

Circuit Court for Prince George's County
Case No. CAL 20-19092 (Lead Case)
Case No. CAL 20-19093

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 726

September Term, 2021

6525 BELCREST ROAD LLC

v.

PRINCE GEORGE'S COUNTY COUNCIL,
ET AL.

Berger,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 4, 2022

*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.

This case is before us on appeal from a judgment of the Circuit Court for Prince George’s County affirming a decision of the County Council of Prince George’s County, sitting as the District Council. The matter before the District Council was an appeal from a decision of the Prince George’s County Planning Board that approved two Detailed Site Plan (“DSP”) applications submitted by Dewey L.C., Bald Eagle Partners, LLC, and BEP Hyattsville, LLC (collectively referred to as “Dewey”). Dewey proposed to develop certain property in Hyattsville, Maryland. Appellant, 6525 Belcrest Road, LLC (“Belcrest”), is the owner of a commercial office building known as Metro III, which is located across the street from the property that Dewey sought to develop (the “Dewey Property”). Since 1970, Metro III owners and tenants have used a surface parking lot located on the Dewey Property. At the time of Metro III’s construction, the owners of Metro III and the Dewey Property sought and obtained a Waiver of Off-Street Parking and/or Loading Requirements (the “Parking Waiver”) from the Prince George’s County Council.

Dewey intends to develop the Dewey Property by removing the existing surface parking lot and replacing it with a predominantly residential development consisting of multifamily dwellings and condominiums, as well as limited commercial/retail uses. Belcrest contends that Dewey cannot remove the surface parking lot used by Belcrest without Belcrest’s consent. Belcrest asserts that the Parking Waiver granted Belcrest an equitable interest in the Dewey Property and that the rights conveyed by the Parking

Waiver can only be modified or eliminated through a joint request by both successor property owners to the original 1970 waiver application.¹

The Planning Board, District Council, and Circuit Court for Prince George’s County all rejected Belcrest’s contention that the existence of the Planning Waiver rendered the approval of Dewey’s DSP applications improper. Belcrest presents the following single issue for our consideration on appeal, which we set forth verbatim as presented in Belcrest’s brief:

Did the District Council err in affirming the Planning Board’s Approval of Dewey’s DSP when the DSP was predicated on Dewey’s unilateral elimination of the parking compound jointly established in 1970 for Belcrest’s Metro III building?

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

The underlying facts giving rise to this appeal are undisputed by the parties. Both the Metro III office building and the parking lot on the Dewey Property were constructed in 1970. At the time, Metro III was owned by Spruell Development Corporation, and the Dewey Property was owned by Dewey Development Corporation. Spruell Development Corporation and Dewey Development Corporation were both controlled by the same individual, Herschel Blumberg.

While Metro III was under construction, Prince George’s County adopted new parking regulations. The then-new parking standards permitted required parking to be

¹ Belcrest characterizes this issue as “a novel issue of law.”

located off-site only under specific circumstances. *See* Prince George’s County Code (1970 Edition), § 24.222. The Code provided, in relevant part:

The required parking compound may be provided on a lot other than that lot on which the principal use is located as otherwise provided for in this Ordinance provided that all of such parking compound is within five hundred (500) feet of the nearest boundary of the record lot on which the use is located and an appropriate legal arrangement assures the permanent availability of the compound.

Id. The Code further limited the number of parking spaces that could be located off-site.

Id.

Because the proposed off-site parking on the Dewey Property exceeded the limits for the allowed number of spaces as well as the distance from the principal use, Spruell Development and Dewey Development jointly sought a waiver of the parking requirements. In the application, Spruell Development and Dewey Development explained that they were seeking of a waiver of the prohibition on: “(1) spaces beyond 500 feet” and “(2) more than 100 spaces or 20% in R-H zone.”² Along with the application form, a letter was submitted from Nicholas Orem, Jr., counsel for Spruell Development and Dewey Development. In the letter, Mr. Orem explained that “[r]equest is hereby made . . . for a waiver of the provisions of Section 24.222 of th[e] ordinance.” The letter explained that the new parking provisions “came as a surprise to applicants” after construction had commenced and “therefore place[d] an unusual hardship upon” the developers. Mr. Orem

² The application was a form with blanks for the applicant to complete with handwritten responses.

referred to a mortgage that established the appropriate legal arrangement as required by the zoning ordinance, describing the mortgage at issue as follows:

The area outlined in red is the area on which applicants desire to construct immediately a parking compound to serve [Metro] III now under construction, the compound thus constructed to be in accord with the site plan submitted with this application if otherwise approved by the Prince George's Planning Board, or such variation therefrom as may be approved by that Board. The rectangle outlined in green is included in this application because it is included in the mortgage covering [Metro] III for the purpose of guaranteeing to the mortgagee that adequate land for parking will be available for that building. The fact that it is so included is "an appropriate legal arrangement that assures the permanent availability of the compound" satisfying that requirement of 24.222, an assurance that is for the benefit of the public as well as the mortgagee.

The referenced mortgage guaranteed that parking would be available to serve the Metro III building, but included the following language indicating that the parking could potentially be relocated from the Dewey Property at some point:

. . . in exchange for a first lien security given to the [lender, Suburban Trust Company] on adjacent land improved for parking or a parking garage affording comparable parking spaces and containing at least 850 parking spaces specifically allocated to the improvements constructed on and described as Parcel I herein, providing such parking spaces are satisfactory to [Suburban Trust Company] . . .

In a letter dated November 25, 1970 from W.C. Dutton, Jr., Chairman of the Prince George's County Planning Board, to the Board of County Commissioners, Chairman Dutton explained that the Board had reviewed the requested parking waiver and recommended approval of the request, explaining:

On November 25, 1970, the Planning Board reviewed the waiver application and recommends approval of the waiver

request. It is the Board and staff's understanding that this is a temporary use, realizing that, at this time, the term "temporary" cannot be specifically defined in terms of months or years; although the implication is that it will be for approximately five (5) years. It is understood that the landscaping shown on the site plan will satisfy the new Ordinance provision that 5 percent of the interior lot be reserved for green space. We further wish to emphasize the Board's desire to see the total parking situation begin its conversion from 100 percent surface parking to that long proposed by the ultimate development scene for the Prince George's Center complex.

The District Council approved the Parking Waiver on November 27, 1970 via District Council Resolution No. 636 - 1970, which provided as follows:

It was Ordered that a WAIVER of the off-street parking requirements of the Zoning Ordinance requested by Nicholas Orem, Jr., Attorney for Spruell Development Corporation and Dewey Development Corporation, owners of all property involved, located on the north side of Toledo Road and limited by Belcrest and Adelphi Roads, Hyattsville, Maryland, be GRANTED.

In the years following the issuance of the Parking Waiver, various documents regarding the regulatory history of the Metro III Property and Dewey Property referred to the surface parking lot on the Dewey Property serving as the parking area for Metro III. By 1998, the ownership of both the Metro III Property and the Dewey Property had changed. Metro III was then owned by PG Metro Center III, Inc., and the Dewey Property was owned by Dewey, L.C. Dewey, L.C. was, at that point, still controlled by Herschel Blumberg.

On March 31, 1998, PG Metro Center III, Inc., and Dewey, L.C., entered into a Ground Lease pursuant to which PG Metro Center III, Inc. leased the Dewey Property from Dewey, L.C. "for parking purposes." Pursuant to the Ground Lease, the owner of Metro

III became the lessee of the 7.92 acre surface parking lot on the Dewey Property. The Ground Lease provided that “[u]pon prior written notice,” the landlord had “the right, at any time and from time to time, to substitute” different parking premises so long as certain conditions were satisfied.

In 2013, FUCMS 1991-C1 Belcrest Road, LLC, acquired the Metro III Property. On July 16, 2014, a First Amendment to Ground Lease was executed by FUCMS 1999-C and Dewey, L.C. The First Amendment to Ground Lease extended the term of the lease to June 30, 2045 and contained, *inter alia*, specifically defined locations to which substitute parking premises could be relocated by the landlord.

On December 28, 2015, Belcrest, appellant, obtained title to the Metro III Property. On November 9, 2016, Belcrest executed an Assignment and Assumption of Ground Lease and Sublease, pursuant to which Belcrest accepted all duties and obligations under the Ground Lease and the First Amendment to Ground Lease.

In addition to changes in ownership of the Metro III Property in the years between 1970 and the filing of the DSP applications that ultimately gave rise to this appeal, there were, unsurprisingly, significant zoning changes that occurred that, *inter alia*, changed the parking requirements for Metro III. We briefly set forth certain relevant zoning provisions in order to provide context for Belcrest’s challenge to Dewey’s development proposal. In 1998, Prince George’s County adopted the 1998 Prince George’s Plaza Transit District Development Plan (“TDDP”), which reduced minimum parking requirements within the Prince George’s Plaza Transit District Overlay Zone (“TDOZ”). Both the Dewey Property

and the Metro III Property are located within the TDOZ. The purposes of the TDOZ include the enhancement of development opportunities in the vicinity of transit stations and the promotion of the use of transit facilities, as well as the reduction of surface parking, among others.

In 2001, the Planning Board approved Conceptual Site Plan (“CSP”) CSP-00024, which included both the Dewey Property and the Metro III Property. The CSP proposed a “mixed-use development with a ‘Main Street’ theme that will include office, retail and residential.” CSP-00024 required that any DSP submitted within the CSP area include “a parking demand analysis which reflects appropriate reduction for shared parking between existing and proposed uses.” CSP-00024 contemplated the construction of parking garages to replace the surface parking and observed that the TDDP “contains a goal of *encouraging the use of structured parking and discouraging huge expanses of surface parking.*” (Emphasis in original.)

In 2016, an updated Prince George’s Plaza TDDP was adopted. The updated TDDP rezoned the Dewey Property as Mixed Use - Infill (“M-U-I”). The general purpose of the M-U-I zone is to permit “a mix of residential and commercial uses as infill development in areas which are already substantially developed.” Prince George’s County Zoning Code § 27-546.15. In addition, the 2016 TDDP provided that CSPs approved prior to the adoption of the TDDP were no longer effective. As a result, the Dewey Property was no longer subject to the parking demand analysis requirement in CSP-00024.

In 2019, Dewey filed two Preliminary Subdivision Plan applications with the Prince George’s County Planning Board, which proposed to subdivide the Dewey Property into five parcels and to develop the parcels with a total of 850 multifamily units and 1,258 square feet of commercial space. Belcrest appeared before the Planning Board and expressed opposition to the proposed development. Belcrest did not raise any issues with the specific development plans presented by Dewey other than with respect to Belcrest’s loss of parking space. Belcrest argued that the 1970 Parking Waiver served to prevent development on the Dewey Property and that adequate parking would not exist if the surface parking lot was redeveloped. The Planning Board approved both Preliminary Subdivision Plans submitted by Dewey, subject to certain conditions. With respect to parking, the Planning Board issued a finding providing the following:

At the Planning Board hearing held on June 27, 2019, the disposition of the existing surface parking lot on site was discussed in depth. The site has been part of a larger [Conceptual Site Plan], including the property to the south. Records indicate that the existing surface parking lot on this site that is to be removed, may require parking to support other uses on properties to the south. While this is an issue for the private property owners, a determination of adequate parking for land uses that depend on this parking lot must be made prior to the approval of the detailed site plan for this property.

Dewey subsequently filed the two DSP applications that form the subject matter of this appeal. Dewey submitted a shared parking analysis with its DSP applications. The parking analysis considered the total parking supply of the University Town Center development in which Metro III is located and concluded that “the University Town Center will continue to be adequately parked with the removal of the 1,503 surface spaces on the

Dewey property.” The parking analysis took into consideration certain existing parking garage structures in the area. Some of the parking structures identified in the analysis were the same parking garages to which the Ground Lease permitted parking to be relocated.

On July 16, 2020, the Planning Board conducted a hearing on both of the DSP applications submitted by Dewey. Belcrest appeared at the public hearings and expressed opposition to the proposed development. Belcrest’s sole objection to the DSP applications was that the development of the Dewey Property would interfere with Belcrest’s parking rights.³ The Planning Board approved both of the DSP applications submitted by Dewey. DSP-19050 was approved via Resolution PGCPB No. 2020-125, and DSP-19050-01 was approved via Resolution PFCPB No. 2020-127. Each resolution included the following finding regarding parking:

Given that the subject property has been used as surface parking for the adjacent University Town Center site for several years, the applicant has provided a parking analysis, in consideration of the uses on that site and the parking supply. The Parking Generation Manual (Institute of Transportation Engineers) includes dense, multi-use, urban, demand models to better assess parking demand in this mixed-use setting, particularly given the proximity of the transit station.

The maximum parking demand is 2,334 spaces, based on the analysis that was provided. This includes 1,095,377 square feet of office space, 224,786 square feet of retail space, and 1,361 residences within the University Town Center. In addition, the Prince George’s Place [Transit District

³ Belcrest argued that the Parking Waiver gave Belcrest vested rights, merged the Dewey and Metro III Properties, gave Belcrest equitable title, and created an easement. Belcrest further argued that the Ground Lease was unenforceable because it was against public policy.

Development Plan] has no minimum parking requirements for any of these properties.

Current parking spaces are 4,845, based on the analysis, and the removal of 1,503 spaces on the Dewey Property would yield a parking supply of 3,342 spaces. There would be a surplus of 1,008 spaces without the Dewey surface parking spaces, with all of these spaces existing within the University Town Center site.

While there might have been a factor of convenience for some uses within the University Town Center to use surface parking within the Dewey Property, there is sufficient parking within University Town Center to serve the uses on that site. **Any matters regarding private agreements for use of the parking on the Dewey property are not relevant to the DSP requirements or analysis. In addition, the Board reviewed and considered a waiver granted by the District Council in 1970 to the adjoining property owner allowing the owner to develop its property without sufficient parking. The Board determined the waiver was for the sole benefit of the owner and did not restrict the future development of the Dewey Property so had no relevance to this application. The Board also found that the parking requirements that limited the development of the adjoining property in 1970 have changed and that sufficient parking exists to accommodate the current parking requirements even if the surface parking on the Dewey Property is no longer available.**

(Emphasis supplied.)

Belcrest appealed the Planning Board's approval of the DSP applications to the District Council. On appeal to the District Council, Belcrest presented four issues: (1) that the Planning Board committed legal error by relying on the parking analysis of the Metro III Property where Belcrest was not an applicant and the Metro III Property was not the property subject to a pending DSP application; (2) that the Planning Board committed legal error by concluding that prior public approvals of the parking arrangement on the Dewey

Property did not restrict the proposed development of the Dewey Property; (3) that the Planning Board committed legal error by concluding that Belcrest had no equitable interest in the Dewey Property, and; (4) that the Planning Board committed legal error by relying upon the Ground Lease.

The District Council rejected Belcrest’s arguments, finding that “the Board’s approval of the DSP application[s] did not extinguish Metro III’s prior development approvals.” The District Council rejected Belcrest’s argument as to the shared parking analysis, concluding that “[t]he Board’s consideration of the shared parking analysis did not eliminate any of [Belcrest’s] rights. It merely concluded that, should the Dewey Property be redeveloped, there is enough parking elsewhere within the University Town Center to satisfy the requirements of the existing uses.” The District Council found that “[t]he Board committed no legal error by considering the parking analysis.” The District Council further rejected Belcrest’s argument that prior public approvals of the parking arrangement prevented further development on the Dewey Property. The District Council explained that “[t]he approval of the Parking Waiver gave [Belcrest and its predecessor] the right to use the Dewey Property. The Parking Waiver did not order or require the owner of the Dewey Property to continue with its contractual relationship with [Belcrest].”

With respect to Belcrest’s equitable interest argument, the District Council determined that the Planning Board was correct when it “rejected [Belcrest’s] argument that the Parking Waiver created an unencumbered, perpetual right to use the Dewey Property.” The District Council further rejected Belcrest’s argument that it had an

equitable interest and/or easement in the Dewey Property, explaining that “the Board properly rejected [Belcrest’s] over-characterization of the Parking Waiver.” Finally, the District Council addressed and rejected Belcrest’s assertion that the Planning Board committed legal error by relying upon the Ground Lease. The District Council observed that the Planning Board “did not interpret the ground lease” but rather, the Planning “Board state[d]; ‘[a]ny matters regarding private agreements for use of the parking on the Dewey property are not relevant to the DSP requirements or analysis.’” (Emphasis added by the District Council.) Belcrest appealed to the Circuit Court for Prince George’s County, which affirmed. This appeal followed.

STANDARD OF REVIEW

The decision before us on appeal is the decision of the District Council, which reviewed on appeal a decision by the Planning Board approving the DSP applications submitted by Dewey. The District Council was acting in its zoning capacity in this context and sitting as an administrative agency. *See Grant v. Cnty. Council of Prince George’s Cnty*, 465 Md. 496, 503 (2019) (“In situations involving zoning actions entirely within Prince George’s County, the County Council of Prince George’s County sits as the District Council. When acting in its zoning capacity, the District Council acts as an administrative agency.”) (internal citation omitted).

“When reviewing an administrative decision . . . we look through the circuit court’s decision, although applying the same standard of review, and evaluate the decision of the agency.” *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 211

(2018). In so doing, this Court is “limited to evaluating whether there is substantial evidence in the record as a whole to support the agency’s findings and conclusions and to determining whether the administrative decision is premised upon an erroneous conclusion of law.” *Id.* (citing *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008) (internal quotation marks omitted). “[O]ur primary goal is to determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious. In applying the substantial evidence test, we must decide whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Rojas v. Bd. of Liquor License Comm’rs for Balt. City*, 230 Md. App. 472, 481 (2016) (quotation and citation omitted).

“[W]e review the agency’s decision in the light most favorable to the agency because it is *prima facie* correct and entitled to a presumption of validity.” *McClure v. Montgomery Cnty. Planning Bd. of Md.—Nat’l Cap. Park & Plan. Comm’n*, 220 Md. App. 369, 379 (2014) (citation and internal quotation marks omitted). Although “[a]n administrative agency’s interpretation of a statute that the agency administers should ordinarily be given considerable weight by reviewing courts,” *Piney Orchard Cmty. Ass’n v. Md. Dept. of the Env’t*, 231 Md. App. 80, 92 (2016) (citation omitted), we owe no deference to an agency’s erroneous conclusions of law. *Bd. of Cnty. Comm’rs for St. Mary’s Cnty. v. S. Res. Mgmt., Inc.*, 154 Md. App. 10, 34 (2003). “It is the appellant’s burden . . . to establish that the agency erred as a matter of law.” *Brandywine Senior Living*

at *Potomac*, *supra*, 237 Md. App. at 211 (citing *Assateague Coastkeeper v. Md. Dept. of the Env't*, 200 Md. App. 665, 690 (2011)).

DISCUSSION

On appeal before this Court, Belcrest frames its arguments somewhat differently than it did before the District Council, but the core of the argument remains the same. Belcrest asserts that the District Council’s finding that no evidence was submitted to establish Belcrest’s interest in the Dewey Property was erroneous. Belcrest contends that the Parking Waiver served to establish a “right created in favor of the Metro III Building” that “gives Belcrest a continued right to use the Dewey Property . . . for parking.” In support of this argument, Belcrest asserts that prior regulatory approvals from the decades between the issuance of the 1970 Parking Waiver and the submission of the DSPs at issue in this appeal establish Belcrest’s interest in the Dewey Property. Belcrest further contends that the adoption of the TDDP parking standards does not serve to terminate the 1970 Parking Waiver. As we shall explain, we are not persuaded by Belcrest’s contentions that the Parking Waiver served to establish a legally cognizable interest in the Dewey Property for Belcrest. Accordingly, we hold that the District Council’s determination that “no evidence has been provided to suggest that [Belcrest] has anything other than a leasehold interest” in the Dewey Property was supported by substantial evidence.⁴

⁴ Arguments in the record refer to a dispute related to the Ground Lease for the parking lot. Belcrest asserts that any arguments in the record below regarding the effect of any leasing agreements are now moot because the Dewey/Belcrest lease for the parking lot was terminated during the course of a bankruptcy proceeding pending in the United States

In its brief, Belcrest acknowledges that this case presents a novel issue, characterizing the issue as whether “a zoning waiver conferred to joint applicants [can] later be extinguished unilaterally by one of the joint applicants. We do not address the question as broadly as presented by Belcrest and we shall not consider whether, in general, a zoning waiver conferred to joint applicants can be extinguished upon request by one of the applicants. Rather, we address the specific, narrow Parking Waiver issued by the District Council in 1970, which waived the parking requirements applicable to Metro III in light of the arrangement allowing Metro III tenants and visitors to park on the Dewey Property lot. As we shall explain, in our view, the District Council did not err by determining that the Parking Waiver issued in this case did not preclude the proposed DSP applications submitted by Dewey.

The core issue upon which Belcrest’s arguments rest is the premise that the Parking Waiver granted Belcrest some type of equitable interest to continued use of the Dewey

Bankruptcy Court for the Southern District of New York. *See In Re: 6525 Belcrest Road LLC*, Chapter 11, Case No.: 21-10968-mew.

We observe that there are two other pending appeals involving Dewey and Belcrest currently pending before this Court. Case No. 1393, Sept. Term 2021, *6525 Belcrest Road, LLC v. Dewey, L.C.*, is an appeal from an October 5, 2021 order of the Circuit Court for Prince George’s County in Case No. CAL21-09482 and involves a petition to confirm an arbitration award. Case No. 1632, Sept. Term 2021, *6525 Belcrest Road LLC v. Dewey LC, et al.*, is an appeal from a November 12, 2021 order of the Circuit Court for Prince George’s County granting a motion to dismiss in a declaratory judgment action. We take no position whatsoever on any of the issues raised in these two separate appeals involving a dispute between two private parties. The only issue in this case before us in this appeal is the propriety of the District Council’s action in approving the two DSP applications submitted by Dewey.

Property separate and apart from any privately negotiated right to use the Dewey Property.⁵

Our assessment of whether the Parking Waiver granted Belcrest such a right begins with the language of the Parking Waiver itself, which provides:

District Council Resolution No. 636-1970

It was Ordered that a WAIVER of the off-street parking requirements of the Zoning Ordinance requested by Nicholas Orem, Jr., Attorney for Spruell Development Corporation and Dewey Development Corporation, owners of all property involved, located on the north side of Toledo Road and limited by Belcrest and Adelphi Roads, Hyattsville, Maryland, be GRANTED.

Belcrest contends that this Parking Waiver, as well as successive regulatory approvals, serve to establish Belcrest's continuing right to use the Dewey Property for parking.

Belcrest points to various regulatory approvals over the decades following the issuance of the 1970 Parking Waiver that contain references to parking for the Metro III building being located on the Dewey Property. One such approval Belcrest identifies is the 2004 DSP associated with Metro III tenant Greenwood School Day Care Center, which

⁵ Before the District Council, in addition to arguing that it had an equitable interest in the Dewey Property, Belcrest argued that: the Planning Board erred by considering a shared parking analysis; Belcrest had a vested right or quasi-vested right in the Dewey Property; the Parking Waiver established an easement over the Dewey Property; and the Planning Board erred by inappropriately relying upon the private ground lease to define the scope of Belcrest's right to use the Dewey Property. The District Council considered and rejected each of these arguments.

Before this Court, Belcrest does not expressly argue that it has a vested right in the Dewey Property but still argues that there are "rights that flow from a validly imposed use restriction" and maintaining that "[t]he right created in favor of the Metro III Building gives Belcrest a continued right to use the Dewey Property" for parking. Irrespective of whether framed in the language of vested rights or some other type of rights, we shall hold that the only rights that Belcrest has are its contractual rights.

includes 202 surface parking spaces and eleven handicap surface parking spaces on the Dewey Property parking lot. Belcrest offers this particular DSP as an example of many building permits and use and occupancy permit applications approved for the Metro III Building that relied upon and considered the parking location at the Dewey Property.

Belcrest is correct that permits have been issued that were approved, in part, based upon proposed parking located on the Dewey Property. It does not necessarily follow, however, that the Parking Waiver itself, or subsequent public approvals acknowledging the existence of parking on the Dewey Property, established a **continuing right** to park on the Dewey Property separate and apart from any privately negotiated right to use the Dewey Property. The zoning authority approved of the arrangement pursuant to which Metro III owners and tenants were permitted to park on the Dewey Property. The zoning authority did not, in and of itself, establish the right for Metro III to use the Dewey Property in perpetuity.

The District Council expressly rejected Belcrest’s assertion that it held an “equitable interest” to use the Dewey Property, explaining as follows:

[T]he [Planning] Board rejected [Belcrest’s] argument that the Parking Waiver created an unencumbered, perpetual right to use the Dewey Property. [B]elcrest offered no evidence that the Parking Waiver conferred such rights. In fact, there is evidence indicating the contrary, including the 1969 mortgage and the 1970 letter from the Chairman of the Board, each of which acknowledge[s] that parking could be temporary and potentially relocated. Rather than reconcile those documents, [Belcrest] ignores them.

Additionally, [Belcrest] alleges that the definition of “equitable interest” provided by [the Planning] Board’s legal

counsel was “extremely narrow” and “unsupported by the law.” However, [Belcrest] cites no law to support those allegations. Based on the foregoing, the [Planning] Board properly rejected [Belcrest’s] over-characterization of the Parking Waiver.

The District Council further discussed and rejected Belcrest’s assertion that the Parking Waiver established an easement over the Dewey Property, determining that there was no express nor implied easement. We agree with the District Council that Belcrest has presented no evidence to demonstrate the Parking Waiver created a continuing right to use the Dewey Property separate and apart from any privately negotiated right to park on the Dewey Property.

Belcrest takes further issue with the District Council and Planning Board’s finding that “adequate parking exists to accommodate the current parking requirements.” Belcrest asserts that the Planning Board’s parking findings constitute legal error because they do not properly apply the TDDP standards to the Belcrest property. Belcrest emphasizes that although the TDDP reduced the amount of parking within the zone, until a DSP is submitted, legally existing parking spaces that were lawful on July 19, 2016 “need not be reduced, are exempt from the Transit District Standards and DSP review, and are not nonconforming.” Belcrest is correct that the parking arrangement on the Dewey Property was not nonconforming and was exempt from Transit District Standards up until the time that Dewey submitted the DSP applications at issue in this appeal. The fact that the TDDP contained an exemption for legally existing parking spaces that predated the establishment of the TDDP, however, does not render the Planning Board’s consideration of the TDDP

parking standards an error of law once a new DSP was submitted by a property owner that wished to redevelop a particular property. The Planning Board was permitted to consider whether adequate parking existed pursuant to the current parking requirements when evaluating Dewey's DSP applications.

Furthermore, although Belcrest contends that the 1970 Parking Waiver "must remain effective unless and until both successors to the original Waiver jointly apply to amend or eliminate it," Belcrest cites no authority for this claim. The Parking Waiver placed no restrictions on any property. Rather, the Parking Waiver allowed Metro III to operate without the parking then-required by code. Moreover, as Dewey observes, Belcrest would not be permitted to participate in a DSP for the Dewey Property. Pursuant to Prince George's County Code, § 27-282(a), only the "owner or his authorized representative" may file a DSP application. "Owner" is defined in the zoning code as "[t]he 'Person' in whom legal or equitable title rests. 'Owner' means any part owner, joint owner, owner of a community or partnership interest, life tenant, tenant in common, tenant by the entirety, or joint tenant." Prince George's County Code, § 27-107.01(172). Belcrest does not satisfy the definition of "owner" and would, therefore, not be permitted to participate in a joint application to develop the Dewey Property.

Private agreements between the parties -- such as the lease negotiated for the use of the parking lot on the Dewey Property in this case -- are irrelevant to an agency's consideration of zoning decisions. *See, e.g., Perry v. Cnty. Bd. of Appeals*, 211 Md. 299-300 (1956) ("Such private restrictions controlled by contract and real estate law are entirely

independent of zoning and have no proper place in proceedings of this character, notwithstanding if in a proper proceeding the restrictions contended for are shown to be binding upon the properties mentioned, zoning cannot nullify them.”). The Planning Board and District Council appropriately recognized that any interpretation of the ground lease was well outside the scope of the zoning action at issue. We agree with the Planning Board that “[a]ny matters regarding private agreements for use of the parking on the Dewey property are not relevant to the DSP requirements or analysis.” If the development proceeds as proposed by Dewey, whether or not parking can be relocated pursuant to the terms of the Ground Lease is a separate legal proceeding not before us in this appeal.

In sum, the Parking Waiver did not establish any rights on the part of Belcrest to continue to use the Dewey Property for parking. Rather, the Parking Waiver was a waiver of the specific parking requirements applicable to the Metro III Property at the time. The only effect of the Parking Waiver was to allow Metro III to proceed with construction of its office building despite the fact that it did not satisfy the parking requirements set forth in Prince George’s County Code (1970 Edition), § 24.222. The Parking Waiver allowed Metro III to utilize off-site parking on the Dewey Property that exceeded the applicable limits for the number of spaces as well as the distance from the principal use. It did not grant Metro III a continuing, perpetual right in the Dewey Property separate and apart from that negotiated privately between the parties.

For these reasons, we affirm the Final Decisions of the District Council approving DSP-19050 and DSP-19050-01, as affirmed by the Circuit Court for Prince George's County.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0726s21cn.pdf>