicial review proceeding.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR CALVERT COUNTY IS
REVERSED. THIS CASE IS
REMANDED TO THAT COURT WITH
INSTRUCTIONS TO DISMISS THIS
ACTION. COSTS TO BE PAID BY
APPELLEE.**

¹⁸ There are four exceptions to the rule of exhaustion of administrative remedies. This Court discussed each of them in *Priester*, 232 Md. App. at 201–13. Unless and until Mr. Gilbert files an application with the Board and the Board acts upon the application, attempting to assess whether any of the exceptions might apply would be speculative.

Appendix
1995 Board Rules



CALVERT COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD

176 Main Street
Prince Frederick, Maryland 20678
Phone (410) 535-2348 • (301) 855-1243
TDD (410) 535-6355

5/1/95

Board of Commissioners
Patrick M. Buckler
Mark H. Froom, D.D.S.
Linda L. Kelley
Mary M. King
Roger R. Miller

AGRICULTURAL PRESERVATION RULES AND REGULATIONS

The following Rules and Regulations are adopted for implementation of the Calvert County Agricultural Land Preservation Program under provisions of Article 12, Agricultural Land Preservation Program, Public Local Laws of Calvert County, Maryland.

I. PURPOSE OF THE PROGRAM.

- A. To offer an incentive for preservation of prime agricultural and forestry land.
- B. To provide reimbursement to the landowner who voluntarily agrees to place agricultural and forestry use covenants on his land.
- C. To utilize the free market system for financing agricultural and forestry preservation, thus avoiding direct cost to the taxpayers.
- D. To guide development away from prime agricultural and forestry lands on which viable farming and forestry endeavors are practical.
- E. To promote and preserve the identity of intact rural agricultural communities where working farms and managed woodlands predominate. (11/4/91)
- F. To minimize potential conflicts between agricultural and non-agricultural land use by providing for a functional separation of the two. (11/4/91)
- G. The purpose of the PAR Fund shall be to purchase, retire and permanently remove TDRs from the development rights market, thereby protecting additional farm land acres from development. (6/1/92)

II. DEFINITIONS USED IN THESE REGULATIONS.

- A. Agricultural Preservation Advisory Board of Calvert County: A five (5) member Board appointed by the County Commissioners with duties and responsibilities as specified in Public Local Laws and these Regulations.
- B. Agricultural Preservation District: An area of prime agricultural or forestry land voluntarily placed in this Program by the owner with approval of the Board.
- C. Designated Agricultural Area: An area of the County identified by the Board as having the greatest potential for maintaining a viable level of agricultural or forest production.

- D. **Development Option:** The right of a landowner in an Agricultural Preservation District to convey the privilege that permits a person to increase the density of residential use of land in a designated Transfer Zone.
- E. **Development Right:** The right an agricultural land owner conveys to a person that permits a person to increase the density of residential use of land in a designated Transfer Zone. A development right comes into existence only after a development option has been conveyed by an owner in an Agricultural Preservation District.
- F. **Program:** The Calvert County Agricultural Land Preservation Program.
- G. **Transfer Zone:** An area in Calvert County designated by the County Commissioners as an area where development rights may be used to increase the density of residential use. No Transfer Zone shall be created within a Designated Agricultural Area. (11/4/91)
- H. **Development Option Agreement:** A recorded instrument which sets forth the provisions of the conveyance of the development options. The format and minimum contents shall be established by the County Commissioners.

III. ORGANIZATION AND MEETINGS OF THE BOARD.

- A. The Board shall hold one regular meeting each calendar month, and special meetings as called by the Chairman or Vice-Chairman.
- B. At the regular meeting in January or February, the members of the Board shall elect a Chairman, Vice-Chairman and Secretary to serve for a period of one (1) year. Duties of the officers shall be as described for such positions in Robert's Rules of Order as are appropriate for the Board.
- C. All meetings of the Board shall be open to the public, and notice shall be given of the time, date and place of such meetings.
- D. Business of the Board shall be conducted in accordance with the procedures outlined in Robert's Rules of Order, Article IX.
- E. Order of Business for Regular Meetings shall be:

Call to Order
Approval of Agenda
Reading of Minutes of previous meeting(s) and their approval
Review of Board Correspondence
Report of Committees
Unfinished Business
New Business
Adjournment

IV. DUTIES OF THE BOARD

- A. Promulgate rules and regulations, and develop procedures for formation of Agricultural Preservation Districts and Designated Agricultural Areas.
- B. Hold a public hearing to present the proposed Program prior to implementation of the Program.
- C. Accept, and approve or reject all applications for Agricultural Preservation Districts and Designated Agricultural Areas.
- D. Promote an open enrollment program annually to attract new landowners to join existing or new Agricultural Preservation Districts.
- E. Record with the Clerk of the Circuit Court in appropriate map of plat form, or by metes and bounds descriptions, all identifications of Designated Agricultural Areas and all designations of Agricultural Preservation Districts.
- F. Record and maintain in the form of an annual summary, all sales of development rights in order to monitor the success and progress of the Agricultural Preservation Program. The identities of individual buyers and sellers of development rights shall not be specified in this summary. (11/4/91)
- G. Conduct a comprehensive review of the Agricultural Preservation Program on the tenth anniversary of the program, or as soon thereafter as is reasonably possible, and to repeat such a comprehensive review at the end of each succeeding five-year period. (11/4/91)
- H. Develop rules, regulations, and procedures for the creation and operation of a Purchase and Retirement Fund for Development Rights. (6/1/92)
- I. Accept, review, and approve or reject all applications for sale of TDRs to the Purchase and Retirement Fund and otherwise administer the operation of the Fund. (6/1/92)

V. PROCEDURES OF THE BOARD.

- A. Designated Agricultural Areas.
 - 1. The Board, with assistance of its staff support, and with the aid of appointed committees and County, State and Federal agencies, shall make an inventory of those lands of the County having the greatest potential for maintaining a viable level of agricultural or forestry production.
 - 2. The board shall accept, and shall approve or reject applications from landowners for identification of land as Designated Agricultural Areas. Applications shall be submitted by landowners on forms prescribed by the Board.

3. The Board shall accept, and shall approve or reject applications from farmer organizations and citizen groups or associations for the identification of land as Designated Agricultural Areas.
4. When an application for a Designated Agricultural Area is approved, notice of the approval shall be furnished to the Department of Planning and Zoning, the Soil Conservation District, the County Commissioners' Office, and the Assessors' Office.

B. Agricultural Preservation Districts.

1. The Board shall at any time accept, and either approve or reject, applications from landowners for designation of land as new APDs or additions to existing APDs. Applications shall be submitted by landowners on forms prescribed by the Board.
2. When an application for an Agricultural Preservation District is approved, notice of the approval shall be furnished to the Department of Planning & Zoning, the Soil Conservation District, the County Commissioners' Office, and the Assessors' Office.

C. Purchase and Retirement Fund

1. The Board shall determine and announce the schedule to be followed for the annual PAR Fund cycle of TDR purchases.
2. The Board shall determine and announce, on an annual basis, the amount of funding available for the purchase and retirement of TDRs.
3. The Board shall recommend, for the approval of the Board of County Commissioners, the price to be offered for the annual purchase of TDRs by the PAR Fund. The Board shall consider the value of TDR sales and transfer during the prior year in recommending the offering price.
4. The Board shall review and rank applications according to established criteria in order to determine which applications are to be accepted.
5. No member of the Board or Advisory Committee shall submit an application for sale of TDRs to the Purchase and Retirement Fund.
6. The investment of PAR Fund monies shall be administered by the Board of County Commissioners.
(6/1/92)

VI. GUIDELINES FOR ACCEPTANCE OF APPLICATION
DESIGNATED AGRICULTURAL AREA - (DAA)

- A. Present land use must be of a type which will permit continuation or initiation of viable agricultural or forestry production.
- B. At least fifty (50) percent of the total acreage in a proposed area shall be suitable for cropland and/or managed forest land. (11/4/91)
- C. Suitability of soils. Using the USDA Soil Survey of Calvert County as a guide, at least fifty (50) percent of the proposed area shall be in Capability Classes I, II, III and IV, or Woodland Suitability Group 1 or II. (11/4/91)
- D. Amount of contiguous farmland. The proposed area shall be sufficient to comprise a viable agricultural unit. (11/4/91)
- E. Boundaries of Designated Agricultural Areas should follow, as closely as possible, existing physical separations, such as streams, valleys, roads, etc. (11/4/91).

VII. CRITERIA FOR ACCEPTANCE OF APPLICATION -
AGRICULTURAL PRESERVATION DISTRICT (APD)

- A. General Requirements
 - 1. The process of creating or joining an Agricultural Preservation District is entirely voluntary. The determination of eligibility and designation of an APD by the Board shall be based on a written application signed by the owner(s) of the property involved. (11/4/91)
 - 2. An Agricultural Preservation District shall remain in effect for a minimum of five years. Owners of parcels of land enrolled in districts from which no development options have been conveyed may withdraw their land after five or more years in the program by giving the Board a one-year notice of such intent. In the event of individual parcels being withdrawn from an APD, any remaining parcels may retain designation as a District, provided they continue to meet all criteria as specified in these Rules and Regulations. If the criteria cannot be met by the remaining parcels, then the entire District shall be terminated. (11/4/91)
(9/1/92)

3. The owner(s) of property designated an Agricultural Preservation District shall voluntarily agree to limit subdivision of their property as indicated in Section VIII. of these Rules and Regulations. (11/4/91)
4. In determining eligibility of a proposed APD, the Board shall consider the present land use, the amount of contiguous farmland, and the uses of adjoining properties as may affect or be affected by the designation. (11/4/91)
5. A current Soil Conservation Plan, and/or a current Forest Resource Management Plan shall be in effect on all parcels designated as Agricultural Preservation Districts. Compliance with these plans shall be maintained as long as the Agricultural Preservation District remains in effect. (6/1/92)

B Initial Requirements for APD Designation

1. The initial minimum requirement to form an Agricultural Preservation District was 300 acres of contiguous land or 500 acres of noncontiguous land. This requirement has been met and no longer pertains to new applications. (11/4/91)

C. Current Requirements for APD Designation

1. Land proposed as an Agricultural Preservation District shall be located within a Designated Agricultural Area, or shall consist of fifty (50) or more contiguous acres meeting the criteria for the Agricultural Preservation District, as described below.
2. For approval as an APD, present land use must be of a type which will permit continuation or initiation of viable agricultural or forestry production.
3. At least seventy-five (75) percent of the total acreage of a proposed APD shall be suitable for cropland and/or managed forest land. (11/4/91)
4. Using the USDA Soil Survey of Calvert County as a guide, land proposed as an Agricultural Preservation District must meet one of the following criteria:
 - a. At least fifty (50) percent of the proposed area shall be in Soil Capability Classes I or II, or Woodland Suitability Group 1 or 2.

- b. If the property is located within the DAA, or if the application consists of at least 300 contiguous acres (which may be under several different ownerships), at least fifty (50) percent of the proposed area shall be in Soil Capability Classes I, II or III, or Woodland Suitability Group 1 or 2.
 - c. For those properties located within the DAA, the Board may further consider the existence and amount of Class IV Soils when designating an Agricultural Preservation District. (9/1/92)
 - d. If topsoil has been removed from land proposed as an APD, then the Board may require that a new soil survey be conducted by the owner, in order to determine current eligibility under these regulations. (9/1/92)
 - e. The Board may approve APD designation for properties in the DAA where an applicant can demonstrate that, through good management and operational practices, his land meets or exceeds the productivity normally associated with the above-mentioned soils.
 - f. In assessing any of the criteria specified in sub-paragraphs (a) through (e) above, the Board may request crop reports in order to verify the viability of the farming operation. Site indices may be needed to determine woodland suitability. (11/4/91)
5. If there is an application for a new APD involving part or all of an existing APD, then the following shall apply:
- a. If the application pertains to only a portion of an APD:
 - i. The act of creating the new APD shall effectively remove and terminate that portion from the existing district.
 - ii. The remainder of the original district shall meet the requirements for an APD.
 - iii. The time period for which the remainder of the original district is in an APD shall run independently of the new APD, and shall run from the original recording date.
 - iv. The development rights shall be certified and sold as separate tracts.

- b. If the application pertains to the entire APD, the time period the property must remain in an APD shall be five years from the new date, except in cases where the APD is being re-recorded merely to correct an error. In that case, the APD time period will run from the original recording date. (4/4/94)

D. Requirements for Joining an Existing APD

- 1. The minimum acreage permitted to join an existing Agricultural Preservation District is ten (10) acres that are actively devoted to Agricultural or Forestry use. However, parcels of less than ten (10) acres may be approved by the Board if the parcel is contiguous with an established Agricultural Preservation District, and located within the Designated Agricultural Area. (11/4/91)
- 2. The proposed addition to an existing APD shall meet all other requirements of a new APD as specified in Section C above. (11/4/91)

VIII. CRITERIA FOR ACCEPTANCE OF PAR FUND APPLICATIONS

- A. The Board shall accept applications for the sale of a maximum of ten TDRs per year from the owner of any recorded Agricultural Preservation District. Owners of any APD from which no TDRs have been sold may apply to sell an additional five TDRs.
- B. TDRs shall be certified before applications to sell to the PAR Fund will be accepted by the Board.
- C. No individual, group of individuals, partnership, corporation, or other legal entity shall have any vested interest in more than one TDR sale to the PAR Fund per calendar year. This provision shall not limit the number of PAR Fund applications that may be made by any such entity.
- D. PAR Fund applications shall be ranked according to the following formula, with those applications receiving the highest ranking being first considered for PAR Fund purchases.

1. LAND USE	33 pts
Active working farm	
60% Tillable	33 pts
40% Tillable	25 pts

20% Tillable	17 pts
Active Tree Farm	13 pts
Undesignated Land	0 pts

Note: An "Active Working Farm" shall be defined as a farm which has been entitled to the Agricultural Use Assessment at least once in the previous five tax years.

"Tillable" shall be defined as that land which is given the Tillable Class A, B, and C, and Class D Land Valuation by the State Department of Assessments and Taxation.

2. LOCATION (a. plus b.)	25 pts
a. In DAA	15 pts
Not in DAA	0 pts
b. Adjacent to preserved APD	10 pts
Adjacent to Unprotected APD	5 pts
Not. adjacent to an APD	0 pts
3. SIZE	25 pts
100+ acres	25 pts
75+ acres	20 pts
50+ acres	15 pts
25+ acres	10 pts
10+ acres	5 pts
-10 acres	0 pts
4 SOILS	17 pts
50% Class I	17 pts
50% Class I and II	11 pts
50% Class I, II, III	5 pts
50% Class I, II, III	0 pts

5. BONUS POINTS

Ten bonus points shall be given to any property that has not sold any development rights to any purchaser.

E. In the event that two or more PAR Fund Applications are tied in rank, first priority will be given to the application which has least recently conveyed TDRs to the PAR Fund and second priority will be given to property enrolled in an APD for the longest time. (6/1/92)

IX. RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL USES IN APDS.
(10/6/81) (2-1-89)

A. Creation of Residential Lots in APDS.

With the exception of the following provisions, no major or minor subdivision, as defined by the Calvert County Zoning Regulations, may be created within an existing Agricultural Preservation District. (6/1/92)

1. Before sale of all development options:

a. Per parcel described in an application and accepted by the Board, the owners shall agree to create no more than a given number of residential lots based on the parcel size.

(1) APDs having 75 acres or more - 3 lots in addition to the existing house.

(2) APDS having less than 75 acres and at least 50 acres - 2 lots in addition to the existing house.

(3) APDs having less than 50 acres and at least 25 acres - 1 lot in addition to the existing house.

(4) APDs having less than 25 acres - no additional lots are allowed.

b. All platted lots, whether developed or not, which are included in the application, are counted against the number of lots permitted in "1" above.

c. Tenant houses are not considered as residential lots.

d. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

2. After the sale of all development options:

a. Per parcel described in an application and accepted by the Board, the Board may not permit the landowner's density to exceed one dwelling per 25 acres. This includes both tenant houses and developed residential lots.

b. In no case shall the owner create more than three residential lots in addition to the existing house.

c. All subdivision of land must comply with the County Zoning Ordinance and Subdivision Regulations.

B. Commercial and Industrial Uses.

(2/1/89)

1. No commercial or industrial use which would require commercial zoning and/or a special exception, other than those directly related to farming or forestry, are allowed in Agricultural Preservation Districts. However, minerals may be extracted from the property provided that the property owner obtains prior approval from the Agricultural Preservation Advisory Board. The Board may apply restrictions on the approval to minimize impact on the farming operation and surrounding properties.
2. No topsoil may be removed from an APD without approval from the Agricultural Preservation Advisory Board. (9/1/92)
3. The operation of a land-clearing debris landfill is allowed on an APD, as long as it meets the following:
 - a. the conditions for a land-clearing debris landfill as set forth in the Calvert County Zoning Ordinance;
 - b. unless debris originates on the site, the landfill must be approved by the Agricultural Preservation Advisory Board.
 - c. the landfill covers no more than five percent of the Agricultural Preservation District.
 - d. the landfill will not be within sight of a public road. (5/1/95)

C. Application for Non-conforming Uses of APD Land

While an Agricultural Preservation District is in effect, the owners of property enrolled in that District may not make application to any State or County agency for any current or future use of that property which is prohibited by these Rules and Regulations. (6/1/92)

X. DEVELOPMENT OPTIONS (RIGHTS)

(10/6/80)

- A. The owner of property designated as an APD is entitled to convey Development Options (rights) for use in a Transfer Zone or in an Agricultural Preservation District for construction of a family or tenant house under provision of paragraph 285, Article 5, Public Local Laws of Calvert County.

- B. An owner of APD designated land may apply to the County Commissioners' Office for certification of Development Options.
 - C. One development option shall be allocated per acre of land in an Agricultural Preservation District, except that:
 - 1. Five (5) development options shall be subtracted for each residence located on a parcel in an Agricultural Preservation District.
 - 2. Five (5) development options shall be allocated for each one-acre lot authorized in the [Agricultural A-1 District] RURAL DISTRICT under the provisions of the County Zoning Ordinance [Article 16,] and not previously used. FIVE (5) DEVELOPMENT OPTIONS SHALL BE ALLOCATED FOR EACH RECORDED BUILDABLE LOT IN A DISTRICT PROVIDED THAT THIS LOT IS THEN SUBJECT TO ALL OTHER DENSITY CRITERIA UNDER THESE RULES AND REGULATIONS.
 - 3. No development options shall be granted on land which previously has been subjected to recorded restrictive development covenants (indentures) which preclude the subdivision and/or residential development of the land.
 - D. Development Options may be conveyed only by use of a Development Option Agreement with format and minimum contents established by the County Commissioners. A title search shall be conducted immediately prior to transfer of Development Rights. (11/2/81)
 - E. Any sale of Development Rights must entail prior written consent of the owners of all parcels within the Agricultural Preservation District. The recording of covenants and the conveyance of Development Options for any parcel within an Agricultural Preservation District shall encumber all parcels within that District. (11/4/91)
- Development Options may not be conveyed unless all owners of each parcel within the Agricultural Preservation District have signed the "Certification of Development Options" and the "Recording of Covenants" forms

XI. PROCESSING OF APPLICATIONS.

- A. In each case of an application for Designated Agricultural Area or Agricultural Preservation District, a staff report shall be prepared for consideration by the Board.

- B. Each applicant shall be notified of the meeting at which his case will be considered, and the applicant will have an opportunity to appear before the Board at that time.
- C. The Board shall consider each case on its own merits, and in conjunction with contiguous or nearby areas previously accepted.
- D. All actions of the Board to approve or reject applications shall be by majority (3) vote, and a resolution shall be adopted for all actions on applications.
- E. Notification of approval or rejection of an application shall be furnished the following:
 - 1. Applicant.
 - 2. County Commissioners.
 - 3. County Department of Planning & Zoning
 - 4. County Department of Inspections & Permits
 - 5. County Assessor.
- F. An official County "Agricultural Land Preservation Program" map, scale 1" = 600', shall be maintained by the Staff Support Office, with copies recorded periodically in the Office of the Clerk of the Circuit Court.

XII. APPEAL PROCEDURE.

Any person or persons, jointly or severally aggrieved by a decision of the Board, may appeal the decision to the County Circuit Court in a manner as set forth in Chapter 1100, Subtitle B of the Maryland Rules. The decision of the Circuit Court may be appealed to the Maryland Court of Appeals.

CHAIRMAN