Circuit Court for Prince George's County
Case No. CAL16-30078

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 809

September Term, 2017

DAVONA GRANT, *et al.*

v.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY sitting as the DISTRICT COUNCIL, *et al.*

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 3, 2018

Wal-Mart wants to turn its store in the Woodyard Crossing Shopping Center into a Wal-Mart Superstore. To complete this expansion, Wal-Mart needs a special exception and a variance. Wal-Mart requested both from the District Council of Prince George's County, which referred the matter to a Zoning Hearing Examiner who conducted extensive hearings and recommended denial of both the special exception and the variance. The Prince George's County Council, sitting as the District Council, disagreed with the Hearing Examiner, conducted its own factfinding, and approved both the special exception and the variance. Appellants, Davona Grant and other local residents, argue that the District Council was required to exercise only appellate review over these zoning matters, and therefore erred by conducting its own factfinding. Grant argues further that the District Council violated the Open Meetings Act, that its findings were not supported by substantial evidence, and that it applied the wrong legal standard to the variance analysis.

We hold that the District Council applied the wrong legal standard and so we remand to allow the District Council to review under the correct standard.

BACKGROUND

The Woodyard Crossing Wal-Mart was built in 2000. In 2014, Wal-Mart decided to expand the store into a Wal-Mart Superstore by enlarging the existing 134,241 square foot building by 37,393 square feet, and adding a grocery store and outdoor garden center. Combining these new uses with the existing general merchandise store is permitted in the

zoning district where Wal-Mart is located so long as the applicant obtains a special exception.[1] Prince George's County Code ("PGCC") § 27-348.02.

In addition to a special exception, Wal-Mart's plans also required it to obtain a variance to the Zoning Code's setback requirements. PGCC § 27-348.02(a)(5). When the existing Wal-Mart was built in 2000, the zoning code only required a 50 foot setback from other properties. The zoning code was amended in 2002 to increase the setback distance to 100 feet, and parts of the existing building (not the expansion) are now within that increased setback distance. Because the existing store extends into the 100 foot setback, Wal-Mart needs a variance from the setback requirement to be eligible for a special exception.

Wal-Mart applied for both the special exception and the variance. Pursuant to PGCC § 27-312, the Planning Board assigned the case to a Hearing Examiner, who took evidence and held hearings on the proposed development. The Hearing Examiner found Wal-Mart's proposal deficient in several regards, including that the expansion created a flood risk for nearby residential properties and that Wal-Mart had not proven its need for a special exception or for a variance. As a result, the Hearing Examiner recommended disapproval of both. The Prince George's County Council, sitting as the District Council, voted to take the case to make a final decision.

The District Council held a hearing, at which it voted to reject the Hearing Examiner's recommended findings and approve the application. The very next day, the

[1] The property is in a Commercial Shopping Center (C-S-C) Zone, a zone which permits all three of these uses individually, but requires a special exception to combine them. PGCC §§ 27-461; 27-348.

District Council produced and approved a 51-page written decision, adopting new findings of fact and granting Wal-Mart's application for a special exception and a variance. In its written decision, the District Council extended no deference of any sort to the findings of the Hearing Examiner, and did not discuss the findings of the Hearing Examiner in conducting its own factfinding, parts of which were in direct contradiction to the findings of the Hearing Examiner.

A group of neighbors—including Davona Grant, whose property adjoins the Wal-Mart property—appealed the District Council's decision to the Circuit Court for Prince George's County. The circuit court affirmed the District Council. Grant noted this timely appeal.

STANDARD OF REVIEW

When reviewing the decision of an administrative agency, this Court "looks through the circuit court's … decision[] … and evaluates the decision of the agency." *People's Counsel for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007). Therefore, we are tasked with looking through the circuit court's decision to determine whether the District Council erred. We review the administrative body's factual findings for whether they are supported by substantial evidence in the record and its legal conclusions without deference. *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island*, 425 Md. 482, 514 n.15 (2012). We do, however, give deference to the legal conclusions of an agency interpreting its own ordinances. *Surina*, 400 Md. at 682. We shall discuss the standard of review in further depth as needed.

DISCUSSION

We have reordered and consolidated Grant's issues on appeal. We first address Grant's argument that the District Council, in approving the special exception and variance, violated the Open Meetings Act. We next turn to Grant's argument that the District Council had only appellate jurisdiction, not original jurisdiction, over the special exception and variance, and it was thus required to afford deference to the Hearing Examiner's findings of fact, rather than adopting its own factual findings. Next, we evaluate Grant's argument that the District Council, if it did in fact have original jurisdiction, lacked substantial evidence to support two of the required findings for a special exception: that the site had sufficient street frontage, and that the exterior architectural features of the building enhanced the surrounding areas. Finally, we consider whether the District Council used the correct legal analysis for the variance application, which was a prerequisite to the District Council granting the special exception.[2]

[2] The District Council argues that Grant lacks standing to contest the award of the variance and special exception. This question is resolved by the Regional District Act, which states that judicial review of a final decision of the District Council may be sought by any person in the county who is aggrieved. Md. Code, Land Use ("LU") § 22-407. The District Council concedes that Grant and the other appellants are persons in the county but asserts that at 1.7 *driving* miles, Grant's property is too far away from the Wal-Mart for her to be aggrieved. Driving miles, however, aren't the correct measure. *Cty. Council of Prince George's Cty. v. Billings*, 420 Md. 84, 98 (2011) ("In actions for judicial review of administrative land use decisions, an adjoining, confronting or nearby property owner is deemed, *prima facie*, a person aggrieved." (cleaned up)). Grant's property abuts Wal-Mart's and that is sufficient for both Grant and as a result, the other appellants as well. *See Billings*, 420 Md. 84, 97 n.12 ("where there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing." (cleaned up)). It does not matter, nor should it, that the roads don't connect the properties directly and that Grant must drive around the block to get to the Wal-Mart.

–Continued–

I. OPEN MEETINGS ACT

The Open Meetings Act requires that "meetings"[3] of a "quorum"[4] of a covered "public body"[5] to "conduct public business"[6] must be advertised in advance so as to give

The District Council also makes a veiled assertion that Grant's lack of participation at any of the prior hearings deprives her of standing. This argument has no traction. *Billings*, cited in the paragraph above, did contain a footnote that under Maryland administrative law a person must show both that they were aggrieved and that they were "a party to the administrative proceedings." *Billings*, 420 Md. at 97 n.10. Just last year, however, the Court of Appeals overruled this aspect of the *Billings* opinion, stating that LU § 22-407 "does not require participation to establish standing." *Cty. Council of Prince George's Cty. v. Chaney Enterprises Ltd. P'ship*, 454 Md. 514, 535 (2017), *reconsideration denied* (Aug. 24, 2017). As a result, Grant's lack of participation—if true—is not a bar to her standing.

[3] Md. Code, Gen. Provisions ("GP") § 3-101(g) (defining "meet[ing]" as "conven[ing] a quorum of a public body to consider or transact public business."); OFFICE OF THE ATTORNEY GENERAL, OPEN MEETINGS ACT MANUAL 1-7 (Dec. 2016) (hereinafter "OPEN MEETINGS MANUAL"), https://perma.cc/9HP6-E5EW; *City of Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 321 (2006).

[4] GP § 3-101(k) (defining a "quorum" as "a majority of the members of a public body or … the number of members that the law requires."); OPEN MEETINGS MANUAL 1-7; *Ajamian v. Montgomery County*, 99 Md. App. 665, 675 (1994).

[5] GP § 3-101(h) (defining public body); OPEN MEETINGS MANUAL 1-1; *Carmel Realty*, 395 Md. at 324.

[6] GP § 3-101(g) (limiting the applicability of the act to a body conducting public business); OPEN MEETINGS MANUAL 1-12; *Carmel Realty*, 395 Md. at 321-24.

"reasonable notice,"[7] an "agenda"[8] must be published, and the meeting must be "open"[9] to the public unless, for very limited reasons, it is permitted to be "closed."[10] Each of these terms has a specific statutory definition and there is a body of case law applying each term in a variety of factual contexts.

Our appellate review of whether an Open Meetings Act violation occurred is unique as compared to the rest of this Opinion. As discussed *supra*, when reviewing the actions of an administrative agency, we look directly to the decision of the agency itself. Here, however, the District Council obviously would not have made a determination whether its own actions were violating the Open Meetings Act—that discussion appeared exclusively at the circuit court level. On this issue, we therefore evaluate the *circuit court's decision* as to whether the Open Meetings Act was violated by the District Council, and do so through the lens of reviewing a trial court's application of a state statute: *de novo* review. *See Town of Oxford v. Koste*, 204 Md. App. 578, 585 (2012) (noting that an interpretation of Maryland statutory law by a trial court is reviewed *de novo* by an appellate court). In this

[7] GP § 3-102(c) ("[T]he public [shall] be provided with adequate notice of the time and location of meetings."); OPEN MEETINGS MANUAL 2-2; *Cmty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 195 (2003).

[8] GP § 3-302.1(a)(1) ("[B]efore meeting in an open session, a public body shall make available to the public an agenda."); OPEN MEETINGS MANUAL 2-5.

[9] GP § 3-303(a) ("Whenever a public body meets in open session, the general public is entitled to attend."); OPEN MEETINGS MANUAL 3-1; *Tuzeer v. Yim, LLC*, 201 Md. App. 443, 471 (2011).

[10] GP § 3-305(b) (listing the only matters a public body may meet to discuss in a closed session); OPEN MEETINGS MANUAL 4-1; *Cmty. & Labor United*, 377 Md. at 195.

review, we presume that the District Council did not violate the Open Meetings Act and the burden falls to Grant to prove a violation. *Tuzeer v. Yim, LLC*, 201 Md. App. 443, 465 (2011). Further, on review, "a court may void an action violative of the Open Meetings Act only when the aggrieved party demonstrates that a government body 'willfully failed to comply' with the requirements of the Act." *Id*. at 471 n.15.

Grant's challenge under the Open Meetings Act fails because she did not produce any evidence that a violation occurred. Instead, Grant's theory relies exclusively on inferences derived from two facts:

- On July 18, at an open meeting, the District Council gave tentative approval for the special exception and variance and asked staff to prepare an appropriate order; and

- On July 19, again at an open meeting, the District Council voted to approve a 51-page order granting the special exception and variance.

Grant doesn't object to either of those two open meetings, nor could she. Rather, she infers from the conduct of the two public meetings that a secret, undisclosed third meeting occurred between the meeting of July 18 and the meeting of July 19. There is, however, no evidence in the record that suggests that such a meeting occurred, and Grant did not introduce any testimony before the circuit court to support her contentions. Md. Code State Gov't ("SG") § 10-222(g)(2) (in judicial review, "[a] party may offer testimony on alleged irregularities in procedure before the [agency] that do not appear on the record."); *Md. Dep't of Agric. v. Hammond*, 170 Md. App. 344, 362 n.10 (2006).

It could have happened as Grant suggests. More likely, however, the staff prepared a draft opinion and showed it separately to individual members of the District Council

before the July 19 meeting. If that's what happened, a quorum never met,[11] no public business was conducted,[12] and the Open Meetings Act was not triggered. But even if this were not so, we would not, in the absence of any evidence to the contrary, presume noncompliance by the District Council. Instead, Maryland law presumes that public officials act in compliance with the law. *Anne Arundel County v. Halle Dev., Inc.*, 408 Md. 539, 565 (2009). We hold, therefore, that Grant has failed to prove any violation of the Open Meetings Act.

II. ORIGINAL AND APPELLATE JURISDICTION

The crux of this appeal concerns whether the common law recognizing the District Council's original jurisdiction when reviewing the factfinding of a Hearing Examiner has been overruled by the new wave of Prince George's County land use litigation. Grant and the District Council agree that in this case, the District Council afforded no deference to the factfinding of the Hearing Examiner. Grant argues that this was error, and that under the Court of Appeals's decision in *County Council of Prince George's County v. Zimmer Dev. Co.*, 444 Md. 490 (2015), the District Council sits in an appellate capacity over decisions of the Hearing Examiner, and thus was required to give substantial deference to the Hearing Examiner's factfinding. The District Council, on the other hand, argues that *Zimmer* did not overrule prior common law holding that the District Council exercises original jurisdiction over special exceptions and variances, and thus it was not required to extend any deference to the Hearing Examiner. The level of deference the District Council

[11] *Supra*, note 4.
[12] *Supra*, note 6.

owes the Hearing Examiner is a legal question that we review without deference to either the District Council or to the circuit court. *K. Hovnanian*, 425 Md. at 514.

The pre-*Zimmer* understanding on this issue comes from *County Council of Prince George's County v. Billings*, which held that when the District Council reviews the zoning decisions of a Hearing Examiner, it is exercising original jurisdiction and thus is allowed to conduct its own factfinding. 420 Md. 84, 105-08 (2011). In analyzing the case before us, we must determine whether *Zimmer* said anything that would change this understanding.

The *Zimmer* opinion divided land use cases from Prince George's County into two categories: (1) actions over which the District Council exercises appellate review and (2) actions over which the District Council exercises original review. Since *Zimmer*, a cottage industry has arisen to try and determine, for each particular land use action of the District Council, on which side of the review line a matter falls. Thus, recently, in *Cty. Council of Prince George's Cty. v. FCW Justice, Inc.* we held that the District Council exercises appellate jurisdiction when it reviews Planning Board decisions related to detailed site plan approval. 238 Md. App. 641, 668-676 (2018). Similarly, in *Cty. Council of Prince George's Cty. v. Convenience & Dollar Mkt./Eagle Mgmt. Co.* we held that the District Council exercises appellate jurisdiction when it reviews Planning Board decisions related to nonconforming use certification. 238 Md. App. 613, 632-640 (2018).

We hold that *Zimmer* did not alter the analysis of *Billings*. *First*, the text of the Prince George's County Code provides that the District Council exercises original jurisdiction over zoning decisions. PGCC § 27-132(f)(1) ("In … review[ing] a decision

made by the Zoning Hearing Examiner ... the Council shall exercise original jurisdiction."); *see also Billings*, 420 Md. at 105-08 (discussing PGCC § 27-132(f)). This language is not ambiguous and there is nothing in *Zimmer* to suggest that the Court of Appeals has changed its reading of the text. *Second*, *Zimmer* held that certain sections of the Maryland Code's Land Use Article specifically overrode the County Code's grant of original jurisdiction to the District Council for planning matters and actions of the Planning Board. *Zimmer* at 444 Md. at 535 (citing LU §§ 20-202; 25-210). Critically, however, there is no analogous state statute that would override the County Code in the context of zoning matters before a Hearing Examiner. *Third*, and more broadly, *Zimmer* purposefully and painstakingly drew a distinction between *planning* cases before the Planning Board (the focus of the *Zimmer* holding) and *zoning* actions that would be carried out by a Hearing Examiner. *Zimmer* at 444 Md. at 505-24 (devoting several sections, including Section I.B "Zoning and Planning Distinguished," to distinguishing the two functions for the purposes of determining the District Council's jurisdiction). The matter at hand clearly concerns zoning, and therefore is unchanged by the *Zimmer* decision.

To summarize, we read *Zimmer* to affect only the District Council's jurisdiction in planning cases and cases before the Planning Board, and to leave unchanged the Council's original jurisdiction in the zoning context when a case is before a Hearing Examiner.[13] We,

[13] Part of Grant's argument is that it would be anomalous for a Hearing Examiner to take evidence but make only non-binding recommendations to another body, in this case, the District Council. We don't think it is anomalous at all. In fact, there are many places in Maryland law in which preliminary factfinding is conducted by one entity, but another entity retains original jurisdiction to make the determination. For example, circuit courts routinely refer many family law issues to magistrates, who are tasked with holding

therefore, hold that the District Council properly exercised original jurisdiction, and was not required to afford any deference to the factfinding of the Hearing Examiner.

III. THE SPECIAL EXCEPTION

Grant proceeds to argue that, even if we find that the District Council properly exercised original jurisdiction over the special exception and the variance, the District Council erred both factually and legally in granting both. We will begin with discussing the special exception. Grant argues that the District Council erred with regards to two findings it was required to make in granting the special exception under PGCC § 27-348.02(a): *first*, that the expanded Wal-Mart would have sufficient frontage onto an arterial road; and *second*, that the exterior architecture of the expanded Wal-Mart sufficiently conformed with the surrounding architecture.

A. Frontage onto an Arterial Roadway

First, Grant argues that the District Council erred in determining that the property has "frontage on and direct vehicular access to an existing arterial roadway," as required for a special exception under PGCC § 27-348.02(a)(1). The District Council found that

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hearings, and making findings of fact and recommendations to the circuit court. Md. Rule 9-208. The magistrate's report, however, is just that: a recommendation, and the final decision—and original jurisdiction—still rests with the circuit court. *O'Brien v. O'Brien*, 367 Md. 547, 554-55 (2002). Similarly, the Maryland Constitution grants original jurisdiction in legislative districting cases to the Court of Appeals. Md. Const., art. II, § 5. Customarily, the Court of Appeals appoints a special master (always a retired judge of the Court) to hold hearings and make recommended findings. *See In re 2012 Legislative Districting*, 436 Md. 121, 129 (2013) (discussing the appointment of a special master); Robert A. Zarnoch, *Surviving the Political Thicket: The Maryland Redistricting Experience*, 33 MD. BAR. J. 16 (2000). Obviously, this practice does not undermine the Court of Appeals's original jurisdiction. Here, the Hearing Examiner's role is similar. This argument, then, is not availing for Grant.

because the Wal-Mart is located in a shopping center, and the shopping center has access and frontage onto Woodyard Road, an arterial road, the shared frontage was sufficient. Grant argues that Wal-Mart could not claim the shopping center's frontage as its own, and that Wal-Mart requires an easement in perpetuity over the access road to Woodyard Road to enjoy sufficient frontage.

The County Code requires that a department or variety store combined with a food and beverage store, as this Wal-Mart Superstore will be, must have "frontage on and direct vehicular access to an existing arterial roadway." PGCC §27-348.02(a)(1). In the case of an "integrated shopping center," however, that requirement may be satisfied by providing a joint parking lot. PGCC §27-572(a) (authorizing use of a joint parking lot for, among others, integrated shopping centers); PGCC §27-107.01(a)(208) (defining an integrated shopping center as "[a] group of (three (3) or more) retail stores planned and developed under a uniform development scheme and served by common and immediate off-street parking and loading facilities."). The District Council's determination—that the proposed Wal-Mart Superstore is part of Woodyard Crossing, that Woodyard Crossing is an integrated shopping center entitled to use joint parking, and that the existing joint parking lot has access to Woodyard Road that satisfies the frontage and access requirements—is legally correct and was supported by substantial evidence.

B. Exterior Architecture

Grant also argues that the District Council did not have sufficient evidence from which to find that the exterior architecture of the Wal-Mart would "enhance the site's architectural compatibility with surrounding commercial and residential areas" as is

required by PGCC § 27-348.02(a)(9). We disagree. The District Council found that the proposed expansion would conform to and enhance the existing architecture of the shopping center. Wal-Mart presented extensive evidence of its plans to conform to the surrounding commercial development of that shopping center. It also presented plans to use walls, bushes, and trees to shield and screen the Wal-Mart from the nearby residential areas. Further, as the exterior architecture of the site is already that of a Wal-Mart, we have trouble envisioning how the expansion's exterior architecture would not conform as it previously had. The evidence showed that the expansion would conform to and enhance the existing architecture of the shopping center.

Therefore, we hold there was sufficient evidence in the record from which the District Council could find that Wal-Mart complied with both the frontage and architectural requirements of the special exception.

IV. THE VARIANCE

Finally, there is the question of the District Council's granting of a variance from the setback requirement. As described above, when the original Wal-Mart was built in 2000, the Prince George's County Code required a 50 foot setback but 2002 amendments increased the requirement to 100 feet. If no work had been undertaken, the existing Wal-Mart would have been out of compliance with the Code, but grandfathered in and allowed to continue in its nonconformance. PGCC § 27-384. New construction, however, regardless of its impact on the building's distance from the setback, requires that any

grandfathered nonconformance be brought into compliance.[14] PGCC § 27-384(a)(5). Thus, Wal-Mart either needed to move the original store or required a variance from the setback requirement.[15]

Recognizing this, Wal-Mart applied for a variance from the setback. The District Council is authorized to grant a variance only if it finds that:

> (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
>
> (2) The strict application of [the Zoning Code] will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
>
> (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

PGCC § 27-230(a). The District Council found that the requested variance met all three elements, and approved the variance. In this Court, Grant contests the District Council's findings on both the first and second elements.

A. Uniqueness

The first element of the variance analysis asks whether the subject property "has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or

[14] Before the circuit court, Wal-Mart argued that even after the expansion its presence within the setback should still be grandfathered in. In this Court, Wal-Mart has wisely abandoned this theory.

[15] Furthermore, because compliance with the setback is required to qualify for a special exception, Wal-Mart also required a variance to qualify for the special exception. PGCC § 27-348.02(a)(5)(A).

other extraordinary situations or conditions." PGCC § 27-230(a)(1). This statutory formulation is synonymous with the characteristic of being "unique." *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995) (noting that the requirement of "uniqueness" for a variance has been long standing in various Maryland statutes and common law). The District Council found that that the *building* was unique, stating, "Wal-Mart's existing 134,241 square foot building has an inherent characteristic not shared by other property in the area, and that uniqueness results in an extraordinary impact upon it."

Grant argues that the District Council's analysis was legally incorrect, because the uniqueness element requires that the *land* be unique, not the *improvements* to the land. Grant is correct: the uniqueness element "does not refer to the extent of improvements upon the property." *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994). Uniqueness instead concerns the "inherent characteristic[s]" of the property itself—"i.e., its shape, topography, sub-surface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties or other similar restrictions." *Trinity Assembly of God of Balt. City v. People's Counsel for Balt. County*, 407 Md. 53, 81 (2008) (cleaned up).[16]

We hold, therefore, that the District Council misunderstood and misapplied this first element of the variance test by only finding uniqueness in the existing building, not in the

[16] Uniqueness is also concerned with comparing the land to other properties: that is, "whether the effect of those [unusual] factors is unique *as compared to similarly situated properties*." *Dan's Mountain Wind Force v. Allegany County Bd. of Zoning Apps.*, 236 Md. App. 483, 498 (2018) (emphasis added). On remand, this too is a required part of the test. Our analysis, however, rests on the District Council's erroneous examination of the uniqueness of the Wal-Mart building and not the land on which it is situated.

land itself. We remand the matter on this ground, however, because the District Council did not, per se, find that the land is *not* unique, and thus more inquiry from the fact-finding body is necessary.

B. Practical Difficulty or Unnecessary Hardship

Grant also contests the District Council's finding that "[t]he strict application of [the Zoning Code] will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property." PGCC § 27-230(a)(2). Grant argues that Wal-Mart's need for a variance arises solely from a "self-imposed hardship," which they purport cannot, as a matter of law, constitute a "practical difficulty." Because we concluded in the previous section that the District Court's analysis of the uniqueness element was in error, we need not reach the question of practical difficulty. We only remind the District Council that on remand it must not only analyze whether this was a self-created hardship, but it must do so in the context of the ordinary three-part analysis for determining whether, without a variance, Wal-Mart will suffer a "practical difficulty:"

> (1) Whether compliance with the strict letter of the restrictions … would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> (2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and the public safety and welfare secured.

Montgomery County v. Rotwein, 169 Md. App. 716, 729-30 (2006).

V. CONCLUSION

To summarize, we hold that the actions of the District Council did not violate the Open Meetings Act and that because the District Council was deciding a matter from a Hearing Examiner, it properly exercised appellate jurisdiction. Having determined, however, that the District Council applied the wrong legal standard for evaluating whether Wal-Mart should receive a variance, we must remand the matter for further proceedings.

Specifically, we remand the case to the circuit court with instructions for it to vacate the order of the District Council granting a variance and remand the matter to the District Council for reconsideration under the correct legal standard. *Dan's Mountain Wind Force v. Allegany County Bd. of Zoning Apps.*, 236 Md. App. 483, 502 (2018). We order the matter remanded, as opposed to ordering reversal, after a thorough review of the existing record satisfies this Court that Wal-Mart met its burden of production to survive a motion to dismiss. *See* ARNOLD ROCHVARG, PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW § 17.4, 230 (2011) ("[A] court will reverse the agency's decision on [a] mixed question of law and fact only if the decision is not supported by substantial evidence, i.e., unreasonable in light of all the facts in the record."). In support of its variance application, Wal-Mart produced sufficient evidence of uniqueness, practical difficulty, and compliance with the General Plan or Master Plan. On remand, whether the District Council will allow Wal-Mart (or Grant, for that matter) to supplement the record, should it desire,

is a question for the District Council. And, once the record is closed, it is exclusively for the District Council to determine whether Wal-Mart satisfied its burden of persuasion to be granted a variance.

On the issue of the special exception, we find no error in the District Council's treatment and analysis of the substantive criteria necessary for a special exception and that Wal-Mart met its burden of production for a special exception. Because Wal-Mart needed the variance to meet the procedural requirements necessary to obtain a special exception, PGCC § 27-348.02(a)(5)(A), however, we are compelled to hold that the District Council erred in granting the special exception. Therefore, our remand to the circuit court also includes additional instructions for it to vacate the order of the District Council granting a special exception, and remand the matter to the District Council for further proceedings. If, on remand, the District Council finds that it is able to grant the variance under the correct legal standard, it may then also consider the special exception.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. THE CASE IS REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO VACATE THE DISTRICT COUNCIL'S APPROVAL OF A VARIANCE AND A SPECIAL EXCEPTION AND REMAND THE CASE TO THE DISTRICT COUNCIL FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-THIRD BY APPELLANTS, ONE-THIRD BY APPELLEE WAL-MART, AND ONE-THIRD BY PRINCE GEORGE'S COUNTY.