UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1251

September Term, 2011

HUNTINGTON TERRACE CITIZENS ASSOCIATION

v.

SUBURBAN HOSPITAL

Meredith,
Hotten,
Leasure, Gary G.
(Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: September 10, 2013

Appellants, Huntington Terrace Citizens Association ("HTCA"), unsuccessfully opposed the application of Suburban Hospital ("Suburban"), appellee, for a modification to an existing special exception, enabling the hospital to significantly expand its campus. After the Montgomery County Board of Appeals granted Suburban's application for modification, HTCA filed a petition for judicial review in the Circuit Court for Montgomery County. After that court affirmed the ruling of the Board, HTCA appealed to this Court.

QUESTIONS PRESENTED

HTCA presents the following questions for our review:

1. Whether, as a matter of law, the Board's chair erred in refusing to recuse herself as her impartiality might reasonably be questioned?

2. Whether, as a matter of law, the Board applied the wrong legal standards?

3. Whether, as a matter of law, the Board failed to make required findings of fact?

Because we perceive neither error nor an abuse of discretion by the Board, we will affirm the judgment of the circuit court.

FACTS AND PROCEDURAL HISTORY

Suburban Hospital has been located at its present site, on Old Georgetown Road, across from the National Institutes of Health, since 1943. Since 1955, it has been operating in a residential zone (R-60) pursuant to a special exception, which has been amended on several occasions. As Montgomery County's only trauma center, and one of only nine in Maryland, Suburban is also a primary stroke center, and it provides health care and medical services in every area except obstetrics. Its last major expansion was in 1979. It is the only

hospital in Montgomery County without on-site doctors' offices. Suburban's campus is bordered on one side, as noted, by Old Georgetown Road, a six-lane divided highway, but on its other three borders Suburban abuts the residential neighborhood of Huntington Terrace. A group of residents of that neighborhood formed the Huntington Terrace Citizens' Association (HTCA) to present the community's views on the hospital's proposed expansion. It appears to have been the hope — at least in the initial stages of this process — that Suburban and HTCA could work together to arrive at a solution that would enable Suburban to modernize while preserving the residential character of the immediate neighborhood. But ultimately, that effort failed.

The three neighborhood streets surrounding the Suburban campus are Southwick Street to the north, Grant Street to the west, and McKinley Street to the south. Bisecting the Suburban campus is Lincoln Street. Part of the modification at issue here involved the abandonment of Lincoln Street, between Old Georgetown Road and Grant Street. The modification application also contemplated that Suburban would demolish 23 rental houses it owns in the immediate area of the hospital, so that it could combine that land with the abandoned Lincoln Street to create a new, 15.2-acre parcel. It is this parcel that was the subject of the modification request.

Under Montgomery County's zoning regime, Chapter 59 of the Montgomery County Code (hereinafter "MC Code"), special exceptions and variances, and modifications thereto, are handled by the Board of Appeals. MC Code, 59-A-4.11. Pursuant to MC Code, 59-A-4.125(a)(1), Suburban's application was referred to the office of the Hearing Examiner for

the purpose of conducting public hearings and rendering a written report and recommendation to the Board. Applications for special exceptions are also reviewed by technical staff of the Montgomery County Planning Board, pursuant to MC Code, 59-A-4.48. "Technical staff" includes representatives from many different departments within the Montgomery County Planning Board, including environmental review, development review, and transportation planning. Ultimately, staff renders its various reports, and makes a recommendation on the application to the Planning Board. The Planning Board then makes its report and recommendation to the Board of Appeals. MC Code, 59-A-4.48.

In this case, staff recommended approval of Suburban's application, with six conditions. Via letter of September 26, 2008, pursuant to a 3-2 vote, the Planning Board conveyed to the Board of Appeals that it concurred with its staff's recommendation, but the Planning Board also added three conditions of its own. Thereafter, public hearings were held before the Hearing Examiner. The first of these was on November 17, 2008. There were 34 hearings in total, with the final hearing occurring on July 24, 2009.

On June 18, 2010, the Hearing Examiner issued a lengthy report, and recommended that the application be remanded to permit Suburban to revise its application. On September 15, 2010, the Board of Appeals heard oral arguments. It thereafter met, on October 20, 2010, for a work session at which it discussed Suburban's application. It issued an opinion, to be effective on December 9, 2010, granting, with conditions, the modification.

HTCA filed a petition for judicial review in the Circuit Court for Montgomery County. That court affirmed, and this appeal followed.

On appeal, HTCA makes three main contentions. First, it argues that the Board's chair, Catherine Titus, was required to recuse herself because her husband — who, since 2003, has been a Judge of the United States District Court for the District of Maryland — had served on Suburban's Board of Trustees for a number of years, including three years as chairman. In his capacity as a Board member, Judge Titus gave testimony in 1987 in favor of a then-pending application by Suburban for a modification to its special exception. Additionally, the Tituses have made charitable donations to Suburban in honor of various individuals.

Second, HTCA argues that certain comments made during the Board's October 20 work session imply that the Board relied upon the wrong legal standards in arriving at its conclusion to grant the request for modification.

Finally, HTCA argues that the Board's decision is not based on substantial record evidence.

DISCUSSION

I. Recusal

HTCA does not allege that Chair Titus was actually biased, which would have required her to recuse herself. Rather, HTCA's contention is that, because Ms. Titus's partiality might reasonably be questioned, she "erred" in declining to recuse herself. We note at the outset that we review the denial of a recusal motion for an abuse of discretion.

South Easton v. Easton, 387 Md. 468, 499 (2005) ("Unless grounds for mandatory recusal are met, a judge's decision not to recuse himself or herself will be overturned only upon a showing of an abuse of discretion.")

In *Regan v. Board of Chiropractic Examiners*, 355 Md. 397 (1999), the Court of Appeals reviewed the refusal of two Board members to grant motions for recusal. Like the Montgomery County Board of Appeals, the Board of Chiropractic Examiners is an administrative agency. Although the Canons of the Maryland Code of Judicial Conduct do not apply to administrative boards, litigants before such boards are entitled to a fair hearing before an impartial tribunal. We shall assume in this case — as did the Court in *Regan* — that "the 'appearance of impropriety' standard . . . is applicable generally to the participation of members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions[.]" *Id.* at 410. As the Court of Appeals observed in *Regan,* there is a presumption of impartiality: "There is a strong presumption in Maryland . . . and elsewhere . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified . . . ." *Id.* at 410-11 (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)).

The "appearance of impropriety" is assessed objectively. "The test generally used in the application of [the] standard is an objective one — whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *In re Turney*, 311 Md. 246, 253 (1987). "Like all legal issues, judges determine appearance of impropriety — not by what a straw poll of

the only partly informed man-in-the-street would show — but by examining the record facts and the law, and deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge." *Jefferson-El, supra*, 330 Md. at 108 (citations omitted). The appearance of impropriety "is not measured by the subjective beliefs or fancies of the litigants. Rather, the standard is an objective one, which looks to whether 'the judge's impartiality might reasonably be questioned.'" *Sharp v. Howard County*, 327 Md. 17, 30 (1992) (quoting Maryland Code of Judicial Conduct, Canon 3C(1), now recodified as Maryland Rule 16-813, § 2, Rule 2.11(a)).

In this case, HTCA made two motions for the recusal of Chair Titus, one prior to the proceedings before the Hearing Examiner, and one following the issuance of the Hearing Examiner's report but prior to deliberation by the Board. In the two motions, HTCA raised, generally, four arguments for recusal, asserting that any of these arguments would cause a reasonable member of the public to reasonably question Chair Titus's impartiality. HTCA's arguments were: 1) that Chair Titus's husband had served on Suburban's Board of Trustees for fourteen years (1986-2000), and had served three years as that Board's chairman; 2) that Chair Titus and her husband had, during the year prior to the hearings at issue, made substantial charitable donations to Suburban;[1] 3) that Chair Titus had taken a position on a

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[1]In an attachment to Suburban's response to HTCA's second recusal motion, Leslie Ford Weber, the Senior Vice President of the Suburban Hospital Healthcare System, Inc., and Executive Vice President of the Suburban Hospital Foundation, Inc., represented that she was the individual responsible for "maintaining the records of donations to Suburban Hospital." She reported that her search of the records revealed that, between January 1, 2006, and (continued...)

procedural issue in which she "urged the Board to reject the advice of its own attorney," which HTCA argues "giv[es] rise to circumstances in which one's impartiality might reasonably be questioned"; and 4) that Chair Titus's husband had, in 1987, testified in support of Suburban's then-pending modification application.

In response, Chair Titus issued a statement rejecting HTCA's arguments as to her predisposition, and declined to recuse herself. HTCA contends that Chair Titus's statement addressed only actual bias, but did not rebut their arguments about the appearance of impropriety.

We find no merit in any of HTCA's recusal arguments. Chair Titus's husband's service on Suburban's board, which ended in 2000 and involved a different board of trustees than the group involved in advocating for the modification at issue here, does not overcome the presumption of impartiality we extend to the administrative agency here. The mere fact that the Chair and her husband had made charitable donations to the community hospital does not render Chair Titus unfit to preside over the Board of Appeals in this case or demonstrate that she was so biased in favor of the hospital that she could not act impartially.

In *South Easton, supra*, a neighborhood association opposing the expansion of a hospital, alleged on appeal that the trial judge abused his discretion in denying the association's recusal motion. The motion was premised on the association's allegation that the trial judge, whose wife was seriously ill, might be inclined to favor the local hospital out

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[1](...continued)
October 22, 2008, the Tituses had made five donations totaling $1,244.20.

of "fear that a ruling adverse to [the hospital's] interests might result in the deprivation of adequate medical care to [the judge] or his wife[.]" 387 Md. at 500. The Court found that the association failed to meet its "heavy burden to overcome the presumption of impartiality," *Attorney Grievance Commission v. Shaw*, 363 Md. 1, 11 (2001), because the association "never mustered any evidence of an instance of partiality by [the judge] toward [the hospital]." *South Easton, id.* Similarly in the instant case, HTCA has not supported its "appearance of impropriety" argument with anything other than its speculation that the Chair's charitable donations might somehow undercut the community's "confidence in the fairness of Board of Appeals decisions and [the] decision making process." This sort of speculation is not enough to overcome the presumption of impartiality.

HTCA's other arguments as to the "appearance of impropriety" are similarly ill-supported. Chair Titus taking a position on a procedural issue at a work session that was at odds with the position of the Board's attorney does not give rise to an inference that her impartiality might reasonably be questioned, nor does the fact that the Chair's husband had, at some point in the past, testified in support of Suburban's modification request lead to the conclusion that Chair Titus could not perform her duties without bias in favor of Suburban. In our view, Ms. Titus's refusal to recuse herself is not a basis for reversing the ruling of the Board.

II.

HTCA contends that we should infer, based on remarks made during the Board's deliberations, that "all of the Board's fact finding and conclusions on issues involving

adverse effects were based upon, or at least influenced by, the wrong [legal] standard." HTCA asserts that these remarks refer to standards which "are plainly contrary to the *Loyola* decision."[2] But HTCA fails to note that, after the arguably inaccurate comments about *Loyola*, the Board's vice-chair, later in the deliberations, made the following statement to clarify the applicable standard:

> MR. PERDUE: And just to be clear, because I've referred to Schultz v. Pritts, I've referred to Anderson, I've referred to Loyola, **just so we're absolutely clear on what the standard is under which our decision is going to be reviewed, the holding from Schultz v. Pritts from page 22 of the opinion the Court says, ["]we now hold the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.["]**
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> That holding was reaffirmed, I think it's fair to say, in Loyola. And Loyola went on to say, the Schultz standard as pre-stated in Anderson, requires that the adverse effect inherent in a proposed use be determined without recourse to a comparative geographic analysis.
>
> And I don't think there's been any discussion either by the hearing examiner or the opponents in this case suggesting that a geographic analysis is required in this case. **So we're clear on what the standards are under which our decision is reviewed,** it seems to me that's where we are.

(Emphasis added.)

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[2] *People's Counsel for Balt. Cnty. v. Loyola Coll. in Md.*, 406 Md. 54 (2008).

As the Board's vice-chair noted in the above-quoted remarks, in *Schultz v. Pritts*, 291 Md. 1, 15 (1981), the Court of Appeals described the required analysis for special exceptions as follows:

> These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception would result in 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. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use ***irrespective of its location within the zone.***

(Emphasis added.)

In subsequent cases, the Court of Appeals has explained that the *Schultz* comparison for special exceptions does not entail a comparative geographic analysis which weighs the impact at the proposed site against the impact the proposed use would have at all other sites within the zone. *See Loyola, supra*, 406 Md. at 100-01 (citing cases). Rather, this comparison "is focused ***entirely*** on the neighborhood involved in each case." *Id.* at 102 (emphasis added). Accordingly, even though a special exception use may have some adverse effects on the surrounding area, "the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the [zoning agency] that actual incompatibility would occur." *Id.* at 106.

In *Loyola*, the Court of Appeals concluded its analysis of the *Schultz* test as follows:

> With this understanding of the legislative process (the "presumptive finding") in mind, the otherwise problematic language in *Schultz* makes perfect sense. The language is a backwards-looking reference to the legislative "presumptive finding" in the first instance made when the particular use was made a special exception use in the zoning ordinance. It is not a part of the required analysis to be made in the review process for each special exception application. It is a point of reference explication only.

Id. at 106-07.

As the Court of Appeals explained in *Montgomery Cnty. v. Butler*, 417 Md. 271, 305 (2010) (quoting *Schultz*, *supra*, 291 Md. at 11) (emphasis omitted): "'[i]f [the applicant] shows . . . that the proposed use would be conducted without real detriment to the neighborhood . . . [the applicant] has met his burden.'" Once the applicant meets this threshold, the local zoning board will "ascertain in each case the adverse effects that the proposed use would have on the specific, actual surrounding area." *Id.* (citing *Schultz*, *supra*, 291 Md. at 11) (emphasis omitted). The Court of Appeals has noted that, "'if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal.'" *Loyola*, *supra*, 406 Md. at 83 (quoting *Turner v. Hammond*, 270 Md. 41, 55 (1973)).

The Board's written opinion does not contain a passage specifically outlining the above standard of review, but there is no requirement that it must do so. It is plain from reading the entire opinion that the Board applied the proper standard. The Board's written opinion made repeated references to its analysis of whether the proposed modification would

have an adverse impact on the neighborhood. The opinion also addressed, point by point, the Montgomery County standards applicable to the proposed use and concluded that "the specific standards for this special exception use will be satisfied in this case." A similar point by point analysis of the county's general standards for specific exceptions set forth the Board's finding that the "general standards" for granting a special exception in Montgomery County would also be satisfied. We find no merit in HTCA's apparent contention that, because other cases that did not state the correct standard were mentioned at one point during the Board's deliberation — before the discussion was later steered in the proper direction by the Board's vice-chair — we should find that the entire deliberation and the written opinion were fatally tainted.

III. There is substantial evidence in the record to support the Board's conclusions

Although this appeal is from the circuit court, we review the decision of the Board of Appeals. Our review of an administrative agency's action generally is a "narrow and highly deferential inquiry." *Park & Planning v. Greater Baden*, 412 Md. 73 (2009). Our review 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." *United Parcel Serv., Inc. v. People's Counsel for Balt. County*, 336 Md. 569, 577 (1994). *Accord Butler, supra*, 417 Md. at 283.

> Since administrative agency decisions are *prima facie* correct and carry a presumption of validity, we must review the [agency's] decision in the light

> most favorable to the [agency]. Our role is essentially to repeat the task of the circuit court; that is, to be certain the circuit court did not err in its review.

Cox v. Prince George's County, 86 Md. App. 179, 186-87 (1970). This means that "this Court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on 'substantial evidence.'"*People's Counsel v. Surina*, 400 Md. 662, 681 (2007) (internal citation omitted).

Judicial deference to an agency's legal determination is less broad. The Court of Appeals stated in *Belvoir Farms v. North*, 355 Md. 259, 267 (1999): "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based on an error of law." Where the legal conclusions reached by the agency are based on an erroneous interpretation or application of law, we may reverse those decisions. *See Trinity Assembly of God v. People's Counsel for Baltimore County*, 407 Md. 53, 78 (2008).

When an agency decision constitutes a mixed question of law and fact, we afford it review under the "substantial evidence" test. *Charles County Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 296 (2004). "Substantial evidence" equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]" *Umerley v. People's Counsel,* 108 Md. App. 497, 504 (1996) (citations omitted). A zoning authority's action is fairly debatable if based on substantial evidence, *Northhampton Corp. v. Prince George's*

County, 273 Md. 93, 101 (1974). *See also Board of County Commissioners v. Holbrook,* 314 Md. 210, 218 (1988) (fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.'")

The Court of Appeals has observed that, "'[i]n judicial review of zoning matters, including special exceptions . . . the correct test to be applied is whether the issue before the administrative body is fairly debatable, that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions.'" *Butler, supra,* 417 Md. at 284 (quoting *White v. North,* 356 Md. 31, 44 (1999)). "[W]e proceed from the premise that an agency's decision is *prima facie* correct and presumed valid," *id.* (citing *Marzullo v. Kahl,* 366 Md. 158, 172 (2001)), but we accord no deference to an agency decision that is based on an error of law. *Loyola, supra,* 406 Md. at 68 ("'Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.'" (Quoting *Belvoir Farms Homeowners Ass'n, Inc. v. North,* 355 Md. 259, 267-68 (1999))).

In this appeal, HTCA contends that, not only was the Board required to support its decision "by meaningful findings of fact," it was also required to explain and support its decision to "reject[] the findings and recommendations of the [Hearing] Examiner." We disagree.

An agency is expected to support its own final decision with substantial evidence. But it does not need to provide a point-by-point refutation, supported by substantial evidence, of preliminary recommendations. "It is well established by this Court that administrative agencies must comport with the applicable statutory requirement to make meaningful findings of fact and conclusions of law when rendering final decisions." *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 62 (2002). The final decision in this case was not the rejection of the hearing examiner's recommendations, but the grant, with conditions, by the Board of Suburban's request to modify its existing special exception.

To like effect is *Board of Physicians v. Elliott*, 170 Md. App. 369 (2006), upon which HTCA relies to support its argument that the Board was required, but failed, to set forth its reasons for disagreeing with the hearing examiner. HTCA cites *Elliott* for the proposition that "[i]n overruling [the] administrative law judge, [the] agency must make own findings supported by the record." HTCA's reliance on *Elliott* is misplaced.

In *Elliott,* a physician applied to the Maryland Board of Physicians for reinstatement of his medical license. The Board denied Elliott's application, notifying him, however, that he was entitled to a contested case hearing conducted by an administrative law judge.[3] The ALJ would submit proposed findings of fact to the Board for consideration. If the proposed findings of fact were adverse to Elliott, he would have the opportunity to file exceptions and

[3] Unlike the proceedings in the instant case, the proceedings in *Elliott* were governed by the Administrative Procedures Act, Md. Code, State Government Article ("SG") §10-201 et. seq. For the purposes of this discussion, the distinction is unimportant.

argue before the Board. Elliott had his ALJ hearing, after which the ALJ issued a recommendation that Elliott's license not be reinstated. Elliott filed exceptions to the Board, which overruled them after a hearing, and rendered a final decision denying Elliott's reinstatement application. Thereafter, Elliott filed a petition for judicial review to the Circuit Court for Baltimore County, which reversed and remanded. The Board appealed.

Judge Moylan, writing for this Court, noted that some confusion had recently crept into the law regarding the deference due an ALJ's assessment of demeanor-based credibility. That is not at issue in this case; in fact, HTCA represented, at p. 2 of its brief, that "[b]ecause this judicial review involves only legal errors, it is not necessary to delve deeply into all the facts." What we went on to say in *Elliott*, however, is pertinent to this case:

> Except for its possibly peripheral influences on the final agency decision, the hearing before the ALJ does not concern us. An appellant who wants to obsess about all of the procedural missteps that allegedly were made by an ALJ may as profitably talk to the wall – unless, of course, those mistakes were then perpetuated in the final decision of the agency.
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> It was Judge Motz in the *Shrieves* opinion, 100 Md. App. 283 at 297, who articulated how finely calibrated our focus of review is on the administrative agency itself.
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> > The court below erred in viewing its "job" as "determin[ing] if the ALJ had a rational basis for making the decision she did" or if the ALJ's decision was supported by substantial evidence. The court's "job" was not to assess the "rationality" of or evidentiary basis for the ALJ's recommendation; it was to assess the rationality or evidentiary basis of the agency's . . . final order. *Drexel Burnham Lambert, Inc. v. Commodity Futures Trading Comm'n*, 850 F.2d 742, 747 (D.C. Cir. 1988) (when the agency and an "ALJ disagree on factual inferences to be drawn from the record . . .the question to be decided is not whether the agency has 'erred' in 'overruling' the ALJ's findings, but

> whether its own findings are reasonably supported on the entire record").

Id. at 402. We also noted that,

> because the substantial evidence test remains the ultimate and absolutely controlling consideration on judicial review, **it does not matter that the agency may have ignored the findings and the proposed decision of the ALJ, even without having had any rational basis to do so, just so long as there still exists some other basis for the agency's decision that would be enough, in and of itself, to satisfy the substantial evidence test.**

Id. at 386. (Emphasis added.) We find no support in *Elliott* for HTCA's contention that the Board was required to articulate why it disagreed with the recommendations of the Hearing Examiner.

As for the Board's own final decision, our review of the record indicates it was supported by substantial evidence. There were 34 days of testimony before the Hearing Examiner, stretching from November 17, 2008 through July 24, 2009. Over seven thousand transcript pages were generated, and 447 exhibits were admitted into evidence. On this record, the Hearing Examiner ultimately recommended that the Board remand the case to allow Suburban to modify its application, which the Hearing Examiner thought would be a preferable alternative to an outright denial. The Board reviewed the voluminous record, disagreed with the Hearing Examiner's recommendations on several points, and approved the modification, with conditions.

In Montgomery County, a special exception cannot be granted unless the body considering the application — in this case, the Board — makes certain findings regarding "the inherent and non-inherent adverse effects of the use on nearby properties and the general

neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone." MC Code, § 59-G-1.2.1. The MC Code goes on to define inherent adverse effects as "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations," and also to make plain that the existence of inherent adverse effects at a given site are not, in and of themselves, sufficient grounds to deny an application for special exception. On the other hand,

> Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

Section 59-G-1.21 sets forth the "general conditions" under which a special exception "may" be granted:

> (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:
>
> (1) Is a permissible special exception in the zone.
>
> (2) Complies with the standards and requirements set forth for the use in Division 59-G-2[4].
>
> (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception

[4] § 59-G-2.31 applies to hospitals.

at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

(4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

* * *

(B) If the special exception:

(i) does not require approval of a new preliminary plan of subdivision; and
(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Section 59-G-1.23 requires that special exceptions comport with the development standards of the particular zone in which they are sited, as well as imposes requirements pertaining to parking, minimum frontage, water quality, lighting, signage, and building compatibility. Section 59-G-2.31 sets forth the specific requirements for hospitals:

> A hospital or sanitarium building may be allowed if the Board finds that it will not create a nuisance because of traffic, noise, or the number of patients or persons cared for; that it will not affect adversely the present character or future development of the surrounding residential community; and if the lot, parcel, or tract of land on which the buildings are to be used are located conforms to the following minimum requirements . . .:
>
> (1) **Minimum area.** Total area, 5 acres.

(2) **Minimum frontage.** Frontage, 200 feet.

(3) **Setback.** No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family detached residential or is used solely for single-family detached residences, and in all other cases not less than 50 feet from a lot line.

(4) **Off-street parking.** Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the surrounding uses and a maximum of safety, convenience, and amenity for the residents of neighboring areas. Parking shall be limited to a minimum in the front yard. Subject to prior board approval, a hospital may charge a reasonable fee for the use of off-street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.

(5) **Commission recommendation.** The board or the applicant shall request a recommendation from the commission with respect to a site plan, submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off-street parking and green area.

(6) **Building height limit.** Building height limit, 145 feet.

In this case, there is substantial evidence in the record to support the Board's grant of Suburban's modification request. This evidence included the testimony of Douglas Wrenn, Suburban's expert land planner, who testified that it was his expert opinion that there would be no adverse impacts on the neighborhood if the modification were granted. Wrenn also testified that there would be no adverse impacts on public facilities, because the

infrastructure and utilities existed to support the proposed modification. Wrenn testified to the proposal's consistency with the relevant master plan, a conclusion buttressed by the fact that Planning Board staff arrived at the same conclusion. Wrenn testified to the proposal's compliance with all the relevant MC Code requirements, as outlined above, including that the proposal met all the setback requirements. Wrenn's testimony was disputed in part by experts who testified on behalf of HTCA, but it is not the task of a reviewing court to weigh the evidence and substitute our judgment for that of the agency; it is our task to simply determine if the evidence exists of record.

The Board's decision was also supported by the testimony of Adrian Hagerty, Suburban's expert in hospital architecture, who testified, among other things, to Suburban's need to upgrade its outdated facilities to keep pace with medical technology, as well as the testimony of Dr. Dany Westerband, the Director of Trauma Services at Suburban, who testified to the need for on-site physicians' offices. The Board's decision was supported by the reports of technical staff, including a list of ten items staff regarded as inherent characteristics of a modern hospital, which list the Board accepted as a finding of fact. It was also supported by the testimony and reports of other witnesses, including Ryland Mitchell, Suburban's expert witness on real estate appraisal and valuation, who testified that the modification would not have a harmful effect on property values in the area.

Given the narrow scope of our review, *see Butler, supra*, 417 Md. at 283-84, and bearing in mind that there is no "precise rubric" for measuring the exact quantity of evidence

that must be received in order to grant a special exception, *Loyola, supra,* at 101, we affirm the circuit court's judgment which affirmed the decision of the Board.

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