

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF THE CITY OF HYATTSVILLE

CONSOLIDATED WITH:

PETITION OF AMANDA EISEN, ET AL.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, SITTING AS THE DISTRICT COUNCIL

IN THE CASE OF CONCEPTUAL SITE PLAN
18002 (APPLICANT WERRLEIN WSSC, LLC)

CAL19-21492

[LEAD CASE – CITY OF HYATTSVILLE]

CONSOLIDATED WITH:

CAL19-22819

[AMANDA EISEN, ET AL.]

MEMORANDUM OPINION

This matter came before the Court on February 26, 2020, on judicial review of the final decision of the County Council of Prince George's County, Maryland, sitting as the District Council ("Council" or "District Council"), which approved Conceptual Site Plan 18002 (CSP-18002) for the development of approximately ±8.26-acres of land in Hyattsville.

BACKGROUND

On June 10, 2019, the District Council approved CSP-18002, a request to change the underlying zone of a portion of the subject property from Open Space (O-S) to R-55 (One-Family Detached Residential) and the list of allowed uses in the 2004 Gateway Arts District Development District Overlay Zone, to permit development of townhomes.

Petitioners challenge the District Council's zoning authority to rezone a portion of the property and amend the table of uses, of the 2004 Gateway Arts District Development District Overlay Zone, to allow certain density of development on the property.

STANDARD OF REVIEW

Reviewing courts evaluate the decision of the agency—i.e.—the District Council—not the Planning Board. The scope of review of an administrative agency decision is well established. In *County Council of Prince George's County v. Zimmer Development Co.*, 444 Md. 490, 573, 120 A.3d 677, 727 (2015), the Court of Appeals stated:

Judicial review of administrative agency action based on factual findings, and the application of law to those factual findings, 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 based on an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994). The reviewing court may not substitute its judgment for that of the administrative agency. *United Parcel Serv.*, 336 Md. at 576–77, 650 A.2d at 230. Rather, the court must affirm the agency decision if there is sufficient evidence such that "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 160, 874 A.2d 919, 939 (2005) (quoting *Christopher v. Dept. of Health*, 381 Md. 188, 199, 849 A.2d 46, 52 (2004)) (internal quotation marks omitted).

Agency decisions receive an even more deferential review regarding matters that are committed to the agency's discretion and expertise. In such situations, courts may only reverse an agency decision if it is "arbitrary and capricious." *Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 529–30, 846 A.2d 341, 349 (2004). "Logically, the courts owe a higher level of deference to functions specifically committed to the agency's discretion than they do to an agency's legal conclusions or factual findings." *Spencer*, 380 Md. at 529, 846 A.2d at 349 (Emphasis added).

The arbitrary and capricious standard affords great deference to the agency's decision. "[S]o long as the actions of administrative agencies are reasonable or rationally

motivated, those decisions should not be struck down as ‘arbitrary or capricious.’” *Cty. Council of Prince George’s Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 676, 193 A.3d 241, 262 (2018) quoting *Harvey v. Marshall*, 389 Md. 243, 298, 884 A.2d 1171, 1204 (2005). A decision is arbitrary and capricious if it is “made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms.” *Id.* In *Maryland Transportation Authority v. King*, 369 Md. 274, 799 A.2d 1246 (2002), the Court of Appeals provided an explanation of the standard:

As long as an administrative sanction or decision does not exceed the agency’s authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be “arbitrary or capricious.” 369 Md. at 291, 799 Md. at 1254 (Emphasis added).

Even with regards to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 203, 978 A.2d 622, 629 (2009) (quoting *United Parcel Serv. v. People’s Counsel for Baltimore Cnty.*, 336 Md. 569, 577, 577, 650 A.2d 226, 230 (1994)).

DISCUSSION

Development of the property is subject to the 2004 Gateway Arts District Development District Overlay (D-D-O) Zone. The County Code defines a D-D-O Zone as “a mapped zone which is superimposed by a Sectional Map Amendment (SMA) over other zones in a designated development district, and may modify development requirements within the underlying zones.” PGCC § 27-548.19.

Under PGCC § 27-548.26, a property owner in a D-D-O Zone may request changes to the underlying zones *or* the list of allowed uses, by Conceptual Site Plan or Detailed Site Plan. PGCC § 27-548.26(b)(1)(B)(i) (Emphasis added). The District Council may approve, approve with conditions, or disapprove any amendment requested by a property owner under this Section. In approving an application and site plan, the District Council shall find that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan, meets applicable site plan requirements, and does not otherwise substantially impair the implementation of any comprehensive plan applicable to the subject development proposal. PGCC § 27-548.26(b)(5).

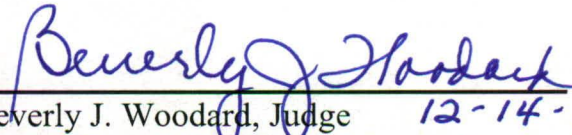
For Prince George’s County, the State Regional District Act (“RDA”), authorizes the District Council to adopt, amend and administer zoning laws within the county. Md. Code, Land Use (“LU”) § 22-104(a), (2012, 2019 Supp.). The RDA bestows upon the District Council wide-ranging authority to regulate zoning within its district. The RDA does not limit the District Council’s jurisdiction over zoning cases and does not confer exclusive jurisdiction over such cases on another entity. *Grant v. Cty. Council of Prince*

George's Cty., 465 Md. 496, 214 A.3d 1098 (2019). Planning Board's role in rezoning is limited to "the preparation and adoption of *recommendations* to the district council with respect to zoning map amendments." LU § 20-202 (Emphasis added).

The District Council applied the appropriate standard of review. The District Council had original jurisdiction to approve CSP-18002, to change the underlying zone of a portion of the subject property from Open Space (O-S) to R-55 (One-Family Detached Residential) *and* the list of allowed uses, in the 2004 Gateway Arts District Development District Overlay Zone, to allow certain density of development on the property, because the D-D-O zone is a "floating zone" that does not require application of the "change-or-mistake" rule. The final decision of the District Council, on rezoning, amendment of use tables, and certain density of development on the property, was supported by substantial evidence. The decision was not arbitrary or capricious or based on an erroneous interpretation or application of the law.

Accordingly, the final decision of the District Council is **AFFIRMED**.

ORDERED, this case is closed statistically.


Beverly J. Woodard, Judge 12-14-2020
Circuit Court for Prince George's County,
Maryland

Judge Beverly J. Woodard

Copies to:

Timothy F. Maloney, Esquire
Alyse L. Prawde, Esquire
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, Maryland 20770
tmaloney@jgllaw.com
aprawde@jgllaw.com
*Counsel for Respondent Werrlein
WSSC, LLC*

Norman Rivera, Esquire
The Law Offices of Norman D. Rivera, LLC
17251 Melford Boulevard, Suite 200
Bowie, Maryland 20715
Normanrivera2012@gmail.com
*Counsel for Respondent Werrlein
WSSC, LLC*

J. Carrol Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
Jcholzer38@gmail.com
Counsel for Eisen Petitioners

E.I. Cornbrooks, IV, Esquire
Sandra D. Lee, Esquire
Karpinski, Colaresi & Karp, P.A.
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202
scornbrooks@bkcklaw.com
slee@bkcklaw.com
Counsel for Petitioner City of Hyattsville

Rajesh Kumar
Principal Counsel
County Administrative Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
rakumar@co.pg.md.us
Attorney for Respondent District Council