Circuit Court for Prince George's County
Case No. CAL 19-40094

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0801

September Term, 2020

THE TOWN OF UPPER MARLBORO

v.

THE PRINCE GEORGE'S COUNTY COUNCIL

Kehoe,
Gould,
Zic,

JJ.

Opinion by Zic, J.

Filed: September 14, 2021

In November 2019, the Prince George's County Council ("Council"), sitting as the District Council, approved County Resolution 98-2019 ("CR-98-2019"), which removed the Old Marlboro Primary School (Historic Site 29-019-51) and the Old Marlboro High School (Historic Site 79-019-52) from the 2010 *Prince George's County Historic Sites and Districts Plan*. The Circuit Court for Prince George's County affirmed that decision on September 14, 2020. The Town of Upper Marlboro ("Town") appeals.

On December 17, 2019, the Town appealed the Council's final decision in CR-98-2019, which was adopted on November 19, 2019, to the circuit court based on alleged procedural deficiencies in the initiating resolution, County Resolution 72-2019 ("CR-72-2019"). CR-72-2019 was adopted on July 23, 2019. The circuit court affirmed the Council's decision, finding that the decision to adopt CR-98-2019 and CR-72-2018 was supported by substantial evidence in the record. The Town appealed CR-98-2019, not CR-72-2019. We shall affirm the judgment of the circuit court. We explain.

QUESTIONS PRESENTED

The Town presents three questions for appellate review,[1] which we have recast and rephrased as follows:

[1] The Town phrases the questions as follows:

I. Did County Resolution No. CR-72-2019 initiating the minor amendment approved by the District Council fail to set forth the required public planning objectives to legally justify the scope of the amendment?

II. Did the resolution initiating the minor amendment as approved by the District Council also fail to set forth the

1. Was CR-72-2019 a final decision that had to be challenged within 30 days of finality as required by § 22-407 of the Land Use Article?

2. Was the Town's appeal of CR-98-2019 sufficient to challenge alleged procedural deficiencies in CR-72-2019?

3. Was the decision of the Council to approve CR-98-2019 supported by substantial evidence?

We answer the first question in the affirmative, the second question in the negative, and decline to rule on the third question. Thus, we shall affirm the judgment of the circuit court. We explain.

FACTS AND PROCEEDINGS

CR-72-2019

On July 23, 2019, the Council published CR-72-2019, a County Resolution that "direct[ed] the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission to initiate a minor amendment[[2]] to the 2010 *Historic Sites and Districts Plan*." CR-72-2019 states that the purpose of the resolution is to "direct[] the Prince George's County Planning Board of the Maryland National Capital Park and Planning Commission to initiate a minor amendment to the 2010 *Historic Sites*

minor amendment's purpose to legally justify the amendment?

III. Was the decision to approve the minor amendment arbitrary, capricious, unreasonable, and made on unlawful procedure?

[2] The minor amendment process is permitted pursuant to Prince George's County Code § 27-642(a), which states in pertinent part: "Minor amendments of approved master, sector, functional plans and/or associated Development District Overlay Zones may be initiated by Resolution of the District Council."

and Districts Plan. CR-72-2019 further specifies that "the District Council finds that there is a need to reevaluate the designation of Historic Sites 79-019-51 and 79-019-52 for removal from the 2010 *Prince George's County Historic Sites and Districts Plan*." Historic sites 79-019-51 and 79-019-52 are the Old Marlboro Primary School and the Old Marlboro High School, respectively. Additionally, CR-72-2019 states that "the existing Historical Cemetery on the site shall be preserved."[3] CR-72-2019 was adopted by the Council on July 23, 2019.

CR-98-2019

CR-98-2019 was published by the Council on November 19, 2019 and approved the proposed minor amendment detailed in CR-72-2019. The Prince George's County Planning Board ("Planning Board") and the Council held a public hearing on the proposed minor amendment on September 17, 2019. After the public hearing, the planning staff drafted a Technical Staff Report detailing the proposed amendment, public comments, and recommendations to the Planning Board. The Planning Board held a public work session concerning the proposed amendment on October 10, 2019. Additionally, the Council conducted a public work session on October 29, 2019 to

[3] In its brief, the Town gives a lengthy history of the two graves adjacent to the lots containing the two schools. The graves are those of Dr. William and Sarah Beanes, which are designated as Historic Site 79-018-22. Dr. Beanes was a Revolutionary War era doctor who treated American soldiers and was instrumental in the writing of the Star-Spangled Banner during the War of 1812. The final language used in the adopted minor amendment indicates that the two graves will continue to be preserved: "[T]he Dr. William and Sarah Beanes Cemetery (Historic Site 79-019-22) [will] be preserved in place and protected from any redevelopment of the subject property, including though [sic] delineation of an appropriate environmental setting."

evaluate the public hearing record and the Planning Board's recommendations concerning the proposed minor amendment. The Council approved the minor amendment on November 19, 2019. The adopted minor amendment states in part:

> Amend the 2010 *Prince George's County Historic Sites and District[s] Plan* to remove the Old Marlboro Primary School, Historic Site 79-019-51, and the Old Marlboro High School, Historic Site 79-019-52, . . . and incorporated fully herein.
>
> . . . .
>
> BE IT FURTHER RESOLVED that the Dr. William and Sarah Beanes Cemetery (Historic Site 79-019-22) be preserved in place and protected from any redevelopment of the subject property, including though [sic] delineation of an appropriate environmental setting.

The Town's Appeal of CR-98-2019

On December 17, 2019, the Town filed a Petition for Judicial Review in the Circuit Court for Prince George's County. In its Petition, the Town stated that it "requests judicial review of the decision of the Prince George's County Council Sitting as the District Council . . . for . . . approving a minor amendment to the 2010 *Prince George's County Historic Sites and Districts Plan* . . . as adopted and endorsed on November 19, 2019, by Prince George's County Resolution CR-98-2019." A hearing was held on September 11, 2020 in the circuit court. The court found that the decision of the Council to approve the minor amendment through CR-98-2019 was supported by substantial evidence in the record and upheld the Council's decision to remove the Old

Marlboro Primary School and the Old Marlboro High School from the 2010 *Prince George's County Historic Sites and Districts Plan*. This appeal followed.

STANDARD OF REVIEW

"In Maryland, traditional land use powers are generally delegated by the State to local political subdivisions." *Grant v. County Council of Prince George's County*, 465 Md. 496, 503 (2019) (citing *County Council of Prince George's County v. Zimmer Dev. Co.*, 444 Md. 490, 503-504 (2015)). "In situations involving zoning actions entirely within Prince George's County, the County Council of Prince George's County sits as the District Council." *Grant*, 465 Md. at 503 (citing Md. Code Ann., Land Use § 22-101(b)). "When acting in its zoning capacity, the District Council acts as an administrative agency." *County Council of Prince George's County v. Palmer Rd. Landfill, Inc.*, 247 Md. App. 403, 416 (2020) (quoting *Grant*, 465 Md. at 503).

"When an appellate court reviews the final decision of an administrative agency, we look through the circuit court's decision, and review the decision of the agency." *Richardson v. Maryland Dep't of Health*, 247 Md. App. 563, 569 (2020) (citing *Cosby v. Dep't of Hum. Res.*, 425 Md. 629, 637 (2012)). "Our role is 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Richardson*, 247 Md. App. at 569 (quoting *Milliman, Inc. v. Md. State Ret. & Pension Sys.*, 421 Md. 130, 151 (2011)).

DISCUSSION

I. THE TOWN FORFEITED JUDICIAL REVIEW OF CR-72-2019.

The Town argues that CR-72-2019 did not properly set forth the purpose and scope of the minor amendment. The Council, however, argues that the Town forfeited its right to appeal CR-72-2019 by not bringing an appeal within the 30-day timeframe as required by Land Use § 22-407(a)(2).

A. Statutory Authority for Judicial Review of the Council's Decision.

The Maryland-Washington Regional District Act ("RDA") governs zoning and planning decisions within the Prince George's County portion of the Maryland-Washington Regional District and is the "essential source of the delegation by the State of zoning authority to Prince George's County." *Zimmer*, 444 Md. at 523-25. The RDA was codified into the Land Use Article of the Maryland Code in 2012; previously, the RDA was codified in Article 28 of the Maryland Code. *Id.* at 520 n.28. When the RDA was recodified in 2012, no substantive amendments were intended to be included. *Id.* Particularly, Land Use § 22-407(a) provides in part:

> (1) Judicial review of *any final decision* of the district council, including an individual map amendment or a sectional map amendment, may be requested by any person or entity that is aggrieved by the decision of the district council and is:
>
> > (i) a municipal corporation, governed special taxing district, or person in the county;

> (ii) a civic or homeowners association representing property owners affected by the final decision;
>
> (iii) the owner of the property that is the subject of the decision; or
>
> (iv) the applicant.
>
> (2) A petition for judicial review under this subsection *shall be filed in the Circuit Court for Prince George's County within 30 days after service of the final decision* by the district council.

(emphasis added).

Additionally, Rule 7-203 similarly states:

> *(a) Generally.* Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:
>
> (1) the date of the order or action of which review is sought;
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
>
> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

While interpreting and applying Rule 7-203, which requires appeals from administrative decisions to be brought within 30 days of the agency's action or order, this Court has found that the petition at issue "must be filed within the thirty-day filing period in order for the circuit court to have authority to hear the appeal." *Colao v. County Council of*

Prince George's County, 109 Md. App. 431, 444 (1996). If an appeal of an administrative decision is not filed within the 30-day time requirement, then the circuit court does not have jurisdiction to hear the claim. *Id.* at 444-45 (finding that "the thirty-day period under Rule 7-203 is now considered in the nature of a statute of limitations"). "[D]iscretion has been removed from the circuit court with respect to untimely filed petitions for judicial review of agency decisions." *Id.* at 444. Likewise, appellate courts have no jurisdiction over an untimely filed appeal and the appeal must be dismissed. *Id*. (explaining that Rule 7-203 operates in a similar manner as Rule 8-202(a), which governs appeals to this Court).

B. CR-72-2019 Was a "Final Decision" and the Town Did Not Timely Appeal.

Land Use § 22-407(a) states in part that "judicial review of *any final decision* . . . shall be filed in the Circuit Court for Prince George's County within 30 days after service of the final decision by the district council." (emphasis added). Though no court in Maryland has yet opined on whether an initiating resolution is a "final decision," we find the following cases to be instructive on the issue.

The Court of Appeals stated in *County Council of Prince George's County v. Chaney Enterprises Ltd. Partnership*, 454 Md. 514 (2017) that "§ 22-407 can readily be interpreted to mean that the General Assembly intended to authorize judicial review of any final decision the District Council has the authority to make." *Id.* at 531-33 (finding that petitioners could seek judicial review of amendments to the Prince George's County 2013 Master Plan under § 22-407). The Town admits in its reply brief that the decision

in *Chaney* "resulted in expanding the types of major land use approvals that could be petitioned for judicial review."

Additionally, in *Colao v. County Council of Prince George's County*, the appellants appealed two approved zoning ordinances but, due to an alleged clerical error, left out one of the two ordinances from their appeal. 109 Md. App. at 440. This Court found that this mistake was fatal because, while the zoning ordinances concerned two related parcels of land, the appellants were required to appeal each zoning ordinance. *Id.* at 450-52. Specifically, we stated that "the Council's action approving [rezoning application] A-9900 was 'an order or action of an administrative agency' that was administratively distinct from its action approving [rezoning application] A-9901." *Id.* at 450.

Here, we find that CR-72-2019 and CR-98-2019 are two administratively distinct actions of the Council. CR-72-2019 described and approved the Council's plan to initiate a minor amendment to the 2010 *Historic Sites and Districts Plan* to evaluate the Historic Designation status of the Old Marlboro High School and Old Marlboro Primary School. CR-98-2019, however, approved the Council's decision to remove the Historic Site designations from the two former schools. While the two resolutions are certainly related and concern the same properties, they are nonetheless, distinct actions of the Council.

In its reply brief, the Town argues that it could not have appealed CR-72-2019 without first exhausting all available administrative remedies. The Town posits that it had to wait until CR-98-2019 was adopted in order to appeal CR-72-2019. The Town

further contends that the "constitutional exception" to the administrative exhaustion doctrine, as detailed in *Harbor Island Marina, Inc. v. Board of County Commissioners of Calvert County*, 286 Md. 303, 308 (1979), does not apply, and thus the Town was required to exhaust its administrative remedies before seeking review of CR-72-2019. The Town states that "it did exhaust its administrative remedies" and that "the exhaustion of administrative remedies doctrine applies, and the Town could not properly bring this petition for judicial review matter [sic] until a final decision had been rendered with the passage of CR-98-2019."

The Town does not explain, however, what remedies it was required to pursue and exhaust before seeking judicial review of CR-72-2019.[4] Because the Town does not point to any administrative remedy it was required to pursue pursuant to the RDA or the Prince George's County Code before seeking judicial review of CR-72-2019, we find that the Town has not properly elucidated the argument. *See* Md. Rule 8-504(a)(6). We, thus, decline to rule on the issue.

Here, the Town did not file a petition for judicial review within 30 days of CR-72-2019 becoming final on July 23, 2019. Instead, the Town filed a Petition for Judicial Review of CR-98-2019 on December 17, 2019. We determine that, because CR-72-2019

[4] Rule 8-504 states that a party's brief must contain "[a]rgument in support of the party's position on each issue" and, if a party does not comply with this Rule, allows this Court to "dismiss the appeal or make any other appropriate order with respect to the case." Md. Rule 8-504(a)(6), (c). As stated by this Court in *Silver v. Greater Baltimore Medical Center, Inc.*, "[a] single sentence is insufficient to satisfy [Rule 8-504(a)(6)]'s requirement." 248 Md. App. 666, 688 n.5 (2020).

was a final decision of the Council and the Town failed to appeal CR-72-2019 within 30 days, the Town forfeited its right to appeal any procedural deficiencies in the resolution.

II. THE TOWN DID NOT ADEQUATELY CHALLENGE CR-98-2019.

The Town argues that the decision to adopt CR-98-2019 was "arbitrary, capricious, unreasonable, and made on unlawful procedure" because CR-72-2019 did not properly set forth the amendment's purpose and scope. The Town's argument that the approval of CR-98-2019 was arbitrary and capricious is based exclusively on alleged deficiencies with CR-72-2019. Because we find that the Town did not properly appeal CR-72-2019, the Town's argument is inapposite. The Town cannot circumvent the 30-day appeal requirement by bringing an appeal of CR-72-2019 through CR-98-2019.

The circuit court found that the Council's decision to approve CR-72-2019 and CR-98-2019 was supported by substantial evidence:

> [THE COURT]: The adoption of County Resolution 72-2019, the initiating resolution, and CR-98-2019, the resolution approving the minor amendment, was not impulsive, random, or based on an individual preference, and such adoptions were conducted under lawful and statutory authority. They were subject to public notice and a deliberative process that is required under the law, further noting that substantial evidence test remains the ultimate consideration on judicial review and does not involve reweighing of the evidence that went before the Council. This Council finds the . . . District Council decision was . . . supported by substantial evidence in the record. **[E. 46]**

The Town did not make any argument that CR-98-2019 was arbitrary and capricious independent of the alleged defects in CR-72-2019, therefore we need not rule on whether the Council's decision to adopt CR-98-2019 was supported by substantial

evidence. *See DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."). CR-72-2019 and CR-98-2019 were two distinct administrative actions of the Council concerning the same properties. The Town had 30 days after July 23, 2019 to file an appeal of CR-72-2019 but did not file its appeal until December 17, 2019. Thus, the Town forfeited its right to judicial review of CR-72-2019. Accordingly, we affirm the ruling of the circuit court.

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