

Circuit Court for Baltimore County
Case No. C-03-CV-23-000191

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1620

September Term, 2023

IN THE MATTER OF IRIS MAGGIO, ET
AL.

Friedman,
Shaw,
Harrell, Glenn T.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: August 8, 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).

This is an appeal from the Circuit Court for Baltimore County. Appellants, Iris and Nicholas Maggio, owners of a residence in the 8200 block of Rosebank Avenue, petitioned for a Special Hearing before the Baltimore County Office of Administrative Law to “determine the existence and legitimacy of a service garage” for the 8209 Rosebank Avenue property. The Property is owned by Appellees, the Rosebank Avenue Group, LLC. Following a hearing in 2021, an Administrative Law Judge denied Appellants’ petition and Appellants appealed to the Board of Appeals of Baltimore County. A de novo hearing was held in 2022 and the Board affirmed the ALJ’s decision. Appellants then filed a petition for judicial review in the Circuit Court for Baltimore County and the circuit court affirmed the decision of the Board of Appeals. Appellants timely appealed and present four questions for our review:

1. Whether the Board of Appeals’ decision was legally erroneous because it did not properly interpret the definition of “Service Garage” in accordance with the Baltimore County Council’s legislative intention and the Zoning Commissioner’s Policy Manual.
2. Whether the Board of Appeals’ decision was legally erroneous because it failed to determine what use existed at the Site.
3. Whether the Board of Appeals’ decision was arbitrary and capricious because it was inconsistent with prior determinations about service garages issued by the Board.
4. Whether the Board of Appeals properly articulated its Decision with regard to one of the contested uses at the Site.

Based on the record before us and in accordance with Md. Rule 8-604(d)(1),¹ we remand this matter to the Board of Appeals to clarify its decision without affirming or reversing.

BACKGROUND

Appellants have lived in their home on Rosebank Avenue, which is zoned Density Residential (DR),² since 2018. The home is located adjacent to 8209 Rosebank Avenue, a 1.34 acre parcel zoned Manufacturing, Light (ML),³ which has one building divided into three separate units, all owned by the Rosebank Avenue Group, LLC. The Rosebank Avenue Group, LLC, was formed and is controlled by unit owners, Brian Roche, Ernie McNew and Stephen Hughes. Mr. Roche occupies the rear third of the building and he

¹ Md. Rule 8-604(d)(1) states:

(d) Remand.

(1) *Generally.* If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

² “Density Residential—permit low, medium and high density urban residential development. Numeral in each classification indicated maximum number of units per acre. No standard unit lot size is required except for small tracts.”

³ “Manufacturing Light—permits light industrial uses such as assembly plants, processing, etc.”

operates an engine company known as Roche Racing Engines that specializes in servicing race car engines that have been removed from cars and delivered to the Property. Mr. McNew occupies the middle unit and uses his space to store and work on his personal vehicles and his friends' vehicles. Mr. Hughes occupies the front third of the building and his unit is an electrical contracting company.

On June 28, 2021, Appellants filed a petition to “determine the existence and legitimacy of a service garage” at the Rosebank Avenue Group property in the Office of Administrative Law of Baltimore County. They requested a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County.⁴ Following the scheduled hearing, the ALJ ruled in favor of the Rosebank Avenue Group. Appellants appealed to the Board of Appeals of Baltimore County and a de novo hearing was held remotely on September 20, 2022.

At the hearing, Appellant, Iris Maggio, testified that shortly after she and her husband purchased their home, they were flooded by the adjacent Property, which

⁴ BCZR § 500.7 states:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

according to her, was being impermissibly operated as a “service garage.” She testified that she observed diesel fuel come onto the Property, vehicles being dropped off at all hours of the day, keys being left on tires, tags being transferred and parts being delivered. She stated that she called the Baltimore County Zoning Office several years ago to complain about the activity and they informed her to keep a record of her observations. Mrs. Maggio then kept a log of the Property’s activities which included photos and videos that were admitted into evidence.

Appellants then called Mr. Michael Farmer as a witness. Mr. Farmer testified that he became familiar with the Property when he began looking for a building to operate a processing center for his cannabis business. He visited the Property in July of 2022, after seeing a billboard advertising the space. He met with Mr. Roche and observed what appeared to be an engine machine shop. He testified that a truck was being worked on in the middle unit owned by Mr. McNew. He explained that he did not pursue the Property due to the agent’s sales tactics. Mr. Farmer testified that he knew Appellants because they grew up in the same area in Baltimore but that he did not know that they owned and lived in the property adjacent to the Rosebank Avenue Group property.

Appellants’ final witness was Mr. Carl Richards. Mr. Richards is a former Zoning Supervisor for Baltimore County for thirty years and was accepted as an expert in Baltimore County zoning. Mr. Richards testified that he visited the Property at the request of Appellants and he observed commercial traffic. He testified that the Property is zoned ML which permits light manufacturing. He also testified that he participated in the creation

of the Zoning Commissioner Policy Manual and stated, “mainly what I did is I just organized all the interpretations of the office and some of the decisions, some of the Courts and it was very helpful with references to cases, previous cases.” Specifically, he stated, in reference to the term “service garage”:

In the zoning regulations, the, the issue of, the definition of a garage, service is the word remuneration is used and the ALJ’s decision upon his justification on remuneration actually being key and modifying everything before it in the definition.

That directly conflicts with the policy manual that I originally wrote and was adopted as a policy manual and followed since the eighties. One of the reasons we came up with the definition of service garage in Section 101 wasn’t to replace the definition, but it was to clarify how the office interpreted it.

And garage service in zoning policy 1-17 is worded includes the use of any land, or residential garage, for the storage or repair of motor vehicles. No remuneration mentioned purposely.

And the reason why we purposely didn’t do that, and that many commercial properties were saying we’re only working on our own trucks. These are all our own trucks. We only work on our own vehicles, therefore, we should not be a service garage.

Well, we created this definition to counter that so that the enforcement, when there’s a lot of commercial traffic, could be, the inspector could determine that this is a service garage. Irrespective of any remuneration at all.

Mr. Richards further testified that a service garage is not permitted in an area zoned ML and that there were no special exceptions applicable to the present case. He opined that based on his short visits and Appellants’ documentation of the amount of traffic, he would find that the Property was a service garage. On cross-examination, Mr. Richards

was asked whether he would expect traffic in a commercial area zoned ML, and in response, he stated, “I would assume if it’s commercial there’s a lot of traffic, yes.”

The owners of the Property were not represented by counsel at the hearing. Ms. Angela Roche, the sister-in-law of Mr. Brian Roche, provided information about the Property on behalf of the property owners. Ms. Roche presented a number of exhibits that were admitted into evidence. The first few exhibits were photographs of 8203 and 8209 Rosebank Avenue. Ms. Roche stated that the general area is industrial and consists of commercial properties with a few houses “sprinkled in.” She introduced a letter from Stormwater Management dated September 12, 2018, which stated that the facility was functioning properly. She also presented a complaint from Baltimore County stating that the Property was zoned for warehouse use but was being used as an engine shop, electrical company and motor business and stated that the county found no violation. Ms. Roche provided the Board with another complaint from the county regarding the Property’s runoff and the county found that there was no violation. She presented the Board with another complaint regarding a water blockage issue on the Property and the county found that there was no violation. She provided the Board with several other complaints from the county and the Department of Environment which stated that there were no violations.

Owner Stephen Hughes testified that the company that previously occupied his space was S&W Motors and when the property was transferred, Google and Yellow Pages continued to list the location as an auto service company. He stated that he has tried to remedy the situation, but he has been unsuccessful. He testified that he is an electrical

contractor and has his own personal vehicles in his unit, including a work van. He testified that he had not worked on any vehicles other than his personal vehicle. On cross-examination he stated that he had red diesel fuel on the Property for their furnaces.

The next witness was owner Ernie McNew. Mr. McNew testified that he has been at the Property for twenty years and that he has his personal cars in the shop. He stated that he allows his friends to come over and “tinker inside” and that “[a]ll the dirt bikes and all, that’s all my personal stuff. The golf cart, the black one is mine. I saw the white one, that’s my neighbor’s.” He stated, “[t]here’s no money exchanging hands. This is my stress relief. I like to work on things. I’m not necessarily a mechanic. I do a lot of welding. So, it’s, it’s not just, you know, oil and grease. I do a lot of welding, that’s what I, that’s, that’s my thing. I like to weld, I like to make things.” He is employed at the Port of Baltimore and works seventy to eighty hours a week. In addition, he stated that there is a five-hundred-gallon oil tank on the Property which is used to run the heaters.

Lastly, Ms. Roche testified specifically on behalf of Roche Racing Engines. She testified that the company is a manufacturer and refurbisher of engines and that they do not work on cars. She testified that their customers bring in their engines and Roche refurbishes, fixes, and/or cleans the engines. She stated that they also build engines from scratch and because they are a commercial business, they have daily deliveries from UPS and FedEx. She testified that customers constitute most of the traffic that comes in and out of the building.

The hearing concluded after Ms. Roche’s testimony. The parties were asked to submit and they, in fact, did submit written closing arguments. On January 4, 2023, the Board issued its written opinion, denying the petition, finding that no service garage was being operated at the premises.

Appellants then filed a petition for judicial review in the Circuit Court for Baltimore County. A hearing took place on August 8, 2023, and the Rosebank Group did not appear or present witnesses.⁵ Appellants argued that the Board of Appeals erred in finding that the Property was not operating as a service garage, and in the alternative, that the Board erred in not determining the rights of the parties under BCZR § 500.7. They argued that the Board erred in determining that “remuneration” is a necessary part of the statute’s definition of a service garage. Finally, Appellants asserted that the Board’s decision was contrary to its decision in a similar case, two years prior. Appellants requested that the circuit court find that the Board erred as a matter of law and that its decision be reversed.

In a written opinion dated September 22, 2023, the circuit court disagreed, and held:

With respect to August 1, as noted above, this Court does not find that there was legal error in the decision of the Board. The argument of the Petitioners hinges on the belief that the Board inaccurately read the Baltimore County Code and failed to follow the testimony of the expert witness engaged by the Petitioners. The Board dealt with the expert witness testimony, in its Opinion and the “Court agrees with that analysis.”

Additionally, it is noteworthy that “automobile assembly” and “service or repair of trucks” is allowed, by right, per the Baltimore County Code in this area.

⁵ The property owners did not appear before the circuit court and they did not submit a brief or appear for oral argument in this appeal.

Question 2, as noted above, deals with the Board’s failure to find that there was a permitted use. Here, the Board did not delve deeply into this issue. However, the Board did note, at page 4, that a “Special Hearing Petition is effectively a request for declaratory judgment.” Citing BCZR §500.7 and *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). In this instance, that declaratory judgment was that no service garage use was occurring on the property. While the Board could have expressed itself with more analysis, this Court finds no error.

Question 3 notes that the decision of the Board in this case is at odds with other decisions the Board has made noting Case No. CBA-20-021. Certainly, the decision in that case and the one before this Court are not consistent. The Board is made up of several different individuals who sit as panels. The panel in CBA-20-021 was different than the panel below. These decisions are not precedential. Much like two separate panels of the Appellate Court of Maryland may not agree on non reported decisions, the results of these different Board panels may be different. This difference does not constitute appealable legal error.

Appellants timely appealed.

DISCUSSION

I. The Board of Appeals failed to articulate a reasoned analysis for its decision and, thus, the case must be remanded for further proceedings.

“When reviewing a decision of an administrative agency, [this court] will ‘look through’ the circuit court’s decision and ‘evaluate the decision of the agency.’” *Hayden v. Maryland Dep’t of Nat. Res.*, 242 Md. App. 505, 520 (2019) (citing *Kor-Ko, Ltd. v. Maryland Dep’t of the Env’t*, 451 Md. 401, 409 (2017)). “[T]he agency’s decision is reviewed in the light most favorable to it; ... and the agency’s decision is deemed prima facie correct and presumed valid.” *Critical Area Comm’n for Chesapeake and Atlantic Coastal Bays v. Moreland, LLC*, 418 Md. 111, 123 (2011). “In general, ‘[a] court’s role is limited to determining if there is substantial evidence in the record as a whole to support

the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 568 (1998) (citing *United Parcel Serv., Inc. v. People’s Counsel*, 336 Md. 569, 577 (1994)).

Administrative decisions, however, cannot be “arbitrary, capricious, or unreasonable’ - there must be ‘substantial evidence from which the Board could have reasonably found’ as it did.” *Baker v. Bd. of Trs. of Emps. Ret. Sys. of City of Balt.*, 269 Md. 740, 744 (1973). A “reviewing court may not, [], uphold an agency’s decision if a record of the facts on which the agency acted **or a statement of reasons for its action is lacking**. Without a reasoned analysis, a reviewing court cannot determine the basis of the agency’s action. If the agency fails to meet this requirement, the agency’s decision may be deemed arbitrary. In such an instance, the case should be remanded for the purpose of having the deficiency supplied.” *Elbert v. Charles Cnty. Planning Comm’n*, 259 Md. App. 499, 509 (2023) (emphasis added).

In the case at bar, the Board of Appeals found that no service garage was in operation at the Rosebank Avenue property, “primarily relying on the definitional language of the BCZR requiring “remuneration, hire or sale” and the Board found “the lack of evidence of remuneration to be determinative.” In this appeal, we are tasked with first deciding whether the Board’s opinion provided a reasoned analysis for its conclusion, such that we can examine whether there is substantial evidence in the record to support its findings and whether there was an error of law. In our view, the opinion lacks such a

reasoned analysis regarding the Board’s interpretation of the regulations, and nexus, if any, to the evidence produced at the hearing.

At the hearing, there was unrefuted testimony that the sole building located on the Property consists of three units or bays, and that each bay operates separately. The units occupied by Roche Racing Engines as well as Mr. Hughes’ electrical contracting company are commercial businesses. The Roche Racing Engines business, as noted by its title, specializes in servicing a specific part of an automobile, i.e., racing cars. Two of the units operate as commercial establishments, and thus, they, clearly, receive some form of remuneration for their services. There was also testimony that customers and deliveries constitute the majority of the traffic at the Property. The McNew bay, according to Mr. McNew, is used to store and work on personal vehicles for himself and his friends. He testified that he receives no payments for the activities in his bay and there was no evidence presented to the contrary. The Board’s opinion stated “[t]he businesses that flank his space are uses permitted in the zone, and as such, involve commercial comings and goings.”

Section 101 of the Baltimore County Zoning Regulation defines a service garage as “a garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration hire or sale.” The Board’s opinion focused on the McNew bay and acknowledged that it relied on the “definitional language...requiring ‘remuneration, hire or sale.’” The Board found that the regulation has an “ambiguous construction.” The opinion noted that there is an “awkward placement

of this operational phrase.” The opinion then concluded that “the lack of evidence of remuneration” was determinative.

As we see it, the opinion did not provide a reasoned analysis or explanation such that we can further determine the sufficiency of the facts and conclusions of law. The opinion observed the ambiguity, however, it did not resolve the purported ambiguity, and it did not interpret the regulation in light of its supposed deficiencies.

Appellants point out that the Board of Appeal’s opinion is, also, in contravention of a 2020 opinion, *In the Matter of: Tatyana Prasol and Vladimir Besser*, Case No.: CBA 20-021, where the Board affirmed an ALJ’s findings that property owners in a DR zone, operated a service garage in violation of Baltimore County Zoning Regulation §1 B01.1. There, one of the property owners testified that “he was only helping friends out and was not doing the work for compensation.” The Board found:

Baltimore County Zoning Regulation §1 B01.1 concerns uses within a DR-zoned property and, to no surprise, operating a service garage is not among the permitted uses. Section 101 of the BCZR defines it as “a garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale.” The definition is presented in the disjunctive and not conjunctive. Further, the term “repaired” followed by “*or* kept” indicates the conclusion of the series of actions as opposed to an interpretation that requires compensation for the repair. If that were the case, the definition would read “where motor-driven vehicles are stored, equipped for operation, [INSERT: and or or] repaired or kept for remuneration, hire or sale.”

As such, the lack of receipt of compensation for repairing the vehicles, as per Mr. Nizamutdinov’s testimony, is not dispositive as to whether his activities at the subject property can qualify as a service garage. As the evidentiary record established, Mr. Nizamutdinov stored and repaired motor vehicles at the subject property. One entry in Mr. Singer’s log also suggests that one vehicle was being displayed for sale (see, October 30, 2019 “Previews Ford

Focus to Potentials”). For these reasons, there is substantial evidence in the record to find a violation of BCZR §1B01.1.

We note that while there may be some factual distinctions between the two cases, the 2020 decision of the Board appears to be in direct opposition to its resolution of the issue of remuneration here. In the present case, the Board found that proof of “remuneration” is required in order for a property to be considered a “service garage,” while in the prior case, the Board found that proof of remuneration or compensation was not dispositive. Here, again, because there was no detailed analysis or explanation, we cannot review whether the Board erred as a matter of law. To be sure, administrative decisions may be different, however the agency must make “meaningful findings of fact and conclusions of law to support its decision.” *Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 668 (2021).

As to the Board’s determination regarding a nexus between the Zoning Commissioner’s Policy Manual and the regulations, we hold that the Board’s opinion did provide a reasoned analysis. It stated:

The Board did not find Mr. Richards reliance on the Zoning Commissioner’s Policy Manual persuasive. An administrative manual does not supersede the plain language of the law. Further, the manual section cited does not expressly address the issue of remuneration, hire or sale, but merely omits any reference to these words. By itself, that omission does not create the implication being asserted by Mr. Richards. Petitioner presented no other evidence to support a finding of a service garage that comports with the BCZR definition.

In sum, on appeal, our task is to determine whether an agency’s decision is in accordance with the law or whether it is arbitrary, illegal and capricious and we may not

uphold an agency’s decision if “a statement of reasons for its action is lacking.” *Elbert*, 259 Md. App. at 509. Because the Board failed to fully articulate its analysis, we remand for further proceedings to enable the Board to clarify and provide its rationale.

CASE REMANDED WITHOUT AFFIRMANCE OR REVERSAL TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTIONS TO REMAND THE CASE TO THE BALTIMORE COUNTY BOARD OF APPEALS FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.