Circuit Court for Prince George's County
Case No. CAE16-25941

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2295

September Term, 2016

BERNARD EUGENE BROOKS

v.

PRINCE GEORGE'S COUNTY PLANNING BOARD, *et al.*

Meredith,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 20, 2018

This appeal arises out of a decision by the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission ("Board" or "Planning Board"), to approve a "departure from design standards" application of Two Farms, Inc. ("Two Farms") and Accent Homes, Inc. ("Accent Homes").[1] On June 24, 2016, appellant Bernard Eugene Brooks ("Brooks") filed a "Complaint for Declaratory Judgment or, in the Alternative, for a Writ of Mandamus" ("complaint") in the Circuit Court for Prince George's County asking the court to find that the Board's decision to grant the DDS was void, or, in the alternative, to issue a writ of mandamus compelling the Board to give "notice of final decision" on the application. On December 12, 2016, the circuit court granted appellees' motion to dismiss with prejudice. Brooks timely appealed to this Court and asks that we review the following issues,[2] which we have reworded and reordered as follows:

> 1. Whether Resolution No. 16-07 was a final, appealable decision of the Board, and if so, whether the Board's notice of the decision to Brooks dated February 18, 2016 commenced the thirty-day period for Brooks to appeal to the District Council.
>
> 2. Whether the Board's re-transmittal of Resolution No. 16-07 to the District Council on March 11, 2016 constituted a

[1] Unless specified, we refer to the Board, Two Farms, and Accent Homes, collectively, as "appellees."

[2] On appeal, Brooks asks that we review the first two issues we list regarding the finality and appealability of the Board's decision. Because we answer in the affirmative on the first issue, and neither party argues that the Board's re-transmittal of its resolution on March 11, 2016 constituted "a final, appealable decision," we need not address the second issue, specifically. We, however, have included a third, broader issue, which is necessary to our review of the circuit court's decision.

> final, appealable action and commenced the thirty-day period for Brooks to appeal to the District Council, even though the Board did not give Brooks notice that it retransmitted its resolution to the District Council?
>
> 3. Whether Brooks failed to exhaust all administrative remedies because he did not file an appeal of the Board's decision with the District Council prior to filing the complaint in the circuit court.

For reasons we explain below, we affirm the circuit court's decision on the grounds that Brooks failed to exhaust his administrative remedies under the zoning ordinances before filing his complaint in the circuit court.

BACKGROUND & PROCEDURAL HISTORY

Brooks owns real property on Moores Road, zoned for residential use, which abuts the western boundary of the tract of land at issue ("the Property"), which is zoned for commercial use. The zoning code permitted Two Farms to build a Royal Farms food and beverage store and gas station on the Property, subject to the County's approval. On October 23, 2015, Two Farms filed two applications with the Planning Board: (1) a detailed site plan ("DSP") application -- DSP-15012; and (2) a departure from design standards ("DDS") application -- DDS-632. Under the zoning code, a drive aisle leading to the loading space was required to be located at least fifty feet from residentially zoned property. In this case, however, because of the narrow shape of the property and limited options for locating a separate drive aisle, Two Farms submitted DDS-632, requesting a departure from the County Code to permit the drive aisle to be located less than fifty feet from Brooks's property.

On January 14, 2016, the Board held a public hearing on both DSP-15012 and DDS-632. Brooks appeared, after receiving notice as a person of record, and gave testimony in opposition to both applications. The Board, however, approved both applications at the end of the hearing. On February 4, 2016, the Board adopted its approvals of DSP-15012 and DDS-632 in the form of Resolution No. 16-06 (DSP-15012) and Resolution No. 16-07 (DDS-632), respectively. On February 10, 2016, Two Farms and Accent Homes filed "ethics affidavits" with the Clerk of the Prince George's County Council, sitting as the District Council ("the Council" or "the District Council") as required by § 5-835 of the General Provisions Article (GP) of the Maryland Code.[3] Under that statute, the District Council may not consider a DDS application until more than thirty days had passed since the required ethics affidavits have been filed with the Clerk. *See* § 5-835(c)(2).[4]

On February 18, 2016, the Planning Board mailed notices of its decision to approve[5] DSP-15012 and DDS-632 to all persons of record, including Brooks. With respect to DDS-632, the notice dated February 18, 2016 said the following:

> This is to advise you that on February 4, 2016 the above-referenced application was acted upon by the . . . Planning Board in accordance with the attached Resolution.
>
> Pursuant to Section 27-228.01, the Planning Board's decision will become final on March 19, 2016 (30 calendar days after

[3] We discuss GP § 5-835 in more detail below.

[4] Subsection (c)(2) provides that "[t]he affidavit shall be filed at least 30 calendar days before consideration of the application by the District Council." GP § 5-835(c)(2).

[5] The Board sent notice of each resolution separately, although the date on both notices was February 18, 2016.

> the date of the final notice) of the Planning Board's decision unless:
>
> 1. Within the 30 days, a written appeal has been filed with the District Council by the applicant or any Person of Record in the case; or
>
> 2. Within 30 days (or other period specified by Section 27-291), the District Council decides, on its own motion, to review the action of the Planning Board.

Attached to each notice was a copy of Resolution No. 16-07, adopting the Board's approval of DDS-632. The Board sent a similar notice applicable to the DSP to Brooks on the same date, which informed him of his right to appeal Resolution No. 16-06 within the same thirty day period. On March 15, 2016, Brooks filed an appeal of the Board's approval of the detailed site plan only.[6] He did not, however, appeal the Board's approval of the DDS application, which is the decision at issue in this case.

On March 21, 2016, the Clerk of the Council sent a notice to all persons of record stating that "on March 11, 2016, the Clerk of [the Council] officially received Planning Board's Resolution No. 16-07, in the matter of DDS-632." Further, the letter explained:

> Although Planning Board's transmittal letter to all persons of record regarding DDS-632 is dated February 18, 2016, the zoning application case file in the matter of DDS-632 was returned to the Planning Board as incomplete. This action was taken due to the omission of timely received public ethics affidavits . . . .

[6] The District Council denied Brooks's appeal of Resolution No. 16-06, adopting the Board's approval of the detailed site plan. On May 23, 2016, Brooks filed a petition for judicial review in the Circuit Court for Prince George's County, which ultimately affirmed the District Council's final decision. Brooks did not appeal the circuit court's decision in that case.

> Please be further advised that DDS-632 will be placed on the March 28, 2016[] District Council Zoning Agenda as a *Pending Finality* item. The District Council's *review period* will end on April 11, 2016.

On April 14, 2016, the Council issued a memorandum, which was sent to all persons of record, stating that no persons of record had filed an appeal of the Board's decision to approve DDS-632, the Council had not elected to review the application, and "[t]herefore, the Planning Board's decision stands final."

On May 20, 2016, Brooks, through his newly hired attorney, sent a letter to the Board asserting that "the appeal period for any challenge to DDS-632 has not yet begun" because the Board did not provide additional notice to Brooks of the Board's retransmission of its decision to the District Council on March 11, 2016. Brooks requested that "the Planning Board send its traditional notice letter confirming that the Planning Board has submitted all of the required documents to the District Council and that the decision will become final 30 days after the new final notice." In a letter dated June 1, 2016, the Planning Board's principal counsel responded that "[t]he final action of the Planning Board on the DDS was mailed to the parties of record on February 18, 2016, and the appeal period expired on March 19, 2016." Further, the letter added that, "[w]ith regard to the review period provided to the District Council, the Clerk of the Council accepted the transmittal of the subject case on March 11, 2016. It was placed on the March 29, 2016 . . . agenda for Pending Finality and no action was taken . . . ." Finally, the letter concluded,

"The case is not currently before the Planning Board, and the Board has no further action to take on the matter."

On June 27, 2016, Brooks filed his complaint in the circuit court for declaratory relief and a writ of mandamus. Appellees responded, on August 17, 2016, with a "Joint Motion to Dismiss Complaint, With Prejudice, For Lack of Jurisdiction and Failure to State a Claim Upon Which Relief May be Granted." After oral argument on December 2, 2016, the circuit court entered an order dated December 12, 2016 dismissing the complaint with prejudice. We discuss additional facts below as they become relevant.

DISCUSSION

I. Standard of Review

Our appellate review of the circuit court's decision to grant a motion to dismiss is focused only on "whether the trial court was legally correct." *See 1000 Friends of Md. v. Ehrlich*, 170 Md. App. 538, 545 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)) (Internal quotation marks omitted). In so doing, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Id.* Accordingly, we review the circuit court's decision to grant a motion to dismiss -- including a dismissal based on the complainant's failure to exhaust all administrative remedies -- *de novo*. *See Montgomery pres. Inc. v. Montgomery Cnty. Planning Bd. of Md.--Nat'l Capital Park & Planning Comm'n*, 197 Md. App. 388, 392-93 (2011), *aff'd*, 424 Md. 367 (2012) (citing *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005)).

II. The Circuit Court Did Not Err in Dismissing Appellant's "Complaint for Declaratory Judgment or, in the Alternative, for a Writ of Mandamus."

Brooks argues on appeal that "the Planning Board . . . never issued in this case a decision that is subject to review," and therefore, Brooks never had the opportunity to appeal the Board's decision. He asserts that "[the Board's] notice of February 18, 2016 regarding DDS-632 was not a final, appealable decision because [Two Farms and Accent Homes] and the Planning Board made procedural errors." The broader issue in this case, is whether Brooks failed to exhaust his administrative remedies prior to filing his complaint in the circuit court. Within that issue are two narrower questions: (1) Whether the Board's February 4, 2016 decision -- Resolution No. 16-07 -- was a final, appealable decision; and (2) if so, whether the thirty-day period for Brooks to appeal the Board's decision commenced upon notice to Brooks on February 18, 2016. We note, preliminarily, that Brooks does not contend that he timely filed an appeal of Resolution No. 16-07 with the District Council; rather, Brooks argues that the time for him to appeal the Board's February 6, 2016 decision has not yet expired and that he can file an appeal once the Board sends him additional notice.

A. Prince George's County Zoning Law and Administrative Procedure

As the Court of Appeals explained in *Cty. Council of Prince George's Cty. v. Billings*, the zoning provisions of the Prince George's County Code ("ZO") provide a "detailed statutory scheme," and "the DDS procedure is littered with 'shalls'" regarding its delineation of the administrative decision-making process. 420 Md. 84, 103-04 (2011). For instance, "[a]ll requests for a Departure from Design Standards shall be in the form of

an application filed with the Planning Board," after which the Board "shall hold a public hearing on the matter." ZO § 27-239.01(b)(1)-(2).

Further, "[a]fter the close of the record, the Planning Board shall take action on the request," and "[t]he decision . . . shall be based on the record, and shall be embodied in a resolution." ZO § 27-239.01(b)(6)(A) (Emphasis added). ZO § 27-239.01 provides the required content for the Board's findings supporting its decision, including that "[t]he purposes of [the] Subtitle will be equally well or better served by the applicant's proposal," and that "[t]he departure is necessary in order to alleviate circumstances which are unique to the site . . . ." ZO § 27-239.01(b)(7)(i), (iii). Finally, "[t]he Planning Board shall give written notice of its decision to all persons of record and to the District Council." § 27-239.01(b)(6)(B). Importantly, ZO § 27-228.02(a) provides:

> The Planning Board in each case shall give notice of its final decision within seven (7) days by sending a copy of the resolution . . . to each person of record by first-class mail, postage prepaid. The date of the notice shall be stated in the mailing."

(Emphasis added).

Pursuant to the zoning provisions, "a person of record may file an appeal from a final Planning Board decision to the District Council, or the Council on its own motion may elect to review a Board decision." ZO § 27-228.01(a). The decisions of the Board that may be appealed under this section include its approval of "Departures from Design Standards." *See id.* DDS applications, ZO § 27-239.01(b)(9)(A) states the following:

> The Planning Board's decision may be appealed to the District Council upon petition of any person of record. **The petition**

> **shall be filed with the Clerk of the Council within thirty (30) calendar days after the date of the notice of the Planning Board's decision.** The District Council may vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice.

(Emphasis added). Accordingly, "[t]he statute governing a Departure from Design Standards request allows for such a request to arrive in the District Council in two ways." *Billings,* 420 Md. at 103-04 (discussing the same procedural steps under circumstances in which "the review was triggered by the District Council's own motion"). Either a person of record appeals the Board's decision to the District Council, or "[t]he District Council may vote to review the Planning Board's decision." ZO § 27-239.01(b)(9)(A). Otherwise, the Council does not make any decision on the matter and the decision of the Board becomes the final administrative decision.

If a person of record appeals the Board's decision, "[t]he Clerk of the Council shall notify the Planning Board," and "[w]ithin seven (7) days after receiving this notice, the Planning Board shall transmit to the District Council a copy of the file on the proposed [DDS]," as well as other evidence and materials from the record. *See* ZO § 27-239.01(b)(9)(B). Under subsection (b)(9)(C), the District Council "shall schedule[s] a public hearing on the appeal or review." *Id.* Upon the close of the hearing, the District Council has sixty days to "affirm, reverse, or modify the decision of the Planning Board," or effectively remand for further proceedings before the Board. *See* ZO § 27-239.01(b)(9)(D). Finally, if the District Council's review of the Board's decision is "triggered" by either an appeal filed by a person of record or by its own motion to review,

a person of record may file a petition for judicial review of the District Council's decision in the circuit court.[7] *See Billings*, 420 Md. at 100 (holding that a person of record need not file an appeal if the Council has already elected to review the application on its own).

B. The Delay Caused By the Board's Compliance With GP § 5-835 Did Not Invalidate Resolution No. 16-07 or Extend the Time for Brooks to Appeal the Board's Decision.

Brooks argues that the Board "never issued a final, appealable decision approving DDS-632 because it has never provided written notice of its resolution to persons of record more than thirty days after the applicant filed the ethics affidavits required by the Prince George's County ethics statute." He contends, therefore, that the circuit court erred by denying his request for a writ of mandamus compelling the Board to issue another notice of its decision to persons of record.

The term "ethics affidavit" refers to the required affidavit that applicants for a DDS must submit "[a]fter an application is filed," in which the applicant states that "during the 36-month period before the filing of the application and during the pendency of the application, the applicant has not made any payment to [a member of the District Council]" or "solicited any person or business entity to make a payment to [a member of the District Council]." *See* GP § 5-835(c). Further, the statute requires that the affidavit "be filed at

[7] See *Billings*, 420 Md. at 100 holding that a person of record may file a petition for judicial review in the circuit court of the final administrative action if the District Council elects to review the Board's decision, even if that person did not submit an appeal to the District Council.

least 30 calendar days before consideration of the application by the District Council." GP § 5-835(c)(2).

The Attorney General of Maryland has interpreted GP § 5-835(c)(1) to mean that the District Council is "not permit[ted] . . . to move forward with an application when the applicant has failed to provide the disclosures that might disqualify a [Council] member." *Public Ethics Law: Zoning & Planning--Regional Districts--Special Disclosure Provisions Relating to Prince George's County*, 100 Op. Att'y Gen. of Md. 55, 57 (2015) (hereinafter "Attorney General's Opinion").[8] Further, the opinion concludes that "the Council 'considers' a matter when, as a body, it convenes to hear testimony or deliberate on a matter, not merely when it convenes to render a decision." *Id.* Thus, the Attorney General concluded that the ethics affidavits must be filed thirty days before the District Council begins any stage of deliberation, including holding a public hearing on the DDS. Pursuant to the Attorney General's Opinion, the Executive Director of the Maryland State Ethics Commission advised the Clerk of the Council the following:

> [T]he District Council may not move forward with an application if the affidavit was not filed at least 30 days prior to the matter coming before the District Council. . . . [T]o ensure the application process proceeds in an orderly fashion and comports with the requirements of the Law, your office should not accept any applications that are transmitted to the

[8] The Attorney General provided a detailed analysis and review of the legislative history of the public ethics laws requiring disclosure of payments to Council members. The opinion explained that the laws "were enacted over twenty years ago in response to published reports that members of the District Council had received significant campaign contributions from the developers and other applicants who appeared before them." *Id.* at 55.

> District Council from the Planning Board . . . if the transmission does not contain the necessary affidavit, to include an indication that it was filed at least 30 days prior to your receipt of the transmission. If you receive an application which does not contain a timely-filed affidavit, **you are to return it to the appropriate entity with the direction to retransmit the application to your office 30 days after a proper affidavit has been filed**.

Letter from Michael W. Lord, Exec. Dir., Md. State Ethics Comm'n, to Redis C. Floyd, Clerk, Prince George's County Council (June 18, 2015).

Pursuant to the Ethics Commission's instructions and the Attorney General's Opinion interpreting GP § 5-835, the Clerk of the County Council returned to the Board Resolution No. 16-07 on February 18, 2016. The letter instructed, "Please resubmit DDS-632 . . . which will be in compliance 30 days after February 10, 2016, the date in which copies of affidavits were received." The Board complied with the District Council's request and resubmitted the same resolution to the District Council on March 11, 2016.

Brooks's primary contention relevant to the ethics affidavits is that the Board's approval of DDS-632 did not constitute a "final decision," because the Board's transmission of its decision on February 18, 2016 to the District Council was too early. Further, he asserts that the March 11, 2016 retransmission of the decision was not a "final decision," because the Board did not send to Brooks additional notice. Because the underlying issue is whether an appeal of the Board's decision to the Council was an available administrative remedy for Brooks upon his receipt of notice from the Board on February 18, 2016, we first resolve the "finality" and "appealability" of the Board's decision embodied in Resolution No. 16-07.

In determining whether an administrative decision is a "final" action of an administrative agency, our courts have focused primarily on a party's ability to petition for judicial review of an agency action in the circuit court. *See, e.g.*, *Willis v. Montgomery Cnty.*, 415 Md. 523, 549 (2010). Under those circumstances, the paramount question is whether the decision or action was the "consummation of the administrative process." *Md. Comm'n on Human Relations v. Baltimore Gas & Elec. Co.*, 296 Md. 46, 55 (1983) (quoting *Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 112-13 (1948)). "To be 'final,' the order or decision must dispose of the case by deciding all questions of law and fact and leave nothing further for the administrative body *to decide*." *Willis*, 415 Md. at 535 (Citation omitted) (Emphasis added). In discussing the circuit court's judicial review, the Court in *Dep't of Health & Mental Hygiene v. Shrieves* explained the difference between an administrative law judge's first-level findings and the agency's final order, reiterating that "it is the *final* order of the administrative agency that is subjected to deferential judicial review." 100 Md. App. 283, 296 (1994) (citing *Anderson v. Dep't of Pub. Safety & Corr. Servs.*, 330 Md. 187, 215 (1993)).

In this case, Brooks argues that the action at the first level of administrative decision-making never became "final" such that he was able to appeal the decision to the next and final level of administrative decision-making prior to filing a petition for judicial

review -- the District Council.[9] The zoning laws provided a detailed process for a person of record to appeal the Board's decision *prior to* the final administrative action on the matter even before the Board's decision became final. In fact, once the decision of the Board became "final," Brooks was no longer permitted to appeal to the District Council. As the Board's notice of February 18, 2016 explained, absent an appeal filed by a person of record or the Council's election to review the Board's action on its own, "the Planning Board's decision *will become final* on March 19, 2016 (30 calendar days after the date of the final notice) of the Planning Board's decision." Therefore, the focus of our first inquiry is whether the Board's resolution, which was adopted on February 4, 2016, was "final" in the sense that it was an appealable decision by a person of record once the Board issued notice of its decision on February 18, 2016.

The Board's decision-making process is outlined in the zoning ordinance, which indicates that the Board concludes its decision-making process by the adoption of its approval of a DDS application in the form of a resolution. Section 27-239.01(b)(6)(A) of the zoning code provides that, "[a]fter the close of the record, the Planning Board shall take action on the request," and "[t]he decision . . . shall be based on the record, and shall be **embodied in a resolution**." (Emphasis added). Further, § 27-228.02(a) states that "[t]he

[9] *See* Md. Code (2012), Land Use Art., § 22-407(a)(1) ("Judicial review of any final decision of the district council . . . may be requested by any person or entity that is aggrieved by the decision of the district council and is . . . [a] person in the county . . . .").

Planning Board in each case shall give notice of its **final decision** . . . by sending a copy of **the resolution** . . . to each person of record." (Emphasis added).

The Board's final act of decision-making is "embodied in a resolution." *See* ZO §§ 27-228.02(a), 27-239.01(b)(6)(A). Further, the zoning code plainly states that "[t]he Planning Board's decision may be appealed to the District Council upon petition of any person of record." ZO § 27-239.01(b)(9)(a). The Board, therefore, had no further decision-making responsibilities with regard to DDS-632 once it issued Resolution No. 16-07, which "le[ft] nothing further for the [Board] to decide." *See Willis, supra*, 415 Md. at 535. That task was complete on February 4, 2016. The Board's only remaining duty to persons of record was to provide them with notice of the decision, pursuant to ZO § 27-239.01(b)(6). We conclude that the Board's decision, which was embodied in Resolution No. 16-07, was the "consummation of the [Board's] administrative process," *see Baltimore Gas & Elec. Co.*, *supra*, 296 Md. at 55, and an appealable decision pursuant to ZO § 27-239.01(b)(9)(A).

With the appealability of the Board's decision established, the next question is when the timeline for Brooks to appeal the Board's decision to the District Council commenced. Neither party disputes that, pursuant to ZO § 27-228.02(a), the Board was required to "give notice of its final decision . . . by sending a copy of the resolution" to Brooks, as a person of record in the case. Brooks, however, contends that the provisions governing notice of the Board's decision required the Board to reissue a new notice to Brooks upon

retransmitting its decision to the District Council in order for the Board's final decision to be valid, and upon doing so, he was entitled to another thirty days to appeal. We disagree.

It is well-established that "[t]he first step" of our construction of a statute "is to look 'to the language of the statute, giving it its natural and ordinary meaning.'" *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 29 (2007) (quoting *Dep't of Human Res. v. Howard*, 397 Md. 353, 361 (2007) (Internal quotation marks omitted). "If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." *Walzer v. Osborne*, 395 Md. 563, 572 (2006) (quoting *Jones v. State*, 336 Md. 255, 261 (1994)).

Brooks emphasizes the text of ZO § 27-228.02(b), which states that "[a]n appeal shall be filed or a Council motion to review shall be made within thirty (30) days of the date of the notice of the Planning Board's decision." Brooks asserts that this provision, which pertains to all appeals from Planning Board decisions, generally, should be interpreted to require that the same "date of *the notice* of the Planning Board's decision" commences the thirty-day period for both a person of record to appeal and the District Council to elect to review the decision. Upon delaying the thirty day period for the Council to elect to review the decision, Brooks contends, the Board should have given notice to persons of record.

We note that, under the same section, the required method of notifying persons of record of Planning Board decisions is stated, specifically, as "within seven (7) days by sending a copy of the resolution or other Board action to each person of record by first-

class mail, postage prepaid." ZO § 27-228.02(a). The provision requires, specific to the notice to persons of record only, that "[t]he date of the notice shall be stated in the mailing." *Id.* There is no similar, separate provision within that section detailing the method and timeline for the issuance of the Board's notice to the District Council. *See* ZO § 27-228.02 *et seq.* We recognize that the ordinance's use of the terms "*the* notice" (emphasis added), however, does not provide any clarity for whether there is only one "date of the notice," or if each applicable thirty-day period for an appeal or for a motion to review, begins on the date of "the notice" that is sent to either a person of record or to the District Council, respectively. *See* ZO § 27-239.01(b)(6)(B) (requiring the Board to give notice "to all persons of record and to the District Council").

Nevertheless, we need not engage in an extensive discussion of statutory construction regarding the Council's particular timeline to elect to review the Board's decision, because nothing in the ordinance indicates that it could change a person of record's timeline to appeal. The effect, if any, of the date that ethics affidavits are filed on the Council's deadline to elect to review an application does not affect the outcome of this case. Instead, our decision turns on whether Brooks exhausted all applicable administrative remedies before filing his complaint in the circuit court. Our focus, therefore, is on whether Brooks, as a person of record, was entitled to appeal the Board's decision to the District Council upon receipt of the February 18, 2016 notice and whether he exercised that right within the time period applicable to a person of record.

Within the narrower Subdivision 4 -- pertaining, specifically, to applications for departures from design standards[10] -- the timeline for a person of record to appeal a decision of the Board is clear and unambiguous:

> The Planning Board's decision may be appealed to the District Council upon petition of any person of record. The petition shall be filed with the Clerk of the Council **within thirty (30) calendar days after the date of the notice** of the Planning Board's decision.

ZO § 27-239.01(b)(9)(A).

In this case, there is no dispute that the Board sent to Brooks notice of its decision to approve DDS-632 on February 18, 2016, and, consistent with § 27-228.02(a), included a copy of Resolution No. 16-07, which "embodied" the Board's final decision. *See* ZO § 27-239.01(b)(6). Pursuant to ZO § 27-228.02(a), the notice stated the date of the notice as February 18, 2016, and it provided, specifically, two conditions that could prevent the Board's decision from becoming final. Consistent with ZO § 27-239.01(b)(9)(A), one such condition was if, "[w]ithin the 30 days, a written appeal has been filed with the District Council by the applicant or any Person of Record in the case . . . ." Although the notice also included that the Council could decide to review the DDS application within thirty

[10] Within the provisions governing interpretation and construction of the zoning code, ZO § 27-108.01(a) states that "[w]ords and phrases are to be interpreted" such that "[t]he particular and specific control the general." ZO § 27-108.01(a)(1).

days, the Council's timeline and discretion to do so had nothing to do with Brooks's ability to appeal the Board's final decision.[11]

Brooks provides no support for his contention that he was entitled to additional notice of the Board's retransmission of its decision to the District Council on March 11, 2016 or that the failure to do so rendered its resolution void. He does not dispute that he received notice of the Board's decision on February 18, 2016 or that the Board sent the same Resolution No. 16-07 upon retransmitting it to the Council as it sent to Brooks. As we explained above, the Board's resolution left "nothing further for the [Board] to decide." *See Willis, supra,* 415 Md. at 535. The notice he received on February 18, 2016 properly notified him of the Board's decision and the effect of remaining silent during the thirty days following the date of the notice, ending on March 19, 2016. Brooks, however, did not exercise his right to appeal the Board's decision to the District Council.

[11] We note that, as the Court of Appeals held in *Billings*, the District Council's timeline to decide whether to review a particular application on its own motion affects a person of record's decision to appeal only to the extent that the Council's decision to review the application may relieve a person of record from the burden of filing a redundant appeal to the District Council prior to the expiration of the deadline to appeal. *See Billings,* 420 Md. at 103 ("Once the District Council grants the review, . . . our exhaustion requirement does not mandate that a party file a separate, redundant request for appeal."). A delay in the District Council's timeline, therefore, does not prejudice persons of record and, indeed, it would only benefit those who fail to file an appeal by leaving open the possibility that the Council may elect to review the application even after the expiration of appeals period. If so, the Council's decision to do so would revive a person of record's ability to petition for judicial review in the circuit court if the Council agrees with the Board's decision. *See id.* at 100.

C. Brooks Failed to Exhaust All Administrative Remedies Prior to Filing His Complaint in the Circuit Court.

In his complaint, Brooks asked the circuit court for a declaratory judgment finding Resolution No. 16-07 to be void, or to "[i]ssue a writ of mandamus compelling the Planning Board to issue a notice of final decision in the matter of DDS-632 . . . ." Two Farms and Accent Homes argued before the circuit court, however, that Brooks had failed to exhaust administrative remedies available to him prior to filing his action in the circuit court, and that the Board had issued notice to Brooks as required by the County's ordinances; therefore, they asserted that his complaint should be dismissed.

The Court of Appeals has explained many times that "[i]t is well settled in Maryland that when there is a special statutory remedy for a specific type of case, and that remedy is intended to be exclusive or primary, a party may not circumvent those [special statutory] proceedings by a declaratory judgment . . . action . . . ." *Sprenger*, 400 Md. 1, 24 (2007) (quoting *Utils., Inc. v. Washington Suburban Sanitary Comm'n*, 362 Md. 37, 45 (2000)). Further, in *Md. Reclamation v. Harford Cnty.*, the Court held that, "when administrative remedies exist in zoning cases, they must be exhausted before other actions, including requests for declaratory judgments, mandamus, and injunctive relief, may be brought." 382 Md. 348, 362 (2004) (citing *Josephson v. Cty. of Annapolis*, 353 Md. 667, 674–78 (1998)).

The Court of Appeals rationale in *Billings*, 420 Md. 84 -- applying the same zoning ordinances applicable to DDS decisions of the Board and Council -- is instructive. In *Billings*, neighbors filed a petition for judicial review in the circuit court of the Council's decision to "withdraw" after it elected to review the Board's decision approving a DDS

application pertaining to an expansion of a gas station. *See id.* at 88. There, the court held that, even though the neighbors had not filed an appeal with the District Council, they were not prevented from petitioning for judicial review once the District Council elected to review zoning decisions. The Court contrasted other situations in which the failure to utilize opportunities to appeal or be heard within an administrative body prior to seeking redress in the courts can be "fatal" to an aggrieved party's case:

> The decision not to file an administrative appeal may be fatal to judicial review, especially when administrative deadlines have lapsed. *See Public Service Comm'n. v. Wilson*, 389 Md. 27, 882 A.2d 849 (2005). In *Wilson*, an employee of the Public Service Commission ("PSC") was fired. By statute, an employee of the PSC could file "a written appeal of a disciplinary action with the head of the principal unit ... within 15 days after the employee receives notice[,]" and "on the grounds that the disciplinary action is illegal or unconstitutional." Md. Code (1993, 2004 Repl. Vol.), § 11–113(b) of the State Personnel and Pensions Article. Wilson did not file an administrative appeal, "opting instead to file in the pending court action [.]" *Wilson*, 389 Md. at 93, 882 A.2d at 887. The Court held that, because she "allowed the relevant time period to expire without following the statutory directive under § 11–113[,]" she failed to satisfy the exhaustion requirement and was unable to "seek alternative redress in the Circuit Court[.]" *Id. See also State Ret. & Pension Sys. of Md. v. Thompson*, 368 Md. 53, 792 A.2d 277, (2002) (dismissing mandamus action against State Retirement and Pension system because of retiree's failure to request an administrative hearing); *Brown v. Fire & Police Emples. Ret. Sys.*, 375 Md. 661, 826 A.2d 525 (2003) (dismissing action for declaratory relief against Retirement System because plaintiffs failed to first seek an administrative hearing).

Id. at 99-100.

The circumstances in *Billings* are analogous to those in the case before us, with one important difference – in *Billings*, the Council exercised its discretion to review the Board's decision before the deadline for persons of record to file an appeal. The Court explained, "When the District Council elects to review a decision, the filing of [an appeal with the District Council] no longer is necessary to guarantee review at the next administrative level." *Id.* at 102. Because of the language in the notice, "[a]ny citizen would be reasonable in interpreting the District Court's election to review the matter as relieving the citizen of any obligation to file a written appeal." *Id.* Critically, however, the Court defined the important facts in that case that distinguished it from more common circumstances in which a party who fails to take action is prevented from seeking redress of a final administrative action in the circuit court:

> As in the above cited cases, the Citizens had a statutory right to District Council review, provided that they file written exceptions within thirty days of the agency decisions. The road to judicial review, therefore, had to run through the District Council. If the Citizens' failure to file written exceptions had prevented the agency decisions from ever reaching the District Council, *their inaction would be a failure to exhaust administrative remedies* and they would be foreclosed from judicial review.

Id. at 100 (Emphasis added).

Finally, and most pertinent to the case before us, the *Billings* Court concluded:

> To be sure, a party to a zoning action who fails to file a written appeal, and hedges its bets on the Council's election to review the decision, runs the risk that the Council will not exercise that power. In that instance, judicial review of the agency decisions could be foreclosed for failure to take advantage of the right to appeal.

Id. at 103.

Regardless of when the period for Brooks to appeal the Board's decision commenced or ended, Brooks *never* filed an appeal with the District Council challenging the Board's approval of the departure from design standards at issue in this case.[12] Even after the District Council sent a memorandum to Brooks on April 14, 2016, notifying him that the decision of the Board was final on March 19, 2016, Brooks waited more than thirty-five days to take any action. When he finally did take action on the DDS decision on May 20, 2016, it was to send a letter to *the Board*, requesting additional notice of its transmission of Resolution No. 16-07 to the District Council on March 11, 2016, but Brooks never filed an appeal of the Board's decision with the District Council -- within the thirty days following his notice of the Board's decision or at any time at all.

The alternative situation described in *Billings*, therefore, is precisely what occurred in the present case. Like the Citizens in *Billings*, Brooks was informed that, absent the District Council's decision to review the DDS application on its own motion, the Board's decision would become final unless he, as a person of record, filed an appeal with the District Council within thirty days of the date of the notice. Similar to the Citizens in *Billings*, Brooks *never* filed an appeal with the District Council. Unlike *Billings*, however, the District Council did not exercise its option to review the Board's approval of the

[12] Brooks did, however, properly appeal the Board's decision to approve DSP-15012 and, upon the review and final decision of the District Council of that decision, Brooks filed a petition for judicial review in the circuit court. He did not appeal the circuit court's decision to this Court.

application and, absent an appeal from a person of record, the Board's decision never reached the District Council.

The Board's final decision, embodied in Resolution No. 16-07, was the Board's "final action" on the application, and that decision was appealable to the District Council under the plain language of ZO § 27-239(b)(9)(A) prior to March 19, 2016. Brooks never filed an appeal and, therefore, he failed to exhaust all administrative remedies prior to filing his complaint in the circuit court. Accordingly, we affirm the circuit court's decision to grant the appellees' motion to dismiss.

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