

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2370

September Term, 2015

RESERVOIR LIMITED PARTNERSHIP

v.

BALTIMORE COUNTY, MARYLAND, et al.

Meredith,
Reed,
Salmon, James P.
(Senior Judge, Specially assigned),

JJ.

Opinion by Meredith, J.

Filed: August 31, 2018

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Reservoir Limited Partnership (“Reservoir”), appellant, opposed a petition filed by Baltimore County that asked the Board of Appeals for Baltimore County to approve an amendment to correct the portion of the zoning map applicable to property owned by Commerce Center Venture, LLP. The Board of Appeals granted the petition to correct the zoning map. Reservoir filed a petition for judicial review in the Circuit Court for Baltimore County. After the circuit court affirmed the ruling of the Board of Appeals, Reservoir noted this appeal.

QUESTION PRESENTED

Appellant presented three questions for our review:

1. Did the 2014 CBA [Baltimore County Board of Appeals] err when it granted a Part IV Petition for Zoning Reclassification for an alleged technical error that is not contemplated by BCC [Baltimore County Code] § 32-3-231(b)(1-3)?
2. Did the 2014 CBA err by ruling in favor of [Baltimore County] despite the lack of substantial evidence?
 - a. Did the CBA err in basing its ruling on a lay witness opinion regarding complex matters requiring special knowledge, whose opinion was not based upon his own perception, and was not helpful to a clear understanding of how the alleged technical error occurred?
 - b. Did the CBA err in reaching a conclusion as to a technical mapping error on a zoning map without actually reviewing the original zoning map in which the technical error allegedly occurred?
 - c. Did the CBA err in its Order directing [the Department of] Planning to “make the necessary change and correction as set out herein, on the latest Comprehensive Zoning Map with regard to the subject property,” when the “corrected” description of the Property presented by BC is derived not from the 1970 CBA, rather from a 1999 Confirmatory Deed, that includes additional property acquired by Centre in 1982?

3. Did the 2014 CBA err in concluding that Planning complied with the Part IV notice provisions even though it failed to notify in writing “property owners affected,” and only sent notice to one of the seven County Council (“Council”) members, of its Petition?

We perceive no reversible error and affirm.

FACTS AND PROCEDURAL HISTORY

Commerce Center Venture, LLP is the owner of property located at 1777 Reisterstown Road, just east of the intersection of Reisterstown Road and Hooks Lane, in the Pikesville area of Baltimore County. The property is improved by a commercial office building known as “Commerce Center II.”¹

On February 13, 2013, an attorney for Commerce Center Venture, LLP (David Karceski, Esquire) wrote a letter to Andrea Van Arsdale, the Director of the Baltimore County Department of Planning, asserting that a small portion of the Commerce Center Venture, LLP’s property was improperly “split-zoned”; that is, although the vast majority of the property was zoned B.R. (Business Roadside), there was a long, narrow, toothpick-shaped sliver toward the rear of the property that was zoned R.O. (Residential-Office). Mr. Karceski suggested that it was “likely the error occurred” following the County’s adoption of the 2000 Comprehensive Zoning Maps, when “the County dispensed with adopting

¹ Reservoir, the appellant here, and Commerce Center Venture, LLP, which is not a named party to this appeal, are engaged in separate litigation before the Board of Appeals (Case No. 12-045) regarding Commerce Center’s desire to construct office space atop its existing parking garage. Appellant’s R.O.-zoned property is next door, and appellant, throughout this case, asserted that, if the petition to rezone the sliver of Commerce Center’s property to BR was granted, that would pave the way for Commerce Center’s addition.

paper comprehensive zoning maps and converted these maps to GIS digital format.” Regardless of when or how the error occurred, Mr. Karceski asked the County to initiate the necessary procedures for effecting a correction of the zoning map. *See* Baltimore County Code (“BCC”), Art. 32, Title 3, Subtitle 2, Part IV.

The Department of Planning did not initially agree with the premise of Mr. Karceski’s letter that there was a zoning error on the Commerce Center Venture, LLP property. But after further discussions and meetings between County planning officials and the property owner’s attorney, the Planning staff searched its archives, and discovered an error was committed when the zoning map was never updated to reflect that, in 1970, the Board of Appeals had ruled that the entire parcel should be zoned B.R. (rather than split-zoned). Planning staff discovered that, in 1968, William Keir and his family (the then-owners of land that became the Commerce Center property), along with the Drew Company (which had contracted to purchase the property and intended to operate a car dealership on it), jointly petitioned the County to reclassify the property, which was split-zoned R.-10 and B.L., to entirely B.R.² On September 26, 1968, the Zoning Commissioner denied the request. The Keirs and the Drew Company then appealed to the Board of Appeals, which issued an opinion on April 27, 1970, reversing the zoning commissioner and rezoning the entire parcel B.R.

² In Baltimore County, the R-10 zone permitted residential lots of not less than 10,000 square feet; the B.L. zone was for “Business Local”; and B.R. refers to “Business Roadside.” The latter designation “allows more intensive uses” than the B.L. designation.

The 1970 Board of Appeals opinion explained its conclusion that the requested change in zoning should be granted:

From all the testimony, the Board finds as a fact that it would be unfeasible to develop the rear of the subject property in its present R-10 classification due to the severe topography and the exorbitant costs of extending utilities to the property, and the impact of the Beltway and the Beltway interchange on the marketability of residences on the subject property. We further find factually that the extensive changes that have occurred in the immediate neighborhood more than justify the requested reclassification, and that the proposed single purpose commercial use of the property would have a much lesser impact on traffic conditions, water and sewer demands, and other public services than if the property were developed in its present category. For these reasons the Board will grant the requested reclassification.

Although a timely appeal of the 1970 decision was filed, it was withdrawn shortly thereafter. It appears that, although the entire property was supposed to have been zoned B.R. as a result of the 1970 Board of Appeals decision, there was a sliver of property that continued to be mapped as R-O (Residential Office) on the zoning map.

On June 27, 2014, Ms. Van Arsdale, the Director of the Department of Planning, wrote Mr. Karceski and advised that the County intended to seek a zoning map amendment to correct the discrepancy. She stated:

In response to your February 13, 2013 correspondence to me, and after a thorough review of the history of the above-referenced property, the Department of Planning concludes there is an error on the Zoning Geodatabase.

The staff has investigated this matter and as the Director of Planning, I certify the following findings. Based upon our review, the Department concludes that a technical drafting error occurred while implementing an April 27, 1970 County Board of Appeals reclassification order. Therefore, in accordance with Section 32-3-233 of the Baltimore County Code, the Department of Planning will initiate a Petition for Zoning Map Correction

with the CBA to correct this error so that the zoning accurately reflects the intent of the 1970 CBA decision in Case No. 68-215-R.

On the same date, Ms. Van Arsdale wrote to the Honorable Vicki Almond, the County Council member representing the district in which the property is located, to advise her that the Department of Planning would be filing a Petition for Zoning Map Correction regarding the subject property.

On August 15, 2014, the County filed its Petition for Zoning Map Correction with the Board of Appeals, asserting, in Paragraph 5:

After a thorough investigation, the Department discovered that a technical drafting error occurred in mapping the Property. The intent of the original reclassification in Case No. 68-215-R was to rezone the entire property to B.R. At the time that the Department implemented the CBA decision in 1970, it erroneously mapped the zoning on the Property. This error has been perpetuated from 1970 through 2014. Further, this technical drafting error by the Department was independent of and not associated with any issue that was raised by any party in any Comprehensive Zoning Map Process since 1970. A copy of the current zoning map for the Property is attached hereto as Exhibit D and a copy of the zoning map depicting the correct zoning for the Property as B.R. is attached hereto as Exhibit E. Both exhibits are incorporated herein by reference.

A hearing before the Board of Appeals was set for September 24, 2014. A sign giving notice of the petition for amendment was posted conspicuously on the property. On September 8, 2014, counsel for Reservoir entered his appearance, noting Reservoir's opposition to the County's request for the zoning map correction, and requesting a continuance of the hearing date.³

³ There were two other protesting parties who also participated in the Board of Appeals proceedings (Greene Tree Homeowners Association, Inc. and Pikesville Communities Corporation), and they were co-petitioners in the judicial review proceedings

The Board of Appeals's hearing was rescheduled, and the hearing was held on November 12, 2014. Jeffrey Mayhew, the Deputy Director of the Baltimore County Department of Planning, was the only witness to testify. Mr. Mayhew testified that he had been with the Department for twenty-four years, and had been Deputy Director for the past three years. He holds a master's degree in public administration from the University of Baltimore, and is AICP certified by the American Planning Association.⁴

Mr. Mayhew described the comprehensive zoning map process ("CZMP") in Baltimore County, which occurs every four years and is a window in which "any person can ask for any zoning on any property." The CZMP has occurred every four years since 1971. And it has only been since 2004 that the maps used by the Department have been digitized; prior to the 2004, planners had to hand-draw zoning maps and incorporate any changes in zoning. Mr. Mayhew explained:

[BY THE WITNESS]: Prior, prior to the Council passing legislation allowing us to create a digital version of the zoning map, the zoning maps were created at one inch . . . one inch equals two hundred [feet] and it's done on mylars with pen and ink and whenever they were changed, we'd have to pull out the map, erase the line, re-draw the line, re-label and then the Council would sign the map.

in the circuit court, but neither of those parties is participating in this appeal. The Office of the People's Counsel for Baltimore County participated in the proceedings before the Board and circuit court; People's Counsel argued in support of the County's position, and has filed an Appellee Brief in this Court.

⁴ AICP stands for the American Institute of Certified Planners, and is a professional designation a planner earns by attaining a certain amount of experience, passing an examination, agreeing to adhere to a code of ethics, and taking continuing education.

Mr. Mayhew explained why he believed there was an error in the map relative to the zoning of the Commerce Center property:

[BY THE COUNTY]: Would it be fair to say that once the planning staff, once your office reviewed this 1968 case and the Board of Appeals decision to change the zoning that, in fact, you were persuaded that there was a problem?

[BY THE WITNESS]: Yes. This case demonstrated to us that when the property was rezoned from BL to BR, that the entire property was intended to be rezoned, not just part of it.

Q. And what is BL and BR zoning?

A. BL and BR are commercial zones that allow various retail and office functions, with BL is business local, BR is business roadside. The business roadside allows more intensive uses than the BL does.

Q. Well, how did, how did this case persuade you that, in fact, there was a problem with where the (inaudible) was?

A. The way the, the way the zoning map shows right now, the entire property is not zoned BR. There is a sliver of RO on the property and there is a triangle piece towards the, towards the west side that was zoned BL that should have been zoned BR based on this case.

* * *

Q. You've looked at this file, you've gone back and looked at the maps, at what point were you persuaded that there was a problem with the line? Did you look at something in a file, on the map?

A. Looked at this case [*i.e.*, the 1970 Board of Appeals case].

Q. Okay.

A. This case was the, the determining factor that we found an error had occurred and was perpetuating.

Q. And is that because after you saw what the Board had ruled here and changed the zoning and you went to the map and you were able to ---

A. This is actually for, as old as this case is, it has a lot of supporting material that, I mean, if you, it has the deed description, several maps indicating the size and scope of the property. Those were convincing to us.

Q. So what'd you do? Was that a eureka moment for you?

A. Yes, after not agreeing to the Petitioner's request, this was kind of the evidence that we felt very comfortable with in bringing forward at the map correction.

He testified that, after reviewing the 1968 case and the 1970 Board of Appeals decision overturning it and rezoning the entire property B.R., the current case was a "very clear and an easy decision to make as a technical map correction." Mr. Mayhew testified that the Department then determined to seek a zoning map correction, pursuant to BCC § 32-3-233.⁵

Mr. Mayhew demonstrated to the Board of Appeals, via maps of the current zoning (admitted as Exhibit 6) compared to maps of the requested zoning (admitted as Exhibit 7), that "[t]here are two areas where the BR zoning does not match the property line." He testified that the sliver of land that improperly retained the R.O. classification was roughly 0.298 acres in size, and would not be split-zoned today due to its small size. He also testified that the Department had posted the requisite notice at the entrance to the shopping

⁵ BCC § 32-3-233 provides:

(a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.

(b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section.

center, and that the Department notified, and actually met with, the councilwoman representing the district in which the property is located.

On February 2, 2015, the Board of Appeals issued its opinion granting the County's petition to correct the zoning map relative to the subject property. The Board's opinion set forth the following findings of fact and conclusions of law:

After extensive research, [the Department of Planning] discovered that an error had indeed occurred in mapping the Property. . . . Planning found a 1970 [County Board of Appeals] decision involving **a zoning reclassification in which the entire Property had been rezoned to B.R.** However, when Planning mapped the zoning on the Property that had been approved by our Predecessors, it made a mistake which was then perpetuated for almost forty-five years. Mr. Mayhew testified that when the maps were adjusted to reflect the rezoning, the .2 acre sliver was not mapped as BR, although the remainder of the site was mapped in accordance with the Order of the Board. The .2 acre sliver is currently zoned Residential Office, which is also the zoning on a separate lot northeast of 1777 Reisterstown Road, adjoining the sliver. Mr. Mayhew's testimony at the hearing was clear that he believed, consistent with our Predecessors opinion in 1970 that the entire parcel should be zoned BR. The Protestants advance seven (7) arguments as to why the Board should deny the Petition for Map Correction. We will address them in the order they were briefed.

The Protestants['] first argument is that the County's only evidence was presented through Mr. Mayhew and they questioned his credentials as being insufficient to discuss the zoning maps. We disagreed. **The Board found Mr. Mayhew's testimony to be substantial, clear and convincing.** The [B]oard reviewed the 1970 opinion of our Predecessors and analyzed Mr. Mayhew's testimony to determine that **the entire parcel should have been zoned BR.**

* * *

It was clear to the current Board that the intent of the original reclassification in Case No. 68-215R was to rezone the entire Property to B.R. It was also clear based on testimony that when Planning implemented the CBA decision in 1970 it incorrectly mapped the zoning on the Property. And it occurred at a time when the Planning staff was still

hand drawing the maps. Mayhew emphasized that the error had been perpetuated from 1970 to the present. Further, he opined that this technical drafting error by Planning was independent of and not associated with any issue that was raised by any party in any CZMP since 1970.

Protestant[s] also attempted to impeach Mr. Mayhew by questioning an immaterial discrepancy of the legal description of the property when comparing a 1990 deed with other public records. As [the Assistant County Attorney] correctly pointed out at the hearing[,] legal descriptions can contain minor discrepancies. The 1970 CBA decision indicated that the Property was 9.76 acres while the current MSDAT records indicate that the Property is 9.5359 acres with a property land area of 9.5400 acres. The County used the 9.54 acres in its Petition. . . . **Protestants['] argument that we should deny the petition because of this minor discrepancy in the Property description is without merit. The 1970 CBA ordered that the entire Property should be rezoned B.R.** On cross examination, Mr. Mayhew did not attach any significance to minor discrepancies in the acreage of the site, noting its small size and toothpick shape. He also stated that while split zoning may be appropriate as a buffer on some sites, this property did not meet the criteria. Mr. Mayhew testified he would not recommend RO zoning on the .2 acre sliver under any zoning scenario. **The opposing parties presented no witness to refute Mr. Mayhew's testimony or to justify retaining RO zoning on the area. The[] 1970 Board order is not ambiguous.** It is undisputed that the 1968 petition and [1970] Board Order conformed to the legal process for cycle rezoning at the time.

* * *

The Protestants['] second argument is that the County failed to comply with the provisions of § 32-3-231(b) of the BCC. In particular they assert the error alleged by the County does not fit into one of the statu[to]ry provisions and therefore cannot be corrected. There was some argument at trial as to whether the Board should accept jurisdiction of this matter under BCC 32-3-231 or BCC 32-3-232. [Sic: the discussion during the hearing before the Board was about whether the petition was properly brought under BCC § 32-3-231 or § 32-3-233. BCC § 32-3-232 outlines what responsibilities the Director of Planning has in responding to a property owner's allegation of zoning area under 32-3-231. The County's petition plainly stated that it was filed pursuant to 32-3-233.] **We reviewed all provisions of the BCC and determined that the Department of Planning complied with the standards and procedures in the relevant parts of the BCC. Mr. Mayhew[']s testimony was clear and uncontroverted. It was**

he and his Department which discovered the correct facts to support the map correction and not the theories advanced by the taxpayer. Therefore, it was proper for the County to file the petition for the correction to the Board. We have determined that filing the petition under either provision of the [s]tatute would lead us to the same result.

Any reference by the County to the provisions of 32-3-231 (the provisions of the BCC whereby the taxpayer files the petition for map correction) are immaterial to the facts and circumstances of this hearing. The County proceeded at the hearing under the provis[i]o[n]s of BCC 32-3-232.^[6] Protestants claimed that principles of due process have been violated since there was argument about which statute gave the Board jurisdiction in this matter. We disagree.

The authority of the Board is found in Baltimore County Code (“Code”) § 32-3-231 et seq. The statute states two procedures for correction: (1) § 32-3-231 provides that a property owner who discovers the error must report to the Department of Planning (“Planning”) that the zoning map “. . . does not accurately reflect the zoning classification enacted by the County Council on the owner’s property during any comprehensive zoning process.” (emphasis added); (2) § 32-3-233(a) provides “The Department of Planning may initiate a petition on its own if its discovers a technical error in the zoning map.” So the alleged error may originate with the property owner who reports to Planning, **or** with the Department of Planning.

* * *

. . . We were unanimous that Mr. Mayhew[’s] testimony was substantial, clear and convincing, to justify the correction. It was clear

⁶ Again, we view this reference to BCC 32-3-232 as an unfortunate typographical error, because the County’s Petition for Zoning Map Correction, filed August 15, 2014, plainly states that it is filed “pursuant to Section 32-3-233 et seq. of the Baltimore County Code[.]” Additionally, the erroneous reference to BCC 32-3-232 makes no sense in context, because § 32-3-232 deals with the “Response of the Director” (of Planning) to a notice given by a property owner pursuant to § 32-3-231 that the owner believes that the zoning map does not accurately reflect the proper zoning classification on the owner’s property due to any of three specifically enumerated errors: (1) a technical drafting error; (2) a change in the property’s zoning that was not within the boundaries of a filed issue; or (3) a technical drafting error made by the original petitioner for a zoning change, provided the error did not impact on the intent of the County Council to place a particular zoning classification on the particular property. Also, we note that the Board cited the correct section of the code --- BCC § 32-3-233 --- in the next paragraph of its opinion.

from the facts presented at trial that the entire Property should have one zoning designation. It was also clear to us from Mr. Mayhew's testimony as to how the technical error occurred and that the County is now seeking the proper remedy under the correct statutory provisions of the BCC.

* * *

The Protestants['] third argument is that the Department of Planning did not give proper notice to the County Council under the provisions of BCC as it only notified one Council Member of its intention to file a petition. The Protestants argue that the clear intent of legislature is that ALL members of the County Council be notified. We disagree. This Board has had a long standing practice that in map correction matters the council person who serves in the District that the property sits [in] is sufficient to receive the statutory required notice. This is analogous to a Resident Agent receiving notice for a Corporation. In this particular case Ms. Almond is an experienced Councilwoman member and is well versed in land use matters. We find no violation of the Protestants['] due process. The evidence is clear that on June 27, 2014 Planning sent letters to Karceski, and to the Honorable Vicki Almond, Councilwoman for the Second District, advising them of the zoning map error on the Property and that it would take the necessary steps to remedy it as provided by the BCC. We find this notice sufficient.

* * *

The Protestants['] fourth argument is that the County failed to provide proper notice to the taxpayers of Baltimore County. In particular, the Protestants read the statute as mandating that the County provide notice to all "affected" property owners to include all surrounding property owners. At dispute here is whether or not the legislature intended to mean [for] the word "affected" to include ALL surrounding property owners. Protestant[s] argue that the County had a duty to notify in writing all property owners whose property is contiguous to or in the immediate vicinity of 1777 Reisterstown Rd. [. . .] We disagree. Once this Hearing was scheduled, Planning posted a public notice of the CBA hearing date. It was posted at Hooks Lane on two separate occasions because the hearing had been rescheduled.

The Petition in the instant case was filed pursuant to BCC, § 32-3-233 which provides as follows:

§ 32-3-233 PETITION BY THE DEPARTMENT OF PLANNING.

- (a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.
- (b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section.

(1988 Code, § 26-134) (Bill No. 42, 1990, §1; Bill No. 103-02, § 2, 7-1-2004; Bill No. 55-11, §§ 1, 2, 10-16-2011)

* * *

. . . Clearly, the intent of this section is that the County must provide notice to the property owner, arguably the fee simple property owner. The Legislative intent was never to impose a burden on the County to notify all potentially interested property owners, whether they be adjacent, surrounding, contiguous or a certain distance from the property at issue. Our opinion was unanimous that the County complied with the requisite notice under BCC § 32-3-233 when it sent Karceski a letter on June 27, 2014 of its intention to correct the map error by filing a petition with the CBA and subsequently posted on the property.

Further, the case law in Maryland is clear regarding notice for a public hearing. The Court of Special Appeals has held that the requirement of notification for a public hearing may be satisfied by “actual” notice, which is the case here. *Largo Civic Ass’n v. Prince George’s Co.*, 21 Md. App. 76, 85-86 (1974); *McLay v. Maryland Assemblies, Inc.*, 269 Md. 456, 477 (1973). . . . We find no violation of the BCC or the Due Process of the Protestants ability to be heard. In fact, this board agreed to postpone the original hearing to allow the Protestants extra time to prepare. Protestants were fully aware of the Petition and had substantial time to prepare for the Hearing, the opportunity to present evidence, cross-examine the County’s witness and otherwise fully participate.

* * *

The Protestants['] fifth argument is that they were not provided discovery materials prior to the hearing. . . . This Board does not have enforcement powers and cannot compel parties to share information before a hearing.

* * *

Protestants['] sixth argument is similar to its other procedural and due process arguments. The Protestant[s] accuse the Department of Planning and this Board of participating in piecemeal rezoning by not following the clear intent of the Legislature. . . .

. . . The Protestant[s] assert that this Board does not have jurisdiction to correct the zoning maps. In substance the Protestant[s] claim [] the petition should have been brought in the name of the owner because the owner initially advised Planning of an error. They claim a drafting or technical error made as a result of a rezoning by the Board of Appeals is beyond the purview of the conditions in § 32-3-231(b)(1)(2)(3). We disagree. The error was discovered by Planning based on their own independent review of over fifty years of County records.

This raises the question whether the two types of petitions (owner initiated and Planning initiated) are bound by the same standards. The statute does not contain specific language limiting Planning's investigation to the three scenarios in § 32-3-231(b). Indeed **there is no limitation imposed on Planning --- § 32-3-233(a) simply authorizes Planning to file a petition on behalf of Baltimore County if "... it discovers a technical error in the zoning map."** If the County Council intended to limit the circumstances in which the zoning occurred, as opposing parties here contend, there must be some statutory meaning or purpose to justify such an interpretation.

It is reasonable to establish some guidelines when an owner alleges an error. Planning is given some direction in its investigation and an owner cannot make a frivolous and baseless claim.

More importantly, it is unreasonable to assume the statute would treat an error resulting from a cycle zoning Board order differently. The clear purpose of the statute is to assure the zoning maps coincide with the intended zoning on a site. A Board rezoning carries the same weight and is tantamount, not substandard, to one or more of the criteria in § 32-3-231(b).

The overwhelming testimony at the hearing was that a technical drafting error was [made] after the Board of Appeals decision in 1970. We find the Protestants['] argument illogical. **It is clear the Board of Appeals has the statu[to]ry authority to correct the zoning map.** Under the rules of statutory construction, the courts can look at the spirit and intent of the

legislation to ascertain its meaning. The position of the Protestants conflict[s] with the purpose and intent of the BCC.

The Protestants['] seventh and final argument is that the Board should have compelled the testimony of two parties and enforced subpoenas. Protestant asserts that Mr. Karceski and Director Van Arsdale were key witnesses. . . . The uncontroverted testimony of Mr. Mayhew was that the Department of Planning reached the decision to file this petition on their own after an independent review of fifty years of County records. Conversations between Mr. Karceski and the County were irrelevant as no theory for the correction advanced by Mr. Karceski was adopted by the County. Further, [t]he Board deemed Mr. Mayhew competent to testify and found his testimony professional, accurate, clear and substantial. We found no reason to compel the testimony of Director Van Arsdale, even if we had those powers.

(Bolded emphasis added.)

Appellant filed a petition for judicial review in the Circuit Court for Baltimore County, which conducted a hearing on September 18, 2015. On December 9, 2015, the circuit court filed an opinion and order, affirming the Board of Appeals. This appeal followed.

STANDARD OF REVIEW

In *People's Counsel for Baltimore Cty. v. Surina*, 400 Md. 662, 681-83 (2007), the Court of Appeals provided this overview of the standard of review applicable to judicial review of the decisions of administrative agencies:

When this or any appellate court reviews the final decision of an administrative agency such as the C[ounty] B[oard of] A[ppeals], the court looks through the circuit court's and intermediate appellate court's decisions, although applying the same standards of review, and evaluates the decision of the agency. *Mastandrea v. North*, 361 Md. 107, 133, 760 A.2d 677, 691 (2000) (citing *White v. North*, 121 Md. App. 196, 219, 708 A.2d 1093, 1105 (1998), *rev'd on other grounds*, 356 Md. 31, 736 A.2d 1072 (1999)). We therefore shall focus our attention in the main on the decision of the CBA.

In doing so, 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, *see, e.g., Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999), so long as the agency's determination is based on "substantial evidence." *See White*, 356 Md. at 44, 736 A.2d at 1079-80; *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979). In that latter regard, we inquire whether the zoning body's determination was supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion" *Annapolis Waterfront Co.*, 284 Md. at 398, 396 A.2d at 1089; *see also Annapolis Waterfront Co.*, 284 Md. at 398-99, 396 A.2d at 1089 ("The heart of the fact-finding process often is the drawing of inferences made from the evidence The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.") (citations omitted); *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443, 447-48, 168 A.2d 390, 392 (1961) (quoting 4 Kenneth Culp Davis & Richard J. Pierce, *Administrative Law* § 29.11, at 186 (1958)). Thus, we will uphold the administrative decision of the zoning body, here the CBA, to approve the development plan if that action was "fairly debatable" on the facts as found by it. *White*, 356 Md. at 44, 736 A.2d at 1079-80; *Sembly v. County Bd. of Appeals of Baltimore County*, 269 Md. 177, 182, 304 A.2d 814, 818 (1973); *Bd. of County Comm'rs for Cecil County v. Holbrook*, 314 Md. 210, 216-17, 550 A.2d 664,

668 (1988); *Prince George's County v. Meininger*, 264 Md. 148, 152, 285 A.2d 649, 651 (1972); *Zengerle v. Bd. of County Comm'rs for Frederick County*, 262 Md. 1, 17, 276 A.2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals*, 261 Md. 153, 156, 274 A.2d 379, 381 (1971).

We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. *Belvoir Farms Homeowners Assoc., Inc. v. North*, 355 Md. 259, 267-68, 734 A.2d 227, 232 (1999) (citing *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749, 753 (1998)); see also *Mombee TLC, Inc. v. Mayor and City Council of Baltimore*, 165 Md. App. 42, 884 A.2d 748 (2005) (finding that an appellate court's role "is precisely the same as that of the circuit court," and that "like that court, we are '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'" (citations omitted)). When determining the validity of those legal conclusions reached by the zoning body, however, "a degree of deference should often be accorded the position of the administrative agency" whose task it is to interpret the ordinances and regulations the agency itself promulgated. *Marzullo v. Kahl*, 366 Md. 158, 172, 783 A.2d 169, 177 (2001). Thus, "[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was 'premiered upon an erroneous conclusion of law.'" *Marzullo*, 366 Md. at 172, 783 A.2d at 178 (quoting *Banks*, 354 Md. at 68, 729 A.2d at 380).

DISCUSSION

I. Statutory authority for the correction of the map.

In its brief, Reservoir asserts that its position is "that this case is not a mapping technical error as required by Part IV" --- a reference to Part IV of Subtitle 2 of Title 3, Zoning, of the Baltimore County Code, in which §§ 32-3-231 and 32-3-233 are found --- "and even if it were [Baltimore County] disregarded the statutory notice mandates required

to bring the action, that its sole witness's testimony was incompetent, and that the property was not properly described." In its first argument in this Court, Reservoir raises the argument it made to the Board of Appeals and the circuit court about the Board's authority: that even though the petition "alleges that it was brought pursuant to BCC § 32-3-233 *et seq.*, it is BCC § 32-3-231(b) (1-3) that sets forth the only three technical errors that can be corrected pursuant to Part IV, in alternative to changing the zoning on a property through the CZMP, or cycle zoning."

In other words, it is appellant's contention that, even though the plain language of BCC § 32-3-233 authorizes the Department of Planning to "initiate a petition on its own if it discovers a technical error in the zoning map," Reservoir insists that the only "technical errors" that qualify for correction pursuant to a petition filed under § 32-3-233 are the three technical errors specified in § 32-3-231 (b)(1)-(3). We reject this argument because it is contrary to the plain language of BCC § 32-3-233.

The Court of Appeals described the pertinent principles of statutory construction in *Smack v. Dep't of Health and Mental Hygiene*, 378 Md. 298, 304-05 (2003):

The predominant goal of statutory construction "is to ascertain and implement, to the extent possible, the legislative intent." *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002). *See Toler v. Motor Vehicle Administration*, 373 Md. 214, 220, 817 A.2d 229, 233 (2003); *Dyer v. Otis Warren Real Estate*, 371 Md. 576, 580-581, 810 A.2d 938, 941 (2002) ("The goal with which we approach the interpretation of a statute is to determine the intention of the Legislature in enacting it."). **We begin the interpretive analysis with the words of the statute and, when they are clear and unambiguous, there is no need to search further.** *Medex v. McCabe*, 372 Md. 28, 38, 811 A.2d 297, 303 (2002); *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 301, 783 A.2d 667, 670 (2001); *Harris v. State*, 353 Md. 596, 606, 728 A.2d 180, 184 (1999); *Degren v. State*, 352 Md. 400,

417, 722 A.2d 887, 895 (1999). “[W]e look first to the words of the statute, on the tacit theory that the Legislature is presumed to have meant what it said and said what it meant.” *Witte*, 369 Md. at 525, 801 A.2d at 165. In that regard, the statute must be given a reasonable interpretation, “not one that is illogical or incompatible with common sense.” *Whiting-Turner*, 366 Md. at 302, 783 A.2d at 671; *State v. Brantner*, 360 Md. 314, 322, 758 A.2d 84, 88–89 (2000). Moreover, statutes are to be interpreted so that no portion is rendered superfluous or nugatory. *See Taylor*, 365 Md. at 181, 776 A.2d at 654; *Blondell v. Baltimore City Police Dep’t*, 341 Md. 680, 691, 672 A.2d 639, 644–45 (1996). **Words may not be added to, or removed from, an unambiguous statute in order to give it a meaning not reflected by the words the Legislature chose to use**, *Medex*, 372 Md. at 38, 811 A.2d at 303, “[n]or [may we] engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.” *Taylor v. NationsBank*, 365 Md. 166, 181, 776 A.2d 645, 654 (2001); *Mid-Atlantic Power Supply Ass’n v. Public Serv. Comm’n*, 361 Md. 196, 204, 760 A.2d 1087, 1091 (2000).

(Emphasis added.)

It is clear from the face of the petition for correction filed by Baltimore County that the County initiated its petition pursuant to BCC § 32-3-233, the words of which are not ambiguous and do not limit the scope of correctible “technical errors” to the three technical errors addressed in § 32-3-231. Rather, § 32-3-233 --- in contrast to the three alternatives outlined for an owner-initiated petition in § 32-3-231 --- grants the Department of Planning the authority to file a petition on its own if it discovers a technical error in the zoning map.

When we are called upon to interpret a statute, “[i]f the language is clear and unambiguous, our search for legislative intent ends and we apply the language as written and in a commonsense manner. We do not add words or ignore those that are there.” *Downes v. Downes*, 388 Md. 561, 571 (2005). “When a statute’s language is clear and unambiguous . . . we need look no further for some hidden legislative intent.” *Management Personnel Servs. v. Sandefur*, 300 Md. 332, 341 (1984). “[T]he Legislature is presumed to

have meant what it said and said what it meant.” *Witte v. Azarian*, 369 Md. 518, 525 (2002).

This was a County-initiated petition, brought pursuant to BCC § 32-3-233. And the County is expressly authorized to bring such a petition if the Department of Planning discovers a technical error in the zoning map. Section 32-3-233 does not restrict the County’s power to correct technical errors to only those three technical errors within the purview of an owner-initiated petition.

For these reasons, we conclude that the Board of Appeals was authorized to grant the County’s Petition for Zoning Map Correction.

II. Substantial Evidence.

Reservoir also argues that the decision of the Board of Appeals was not supported by substantial evidence. Reservoir contends that the County “should have presented an expert witness,” and complains that, because Mr. Mayhew did not personally participate in the 1970 Board proceedings, he lacked “any contemporaneous facts or personal knowledge of what may have occurred in 1970.” We are satisfied, however, that there was substantial evidence to support the Board’s conclusion.

At the outset, we note that the rules of practice and procedure that have been adopted for hearings before the Baltimore County Board of Appeals expressly provide in Rule 7 that “the technical rules of evidence” do not apply. Consequently, the Board was well

within its right to receive the testimony from Mr. Mayhew, including opinion testimony, without applying the Maryland Rules of Evidence.⁷

In *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998), the Court of Appeals made the following observations about the evidence required to support an agency's findings:

Our review of the agency's factual findings entails only an appraisal and evaluation of the agency's fact finding and not an independent decision on the evidence. *Anderson v. Department of Pub. Safety & Correctional Servs.*, 330 Md. 187, 212, 623 A.2d 198, 210 (1993). This examination seeks to find the substantiality of the evidence. "That is to say, a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test to the final decisions of an administrative agency. . . ." *Baltimore Lutheran High Sch. Ass'n v. Employment Sec. Admin.*, 302 Md. 649, 662, 490 A.2d 701, 708 (1985); *Anderson*, 330 Md. at 212, 623 A.2d at 210; *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 511–13, 390 A.2d 1119, 1123 (1978). In this context, "[s]ubstantial evidence,' as the test for reviewing factual findings of administrative agencies, has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion [.]'" *Bulluck*, 283 Md. at 512, 390 A.2d at 1123 (quoting *Snowden v. Mayor of Baltimore*, 224 Md. 443, 448, 168 A.2d 390, 392 (1961)).

⁷ Rule 7 provides:

A. Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, **the board will not be bound by the technical rules of evidence** but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties. **Any oral or documentary evidence may be received**; but the board reserves the right as a matter of policy to provide for the exclusion of immaterial or unduly repetitious evidence, and the number of witnesses may be limited if it appears that their testimony may be merely cumulative.

(Emphasis added.)

We have said, “reviewing courts are under no constraint to affirm an agency decision premised solely upon an erroneous conclusion of law.” *Insurance Comm’r v. Engelman*, 345 Md. 402, 411, 692 A.2d 474, 479 (1997). Accordingly, we may reverse an administrative decision premised on erroneous legal conclusions. *See People’s Counsel v. Maryland Marine Mfg.*, 316 Md. 491, 497, 560 A.2d 32, 34–35 (1989).

We are also obligated to “review the agency’s decision in the light most favorable to the agency,” since their decisions are *prima facie* correct and carry with them the presumption of validity. *Anderson*, 330 Md. at 213, 623 A.2d at 211; *Bulluck*, 283 Md. at 513, 390 A.2d at 1124.

We have briefly outlined above the evidence that was before the Board. Mr. Mayhew was the only witness who testified. His testimony, which the Board found “substantial, clear, and convincing,” led the Board of Appeals to conclude that its predecessors intended, in 1970, to rezone “the entire property” B.R., and a mistake was made when the zoning map was revised and failed to incorporate the 1970 ruling of the Board of Appeals. Mr. Mayhew explained that the maps were still hand-drawn at that time, and that if a change was made on a zoning map, it literally required erasing and re-drawing lines on the mylar map sheets. The error --- failing to conform the map to the Board’s 1970 ruling --- was then perpetuated through the years. There was no evidence to the contrary.

Appellant also complains that the Board erred in granting the petition because the legal descriptions of the property’s total acreage differed slightly, noting that the property was described, in the 1970 Board of Appeals decision, as consisting of 9.76 acres, whereas the property was described in a 1999 deed as being a 9.9639-acre parcel, and, the County referred to the property in its petition as being 9.54 acres. People’s Counsel pointed out

that, with regard to the 1999 deed, “[i]t says 9.9639 acres of land more or less. I’m sure anyone who does title work knows what [‘]more or less[’] means.”⁸

The Board of Appeals found these discrepancies were immaterial, which is a finding within the Board’s discretion and expertise. The Board noted that legal descriptions of land “can contain minor discrepancies,” and explained how that could happen. Appellant has failed to demonstrate that this finding was a material error.

We conclude that the Board’s factual determinations were adequately supported by uncontroverted testimony of Mr. Mayhew that the Board found credible, in addition to the documentary evidence presented by the County.

III. Notice requirements.

Appellant also complains that the notice given by the County in this case was inadequate, for two reasons. As appellant observes, BCC § 32-3-233(b) states that the County “shall provide written notice to property owners affected by a petition” filed by the Department of Planning pursuant to § 32-3-233(a). Appellant contends “property owners

⁸ See, e.g., *Marcus v. Bathon*, 72 Md. App. 475 (1987), in which a purchaser of property that was described both by metes and bounds and by reference to its consisting of “5.9455 acres, more or less” was not entitled to damages when she found out, a year after the sale, that the property actually consisted of 4.944 acres. We noted that the metes and bounds did accurately depict the borders of the land the buyer purchased, even if the acreage within those boundaries was off by an entire acre, and therefore the buyer “got exactly what she bargained for.” *Id.* at 485. We observed that, “[w]hen land sold by metes and bounds or by any other definite description is estimated to contain a specified quantity qualified by the words ‘more or less,’ the statement of quantity is construed as a matter of description, and not of the essence of the contract,” *id.* at 484, and “[v]ery little stress is placed on words of general description as to the extent of a conveyance, such as an estimation accompanied by the words ‘more or less,’ when the instrument also contains a particular description of the property to be conveyed.” *Id.* at 486.

affected” must “include[] adjacent and confronting property owners, whose interest in their own property may be adversely affected by the subject zoning reclassification.”

On this point, the Board agreed with the County that, when a petition for map correction is filed pursuant to § 32-3-233(b), the written notice need only be sent to the property owners whose zoning will be affected by the requested correction (and that was done in this case).

We need not decide the notice issue in this case however, because it is undisputed that Reservoir had actual notice of the petition to correct the zoning map. The Court of Appeals held in *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 477 (1973), that “the requirement of notification proposed to inform may be satisfied by actual notice, especially when it is acted upon.” (Citation omitted.) *Accord Largo Civic Ass’n v. Prince George’s County*, 21 Md. App. 76, 85-86 (1974). It is beyond dispute that Reservoir --- the only protestant before us --- had actual notice of the proposed correction and took advantage of the opportunity to participate in the hearing before the Board.

Appellant also complains that, in giving notice to the council representative for the district, and not the entire County Council, as described in BCC § 32-3-232(b)(3), the County failed to provide the notice required by the BCC. We disagree. First of all, these proceedings were filed pursuant to BCC § 32-3-233, and the notice requirements for such a petition are found in § 32-3-234(a), which requires the County to “conspicuously post notice of a petition filed under this part on the property under petition for a period of at least 15 days following the filing of the petition.” That occurred here. Second, assuming

that the County was also required to alert the County Council that a petition to correct the zoning map under § 32-3-233 had been filed, it was within the Board's discretion to recognize its own "long standing practice that in map correction matters," notifying the councilperson for the district in which the property is located satisfies that notice requirement.

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

IN THE MATTER OF
RESERVOIR LIMITED PARTNERSHIP

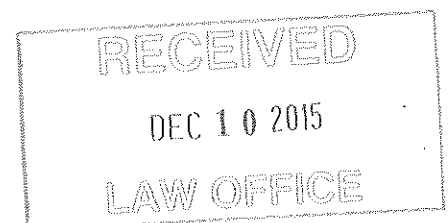
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO.: 03-C-15-002153

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court for judicial review of a decision issued by the Board of Appeals of Baltimore County ("The Board"). On February 2, 2015, following a hearing before the Board of Appeals of Baltimore County that concluded on November 12, 2014, the Board issued an opinion that found that Petitioner/Respondent, Baltimore County, had properly addressed the steps necessary to correct a technical drafting error in its zoning maps and issued an order to reclassify the parcel in question from split zoning of R-O (Residential –Office) B.R. (Business, Roadside) to B.R.. Reservoir Limited Partnership, filed a Petition for Judicial Review on February 25, 2015 in the Circuit Court for Baltimore County. Petitioners, joined by Greene Tree Homeowners Association, Inc. then filed a Memorandum of Law in Support of the Petition for Judicial Review on May 28, 2015. People's Counsel of Baltimore County filed a memorandum supporting the Board's decision on July 2, 2015, which Petitioner's filed a reply to on July 22, 2015. Baltimore County filed its own memorandum in support of the Board's decision on July 8, 2015, which Petitioner's replied to on July 28, 2015

On September 18, 2015, a hearing was held before the Honorable Ruth A. Jakubowski at which time counsel for all parties were present. For the reasons set forth herein, the decision of the Board of Appeals of Baltimore County is **AFFIRMED**.



Background

Commerce Centre Venture LLP is the fee simple owner of a 9.5 acre parcel of land improved with a commercial building known as Commerce Center II located at 1777 Reisterstown Road, Baltimore County Maryland 21208. In February of 2013, Commerce Centre's attorney, David Karceski, notified the Director of the Department of Planning of a potential error in the zoning on the property; specifically, that a portion of the property was incorrectly split-zoned. The site is located at the intersection of Hooks Lane and Reisterstown Rd. at Exit 20 off Interstate 695. The area in dispute is a .2 acre strip, that is currently zoned Residential Office (R-O) while the remainder of the site is zoned Business, Roadside (B.R.). The Department of Planning ("Planning") staff scrutinized the materials provided by the property owner's attorney, and concluded that the information did not support a technical drafting error eligible for correction. On its own accord, Planning undertook an extensive investigation of its archives for potential variance and reclassification requests which may have led to an error. Planning eventually did discover an error that had occurred in mapping the property, however, this error was unrelated to anything proffered by the property owner's attorney. The error Planning uncovered stemmed from a 1970 Board decision in which the entire property was rezoned to B.R., however, the correction was never properly mapped onto the property by zoning, resulting in a discrepancy that persisted until this action. The County filed a Petition for Zoning Map Correction on August 15, 2014, which alleged that a technical error was made in transferring zoning imposed upon the site following a 1968 Petition for Reclassification. The petition filed with the Board sought to correct the zoning from Business Local (BL) and Residential (R- 10), to Business, Roadside (B.R.).

STANDARD OF REVIEW

A final decision of the CBA must be upheld on review if it is not premised upon an error of law and if the Board's conclusions reasonably may be based on the facts proven. In fact, this Court's role in reviewing an administrative agency's decision is narrow. The reviewing court cannot substitute its own judgment for that of the zoning board and must accept the zoning board's factual conclusions, if they are based on substantial evidence and if reasoning minds could reach the same conclusion on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994). This Court also 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 v. People's Counsel*, 336 Md. 569, 577 (1994).

In regard to the Board's legal conclusions, this Court's review is "expansive" and owes "no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299 (2005), *cert. granted*, 389 Md. 399 (2005). "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." *Stansbury v. Jones*, 372 Md. 172, 184 (2002) (quoting *Belvoir Farms Homeowners' Ass'n v. North*, 355 Md. 259, 267 (1999)). However, the agency's interpretation and application of any statute that the agency administers should be given considerable weight by the reviewing court. *Lussier v. MD Racing Commission*, 343 Md. 681, 696-97 (1996).

For purposes of judicial review, substantial evidence means more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion in such a situation, the issue to be considered is "fairly debatable" and the reviewing court may not

substitute its judgment for that of the agency. *Realty Improvement Ass'n v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714, 661 A.2d 182 (1995)

The Petitioner has raised several arguments on its appeal of the CBA decision. This Court has reordered and slightly rephrased the questions presented in the interest of clarity.

Discussion

1) Was the Board of Appeals of Baltimore County's decision supported by substantial evidence to adjust the zoning?

Reservoir and Greene Tree contend that the evidence presented at trial was insufficient to support the Board's decision, as the sole witness was not qualified as an expert, and furthermore, testified about the Board's 1970 decision without any personal knowledge. The County encourages this Court to defer to the Board on matters of weight and credibility. The Board had the opportunity to consider extensive testimony from Jeff Mayhew, the sole witness for the County. Mayhew testified that he had worked for the Department of Planning for over 20 years and is currently the Deputy Director of Planning. Mayhew testified extensively about the process that exists in the County as it relates to zoning. He also testified about the specific zoning process as it related to this piece of property dating back to 1968. Mayhew testified as to the multiple meetings with the property owner's counsel about efforts to obtain a zoning modification based on a technical drafting error. The County did not agree with the property owner's position but did undertake its own extensive review as described by Mayhew. Mayhew testified that after their extensive review they concluded that an error had occurred in the mapping of the property based on a 1970 Board decision. The Board found Mayhew's testimony to be "substantial, clear and convincing." See Board's Opinion at page 6. The Board also found

that the intent of the original reclassification was to rezone the entire property to B.R. Finally, the Board found, based on the testimony and exhibits presented, that when Planning implemented the 1970 decision by the Board, it incorrectly mapped the zoning on the property at issue. *See Board's Opinion at page 7.*

Rezoning petitions alleging mistake must be supported by substantial evidence.

White v. Spring, 109 Md. App. 692, 675 A.2d 1023 (1996). In evaluating a petition, there is a presumption of correctness and validity of the underlying zoning plan. People's Counsel for Baltimore County v. Beachwood I Limited Partnership, 107 Md. App. 627, 639, 670 A.2d 484, 490 (1995). Based on the record before it, this Court finds that the evidence presented before the Board was substantial and sufficient to support the Board's decision. Furthermore, this Court defers to the Board as to the weight and credibility of the witness testimony before the Board.

2) Did the County provide proper written notice prior to the hearing before the Board of Appeals of Baltimore County?

The Petitioners have raised the issue of improper notice. They contend that the County did not satisfy the notice provision for Department of Planning initiated zoning reclassification. The Petitioners contend that there was both deficient notice to the County Council and to the affected property owners under § 32-3-232(b) (3) and § 32-3-233(b), respectively, of the Baltimore County Code.

The Baltimore County Code provides separate written notice requirements for the two procedures for correction of the zoning map. Baltimore County Code § 32-3-231 and § 32-3-232 enumerate the procedures to be followed when the catalyst for a petition is the property owner. In property owner initiated petition's, the owner notifies the Director of Planning who then prepares a Petition for correction of zoning classification to which the owner becomes a party.

Under §32-3-232(b) (3), the Director of Planning is then required to notify the County Council that a petition will be filed prior to filing the petition.

The second notice provision, found under §32-3-233(b), pertains to petitions for the correction of zoning initiated by the Department of Planning. Under this provision, the Department of Planning is required to provide written notice to property owners affected by a Petition initiated by the Department.

Baltimore County, as well as People's Counsel, contend that the notice provided was sufficient in either manner. The Board held that it has a long standing practice in map correction matters, that the Council person who serves in the district in which the property sits is sufficient to receive the statutory notice. *See Board's Opinion at page 11.* The Board found that the notice provided to the Honorable Vicki Almond was sufficient in accordance with established procedures and did not violate Petitioner's due process rights.

Petitioners argue that in the instant case, The Acardi doctrine¹ would control; as a result any procedural defects regarding notice would be fatal to the administrative action. The Petitioners contend that the notice provided was insufficient. Petitioner's first theory, regarding petitions initiated by property owners, is that notice is required to be provided, by Planning, to the entire County Council that a Petition will be filed. In the present case, the Director of Planning sent letters to the Councilwoman in whose district the property in question was located.

¹ In *Pollock v. Patuxent*, 374 Md. 463, 495, 823 A.2d 626, 645-46 (2003), the Court of Appeals held that a government agency must observe rules, regulations or procedures which it has established that affect individual rights and obligations or that confer important procedural benefits, pursuant to the *Accardi* doctrine. And, when that agency's action in violation of its own internal procedures causes prejudice to a party who has been the subject of agency action, the agency action may be subject to vacation under the Administrative Procedure Act. *Pollock* at 501.

The Board found that Planning gave notice sufficient to satisfy the requirements of the statute by sending the letter to the elected representative of the area in which the property was located. This Court agrees with the Board's analysis of this issue and finds no merit to Petitioner's theory that the entire County Council must be provided notice.

Petitioner's second theory is that the County did not satisfy the notice provision for Department of Planning initiated zoning reclassifications. Under this mechanism of zoning reclassification, the Department of Planning must provide written notice to property owners affected by a petition. Petitioners advance an argument that encourages the Court to construe this to mean that written notice must be provided to not only the property owner themselves, but also to any interested property owner in the vicinity. The Board again found in favor of the County after a lengthy discussion of prior case law as well as an analysis of legislative intent. The Board found that the statute intended notice to be provided to the property owner, likely the fee simple property owner. *See* Board's Opinion at page 11. The Board expressly declined to find legislative intent to impose a burden on the County to notify any potentially interested property owners. *Id.* This Court agrees with the Board's well-reasoned opinion and finds that it appropriately applied the applicable law as it relates to notice.

This Court finds that Petitioners argument is far too broad and has no merit. The County provided evidence at the hearing that a sign was posted at an intersection adjacent to the property, publicly announcing the hearing on the zoning classification. The Board found that the sign was located at a busy thoroughfare close to a main artery of Baltimore's transportation system and that this sign is sufficient to provide notice to any interested third party who may be *indirectly* affected by any correction in zoning on an individual property. *See* Board's Opinion at pages 11-14. This Court agrees with the Board reasoning on this issue.

The Board opinion expressly addressed both notice issues that have been raised on appeal. This Court does not believe that the notice provision was intended to impose a duty on the County to notify all potentially interested property owners, whether they are adjacent, surround, or contiguous to the property at issue. This Court agrees with the Board decision finding that the County complied with the required notice under BCC § 32-3-232(b) (3) and § 32-3-233(b). Furthermore the case law in Maryland is clear regarding notice for a public hearing. The Court of Special Appeals has held that the requirement of notification for a public hearing may be satisfied by “actual” notice, which is what occurred in this case. *Largo Civic Ass’n v. Prince George’s Co*, 21 Md.App 76 ,85-86 (1974 ;*McLay v. Maryland Assemblies, Inc.*, 269 Md.465,477 (1973)). This Court agrees with the Board’s opinion that there was no violation of the Baltimore County Code or of Petitioner’s right to due process or ability to be heard. In fact, the Board agreed to postpone the hearing to give Petitioner’s additional time to prepare. Petitioners, through their counsel, fully participated in the hearing and had ample notice and opportunity to be heard and participate in the proceeding before the Board. This Court finds that the Board’s analysis of both provisions was appropriate and based on substantial evidence.

3) Did the County follow the appropriate procedure to effectuate a zoning map correction?

Petitioners contend that the County not only failed to follow the notice procedures, but also that the procedure generally failed to satisfy the statutory requirements. Petitioners argue several procedural defects in the alternative.

Beyond the notice issue, Petitioners argue that since the genesis of the present case was the property owner, the Board should have conducted its analysis under BCC § 32-3-231 *et seq* . Petitioner’s position is that procedural posture taken prior to the Board hearing is irrelevant, and

that the Board should have analyzed the petition as owner initiated. Furthermore, Petitioners argue that since the issue before the Board originated with the property owner, BCC § 32-3-231 *et seq.* limits discoverable defects that are ripe for rezoning.

The County maintains that the procedure for map correction was properly executed. The County argues that in this case, the controlling statute is BCC § 32-3-233. The County's position is that regardless of the impetus for discovering the error, since Planning approached the Board and determined the error was a technical correction, eligible for correction under BCC §32-3-233, that statute should control. The County asserts that the manner in which the issue was raised to the Board was proper, as was the Board's analysis of the issue under the statute.

The official zoning map for Baltimore County is enacted by the County Council, and is principally changed in three ways. The Comprehensive Zoning Map Process and cycle zoning are the two methods utilized by the County at regular intervals in order to adjust zoning issues as they may ordinarily arise. The third method, zoning map corrections, constitutes a less comprehensive procedure, designed to accommodate small changes, or tweaks, to the zoning map. Zoning map corrections address smaller issues that commonly arise in mapping errors.

Petitioner's position is that piecemeal rezoning is allowed by the legislative grace so that property owners may have a quasi-judicial process to correct zoning errors. Petitioner points to an apportionment of duties between the legislature (deciding original and comprehensive rezoning) and this judicial process as further indication that the piecemeal rezoning process is not meant to be used a mechanism by the County to correct errors created by the Board.

In response, the County maintains that in writing the statute the legislature intended to create two methods for piecemeal zoning corrections, both of which authorize the Department of Planning to bring the petition to the Board. The county contends that the statute intended

Planning, as an objective party, to filter requests from property owners. Furthermore, the County argues that in including these two correction mechanisms in the statute, the legislature intended to provide Planning a method by which it could ensure the zoning was aligned with the intended zoning of a site.

This Court has reviewed the statute and finds that the rezoning statute, read as a whole, clearly lays out various means by which the Department of Planning can adjust the zoning classification of an individual parcel of land. While an individual property owner is limited by BCC § 32-3-231 *et seq.*, to certain kinds of defects the Department of Planning may bring on the owners behalf, Planning is not so limited. The impetus for the Petition in this case is irrelevant. The property owner approached the County, however, the purported defect was not the one that the Department of Planning ultimately took before the Board. Planning is not confined by BCC § 32-3-231 *et seq.* and, upon its own discovery, may correct zoning issues by means of BCC § 32-3-233. This Court gives deference to the underlying administrative agency's findings that the mechanism used to correct the zoning in question was BCC § 32-3-233 and that the Board's interpretation of the process and requirements was appropriate.

4.) Did the Board err in not addressing the changes in the deed from the 1970 Board decision?

Petitioner's argue that the Board's 1970 decision, which Mayhew testified about, was irrelevant because the property was altered in 1982. Petitioner's raise this question in their memorandum and allude to it throughout their brief, therefore this Court will address this issue as it interprets it. The Petitioner contends that since a small piece of land was added to the property after the initial Board decision in 1970, the intent of that decision should not be addressed as it is not the same property. The County maintains that the addition of land,

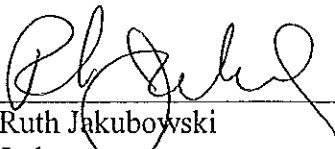
especially less than half an acre, is immaterial to zoning and a small increase in acreage does not materially transform the nature of the property for zoning purposes.

The Board found the Petitioners argument to be illogical and conflicted with the purpose and intent of the BCC. The Board considered testimony from Mayhew regarding the intent of comprehensive zoning and what ramifications an addition to the property would have had on zoning.

This Court finds that despite the small addition, the Board's decision to treat the property as essentially the same as the one it addressed in 1970 was appropriate and based on substantial evidence.. The testimony from Mayhew that such a small addition to the acreage of the property would not alter the nature or the intent of the comprehensive zoning was sufficient enough to support the Board's decision to treat the property the same as it did in 1970.

Conclusion

For the reasons set forth herein, the decision of the County Board of Appeals shall be **AFFIRMED.**


Ruth Jakubowski
Judge

11/30/15
Date

CLERK TO NOTIFY ALL PARTIES

CC: County Board of Appeals,
Chairman, David Thurston

True Copy Test
JULIE L. ENSOR, Clerk
Per 
Assistant Clerk

FILED DEC 09 2015

IN THE MATTER OF
RESERVOIR LIMITED PARTNERSHIP

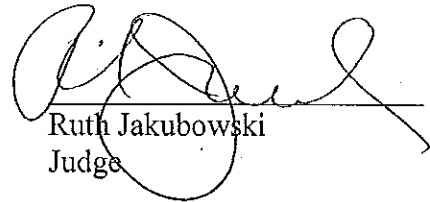
* IN THE
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* FOR
* BALTIMORE COUNTY
* CASE NO.: 03-C-15-002153

* * * * *

ORDER

This matter came before the Court on a Petition for Judicial Review from a decision issued by the Board of Appeals of Baltimore County on February 2, 2015. Based upon the Court's review of the record, and for the reasons stated in its memorandum opinion, it is this 30th day of November, 2015, by the Circuit Court for Baltimore County, Maryland,

ORDERED that the decision of the Board of Appeals of Baltimore County be
AFFIRMED.


Ruth Jakubowski
Judge

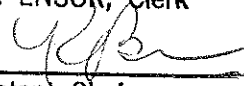
11/30/15
Date

CLERK TO NOTIFY ALL PARTIES

CC:

True Copy Test

JULIE L. ENSOR, Clerk

Per 
Assistant Clerk

FILED DEC 09 2015

IN RE: ZONING MAP CORRECTION	*	BEFORE THE
1777 Reisterstown Road	*	BOARD OF APPEALS
BALTIMORE COUNTY, MARYLAND	*	OF
a body corporate and politic	*	BALTIMORE COUNTY
	*	Case No.: M.C.-15-01

* * * * *

OPINION

Commerce Centre Venture LLP (Commerce Centre) is the fee simple owner of a 9.54-acre parcel of land improved with a commercial building known as Commerce Centre II. It is located on the northeast side of Reisterstown Road, just east of the intersection of Reisterstown Road and Hooks Lane, in the Pikesville area of Baltimore County, Maryland 21208 (the Property). The Property address is 1777 Reisterstown Road (Map 68, Parcel 189).

On February 13, 2013, David Karceski, Esq. (Karceski) of Venable LLP on behalf of Commerce Centre, sent a letter to Andrea Van Arsdale, Director of the Department of Planning (Planning), advising that a portion of his client's Property was incorrectly split-zoned R-O (Residential - Office) and B.R. (Business, Roadside). Mr. Karceski claimed the whole property should be zoned B.R. Karceski advanced several theories for his assertion. First, he claimed that before the adoption of the 2004 Comprehensive Zoning Maps by the County Council, the zone line followed the property boundary line but that thereafter it did not. He noted that following the adoption of the 2000 Comprehensive Zoning Maps, the County no longer made hand-drawn changes to paper zoning maps but rather converted to a GIS (Geographic Information System) digital format. Karceski believed that the zoning error on his client's Property was the result of a technical drafting error made by Planning before the GIS conversion. Therefore, he thought it

should be corrected by the County, at its expense, in accordance with the procedure outlined in §32-3-233 et seq of the Baltimore County Code (BCC). The County rejected this assertion and several others advanced by Mr. Karceski. After many conversations with Mr. Karceski and the rejection of the theories he advanced the County began its own investigation of the zoning for the Property. The County on August 15, 2014 filed a Petition for Zoning Map Correction.

HEARING

On November 12, 2014 we held an evidentiary hearing on a petition filed by Baltimore County Maryland under Article 32, Title 3, Part IV of the Baltimore County Code (“Code”) to correct an error in the zoning map. The Petition states the area in question is a .2 acre strip, more or less, running along the rear of the property, in a northeasterly direction from Reisterstown Road. The .2 acres is currently zoned Residential Office (RO) and the petition states the correct zoning is Business Roadside (BR). The remainder of the property is zoned BR.

Baltimore County was represented at the hearing by Nancy C. West, Assistant County Attorney. The petition was opposed by Reservoir Limited Partnership, represented by Alan P. Zukerberg, Green Tree Homeowners Association Inc., represented by Cynthia Hitt Kent, and Pikesville Communities Corporation, represented by Michael R. McCann. Carole S. Demilio, Deputy People’s Counsel for Baltimore County, also attended the hearing. The Protestants argued two preliminary motions, both concerned discovery issues. The first was a motion to compel discovery. The Second was a motion to compel testimony. We denied both motions for reason and will discuss later in this opinion. After the Board publically deliberated the preliminary motions the remaining issue is whether the Petition for Zoning Map Correction should be affirmed or denied.

The Petition alleges a technical error was made in transferring zoning imposed upon the site following a 1968 Petition for Reclassification from Business Local (BL) and Residential 10 (R-10) to Business Roadside (BR) filed with the Board of Appeals. The Petition was granted by our Predecessors in a 1970 opinion.

The County called one witness, Mr. Jeff Mayhew, to testify. Mr. Mayhew testified that he has been with the Department of Planning for 24 years, with the last three as Deputy Director. He has a B.S. in Economics from the University of Delaware and a M.A. in Public Administration from the University of Baltimore. Additionally, he has met the rigorous standards of the American Institute of Certified Planners and is recognized as a Certified Planner. As Deputy Director, he oversee the operations of the Development Review Section; Commercial Revitalization; the Zoning Process; and various Boards and Commissions, such as the Planning Board, Landmarks Preservation Commission, Design Review Panel, Commission on Disabilities, and the Agricultural Preservation Board.

The uncontroverted testimony of Mr. Mayhew is that he and his staff met with Mr. Karceski and his client on multiple occasions over the course of approximately 18 months concerning the property. Their first meeting occurred on February 6, 2013, and they met twice again in August 2013. Mr. Mayhew testified that the County simply disagreed with the theories Mr. Karceski's advanced concerning the Property. Mr. Karceski's and his client remained adamant that there were inaccuracies in the 2012 official zoning map for the Property that resulted from the scaling and transferring of the original paper maps to the GIS digital format. They argued that these inaccuracies, in conjunction with the discrepancy between the tax map property boundary and the actual property boundary, resulted in the zoning being depicted incorrectly on the Property. As Mayhew stated, the Planning staff continued to search the Comprehensive Zoning Map Process

(CZMP) records, looked at issue maps for each CZMP, and coordinated the maps with the log of issues in an attempt to verify the alleged inaccuracy.

On September 16, 2013, Stephen A. Warfield of Matis Warfield, Inc. and engineer for the property owner provided Planning some additional documentation in support of their position that the B.R.-R.O. zoning line located along the northwest property line had been mapped incorrectly. These materials included copies of the following plans that they believed reflected the correct zoning line corresponding with the actual property line:

- a CRG Plan for “Hooks Lane Executive Park”;
- a 2nd Refined CRG Plan for the “Executive Center at Hooks Lane” that was approved on 2/11/98;
- a JSPC Preliminary Plan for” Hooks Lane Park”- Unsigned- Preliminary Plan for Subject Property dated April, 1981;
- a Site Plan for Commerce Center Parking Deck, Permit # C-1549-85 – Revised/Dated 10/8/1985;
- a Record Plat “Commerce Centre” - EHK, JR. 49, FOLIO 110 filed 12/28/1982; and
- a final Grading Plan EXECUTIVE CENTER AT HOOKS LANE” - Approved October 10-12, 1994 (Adjacent Property).

Planning scrutinized these materials and concluded that they did not support a technical drafting error that it could correct. Mayhew noted that his staff disposed of these materials having considered them irrelevant. Undeterred, Karceski continued to plead his case to Planning and held additional meetings, one in January 2014 and two in March 2014. Each time the County’s response was the same, it simply could not agree that a technical drafting error had occurred that could be remedied.

Planning then decided to review its archives for possible variance and reclassification requests in connection with the Property to see if it could locate anything to support a finding of error. After extensive research, it discovered that an error had indeed occurred in mapping the Property. But it was unrelated to anything that Karceski had proffered. Rather Planning found a 1970 CBA decision involving a zoning reclassification in which the entire Property had been rezoned to B.R. However, when Planning mapped the zoning on the Property that had been approved by our Predecessors', it made a mistake which was then perpetuated for almost forty-five years. Mr. Mayhew testified that when the maps were adjusted to reflect the rezoning, the .2 acre sliver was not mapped as BR, although the remainder of the site was mapped in accordance with the Order of the Board. The .2 acre sliver is currently zoned Residential Office, which is also the zoning on a separate lot northeast of 1777 Reisterstown Road, adjoining the sliver. Mr. Mayhew's testimony at the hearing was clear that he believed, consistent with our Predecessors opinion in 1970 that the entire parcel should be zoned BR. The Protestants advance seven (7) arguments as to why the Board should deny the Petition for Map Correction. We will address them in the order they were briefed.

ARGUMENT

1. THE COUNTY'S CORNERSTONE EVIDENCE IS BASED ON ITS PRESENT DAY INTERPRETATION OF THE BOARD OF APPEALS' INTENT IN 1970 AND THE "CORRECTED" ZONING MAP IS BASED ON A 1999 CONFIRMATORY DEED DESCRIPTION AND SINCE EVIDENCE DOES NOT CONSTITUTE CLEAR CONVINCING CONTEMPORANEOUS EVIDENCE OF A TECHNICAL ERROR IN 1970, THE RELIEF MUST BE DENIED.

The Protestants first argument is that the County's only evidence was presented through Mr. Mayhew and they questioned his credentials as being insufficient to discuss the zoning maps. We disagreed. The Board found Mr. Mayhew's testimony to be substantial, clear and convincing. The board reviewed the 1970 opinion of our Predecessors and analyzed Mr. Mayhew's testimony to determine that the entire parcel should have been zoned BR.

The official zoning map is enacted by the Baltimore County Council. There are three principle ways by which it can be changed, namely, the Comprehensive Zoning Map Process and Cycle Zoning. The zoning map may also be changed through a Zoning Map Correction.

As Mayhew testified, the CZMP takes place every four years on a schedule specified in the BCC. Any citizen may request a zoning change on any property in the County, although the usual participants in the process are individual landowners, contract purchasers, community organizations, County staff, the Planning Board and the County Council. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a final log of issues. Ultimately, the County Council decides on each issue whether to retain the existing zoning or to enact a different zone(s) or district(s). Generally, each issue is a single property, but an issue may cover many adjoining properties and might even cover many hundreds of acres. The zoning on all properties which were not issues is re-enacted without change.

Mayhew emphasized that 1971 was the first CZMP that laid out a process for the County Council to decide the zoning on property. Before that time all zoning requests were heard and decided by the Zoning Commissioner. Accordingly, in 1968, then owners William Gladstone Keir, Margaret V. Keir, Elizabeth Ruth Cooper, Marion F. Cooper, Wilfred Grenfell Keir and Blanche S. Keir (collectively, Keir), petitioned for a reclassification of the Property from a split zoning of

R-10 Residential (10 units per acre) and B.L. (Business, Local) to B.R. (Business, Roadside). Keir contended that the R-10 zoning was erroneous and could not be justified, and that the B.L. zoning was out of character with the actual commercial development in the area. The Zoning Commissioner (ZC) denied the requested relief on September 26, 1968 in Case No. 68-215-R. Thereafter, the matter was appealed to the CBA which reversed the ZC and granted Keir's request that the entire Property be rezoned from R-10 and B.L. to B.R.

In its April 27, 1970 Order, the CBA articulated in its factual findings that:

“.....it would be unfeasible to develop the rear of the subject property in its present R-10 classification due to the severe topography and the exorbitant costs of extending utilities to the property, and the impact of the Beltway and the Beltway Interchange on the marketability of residences on the subject property. We further find factually that the extensive changes that have occurred in the immediate neighborhood more than justify the requested reclassification, and that the proposed single purpose commercial use of the property would have a much lesser impact on traffic conditions, water and sewer demands, and other public services than if the property were developed in its present category. For those reasons the Board will grant the requested reclassification”

Id. at p. 6.

It was clear to the current Board that the intent of the original re-classification in Case No. 68-215R was to rezone the entire Property to B.R. It was also clear based on testimony that when Planning implemented the CBA decision in 1970 it incorrectly mapped the zoning on the Property. And it occurred at a time when the Planning staff was still hand drawing the maps. Mayhew emphasized that the error had been perpetuated from 1970 to the present. Further, he opined that this technical drafting error by Planning was independent of and not associated with any issue that was raised by any party in any CZMP since 1970.

Protestant also attempted to impeach Mr. Mayhew by questioning an immaterial discrepancy of the legal description of the property when comparing a 1990 deed with other public

records. As Ms. West correctly pointed out at the hearing legal descriptions can contain minor discrepancies. The 1970 CBA decision indicated that the Property was 9.76 acres while the current MSDAT records indicate the Property is 9.5359 acres with a property land area of 9.5400 acres. The County used the 9.54 acres in its Petition. Some subdivision plats and legal descriptions do not close, from a few tenths of a foot to several feet. Depending on equipment and methods, the same line will be measured differently and the basis of bearing (direction of the lines) will differ. More often, modern surveys will be very close to the same distances and direction between objects measured on the ground. This is due in part to the standardization of those procedures and requirements of the surveyor. Also some areas have little to no monuments while others have multiple monuments set at the same corner. When you have deeds that do not close because of lack of monuments or multiple monuments at the same corner, this also comes into play on the differences along lines. Finally, the placement of County and State right-of ways may also impact the distances of a surveys. Protestants argument that we should deny the petition because of this minor discrepancy in the Property description is without merit. The 1970 CBA ordered that the entire Property should be rezoned B.R. On cross examination, Mr. Mayhew did not attach any significance to minor discrepancies in the acreage of the site, noting its small size and toothpick shape. He also stated that while split zoning may be appropriate as a buffer on some sites, this property did not meet the criteria. Mr. Mayhew testified he would not recommend RO zoning on the .2 acre sliver under any zoning scenario. The opposing parties presented no witness to refute Mr. Mayhew's testimony or to justify retaining RO zoning on the area. Their 1970 Board order is not ambiguous. It is undisputed that the 1968 petition and Board Order conformed to the legal process for cycle rezoning at the time.

2. THE COUNTY FAILED TO PROVE TECHNICAL ERROR IN ACCORDANCE WITH SECTION 32-3-321 ET SEQ.

The Protestants second argument is that the County failed to comply with the provisions of §32-3-231(b) of the BCC. In particular they assert the error alleged by the County does not fit into one of the statutory provisions and therefore cannot be corrected. There was some argument at trial as to whether the Board should accept jurisdiction of this matter under BCC 32-3-231 or BCC 32-3-232. We reviewed all provisions of the BCC and determined that the Department of Planning complied with the standards and procedures in the relevant parts of the BCC. Mr. Mayhews' testimony was clear and uncontroverted. It was he and his Department which discovered the correct facts to support the map correction and not the theories advanced by the taxpayer. Therefore, it was proper for the County to file the petition for the correction to the Board. We have determined that filing the petition under either provision of the Statute would lead us to the same result.

Any reference by the County to the provisions of 32-3-231 (the provisions of the BCC whereby the taxpayer files the petition for map correction) are immaterial to the facts and circumstances of this hearing. The County proceeded at the hearing under the provisions of BCC 32-3-232. Protestants claimed that principles of due process have been violated since there was argument about which statute gave the Board jurisdiction in this matter. We disagree.

The authority of the Board is found in Baltimore County Code ("Code") § 32-3-231 et seq. The statute states two procedures for correction: (1) § 32-3-231 provides that a property owner who discovers the error must report to the Department of Planning ("Planning") that the zoning map " . . . does not accurately reflect the zoning classification enacted by the County Council on

the owner's property during any comprehensive zoning process.” (emphasis added); (2) § 32-3-233 (a) provides “The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.” So the alleged error may originate with the property owner who reports to Planning, or with the Department of Planning.

BCC§ 32-3-235 requires the Board to conduct a hearing as close as its schedule permits 30 days after the petition is filed. If there is no opposition to the petition, the Board must issue its Order within 10 days after the hearing. If opposed, the Board may schedule hearing dates as needed and, presumably, the 30 day requirement would not apply.

The statute does not enumerate specific standards to grant or deny the petition. It is presumed the decision, like all Board decisions, must be supported by “substantial evidence”. Monkton Preservation Ass’n v Gaylord Brooks Realty Corp., 107 Md. App. (1996) cert. denied, 675 A.2d 993 (1996). Similarly, the Board’s decision must be in accordance with the law. People’s Counsel v. Maryland Marine Mfg. Co., 316 Md. 491, 496-97 (1989). “**The Board’s decision may be set aside as not in accordance with law if it is arbitrary, illegal or capricious.**” (citation omitted) Art Wood v. Wiseburg, 88 Md. App. 723 (1991), cert. denied 325 Md. 397 (1992). We were unanimous that Mr. Mayhews’ testimony was substantial, clear and convincing, to justify the correction. It was clear from the facts presented at trial that the entire Property should have one zoning designation. It was also clear to us from Mr. Mayhew’s testimony as to how the technical error occurred and that the County is now seeking the proper remedy under the correct statutory provisions of the BCC.

3. THE COUNTY FAILED TO PROVIDE PROPER NOTICE TO THE COUNTY COUNCIL AS REQUIRED BY THE STATUTE AND THEREFORE, THE

REQUESTED MUST BE DENIED.

The Protestants third argument is that the Department of Planning did not give proper notice to the County Council under the provisions of BCC as it only notified one Council Member of its intention to file a petition. The Protestants argue that the clear intent of legislature is that ALL members of the County Council be notified. We disagree. This Board has had a long standing practice that in map correction matters the council person who serves in the District that the property sits is sufficient to receive the statutory required notice. This is analogous to a Resident Agent receiving notice for a Corporation. In this particular case Ms. Almond is an experienced Councilwoman member and is well versed in land use matters. We find no violation of the Protestants due process. The evidence is clear that on June 27, 2014 Planning sent letters to Karceski, and to the Honorable Vicki Almond, Councilwoman for the Second District, advising them of the zoning map error on the Property and that it would take the necessary steps to remedy it as provided by the BCC. We find this notice sufficient.

4. THE COUNTY FAILED TO PROVIDE PROPER NOTICE TO PROPERTY OWNERS.

The Protestants fourth argument is that the County failed to provide proper notice to the taxpayers of Baltimore County. In particular, the Protestants read the statute as mandating that the County provide notice to all “affected” property owners to include all surrounding property owners. At dispute here is whether or not the legislature intended to mean the word “affected” to include ALL surrounding property owners. Protestant argue that the County had a duty to notify in writing all property owners whose property is contiguous to or in the immediate vicinity of 1777

Reisterstown Rd. Protestant further argue it is common sense that such a change may have some effect on contiguous properties, *albeit* via a map error process, rather than the CZMP. The Protestants also argue since the County is suggesting that the “correction” be on the property boundary lines more extensive notice is required. As a result of the failure to provide notice to contiguous affected property owners, the Petition should be denied. We disagree. Once this Hearing was scheduled, Planning posted a public notice of the CBA hearing date. It was posted at Hooks Lane on two separate occasions because the hearing had been rescheduled.

The Petition in the instant case was filed pursuant to BCC, § 32-3-233 which provides as follows:

§ 32-3-233. PETITION BY THE DEPARTMENT OF PLANNING.

(a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.

(b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section. (1988 Code, § 26-134) (Bill No. 42, 1990, §1; Bill No. 103-02, §2, 7-1-2004; Bill No. 55-11, §§ 1, 2, 10-16-2011)

The legislative history sheds light on who is entitled to get the written notice as a “property owner.” In 1990, Bill No. 42-90 revised what was previously codified at BCC § 22-25, Correction of Zoning Map. Subsection (D) was revised as follows:

The Office of Planning and Zoning may initiate such a petition on its own if it discovers a technical error, as defined in subsection (a), with written notice to the affected property owners. (Emphasis in the original)

Then in 2002, the County Council enacted various changes to the Baltimore County Code, 1998-Twenty-Second Enactment with the passage of Bill No. 103-02. The current BCC, § 32-3-

233 replaced the former BCC, § 26-134 which authorized the Department of Planning to initiate a petition on its own if it discovered a technical error in the zoning map. The Revisor's Note in the bill states:

This section is new language derived without substantive change from former §26-134(d). In subsection (b) of this section, the reference to the "Office of Planning" is added to clarify who is required to provide notice to the property owner. (Emphasis added)

Id. at 73. Clearly, the intent of this section is that the County must provide notice to the property owner, arguably the fee simple property owner. The Legislative intent was never to impose a burden on the County to notify all potentially interested property owners, whether they be adjacent, surrounding, contiguous or a certain distance from the property at issue. Our opinion was unanimous that the County complied with the requisite notice under BCC § 32-3-233 when it sent Karceski a letter on June 27, 2014 of its intention to correct the map error by filing a petition with the CBA and subsequently posted on the property.

Further, the case law in Maryland is clear regarding notice for a public hearing. The Court of Special Appeals has held that the requirement of notification for a public hearing may be satisfied by "actual" notice, which is the case here. Largo Civic Ass'n v. Prince George's Co., 21 Md. App. 76, 85-86 (1974); McLay v. Maryland Assemblies, Inc., 269 Md. 465, 477 (1973). In Largo, the Court reasoned that the appellants in that case "arrived at the hearing prepared to contest," the requested zoning relief, which sufficed for actual notice. Largo, 21 Md. App. at 86. In McLay, the Court held that there can be no showing of prejudice when appellants "appeared at and participated in the hearing." McLay, 269 Md. at 476. In other words, notice requirements serve the purpose of alerting individuals and community associations who may oppose the requested relief of the time and location of the public hearing and the nature of the requested relief. In Largo

and McLay, the Court of Special Appeals held that sufficient notice was established by the appellants' presence and participation at the public hearing. We find no violation of the BCC or the Due Process of the Protestants ability to be heard. In fact, this board agreed to postpone the original hearing to allow the Protestants extra time to prepare. Protestants were fully aware of the Petition and had substantial time to prepare for the Hearing, the opportunity to present evidence, cross-examine the County's witness and otherwise fully participate.

5. THE COUNTY FAILED TO SUPPLY FULL AND COMPLETE SUPPORTING MATERIALS, THEREFORE THE PETITION SHOULD BE DENIED.

The Protestants fifth argument is that they were not provided discovery materials prior to the hearing. The Protestants served various government agencies seeking information concerning the Property. Ms. West, in her preliminary motions argument proffered that over 250 pages of information was provided to the Protestants. Further, this Board granted the Protestants a lengthy postponement of the hearing to allow them to prepare and conduct discovery. This Board does not have enforcement powers and cannot compel parties to share information before a hearing. We are empowered only to consider evidence presented at the hearing and gave the Protestant sufficient time to prepare for the hearing.

6. THE PETITION SHOULD BE DENIED FOR COUNTY'S FAILURE TO COMPLY WITH LEGISLATIVE INTENT.

Protestants sixth argument is similar to its other procedural and due process arguments.

The Protestant accuse the Department of Planning and this Board of participating in piecemeal rezoning by not following the clear intent of the Legislature They cite a case, Mayor & Council of Rockville v. Rylyns Enters., 372 Md. at 532,814 at 479

("[A] fundamental distinction between original zoning, comprehensive zoning, and piecemeal zoning is that the two are purely legislative processes, while piecemeal rezoning is achieved, usually at the request of the property owner, through a quasi-judicial process leading to a legislative act.").

Protestant asserts this apportionment of duties with respect to zoning is further indication that this process is not meant to correct errors created by Board of Appeals decisions. The Protestant assert that this Board does not have jurisdiction to correct the zoning maps. In substance the Protestant claims the petition should have been brought in the name of the owner because the owner initially advised Planning of an error. They claim a drafting or technical error made as a result of a rezoning by the Board of Appeals is beyond the purview of the conditions in § 32-3-231(b) (1) (2) (3). We disagree. The error was discovered by Planning based on their own independent review of over fifty years of County records.

This raises the question whether the two types of petitions (owner initiated and Planning initiated) are bound by the same standards. The statute does not contain specific language limiting Planning's investigation to the three scenarios in § 32-3-231(b). Indeed there is no limitation imposed on Planning - § 32-3-233(a) simply authorizes Planning to file a petition on behalf of Baltimore County if " . . . it discovers a technical error in the zoning map." If the County Council intended to limit the circumstances in which the zoning occurred, as opposing parties here contend, there must be some statutory meaning or purpose to justify such an interpretation.

It is reasonable to establish some guidelines when an owner alleges an error. Planning is given some direction in its investigation and an owner cannot make a frivolous and baseless claim.

More importantly, it is unreasonable to assume the statute would treat an error resulting from a cycle zoning Board order differently. The clear purpose of the statute is to assure the zoning maps coincide with the intended zoning on a site. A Board rezoning carries the same weight and is tantamount, not substandard, to one or more of the criteria in § 32-3-231(b).

The overwhelming testimony at the hearing was that a technical drafting error was after the Board of Appeals decision in 1970. We find the Protestants argument illogical. It is clear the Board of Appeals has the statutory authority to correct the zoning map. Under the rules of statutory construction, the courts can look at the spirit and intent of the legislation to ascertain its meaning. The position of the Protestants conflict with the purpose and intent of the BCC.

7. THE BOARD OF APPEALS SHOULD NOT HAVE REFUSED TO REQUIRE MR. KARCESKI TO PROVIDE NON-REDACTED MATERIALS IN RESPONSE TO PROTESTANTS SUBPOENA DUCES TECUM, OR TO HAVE MR. KARCESKI AND DIRECTOR VAN ARSDALE TO PERSONALLY ANSWER SUBPOENAS.

The Protestants seventh and final argument is that the Board should have compelled the testimony of two parties and enforced subpoenas. Protestant asserts that Mr. Karceski and Director Van Arsdale were key witnesses. Protestants also assert that Mr. Karceski should be required to produce copies of non-redacted documents for inspection because the County cannot claim attorney-client privilege or work product privilege for correspondences with a non-party. This

Board has been very reluctant to compel testimony of attorneys when there are issues of attorney client privilege. Protestants argue that Mr. Karceski and his client are not a party to this proceeding and as such the Privilege cannot be asserted. We disagree. The uncontroverted testimony of Mr. Mayhew was that the Department of Planning reached the decision to file this petition on their own after an independent review of fifty years of County records. Conversations between Mr. Karceski and the County were irrelevant as no theory for the correction advanced by Mr. Karceski was adopted by the County. Further, The Board deemed Mr. Mayhew competent to testify and found his testimony professional, accurate, clear and substantial. We found no reason to compel the testimony of Director Van Arsdale, even if we had those powers. Finally, as stated above we do not have powers to compel discovery. We are frequently presented with motions to mandate discovery compliance. Unfortunately, we do not have statutory powers to compel discovery request.

ORDER

IT IS THEREFORE, this 2nd day of February, 2015 by the Board of Appeals of Baltimore County

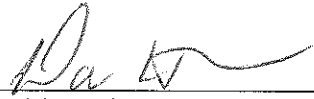
ORDERED that Tax Map 68 Parcel 189 at 1777 Reisterstown Road be reclassified from its current split zoning of RO and BR to BR.

ORDERED that the Department of Planning make the necessary change and correction as set out herein, on the latest Comprehensive Zoning Map for Baltimore County with regard to the subject property.

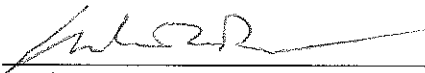
In the matter of: Baltimore County, MD – Petitioner
Commerce Centre Venture, LLC - Legal Owner
MC-15-01

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

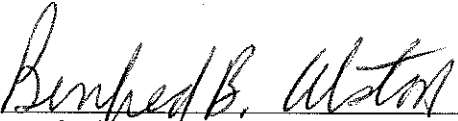
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Chairman



Andrew M. Belt



Benfred B. Alston



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 2, 2015

Alan Zukerberg, Esquire
7919 Long Meadow Road
Baltimore, Maryland 21208

Cynthia Hitt Kent, Esquire
Sarah L. Narsavage, Esquire
10 Crossroads Drive, Suite 107
Owings Mills, Maryland 21117

Michael McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

Carole S. Demilio, Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: In the Matter of: Baltimore County, Maryland – Petitioner
Commerce Centre Venture, LLP – Legal Owner
Case No: MC-15-01

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

In Re: Baltimore County, Maryland – Petitioner
Commerce Centre Venture, LLP – Legal Owner
Distribution List
February 2, 2015
Page 2

David Karceski, Esquire
James A. Dunbar, Esquire
Commerce Centre Venture, LLC
Reservoir Limited Partnership
Greene Tree Homeowners Assoc., Inc.
Pikesville Community Association
The Honorable Vicki Almond, 2nd District, Baltimore County Council
Fred Homan, Administrative Officer
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Jeff Mayhew, Deputy Director, Department of Planning