

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

APPEAL OF MAURITS and
ANKE VAN WAGENBERG

* FINDINGS AND DECISION
* Appeal No. 25-1751

* * * * *

The Talbot County Board of Appeals (the “Board”) held a hearing on June 30, 2025, in the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland to consider the Appeal of Maurits and Anke Van Wagenberg.

The Appellants were participants in the matter of Frad Five, LLC (STB-24-16) whereby the Short Term Rental Review Board (“STRRB”) granted a Short-Term Rental License to Frad Five, LLC (“Appellee”).

Voting Board Members present for this hearing were Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Meredith Watters, Jeff Adelman, and Zakary Krebeck.

STATEMENT OF THE CASE

This matter is brought forth under Article VII of the Talbot County Code, § 190-63.2(H), which provides that “Any party that participated in the hearing and is aggrieved by the [STRRB] Board's decision may file an appeal to the Talbot County Board of Appeals within 30 days of the issuance of the written decision. Such appeal shall be on the record.” This Board’s review of STRRB decisions is to assure that the decision is in conformance with law and supported by substantial evidence. *Monkton Preservation Ass’n v. Gaylord Brooks Realty*, 107 Md. App. 573, 580 (1995).

The property at issue is located at 27213 Baileys Neck Rd., Easton, Maryland 21601 (“Property”). On June 20, 2024, the STRRB conducted a public hearing that considered the application of Appellee to obtain a Short-Term Rental License for the Property. As set forth in Article VII of the Talbot County Code, § 190-63.2(G)(6):

The [STRRB] Board shall approve an application for a new short-term rental license unless the Board finds that:

- a. The license application is incomplete;
- b. The applicant has made false, inaccurate, incomplete, or incorrect statements in connection with the application;
- c. The applicant has not complied with the application notice requirements;
- d. Issuance of the license would unduly disturb the peace of the residents of the neighborhood in which the short-term rental will be located; and/or
- e. There are other substantial reasons in the discretion of the Board why the license should not be issued, in which event the Board shall deny the license.

The STRRB, by a vote of three to two, granted the Short Term Rental License. It issued a written decision, dated July 18, 2024. The written decision addressed each of the criteria set forth in § 190-63.2(G)(6). The written decision found that:

- a. The license application was complete.
- b. The applicant had not made false, inaccurate, incomplete, or incorrect statements in connection with the application.
- c. The applicant complied with all notice requirements.
- d. The “issuance of the license would not unduly disturb the peace of the residents of the neighborhood in which the STR is located because the Property does not have any previous complaints.”
- e. There are no other substantial reasons to support denial of the license.

Appellants previously appealed under Appeal No. 24-1748 whereby the Board remanded the matter to the STRRB for more detailed findings of fact to support the STRRB’s decision. The STRRB met on March 20, 2025. Counsel for Frad Five, LLC requested that STRRB Member Hugh Smith recuse himself from the proceeding and Mr. Smith did recuse himself. The STRRB issued Amended Findings and Decision, dated April 14, 2025 (“Decision”).

As stated in the Decision, the STRRB considered Amended Findings of Fact prepared by the STRRB counsel, which were a summary of facts contained in the STRRB March 20, 2025, hearing transcript. A motion was made to adopt those facts, but the motion was not carried. Nonetheless, the Decision set forth the facts considered by the STRRB and the Decision affirmed its previous decision to issue a license to the Applicant Frad Five, LLC.

SUMMARY OF ARGUMENTS

The Appellants were represented by attorneys Anne C. Ogletree, Mark Gabler, and Garrett Fitzgerald who submitted a Pre-Hearing Statement and provided oral argument. The Respondent was represented by attorney Lyndsey Ryan who submitted a Pre-Hearing Statement and provided oral argument. The Board has read and considered the respective written arguments. A summary of the respective oral arguments, in response to the Appellant’s bases for appeal, are as follows.

Appellants

Appellants state that road safety is the primary concern of the Appellants, and it is their position that the STRRB did not adequately consider road safety in issuing a short term rental license. This Board remanded the matter to the STRRB to provide more adequate deliberation and findings regarding the evidence presented concerning road safety. Appellant states that the findings of fact prepared by the STRRB’s counsel were not discussed on remand. Certain STRRB members discussed road safety but from their own perspectives.

Appellants arguments focused on the recusal of STRRB Board Member Hugh Smith who recused himself after a closed meeting session. The request was made by Appellee’s counsel, which Appellants did not receive. Appellants find fault with the recusal because the STRRB rules

only require recusal of a board member if they have a financial interest in the matter. The Appellants provided case law to demonstrate incidents where a board member is not required to recuse themselves but did not provide any law regarding whether board members are able to voluntarily recuse themselves.

Appellants also argue that the closed session meeting to obtain legal advice, which resulted in a board member recusing himself, was a violation of the Open Meetings Act. Md. Code Ann., *Gen. Prov.* §§ 3-101 to 3-501. The reason, according to Appellants, is that “back room dealing” must have occurred in that meeting for Board Member Smith to recuse himself. Appellants argue that the recusal was improper, among other reasons, because the recusal was not made in the open hearing on the record.

Finally, Appellants contend that the STRRB did not adequately consider facts about road safety. There was no additional evidence presented. There was no expert witness testimony. The STRRB merely took a vote on whether to adopt its counsel’s findings of fact, as summarized from the June 20, 2024, STRRB hearing transcript. The vote did not carry the motion to adopt those findings.

The Appellants request that this Board remand the matter, again, to the STRRB and direct it to have a new evidentiary hearing where the Appellant can cross-examine witnesses. Appellants urge this Board to determine that Mr. Smith cannot recuse himself because, otherwise, there will not be a fifth board member to avoid a tie vote. In the alternative, the Appellants request that this Board reverse the STRRB decision because its factual findings are insufficient.

Respondent

Respondent’s primary argument on appeal is that this Board does not have jurisdiction to hear the appeal because the STRRB, on remand, did not make an appealable “decision.” Therefore, the original STRRB decision must stand. Because the STRRB did not issue a decision to appeal from, in Respondent’s view, the Appellant’s only available remedy is for a Circuit Court to issue an order of mandamus to the STRRB to issue its decision.

In response to Appellant’s assertion that it was an error for STRRB member Smith to recuse himself. Respondent explained that it requested the recusal because Mr. Smith, prior to being a member of the STRRB, submitted a letter in opposition to the granting of a short term rental for the Property.

Respondent’s counsel also highlights the statutory charge of the STRRB. Section 190-63.2(G)(6) provides that the STRRB shall approve an application for a new short-term rental license unless the Board finds that:

- a. The license application is incomplete;
- b. The applicant has made false, inaccurate, incomplete, or incorrect statements in connection with the application;
- c. The applicant has not complied with the application notice requirements;
- d. Issuance of the license would unduly disturb the peace of the residents of the neighborhood in which the short-term rental will be located; and/or

- e. There are other substantial reasons in the discretion of the Board why the license should not be issued, in which event the Board shall deny the license.

(emphasis added).

Therefore, the STRRB must approve a short-term rental license application unless it affirmatively finds one of the above. The Appellant contends that the alleged road safety is another “substantial reason” to deny the license. However, the Board did not affirmatively find, in its discretion, that road safety is reason to deny the issuance of a license.

STANDARD OF REVIEW

Review of administrative agency action is narrow. The court's [or this Board's] task on review is *not* to “substitute its judgment for the expertise of those persons who constitute the administrative agency,” *Bulluck v. Pelham Woods Apts.*, 283 Md. 505, 513, 390 A.2d 1119, 1124 (1978), quoting *Bernstein v. Real Estate Comm.*, 221 Md. 221, 230, 156 A.2d 657, 662 (1959), *appeal dismissed*, 363 U.S. 419, 80 S. Ct. 1257, 4 L. Ed. 2d 1515 (1960).

The 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, 12 A.3d 1223 (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, 709 A.2d 749 (1998) (emphasis supplied) (citing *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226 (1994)).

DECISION

To begin, we address the Respondent's assertion that this Board does not have jurisdiction to hear the appeal because the STRRB, on remand, did not make an appealable “decision.” To the contrary, this is an appeal of a written decision by the STRRB, which is signed and dated April 14, 2025. The “Amended Findings and Decision” of the STRRB concludes, “Except as amended herein, the STRRB's Initial Decision remains unchanged and in full force in effect.” It also provides that “any party that participated in the hearing and is aggrieved by the Board's decision may file an appeal to the Talbot County Board of Appeals within 30 days of the issuance of this decision ...”

The Decision also sets forth a summary of facts from the March 20, 2025 hearing transcript, which summarize the road safety facts considered by the STRRB during that hearing. Among those facts considered during that hearing are:

1. There was testimony and written comments of neighbors concerning safety of Bailys Neck Road. It was made known that there are portions that are narrow, a single lane,

- and with steep ditches on both sides. If there is an oncoming vehicle, one must pull to the side or pull into a driveway.
2. Baileys Neck Road is a County maintained road.
 3. Baileys Neck Road is similar to other roads in Talbot County where people must slow down and be attentive.
 4. There is language that must be included in the written lease and house rules for all short term rentals, which instruct tenants regarding road safety and speed limits.
 5. That the Property owner has agreed to send more specific instructions to its tenants regarding the condition of the road and safe travel on the road.

The Decision is a final appealable decision, and the facts contained therein better guide this Board in determining what the STRRB considered and/or heard when making the decision to issue a short term rental license.

We turn our attention now to the bases of appeal.

This Board, in its December 10, 2024 Decision, remanded this matter to the STRRB to provide more adequate deliberation and findings regarding the evidence presented concerning road safety.

The Appellants previously raised two other issues, which the Board addressed in its December 10, 2024 Decision. We encouraged, but did not order, the STRRB to also consider whether STRRB Board Member Watts was eligible to serve on that Board and, if not, whether the STRRB can render decisions of an ineligible Board member. We also encouraged the STRRB to consider whether it erroneously failed to allow a motion by STRRB Board Member Haase. Neither of these latter two issues have been raised on the instant appeal and so the Board does not address those issues in this decision.

The instant appeal raises two issues, in addition to alleging that the initial decision was insufficient. (1) Whether this Board should remand or reverse the STRRB Amended Findings and Decision due to alleged violations of the Open Meetings Act. (2) Whether this Board should remand or reverse the STRRB Amended Findings and Decision for alleged failure to make factual findings.

Alleged Violations of Open Meetings Act

To the extent Appellant's arguments allege violations of the Open Meetings Act, this Board does not have jurisdiction. Complaints about Open Meetings Act violations are governed by the General Provisions Article, Title 3, of the Maryland Code. Specifically, § 3-205 addresses complaints. Section 3-207 details the review and written opinion by the Open Meetings Compliance Board who is granted authority to hear complaints about Open Meetings Act violations. Any complaint(s) that the Appellants have regarding Open Meetings act violations must follow the procedures set forth in that Act and this Board will not opine on alleged Open Meetings Act violations.

The assertion seems to be that the STRRB deliberated regarding findings of fact in the closed meeting, but this Board finds that there was no evidence presented in this regard. It is merely speculation.

Appellants also assert that there was some deliberation regarding Mr. Smith's recusal during the closed meeting session. Again, this is merely speculation, and this Board will not opine on alleged Open Meetings act violations.

STRRB Rules of Procedure § 4, as argued by Appellants, provides that a board member's financial interest is a mandatory basis for a board member to recuse themselves. To the extent Appellants argue that the recusal is improper on its face and is grounds for remand or reversal, we disagree.

Section 4 of the STRRB Rules of Procedure is not the only rule governing recusal of Board members. STRRB members must also be mindful of State and County ethics laws. The Maryland Public Ethics Law, set forth in Md. Code Ann., General Provisions (§§ 5-101 through 5-1001), is the primary state-level framework. It requires Counties and local municipal governments to enact their own ethics rules.

Talbot County enacted its ethics provisions within Chapter 60 (Ethics) of the Talbot County Code. These provisions align with the state's goals of promoting transparency and avoiding conflicts of interest. In summary, both Maryland State Law (Public Ethics Law) and the Talbot County Code require public officials and appointed board members to recuse themselves from matters where: (1) they have a conflict of interest, (2) their impartiality might be questioned, or (3) they have a financial interest or relationship that could be perceived as influencing their judgment.

The issue of impartiality appears to have been questioned here and, to the extent that Mr. Smith wrote a letter of opposition regarding a short term rental at the property that is under review, it would certainly be grounds for recusal because of a question of impartiality. While Talbot County's ethics law primarily focus on mandatory recusals due to actual or apparent conflicts of interest, a board member can recuse themselves voluntarily even if a formal conflict does not exist. Appellant cites *Doering v. Fader*, 315 Md. 351 (1989) for the proposition that Mr. Smith's letter, which expressed his opinion regarding a short term rental at the property, is not necessarily disqualifying. Appellant does not cite any law, however, that precludes an appointed official from voluntarily recusing themselves if they choose not to participate in a particular hearing. There is no evidence that the recusal was not voluntary.

Alleged Failure to Make Factual Findings

We find that the facts provided in the Decision are adequate for this Board to ascertain what facts were made available to the STRRB during its March 20, 2025 hearing. We did not remand this matter to the STRRB for a new hearing. We stated the following in our previous decision:

The Supreme Court has stated “when the Board of Appeals [agency] refers to evidence in the record in support of its findings, meaningful judicial review is possible.” *Critical Area Comm’n v. Moreland, LLC*, 418 Md. 11 (2010). In this instance, the STRRB’s findings do not even sufficiently refer to evidence in the record to support its findings and we find that meaningful review is not possible as a consequence.

This Board will not overturn findings of the STRRB if that finding is one that a reasonable individual could make. However, there is not enough information on appeal for this Board to make that determination. This Board will not “search the record for evidence to support the judgment.” 336 Md. 569 at 585. Therefore, this Board remands the matter to the STRRB to provide more adequate deliberation and findings regarding the evidence presented concerning road safety.

The Decision does summarize the facts on the record and, therefore, this Board no longer must search the record for evidence to support the decision of the STRRB. The facts on the record can now be considered to determine whether 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.* 349 Md. 560, 568. There is no requirement that the STRRB formally vote to adopt those findings of fact. Nor is it required that the STRRB decision be based on expert testimony from the Fire Department, Emergency Services, and County Roads, as suggested by Appellants.

In *Critical Area Comm’n v. Moreland, LLC*, 418 Md. 11 (2010), the Supreme Court articulated the level of specificity required by an administrative agency decision:

Moreland’s assertion that the Board of Appeals must describe the evidentiary foundation for each of its findings, immediately following each finding, to enable meaningful judicial review does not have a foundation in our jurisprudence. What does have a grounding in our jurisprudence is that there has to be articulated evidence in support of a conclusion finding.

Id. at 128

[Describing its finding in *Bucktail* as they pertained to a developer who was denied growth allocation under the Chesapeake Bay Critical Area Protection Program.] We granted certiorari prior to any proceedings in the intermediate appellate court and reversed, reasoning that the relevant findings were merely ‘conclusory statements’ and failed to advise the developer, ‘in terms of the facts and circumstances of the record,’ the manner in which the application failed, thereby evading ‘meaningful judicial review.’ We emphasized that because the ‘planning staff and the Planning Commission ha[d] recommend approval of Bucktail’s project and found that it complied[d] with all applicable requirements, it [wa]s not sufficient for the Council simply to express conclusions, without pointing to the facts found by the Council that form[ed] the basis for its contrary conclusion.’

Id. at 129-30. In other words, the court found fault with a Board decision because it denied a substantive privilege to an applicant that was contrary to recommendations by the planning staff and planning commission, without any evidence on the record for its reasons, and without explanation of its reasons. That is not analogous to the present matter. In this matter, there is a transcript of the STRRB hearing that contains facts presented and considered by the STRRB and its decision. The Decision summarizes the evidence in the record, which allows this Board to determine whether the final conclusions of the STRRB majority were supported by sufficient evidence.

The Supreme Court concluded, regarding that Board's decision:

...when the Board of Appeals refers to evidence in the record in support of its findings, meaningful judicial review is possible.”

This is especially true because of the standard for which the STRRB is required to follow. Section 190-63.2(G)(6) provides that the STRRB shall approve an application for a new short-term rental license unless the Board finds that:

- a. The license application is incomplete;
- b. The applicant has made false, inaccurate, incomplete, or incorrect statements in connection with the application;
- c. The applicant has not complied with the application notice requirements;
- d. Issuance of the license would unduly disturb the peace of the residents of the neighborhood in which the short-term rental will be located; and/or
- e. There are other substantial reasons in the discretion of the Board why the license should not be issued, in which event the Board shall deny the license.

The ordinance does not give the STRRB discretionary authority to approve or deny licenses. It provides that the STRRB “shall” approve an application “unless” there is an affirmative finding as stated in that Section. It is, therefore, incumbent on any party challenging the short term rental license to provide the STRRB with evidence that (a) the license was incomplete, (b) the applicant made false, inaccurate statements, (3) the applicant did not comply with notice requirements, (3) the license would unduly disturb the peace, or (4) there are other substantial reasons.

In this case, the only evidence presented to the STRRB, by opponents, was testimony from residents in the neighborhood that the road is unsafe and would be unsafe for short term rental residents. There was also evidence that the road is a public road and that many other roads in Talbot County are similarly situated. There was also evidence that the short term rental rules address informing tenants of road rules and that the applicant for this license agreed to additional safeguards for informing tenants. A reasonable board member could conclude, as do we, that such evidence does not amount to grounds for denying a short term rental license. Any other guest, visitor, contractor, etc., of residents in that neighborhood, are faced with the same road hazard. It would be prejudicial for the County to allow one group or groups of individuals to use that road while denying a license that would arbitrarily preclude others.

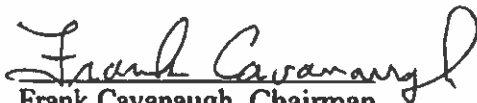
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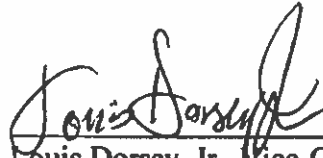
The Board accepted and considered the following documents as part of the record in this appeal:

1. Application for Administrative Appeal with Attachment 1.
2. Checklist for Administrative Appeal.
3. Notice of Intent to Participate.
4. List of Witnesses to be Summoned.
5. Tax Map with subject property highlighted.
6. Notice of Public Hearing for Advertisement in local paper.
7. Newspaper Confirmation.
8. Public Notice with Revised Adjacent Property Owner List attached.
9. Sign Maintenance Agreement.
10. Acknowledgement Form for Administrative Appeal.
11. Frad Five, LLC, STN-24-16 Short Term Rental Decision.
12. Email from the VanWagenbergs to give Authorization to her attorneys to represent them.
13. Certificate of Service from Mark Gabler, received 5/14/25.
14. Notice of Intent to Participate from Lyndsey Ryan, Esq., for Frad Five.
15. Original transcript of 3/20/25 STR meeting for STN-24-16.
16. Appellant's Pre-Hearing Statement, received 5/29/25.
17. Respondent's Pre-Hearing Statement, received 6/23/25.
18. Unofficial Transcript, received from Garrett Fitzgerald, of STR meeting on 2/20/25.

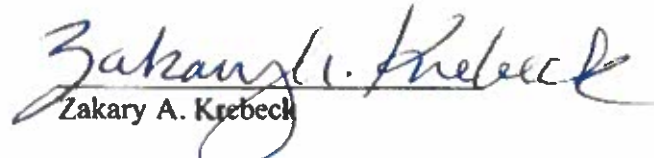
IT IS THEREFORE, this 29th day of July 2025, on a motion made by Mr. Krebeck, and seconded by Vice Chairman Dorsey, with all Board members in favor, **RESOLVED** that the decision of the Short Term Rental Review Board is **AFFIRMED** and that the Appeal of Maurits & Anke Van Wagenberg is **DENIED**.

This Decision is issued with the following condition - The property owner and rental agent must include a notice to all potential and actual renters stating: "Baileys Neck Road narrows to a 1 lane road and can be hazardous due to its narrow width and drainage ditches on both sides. There is no room to pass when meeting another vehicle, it would necessitate backing up or pulling into a private driveway to allow passage. When doing so, use courtesy and avoid any disturbance to private property. Strictly obeying the speed limit is required."


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Meredith Watters


Zakary A. Krebeck

Jeff Adelman

Jeff Adelman

Signature: 
Jeff Adelman (Jul 29, 2025 09:46:36 EDT)