

Circuit Court for Baltimore City
Case No.: 24-C-18-004926

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 175

September Term, 2019

BAY PROPERTIES 2, LLC.

v.

BALTIMORE CITY BOARD OF
MUNICIPAL & ZONING APPEALS

Graeff,
Beachley,
Gould,

JJ.

Opinion by Gould, J.

Filed: March 9, 2020

*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.

Appellant Bay Properties 2, LLC. (“Bay Properties”) appeals from the denial of its application to convert its existing paper billboard to a digital billboard. At the time of its application, Baltimore City zoning law permitted the construction of a *new digital* billboard only when the applicant provided “documentation that at least 3 existing billboard faces have been removed.” On the other hand, it allowed “changes” to *existing* billboards so long as they were approved by the Baltimore City Board of Municipal & Zoning Appeals (the “BMZA”).

The BMZA denied Bay Properties’ application because it had not demonstrated that it had removed three other existing billboards. Bay Properties petitioned for judicial review of the denial in the Circuit Court for Baltimore City, where the BMZA’s decision was upheld. It now appeals to this Court, arguing that because its digital billboard would replace an existing one and is thus not “new,” the requirement of removing other billboards does not apply. We disagree and affirm.

BACKGROUND REGULATIONS AND PROCEEDINGS

THE RELEVANT REGULATORY SCHEME

To fully explain the parties’ positions, we must summarize the provisions of the Baltimore City Code (“BCC” or the “Code”) that are implicated in this dispute. The Code governs, among other things, the erection, replacement, and location of billboards within

the City of Baltimore.¹ At the time of Bay Properties’ application,² the Code banned the construction of new billboards, subject to certain explicit exceptions.

Section 17-603, entitled “Billboards,” stated:

(a) *General Prohibition.*

Except as otherwise specifically provided in the Code:

- (1) the erection, placement, or construction of new billboards is prohibited; and
- (2) the City may not issue permits for these signs.

(b) *Exceptions.*

- (1) The following exceptions apply to this section.

* * *

- (3) Subject to conditional use approval, a digital billboard may be erected, but:
 - (i) must be accompanied by documentation that at least 3 existing billboard faces have been removed for each new digital billboard face to be placed or erected; and
 - (ii) in addition, must meet the following standards:
 - (A) each message or image displayed on a digital billboard must be static or depicted for at least 10 seconds;
 - (B) animation, streaming video, or images that move or give the appearance of movement are prohibited;
 - (C) no illumination from any digital billboard may glare directly into any residential premises or interfere with the safe movement of motor vehicles on public thoroughfares;
 - (D) all digital billboards must have ambient light monitors, which automatically adjust the brightness

¹ Unless otherwise indicated, any citation to a section of the Code is to the Zoning Article (currently Article 32).

² The version of the BCC in effect at the time of the application controls the resolution of that application. See Balt. City Code, Zoning § 2-203(k)(2) (2017, updated 2019, as last amended by Ord. 19-261).

- level of the electronic billboard based on ambient light conditions; and
- (E) no digital billboard may have audio speakers or any audio component.

BCC, Zoning § 17-603 (2017, updated 2018, as last amended by Ord. 18-136).

Section 18-502 provided for the alteration or replacement of existing, “nonconforming” billboards:

Any nonconforming sign may be structurally altered, reconstructed, replaced, or relocated, as long as the alteration, reconstruction, replacement, or relocation does not result in:

- (1) an increase in the area of any dimension of the sign;
- (2) an increase in the degree of illumination of the sign;
- (3) the addition of:
 - (i) any moving, rotating or otherwise animated part; or
 - (ii) any flashing, blinking, fluctuating, or otherwise animated light; or
- (4) any other increase in the degree of the sign’s nonconformity.

BCC, Zoning § 18-502 (2017, updated 2018, as last amended by Ord. 18-136). Section 18-504 went on to explain:

(a) *BMZA approval required.*

Any change to a nonconforming billboard requires the approval of the Board of Municipal and Zoning Appeals.

(b) *Findings and conditions.*

The Board of Municipal and Zoning Appeals must find, and require as conditions of approval, that:

- (1) the sign conforms to its original approvals;
- (2) neither the height nor size of the sign will be increased; and
- (3) the sign will not be located more than 10 feet from its originally approved location.

(c) *Prohibited additions or alterations.*

The Board of Municipal and Zoning Appeals may not authorize the following additions or alterations to nonconforming billboards:

- (1) internally illuminated box signs;

- (2) neon signs;
- (3) tri-vision signs; or
- (4) fluctuating signs, other than for time or temperature.

(d) *Supporting structure.*

The Board of Municipal and Zoning Appeals may approve a change in the sign’s supporting structure.

BCC, Zoning § 18-504 (2017, updated 2018, as last amended by Ord. 18-136).

PRIOR PROCEEDINGS

In April 2018, Bay Properties applied to the Zoning Administrator for Baltimore City to change an existing billboard located on its property (at 846 and 848 North Eutaw Street) from a paper billboard to a digital billboard. That application was denied, and Bay Properties appealed the denial to the BMZA.

At the hearing before the BMZA, Bay Properties argued that this billboard should be governed by § 18-504 as a “replacement” of an existing, nonconforming billboard. It contended that § 17-603 did not apply because the proposed digital billboard was not “new” and thus did not fall under the section’s purview. Bay Properties also pointed out that its new digital billboard would comply with §§ 18-502 and 18-504’s prohibitions against adding distracting elements to the billboards.

The BMZA disagreed and unanimously denied the appeal because Bay Properties did not show that, in exchange for erecting its digital billboard, it would take down three billboards as required under § 17-603. The BMZA reasoned that under basic principles of statutory interpretation as well as under § 1-204(b), the specific provision discussing digital

billboards (§ 17-603) took precedence over the general provision concerning replacement of billboards (§ 18-504).³ The BMZA concluded:

In the subject appeal, even if the Board finds that the plain language of ZC § 17-603 is ambiguous, and would thus require [the BMZA] to interpret the terms contained therein, the outcome would favor the interpretation proposed by the Planning Department, as ZC § 17-603 pertains to the erection of digital billboards triggering the more restrictive provisions therein, while ZC § 18-504 pertains to the more general replacement of existing billboards, lacking the restrictive provisions contained in ZC § 17-603. Both address the same subject, but ZC § 17-603 provides specific exceptions relating to digital billboards, while ZC § 18-504 is more general and does not include language referring to digital billboards. The Board finds this argument compelling, and irrespective of any finding related to the ambiguity of the seemingly conflicting language of ZC §§ 17-603 and 18-504, concludes that it lacks the authority to grant Appellant’s application without the documented removal of three other billboards in compliance with the exception to the erection of new billboards found under ZC § 17-603(3).

Bay Properties appealed the BMZA’s determination to the Circuit Court for Baltimore City, which upheld the decision. This timely appeal followed.

DISCUSSION

Bay Properties makes the same argument here that it did before the BMZA: that § 18-504, rather than § 17-603, governs the erection of its digital billboard. It reasons that

³ BCC, Zoning § 1-204(b) provides:

If any condition or requirement imposed by this Code is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this Code or of any other law, rule, or regulation of any kind, including an applicable Urban Renewal Plan, the condition or requirement that is the more restrictive governs.

BCC, Zoning § 1-204(b) (2017, updated 2018, as last amended by Ord. 18-136).

its digital billboard is not “new,” and thus the plain language of § 18-504—governing replacement of nonconforming billboards—should apply. We disagree.

STANDARD OF REVIEW

“We review the final decision of the Board, rather than the circuit court, in accordance with the well established principles of administrative law.” Mueller v. People’s Counsel for Baltimore Cty., 177 Md. App. 43, 82 (2007) (citations omitted). Although we would defer to the BMZA’s judgment in discretionary matters within their scope of expertise, in decisions such as this that purely involve the interpretation of Maryland law, we “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.” Id. at 83 (quotation omitted).

We will give the administrative body a degree of deference when it has interpreted a statute or regulation which it administers. Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Properties, 453 Md. 516, 550-51 (2017); Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore Cty., 407 Md. 53, 78 (2008). On the other hand, “[d]eference to the interpretation of the agency . . . does not mean acquiescence or abdication of our construction responsibility,” and it is “always within our prerogative to determine whether an agency’s conclusions of law are correct.” Adventist Health Care Inc. v. Maryland Health Care Comm’n, 392 Md. 103, 121 (2006) (quotation omitted).

SECTION 17-603 VERSUS SECTION 18-504

As explained above, our task is to determine whether § 17-603 or § 18-504 governed the erection of Bay Properties’ digital billboard. Zoning codes are to be interpreted using the generally-accepted canons of statutory interpretation. See *Singley v. Cty. Comm’rs of Frederick Cty.*, 178 Md. App. 658, 675 (2008). Our goal in interpreting these codes is to “ascertain the intention of the drafters from the plain meaning of the words of the ordinance,” id., and where the language is clear and unambiguous, we enforce its plain meaning. See *Stoddard v. State*, 395 Md. 653, 661 (2006) (quotations omitted). Where several provisions in a regulatory scheme are implicated, we must construe the sections to “give as full effect to each as possible.” See *Ingram v. State*, 461 Md. 650, 665-66 (2018) (quotation omitted). When these provisions conflict, we usually hold that the more specific rule is an exception to the more general one. Id. at 665.

With these tenets in mind, we analyze the effect of §§ 17-603 and 18-504 on Bay Properties’ billboard.

“New” Billboards

There is no dispute that the billboard in question is a digital billboard; this case instead turns on whether the digital billboard is “new.” Bay Properties contends that its billboard is being constructed in the place of an existing billboard, and therefore § 17-603 does not apply because the digital billboard is not “new.” As Bay Properties sees it, only § 18-504 comes into play.

We believe that Bay Properties’ interpretation of the term “new” is too narrow. Although the Code does not define the term, we will give it its normal meaning of having

“recently come into being.” Black’s Law Dictionary 1204 (10th ed. 2014); see also Baltimore City Det. Ctr. v. Foy, 461 Md. 627, 645 (2018) (citations omitted) (noting that when a term is not defined in a statutory scheme, “we may consult a dictionary and give words their ordinary meaning”). As Bay Properties candidly admitted at the hearing before the BMZA, in order to erect its digital billboard, the “whole structure” would have to come down and be replaced with a “*new* digital billboard.” We believe that such a billboard would qualify as “new” under common parlance, and thus fall under the purview of § 17-603.

Bolstering our analysis is the fact that the drafters of the Code specifically mandated that more restrictive Code provisions be applied over less restrictive ones. See BCC Zoning, § 1-204(b). Here, § 17-603 is more restrictive because it not only prohibits the sign from including certain distracting elements, but also requires the removal of three existing billboards—a requirement not included in § 18-504. As such, in a scenario where both provisions are arguably implicated, we will apply the more restrictive one—here, § 17-603.

Why Isn’t This a “Replacement” Billboard?

We are cognizant that reading the term “new” to encompass billboards erected in place of preexisting billboards may appear to be in conflict with § 18-502, which allowed nonconforming signs to be “replaced” so long as other conditions were met. After all, what is a “replacement” billboard if not one that is erected at the same location as a previously-existing nonconforming billboard? But we believe that reading “new” to exclude such

“replacement” billboards would be to ignore the clear legislative history surrounding the implementation of § 17-603.⁴

As originally introduced, § 17-603 allowed a digital billboard to be erected only if “accompanied by a plan of removal *elsewhere* of at least 3 existing billboards.” Council Bill 12-0152, First Reader, at 295 (Oct. 22, 2012) (emphasis added). The word “elsewhere” was struck prior to the final enactment of § 17-603. See BCC, Zoning § 17-603(b)(3) (2017). This change resulted from the planning commission’s suggestion that the bill be revised “to make clear that the Board may authorize removing [] three or more billboards to replace with one digital board *in the location of a removed board.*” Council Bill 12-0152, Proposed Text and Table Amendments, at 88 (Sept. 2, 2015) (emphasis added). Thus, the legislative history suggests that the drafters intended an applicant be able to erect a digital billboard in the same location as an existing billboard if it removed the existing billboard and two others. This necessarily means that, as enacted, § 17-603 encompassed the precise situation at issue here—the replacement of a paper billboard with a digital billboard.

Subsequent Changes to the Digital Billboard Provision

Seeking to avoid such a construction, at oral argument Bay Properties noted that after its hearing, the City Council amended the digital billboard provision to explicitly state that it applied to the replacement of existing paper billboards. The amendment now reads:

⁴ Even if the words are unambiguous, a review of the legislative history may in certain contexts be useful to confirm its interpretation or to rule out “another version of the legislative intent alleged to be latent in the language.” Blackstone v. Sharma, 461 Md. 87, 113 (2018) (quotation omitted).

“[a]n existing non-digital billboard may be converted to a digital billboard only if . . . it is accompanied by documentation that at least 3 existing billboard faces in the City have been removed for each new digital billboard face to be placed or erected.” BCC, Zoning § 17-406(d)(1)(i). Billboards. (2017, updated 2019, as last amended by Ord. 19-261).

Bay Properties contends that this change was the “statutory interpretation equivalent of an admission against interest.” In other words, under Bay Properties’ theory, the City Council tacitly admitted that the prior version of the provision did not include replacement billboards because otherwise the Council would have had no reason to amend it.

We disagree. We can just as easily interpret the amendment as an effort by the City Council to reaffirm its intended position in the face of a legal challenge, and to remove any possible ambiguity going forward. Thus, a more apt analogy would be to consider the amendment by the City Council as a subsequent remedial measure in which a party, without admitting fault, makes a change to avoid future problems.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.