Circuit Court for Baltimore County
Case No.: 03-C-15-002153

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2370

September Term, 2015

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RESERVOIR LIMITED PARTNERSHIP

v.

BALTIMORE COUNTY, MARYLAND, et al.

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Meredith,
Reed,
Salmon, James P.
(Senior Judge, Specially assigned),

JJ.

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Opinion by Meredith, J.

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Filed: August 31, 2018

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Reservoir Limited Partnership ("Reservoir"), appellant, opposed a petition filed by Baltimore County that asked the Board of Appeals for Baltimore County to approve an amendment to correct the portion of the zoning map applicable to property owned by Commerce Center Venture, LLP. The Board of Appeals granted the petition to correct the zoning map. Reservoir filed a petition for judicial review in the Circuit Court for Baltimore County. After the circuit court affirmed the ruling of the Board of Appeals, Reservoir noted this appeal.

## QUESTION PRESENTED

Appellant presented three questions for our review:

> 1. Did the 2014 CBA [Baltimore County Board of Appeals] err when it granted a Part IV Petition for Zoning Reclassification for an alleged technical error that is not contemplated by BCC [Baltimore County Code] § 32-3-231(b)(1-3)?
>
> 2. Did the 2014 CBA err by ruling in favor of [Baltimore County] despite the lack of substantial evidence?
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>> a. Did the CBA err in basing its ruling on a lay witness opinion regarding complex matters requiring special knowledge, whose opinion was not based upon his own perception, and was not helpful to a clear understanding of how the alleged technical error occurred?
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>> b. Did the CBA err in reaching a conclusion as to a technical mapping error on a zoning map without actually reviewing the original zoning map in which the technical error allegedly occurred?
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>> c. Did the CBA err in its Order directing [the Department of] Planning to "make the necessary change and correction as set out herein, on the latest Comprehensive Zoning Map with regard to the subject property," when the "corrected" description of the Property presented by BC is derived not from the 1970 CBA, rather from a 1999 Confirmatory Deed, that includes additional property acquired by Centre in 1982?

3. Did the 2014 CBA err in concluding that Planning complied with the Part IV notice provisions even though it failed to notify in writing "property owners affected," and only sent notice to one of the seven County Council ("Council") members, of its Petition?

We perceive no reversible error and affirm.

## FACTS AND PROCEDURAL HISTORY

Commerce Center Venture, LLP is the owner of property located at 1777 Reisterstown Road, just east of the intersection of Reisterstown Road and Hooks Lane, in the Pikesville area of Baltimore County. The property is improved by a commercial office building known as "Commerce Center II."[1]

On February 13, 2013, an attorney for Commerce Center Venture, LLP (David Karceski, Esquire) wrote a letter to Andrea Van Arsdale, the Director of the Baltimore County Department of Planning, asserting that a small portion of the Commerce Center Venture, LLP's property was improperly "split-zoned"; that is, although the vast majority of the property was zoned B.R. (Business Roadside), there was a long, narrow, toothpick-shaped sliver toward the rear of the property that was zoned R.O. (Residential-Office). Mr. Karceski suggested that it was "likely the error occurred" following the County's adoption of the 2000 Comprehensive Zoning Maps, when "the County dispensed with adopting

[1] Reservoir, the appellant here, and Commerce Center Venture, LLP, which is not a named party to this appeal, are engaged in separate litigation before the Board of Appeals (Case No. 12-045) regarding Commerce Center's desire to construct office space atop its existing parking garage. Appellant's R.O.-zoned property is next door, and appellant, throughout this case, asserted that, if the petition to rezone the sliver of Commerce Center's property to BR was granted, that would pave the way for Commerce Center's addition.

paper comprehensive zoning maps and converted these maps to GIS digital format." Regardless of when or how the error occurred, Mr. Karceski asked the County to initiate the necessary procedures for effecting a correction of the zoning map. *See* Baltimore County Code ("BCC"), Art. 32, Title 3, Subtitle 2, Part IV.

The Department of Planning did not initially agree with the premise of Mr. Karceski's letter that there was a zoning error on the Commerce Center Venture, LLP property. But after further discussions and meetings between County planning officials and the property owner's attorney, the Planning staff searched its archives, and discovered an error was committed when the zoning map was never updated to reflect that, in 1970, the Board of Appeals had ruled that the entire parcel should be zoned B.R. (rather than split-zoned). Planning staff discovered that, in 1968, William Keir and his family (the then-owners of land that became the Commerce Center property), along with the Drew Company (which had contracted to purchase the property and intended to operate a car dealership on it), jointly petitioned the County to reclassify the property, which was split-zoned R.-10 and B.L., to entirely B.R.[2] On September 26, 1968, the Zoning Commissioner denied the request. The Keirs and the Drew Company then appealed to the Board of Appeals, which issued an opinion on April 27, 1970, reversing the zoning commissioner and rezoning the entire parcel B.R.

[2] In Baltimore County, the R-10 zone permitted residential lots of not less than 10,000 square feet; the B.L. zone was for "Business Local"; and B.R. refers to "Business Roadside." The latter designation "allows more intensive uses" than the B.L. designation.

The 1970 Board of Appeals opinion explained its conclusion that the requested change in zoning should be granted:

> From all the testimony, the Board finds as a fact that it would be unfeasible to develop the rear of the subject property in its present R-10 classification due to the severe topography and the exorbitant costs of extending utilities to the property, and the impact of the Beltway and the Beltway interchange on the marketability of residences on the subject property. We further find factually that the extensive changes that have occurred in the immediate neighborhood more than justify the requested reclassification, and that the proposed single purpose commercial use of the property would have a much lesser impact on traffic conditions, water and sewer demands, and other public services than if the property were developed in its present category. For these reasons the Board will grant the requested reclassification.

Although a timely appeal of the 1970 decision was filed, it was withdrawn shortly thereafter. It appears that, although the entire property was supposed to have been zoned B.R. as a result of the 1970 Board of Appeals decision, there was a sliver of property that continued to be mapped as R-O (Residential Office) on the zoning map.

On June 27, 2014, Ms. Van Arsdale, the Director of the Department of Planning, wrote Mr. Karceski and advised that the County intended to seek a zoning map amendment to correct the discrepancy. She stated:

> In response to your February 13, 2013 correspondence to me, and after a thorough review of the history of the above-referenced property, the Department of Planning concludes there is an error on the Zoning Geodatabase.
>
> The staff has investigated this matter and as the Director of Planning, I certify the following findings. Based upon our review, the Department concludes that a technical drafting error occurred while implementing an April 27, 1970 County Board of Appeals reclassification order. Therefore, in accordance with Section 32-3-233 of the Baltimore County Code, the Department of Planning will initiate a Petition for Zoning Map Correction

> with the CBA to correct this error so that the zoning accurately reflects the intent of the 1970 CBA decision in Case No. 68-215-R.

On the same date, Ms. Van Arsdale wrote to the Honorable Vicki Almond, the County Council member representing the district in which the property is located, to advise her that the Department of Planning would be filing a Petition for Zoning Map Correction regarding the subject property.

On August 15, 2014, the County filed its Petition for Zoning Map Correction with the Board of Appeals, asserting, in Paragraph 5:

> After a thorough investigation, the Department discovered that a technical drafting error occurred in mapping the Property. The intent of the original reclassification in Case No. 68-215-R was to rezone the entire property to B.R. At the time that the Department implemented the CBA decision in 1970, it erroneously mapped the zoning on the Property. This error has been perpetuated from 1970 through 2014. Further, this technical drafting error by the Department was independent of and not associated with any issue that was raised by any party in any Comprehensive Zoning Map Process since 1970. A copy of the current zoning map for the Property is attached hereto as Exhibit D and a copy of the zoning map depicting the correct zoning for the Property as B.R. is attached hereto as Exhibit E. Both exhibits are incorporated herein by reference.

A hearing before the Board of Appeals was set for September 24, 2014. A sign giving notice of the petition for amendment was posted conspicuously on the property. On September 8, 2014, counsel for Reservoir entered his appearance, noting Reservoir's opposition to the County's request for the zoning map correction, and requesting a continuance of the hearing date.[3]

[3] There were two other protesting parties who also participated in the Board of Appeals proceedings (Greene Tree Homeowners Association, Inc. and Pikesville Communities Corporation), and they were co-petitioners in the judicial review proceedings

The Board of Appeals's hearing was rescheduled, and the hearing was held on November 12, 2014. Jeffrey Mayhew, the Deputy Director of the Baltimore County Department of Planning, was the only witness to testify. Mr. Mayhew testified that he had been with the Department for twenty-four years, and had been Deputy Director for the past three years. He holds a master's degree in public administration from the University of Baltimore, and is AICP certified by the American Planning Association.[4]

Mr. Mayhew described the comprehensive zoning map process ("CZMP") in Baltimore County, which occurs every four years and is a window in which "any person can ask for any zoning on any property." The CZMP has occurred every four years since 1971. And it has only been since 2004 that the maps used by the Department have been digitized; prior to the 2004, planners had to hand-draw zoning maps and incorporate any changes in zoning. Mr. Mayhew explained:

> [BY THE WITNESS]: Prior, prior to the Council passing legislation allowing us to create a digital version of the zoning map, the zoning maps were created at one inch . . . one inch equals two hundred [feet] and it's done on mylars with pen and ink and whenever they were changed, we'd have to pull out the map, erase the line, re-draw the line, re-label and then the Council would sign the map.

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in the circuit court, but neither of those parties is participating in this appeal. The Office of the People's Counsel for Baltimore County participated in the proceedings before the Board and circuit court; People's Counsel argued in support of the County's position, and has filed an Appellee Brief in this Court.

[4] AICP stands for the American Institute of Certified Planners, and is a professional designation a planner earns by attaining a certain amount of experience, passing an examination, agreeing to adhere to a code of ethics, and taking continuing education.

Mr. Mayhew explained why he believed there was an error in the map relative to the zoning of the Commerce Center property:

> [BY THE COUNTY]: Would it be fair to say that once the planning staff, once your office reviewed this 1968 case and the Board of Appeals decision to change the zoning that, in fact, you were persuaded that there was a problem?
>
> [BY THE WITNESS]: Yes. This case demonstrated to us that when the property was rezoned from BL to BR, that the entire property was intended to be rezoned, not just part of it.
>
> Q. And what is BL and BR zoning?
>
> A. BL and BR are commercial zones that allow various retail and office functions, with BL is business local, BR is business roadside. The business roadside allows more intensive uses than the BL does.
>
> Q. Well, how did, how did this case persuade you that, in fact, there was a problem with where the (inaudible) was?
>
> A. The way the, the way the zoning map shows right now, the entire property is not zoned BR. There is a sliver of RO on the property and there is a triangle piece towards the, towards the west side that was zoned BL that should have been zoned BR based on this case.
>
> * * *
>
> Q. You've looked at this file, you've gone back and looked at the maps, at what point were you persuaded that there was a problem with the line? Did you look at something in a file, on the map?
>
> A. Looked at this case [*i.e.*, the 1970 Board of Appeals case].
>
> Q. Okay.
>
> A. This case was the, the determining factor that we found an error had occurred and was perpetuating.
>
> Q. And is that because after you saw what the Board had ruled here and changed the zoning and you went to the map and you were able to ---

> A. This is actually for, as old as this case is, it has a lot of supporting material that, I mean, if you, it has the deed description, several maps indicating the size and scope of the property. Those were convincing to us.
>
> Q. So what'd you do? Was that a eureka moment for you?
>
> A. Yes, after not agreeing to the Petitioner's request, this was kind of the evidence that we felt very comfortable with in bringing forward at the map correction.

He testified that, after reviewing the 1968 case and the 1970 Board of Appeals decision overturning it and rezoning the entire property B.R., the current case was a "very clear and an easy decision to make as a technical map correction." Mr. Mayhew testified that the Department then determined to seek a zoning map correction, pursuant to BCC § 32-3-233.[5]

Mr. Mayhew demonstrated to the Board of Appeals, via maps of the current zoning (admitted as Exhibit 6) compared to maps of the requested zoning (admitted as Exhibit 7), that "[t]here are two areas where the BR zoning does not match the property line." He testified that the sliver of land that improperly retained the R.O. classification was roughly 0.298 acres in size, and would not be split-zoned today due to its small size. He also testified that the Department had posted the requisite notice at the entrance to the shopping

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[5] BCC § 32-3-233 provides:

> (a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.
>
> (b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section.

center, and that the Department notified, and actually met with, the councilwoman representing the district in which the property is located.

On February 2, 2015, the Board of Appeals issued its opinion granting the County's petition to correct the zoning map relative to the subject property. The Board's opinion set forth the following findings of fact and conclusions of law:

> After extensive research, [the Department of Planning] discovered that an error had indeed occurred in mapping the Property. . . . Planning found a 1970 [County Board of Appeals] decision involving **a zoning reclassification in which the entire Property had been rezoned to B.R.** However, when Planning mapped the zoning on the Property that had been approved by our Predecessors, it made a mistake which was then perpetuated for almost forty-five years. Mr. Mayhew testified that when the maps were adjusted to reflect the rezoning, the .2 acre sliver was not mapped as BR, although the remainder of the site was mapped in accordance with the Order of the Board. The .2 acre sliver is currently zoned Residential Office, which is also the zoning on a separate lot northeast of 1777 Reisterstown Road, adjoining the sliver. Mr. Mayhew's testimony at the hearing was clear that he believed, consistent with our Predecessors opinion in 1970 that the entire parcel should be zoned BR. The Protestants advance seven (7) arguments as to why the Board should deny the Petition for Map Correction. We will address them in the order they were briefed.
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> The Protestants['] first argument is that the County's only evidence was presented through Mr. Mayhew and they questioned his credentials as being insufficient to discuss the zoning maps. We disagreed. **The Board found Mr. Mayhew's testimony to be substantial, clear and convincing.** The [B]oard reviewed the 1970 opinion of our Predecessors and analyzed Mr. Mayhew's testimony to determine that **the entire parcel should have been zoned BR**.
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> * * *
>
> **It was clear to the current Board that the intent of the original re-classification in Case No. 68-215R was to rezone the entire Property to B.R. It was also clear based on testimony that when Planning implemented the CBA decision in 1970 it incorrectly mapped the zoning on the Property.** And it occurred at a time when the Planning staff was still

hand drawing the maps. Mayhew emphasized that the error had been perpetuated from 1970 to the present. Further, he opined that this technical drafting error by Planning was independent of and not associated with any issue that was raised by any party in any CZMP since 1970.

Protestant[s] also attempted to impeach Mr. Mayhew by questioning an immaterial discrepancy of the legal description of the property when comparing a 1990 deed with other public records. As [the Assistant County Attorney] correctly pointed out at the hearing[,] legal descriptions can contain minor discrepancies. The 1970 CBA decision indicated that the Property was 9.76 acres while the current MSDAT records indicate that the Property is 9.5359 acres with a property land area of 9.5400 acres. The County used the 9.54 acres in its Petition. . . . **Protestants['] argument that we should deny the petition because of this minor discrepancy in the Property description is without merit. The 1970 CBA ordered that the entire Property should be rezoned B.R.** On cross examination, Mr. Mayhew did not attach any significance to minor discrepancies in the acreage of the site, noting its small size and toothpick shape. He also stated that while split zoning may be appropriate as a buffer on some sites, this property did not meet the criteria. Mr. Mayhew testified he would not recommend RO zoning on the .2 acre sliver under any zoning scenario. **The opposing parties presented no witness to refute Mr. Mayhew's testimony or to justify retaining RO zoning on the area. The[] 1970 Board order is not ambiguous.** It is undisputed that the 1968 petition and [1970] Board Order conformed to the legal process for cycle rezoning at the time.

* * *

The Protestants['] second argument is that the County failed to comply with the provisions of § 32-3-231(b) of the BCC. In particular they assert the error alleged by the County does not fit into one of the statu[to]ry provisions and therefore cannot be corrected. There was some argument at trial as to whether the Board should accept jurisdiction of this matter under BCC 32-3-231 or BCC 32-3-232. [Sic: the discussion during the hearing before the Board was about whether the petition was properly brought under BCC § 32-3-231 or § 32-3-233. BCC § 32-3-232 outlines what responsibilities the Director of Planning has in responding to a property owner's allegation of zoning area under 32-3-231. The County's petition plainly stated that it was filed pursuant to 32-3-233.] **We reviewed all provisions of the BCC and determined that the Department of Planning complied with the standards and procedures in the relevant parts of the BCC. Mr. Mayhew[']s testimony was clear and uncontroverted. It was**

> **he and his Department which discovered the correct facts to support the map correction and not the theories advanced by the taxpayer. Therefore, it was proper for the County to file the petition for the correction to the Board**. We have determined that filing the petition under either provision of the [s]tatute would lead us to the same result.
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> Any reference by the County to the provisions of 32-3-231 (the provisions of the BCC whereby the taxpayer files the petition for map correction) are immaterial to the facts and circumstances of this hearing. The County proceeded at the hearing under the provis[i]o[n]s of BCC 32-3-232.[6] Protestants claimed that principles of due process have been violated since there was argument about which statute gave the Board jurisdiction in this matter. We disagree.
>
> The authority of the Board is found in Baltimore County Code ("Code") § 32-3-231 et seq. The statute states two procedures for correction: (1) § 32-3-231 provides that a property owner who discovers the error must report to the Department of Planning ("Planning") that the zoning map ". . . does not accurately reflect the zoning classification enacted by the County Council on the owner's property during <u>any</u> comprehensive zoning process." (emphasis added); (2) § 32-3-233(a) provides "The Department of Planning may initiate a petition on its own if its discovers a technical error in the zoning map." So the alleged error may originate with the property owner who reports to Planning, **or** with the Department of Planning.
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> * * *
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> . . . **We were unanimous that Mr. Mayhew['s] testimony was substantial, clear and convincing, to justify the correction. It was clear**

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[6] Again, we view this reference to BCC 32-3-232 as an unfortunate typographical error, because the County's Petition for Zoning Map Correction, filed August 15, 2014, plainly states that it is filed "pursuant to Section 32-3-233 et seq. of the Baltimore County Code[.]" Additionally, the erroneous reference to BCC 32-3-232 makes no sense in context, because § 32-3-232 deals with the "Response of the Director" (of Planning) to a notice given by a property owner pursuant to § 32-3-231 that the owner believes that the zoning map does not accurately reflect the proper zoning classification on the owner's property due to any of three specifically enumerated errors: (1) a technical drafting error; (2) a change in the property's zoning that was not within the boundaries of a filed issue; or (3) a technical drafting error made by the original petitioner for a zoning change, provided the error did not impact on the intent of the County Council to place a particular zoning classification on the particular property. Also, we note that the Board cited the correct section of the code --- BCC § 32-3-233 --- in the next paragraph of its opinion.

**from the facts presented at trial that the entire Property should have one zoning designation. It was also clear to us from Mr. Mayhew's testimony as to how the technical error occurred and that the County is now seeking the proper remedy under the correct statutory provisions of the BCC.**

* * *

The Protestants['] third argument is that the Department of Planning did not give proper notice to the County Council under the provisions of BCC as it only notified one Council Member of its intention to file a petition. The Protestants argue that the clear intent of legislature is that ALL members of the County Council be notified. We disagree. This Board has had a long standing practice that in map correction matters the council person who serves in the District that the property sits [in] is sufficient to receive the statutory required notice. This is analogous to a Resident Agent receiving notice for a Corporation. In this particular case Ms. Almond is an experienced Councilwoman member and is well versed in land use matters. We find no violation of the Protestants['] due process. The evidence is clear that on June 27, 2014 Planning sent letters to Karceski, and to the Honorable Vicki Almond, Councilwoman for the Second District, advising them of the zoning map error on the Property and that it would take the necessary steps to remedy it as provided by the BCC. We find this notice sufficient.

* * *

The Protestants['] fourth argument is that the County failed to provide proper notice to the taxpayers of Baltimore County. In particular, the Protestants read the statute as mandating that the County provide notice to all "affected" property owners to include all surrounding property owners. At dispute here is whether or not the legislature intended to mean [for] the word "affected" to include ALL surrounding property owners. Protestant[s] argue that the County had a duty to notify in writing all property owners whose property is contiguous to or in the immediate vicinity of 1777 Reisterstown Rd. [. . .] We disagree. Once this Hearing was scheduled, Planning posted a public notice of the CBA hearing date. It was posted at Hooks Lane on two separate occasions because the hearing had been rescheduled.

The Petition in the instant case was filed pursuant to BCC, § 32-3-233 which provides as follows:

§ 32-3-233 PETITION BY THE DEPARTMENT OF PLANNING.

(a) In general. The Department of Planning may initiate a petition on its own if it discovers a technical error in the zoning map.
(b) Notice of petition. The Department of Planning shall provide written notice to property owners affected by a petition under subsection (a) of this section.

(1988 Code, § 26-134) (Bill No. 42, 1990, §1; Bill No. 103-02, § 2, 7-1-2004; Bill No. 55-11, §§ 1, 2, 10-16-2011)

* * *

**. . . Clearly, the intent of this section is that the County must provide notice to the property owner, arguably the fee simple property owner. The Legislative intent was never to impose a burden on the County to notify all potentially interested property owners, whether they be adjacent, surrounding, contiguous or a certain distance from the property at issue. Our opinion was unanimous that the County complied with the requisite notice under BCC § 32-3-233 when it sent Karceski a letter on June 27, 2014 of its intention to correct the map error by filing a petition with the CBA and subsequently posted on the property.**

**Further**, the case law in Maryland is clear regarding notice for a public hearing. The Court of Special Appeals has held that **the requirement of notification for a public hearing may be satisfied by "actual" notice, which is the case here**. *Largo Civic Ass'n v. Prince George's Co.*, 21 Md. App. 76, 85-86 (1974); *McLay v. Maryland Assemblies, Inc.*, 269 Md. 456, 477 (1973). . . . We find no violation of the BCC or the Due Process of the Protestants ability to be heard. In fact, this board agreed to postpone the original hearing to allow the Protestants extra time to prepare. **Protestants were fully aware of the Petition and had substantial time to prepare** for the Hearing, the opportunity to present evidence, cross-examine the County's witness and otherwise fully participate.

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The Protestants['] fifth argument is that they were not provided discovery materials prior to the hearing. . . . This Board does not have enforcement powers and cannot compel parties to share information before a hearing.

* * *

Protestants[’] sixth argument is similar to its other procedural and due process arguments. The Protestant[s] accuse the Department of Planning and this Board of participating in piecemeal rezoning by not following the clear intent of the Legislature. . . .

. . . The Protestant[s] assert that this Board does not have jurisdiction to correct the zoning maps. In substance the Protestant[s] claim [ ] the petition should have been brought in the name of the owner because the owner initially advised Planning of an error. They claim a drafting or technical error made as a result of a rezoning by the Board of Appeals is beyond the purview of the conditions in § 32-3-231(b)(1)(2)(3). We disagree. The error was discovered by Planning based on their own independent review of over fifty years of County records.

This raises the question whether the two types of petitions (owner initiated and Planning initiated) are bound by the same standards. The statute does not contain specific language limiting Planning’s investigation to the three scenarios in § 32-3-231(b). Indeed **there is no limitation imposed on Planning --- § 32-3-233(a) simply authorizes Planning to file a petition on behalf of Baltimore County if “. . . it discovers a technical error in the zoning map.”** If the County Council intended to limit the circumstances in which the zoning occurred, as opposing parties here contend, there must be some statutory meaning or purpose to justify such an interpretation.

It is reasonable to establish some guidelines when an owner alleges an error. Planning is given some direction in its investigation and an owner cannot make a frivolous and baseless claim.

More importantly, it is unreasonable to assume the statute would treat an error resulting from a cycle zoning Board order differently. The clear purpose of the statute is to assure the zoning maps coincide with the intended zoning on a site. A Board rezoning carries the same weight and is tantamount, not substandard, to one or more of the criteria in § 32-3-231(b).

The overwhelming testimony at the hearing was that a technical drafting error was [made] after the Board of Appeals decision in 1970. We find the Protestants[’] argument illogical. **It is clear the Board of Appeals has the statu[to]ry authority to correct the zoning map**. Under the rules of statutory construction, the courts can look at the spirit and intent of the

> legislation to ascertain its meaning. The position of the Protestants conflict[s] with the purpose and intent of the BCC.
>
> The Protestants['] seventh and final argument is that the Board should have compelled the testimony of two parties and enforced subpoenas. Protestant asserts that Mr. Karceski and Director Van Arsdale were key witnesses. . . . The uncontroverted testimony of Mr. Mayhew was that the Department of Planning reached the decision to file this petition on their own after an independent review of fifty years of County records. Conversations between Mr. Karceski and the County were irrelevant as no theory for the correction advanced by Mr. Karceski was adopted by the County. Further, [t]he Board deemed Mr. Mayhew competent to testify and found his testimony professional, accurate, clear and substantial. We found no reason to compel the testimony of Director Van Arsdale, even if we had those powers.

(Bolded emphasis added.)

Appellant filed a petition for judicial review in the Circuit Court for Baltimore County, which conducted a hearing on September 18, 2015. On December 9, 2015, the circuit court filed an opinion and order, affirming the Board of Appeals. This appeal followed.

## STANDARD OF REVIEW

In *People's Counsel for Baltimore Cty. v. Surina*, 400 Md. 662, 681-83 (2007), the Court of Appeals provided this overview of the standard of review applicable to judicial review of the decisions of administrative agencies:

> When this or any appellate court reviews the final decision of an administrative agency such as the C[ounty] B[oard of] A[ppeals], the court looks through the circuit court's and intermediate appellate court's decisions, although applying the same standards of review, and evaluates the decision of the agency. *Mastandrea v. North,* 361 Md. 107, 133, 760 A.2d 677, 691 (2000) (citing *White v. North,* 121 Md. App. 196, 219, 708 A.2d 1093, 1105 (1998), *rev'd on other grounds,* 356 Md. 31, 736 A.2d 1072 (1999)). We therefore shall focus our attention in the main on the decision of the CBA.
>
> In doing so, this Court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, *see, e.g., Bd. of Physician Quality Assurance v. Banks,* 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999), so long as the agency's determination is based on "substantial evidence." *See White,* 356 Md. at 44, 736 A.2d at 1079-80; *Mayor of Annapolis v. Annapolis Waterfront Co.,* 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979). In that latter regard, we inquire whether the zoning body's determination was supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion . . . ." *Annapolis Waterfront Co.,* 284 Md. at 398, 396 A.2d at 1089; *see also Annapolis Waterfront Co.,* 284 Md. at 398-99, 396 A.2d at 1089 ("The heart of the fact-finding process often is the drawing of inferences made from the evidence . . . . The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.") (citations omitted); *Snowden v. Mayor and City Council of Baltimore,* 224 Md. 443, 447-48, 168 A.2d 390, 392 (1961) (quoting 4 Kenneth Culp Davis & Richard J. Pierce, Administrative Law § 29.11, at 186 (1958)). Thus, we will uphold the administrative decision of the zoning body, here the CBA, to approve the development plan if that action was "fairly debatable" on the facts as found by it. *White,* 356 Md. at 44, 736 A.2d at 1079-80; *Sembly v. County Bd. of Appeals of Baltimore County,* 269 Md. 177, 182, 304 A.2d 814, 818 (1973); *Bd. of County Comm'rs for Cecil County v. Holbrook,* 314 Md. 210, 216-17, 550 A.2d 664,

> 668 (1988); *Prince George's County v. Meininger,* 264 Md. 148, 152, 285 A.2d 649, 651 (1972); *Zengerle v. Bd. of County Comm'rs for Frederick County,* 262 Md. 1, 17, 276 A.2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals,* 261 Md. 153, 156, 274 A.2d 379, 381 (1971).
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> We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. *Belvoir Farms Homeowners Assoc., Inc. v. North,* 355 Md. 259, 267-68, 734 A.2d 227, 232 (1999) (citing *Catonsville Nursing Home, Inc. v. Loveman,* 349 Md. 560, 569, 709 A.2d 749, 753 (1998)); *see also Mombee TLC, Inc. v. Mayor and City Council of Baltimore,* 165 Md. App. 42, 884 A.2d 748 (2005) (finding that an appellate court's role "is precisely the same as that of the circuit court," and that "like that court, we are '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'") (citations omitted). When determining the validity of those legal conclusions reached by the zoning body, however, "a degree of deference should often be accorded the position of the administrative agency" whose task it is to interpret the ordinances and regulations the agency itself promulgated. *Marzullo v. Kahl,* 366 Md. 158, 172, 783 A.2d 169, 177 (2001). Thus, "[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was 'premised upon an erroneous conclusion of law.'" *Marzullo,* 366 Md. at 172, 783 A.2d at 178 (quoting *Banks,* 354 Md. at 68, 729 A.2d at 380).

## DISCUSSION

### I. Statutory authority for the correction of the map.

In its brief, Reservoir asserts that its position is "that this case is not a mapping technical error as required by Part IV" --- a reference to Part IV of Subtitle 2 of Title 3, Zoning, of the Baltimore County Code, in which §§ 32-3-231 and 32-3-233 are found --- "and even if it were [Baltimore County] disregarded the statutory notice mandates required

to bring the action, that its sole witness's testimony was incompetent, and that the property was not properly described." In its first argument in this Court, Reservoir raises the argument it made to the Board of Appeals and the circuit court about the Board's authority: that even though the petition "alleges that it was brought pursuant to BCC § 32-3-233 *et seq*., it is BCC § 32-3-231(b) (1-3) that sets forth the only three technical errors that can be corrected pursuant to Part IV, in alternative to changing the zoning on a property through the CZMP, or cycle zoning."

In other words, it is appellant's contention that, even though the plain language of BCC § 32-3-233 authorizes the Department of Planning to "initiate a petition on its own if it discovers a technical error in the zoning map," Reservoir insists that the only "technical errors" that qualify for correction pursuant to a petition filed under § 32-3-233 are the three technical errors specified in § 32-3-231 (b)(1)-(3). We reject this argument because it is contrary to the plain language of BCC § 32-3-233.

The Court of Appeals described the pertinent principles of statutory construction in *Smack v. Dep't of Health and Mental Hygiene*, 378 Md. 298, 304-05 (2003):

> The predominant goal of statutory construction "is to ascertain and implement, to the extent possible, the legislative intent." *Witte v. Azarian,* 369 Md. 518, 525, 801 A.2d 160, 165 (2002). *See Toler v. Motor Vehicle Administration,* 373 Md. 214, 220, 817 A.2d 229, 233 (2003); *Dyer v. Otis Warren Real Estate,* 371 Md. 576, 580–581, 810 A.2d 938, 941 (2002) ("The goal with which we approach the interpretation of a statute is to determine the intention of the Legislature in enacting it."). **We begin the interpretive analysis with the words of the statute and, when they are clear and unambiguous, there is no need to search further.** *Medex v. McCabe,* 372 Md. 28, 38, 811 A.2d 297, 303 (2002); *Whiting–Turner Contracting Co. v. Fitzpatrick,* 366 Md. 295, 301, 783 A.2d 667, 670 (2001); *Harris v. State,* 353 Md. 596, 606, 728 A.2d 180, 184 (1999); *Degren v. State,* 352 Md. 400,

> 417, 722 A.2d 887, 895 (1999). "[W]e look first to the words of the statute, on the tacit theory that the Legislature is presumed to have meant what it said and said what it meant." *Witte,* 369 Md. at 525, 801 A.2d at 165. In that regard, the statute must be given a reasonable interpretation, "not one that is illogical or incompatible with common sense." *Whiting-Turner,* 366 Md. at 302, 783 A.2d at 671; *State v. Brantner,* 360 Md. 314, 322, 758 A.2d 84, 88–89 (2000). Moreover, statutes are to be interpreted so that no portion is rendered superfluous or nugatory. *See Taylor,* 365 Md. at 181, 776 A.2d at 654; *Blondell v. Baltimore City Police Dep't,* 341 Md. 680, 691, 672 A.2d 639, 644–45 (1996). **Words may not be added to, or removed from, an unambiguous statute in order to give it a meaning not reflected by the words the Legislature chose to use**, *Medex,* 372 Md. at 38, 811 A.2d at 303, "**[n]or [may we] engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning**." *Taylor v. NationsBank,* 365 Md. 166, 181, 776 A.2d 645, 654 (2001); *Mid-Atlantic Power Supply Ass'n v. Public Serv. Comm'n,* 361 Md. 196, 204, 760 A.2d 1087, 1091 (2000).

(Emphasis added.)

It is clear from the face of the petition for correction filed by Baltimore County that the County initiated its petition pursuant to BCC § 32-3-233, the words of which are not ambiguous and do not limit the scope of correctible "technical errors" to the three technical errors addressed in § 32-3-231. Rather, § 32-3-233 --- in contrast to the three alternatives outlined for an owner-initiated petition in § 32-3-231 --- grants the Department of Planning the authority to file a petition on its own if it discovers a technical error in the zoning map.

When we are called upon to interpret a statute, "[i]f the language is clear and unambiguous, our search for legislative intent ends and we apply the language as written and in a commonsense manner. We do not add words or ignore those that are there." *Downes v. Downes*, 388 Md. 561, 571 (2005). "When a statute's language is clear and unambiguous . . . we need look no further for some hidden legislative intent." *Management Personnel Servs. v. Sandefur,* 300 Md. 332, 341 (1984). "[T]he Legislature is presumed to

have meant what it said and said what it meant." *Witte v. Azarian*, 369 Md. 518, 525 (2002).

This was a County-initiated petition, brought pursuant to BCC § 32-3-233. And the County is expressly authorized to bring such a petition if the Department of Planning discovers a technical error in the zoning map. Section 32-3-233 does not restrict the County's power to correct technical errors to only those three technical errors within the purview of an owner-initiated petition.

For these reasons, we conclude that the Board of Appeals was authorized to grant the County's Petition for Zoning Map Correction.

**II. Substantial Evidence.**

Reservoir also argues that the decision of the Board of Appeals was not supported by substantial evidence. Reservoir contends that the County "should have presented an expert witness," and complains that, because Mr. Mayhew did not personally participate in the 1970 Board proceedings, he lacked "any contemporaneous facts or personal knowledge of what may have occurred in 1970." We are satisfied, however, that there was substantial evidence to support the Board's conclusion.

At the outset, we note that the rules of practice and procedure that have been adopted for hearings before the Baltimore County Board of Appeals expressly provide in Rule 7 that "the technical rules of evidence" do not apply. Consequently, the Board was well

within its right to receive the testimony from Mr. Mayhew, including opinion testimony, without applying the Maryland Rules of Evidence.[7]

In *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998), the Court of Appeals made the following observations about the evidence required to support an agency's findings:

> Our review of the agency's factual findings entails only an appraisal and evaluation of the agency's fact finding and not an independent decision on the evidence. *Anderson v. Department of Pub. Safety & Correctional Servs.,* 330 Md. 187, 212, 623 A.2d 198, 210 (1993). This examination seeks to find the substantiality of the evidence. "That is to say, a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test to the final decisions of an administrative agency. . . ." *Baltimore Lutheran High Sch. Ass'n v. Employment Sec. Admin.,* 302 Md. 649, 662, 490 A.2d 701, 708 (1985); *Anderson,* 330 Md. at 212, 623 A.2d at 210; *Bulluck v. Pelham Wood Apts.,* 283 Md. 505, 511–13, 390 A.2d 1119, 1123 (1978). In this context, "'[s]ubstantial evidence,' as the test for reviewing factual findings of administrative agencies, has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion [.]'" *Bulluck,* 283 Md. at 512, 390 A.2d at 1123 (quoting *Snowden v. Mayor of Baltimore,* 224 Md. 443, 448, 168 A.2d 390, 392 (1961)).

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[7] Rule 7 provides:

> A. Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, **the board will not be bound by the technical rules of evidence** but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties. **Any oral or documentary evidence may be received**; but the board reserves the right as a matter of policy to provide for the exclusion of immaterial or unduly repetitious evidence, and the number of witnesses may be limited if it appears that their testimony may be merely cumulative.

(Emphasis added.)

> We have said, "reviewing courts are under no constraint to affirm an agency decision premised solely upon an erroneous conclusion of law." *Insurance Comm'r v. Engelman,* 345 Md. 402, 411, 692 A.2d 474, 479 (1997). Accordingly, we may reverse an administrative decision premised on erroneous legal conclusions. *See People's Counsel v. Maryland Marine Mfg.,* 316 Md. 491, 497, 560 A.2d 32, 34–35 (1989).
>
> We are also obligated to "review the agency's decision in the light most favorable to the agency," since their decisions are *prima facie* correct and carry with them the presumption of validity. *Anderson,* 330 Md. at 213, 623 A.2d at 211; *Bulluck,* 283 Md. at 513, 390 A.2d at 1124.

We have briefly outlined above the evidence that was before the Board. Mr. Mayhew was the only witness who testified. His testimony, which the Board found "substantial, clear, and convincing," led the Board of Appeals to conclude that its predecessors intended, in 1970, to rezone "the entire property" B.R., and a mistake was made when the zoning map was revised and failed to incorporate the 1970 ruling of the Board of Appeals. Mr. Mayhew explained that the maps were still hand-drawn at that time, and that if a change was made on a zoning map, it literally required erasing and re-drawing lines on the mylar map sheets. The error --- failing to conform the map to the Board's 1970 ruling --- was then perpetuated through the years. There was no evidence to the contrary.

Appellant also complains that the Board erred in granting the petition because the legal descriptions of the property's total acreage differed slightly, noting that the property was described, in the 1970 Board of Appeals decision, as consisting of 9.76 acres, whereas the property was described in a 1999 deed as being a 9.9639-acre parcel, and, the County referred to the property in its petition as being 9.54 acres. People's Counsel pointed out

that, with regard to the 1999 deed, "[i]t says 9.9639 acres of land more or less. I'm sure anyone who does title work knows what [']more or less['] means."[8]

The Board of Appeals found these discrepancies were immaterial, which is a finding within the Board's discretion and expertise. The Board noted that legal descriptions of land "can contain minor discrepancies," and explained how that could happen. Appellant has failed to demonstrate that this finding was a material error.

We conclude that the Board's factual determinations were adequately supported by uncontroverted testimony of Mr. Mayhew that the Board found credible, in addition to the documentary evidence presented by the County.

**III. Notice requirements.**

Appellant also complains that the notice given by the County in this case was inadequate, for two reasons. As appellant observes, BCC § 32-3-233(b) states that the County "shall provide written notice to property owners affected by a petition" filed by the Department of Planning pursuant to § 32-3-233(a). Appellant contends "property owners

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[8] *See, e.g.*, *Marcus v. Bathon*, 72 Md. App. 475 (1987), in which a purchaser of property that was described both by metes and bounds and by reference to its consisting of "5.9455 acres, more or less" was not entitled to damages when she found out, a year after the sale, that the property actually consisted of 4.944 acres. We noted that the metes and bounds did accurately depict the borders of the land the buyer purchased, even if the acreage within those boundaries was off by an entire acre, and therefore the buyer "got exactly what she bargained for." *Id.* at 485. We observed that, "[w]hen land sold by metes and bounds or by any other definite description is estimated to contain a specified quantity qualified by the words 'more or less,' the statement of quantity is construed as a matter of description, and not of the essence of the contract," *id.* at 484, and "[v]ery little stress is placed on words of general description as to the extent of a conveyance, such as an estimation accompanied by the words 'more or less,' when the instrument also contains a particular description of the property to be conveyed." *Id.* at 486.

affected" must "include[ ] adjacent and confronting property owners, whose interest in their own property may be adversely affected by the subject zoning reclassification."

On this point, the Board agreed with the County that, when a petition for map correction is filed pursuant to § 32-3-233(b), the written notice need only be sent to the property owners whose zoning will be affected by the requested correction (and that was done in this case).

We need not decide the notice issue in this case however, because it is undisputed that Reservoir had actual notice of the petition to correct the zoning map. The Court of Appeals held in *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 477 (1973), that "the requirement of notification proposed to inform may be satisfied by actual notice, especially when it is acted upon." (Citation omitted.) *Accord Largo Civic Ass'n v. Prince George's County*, 21 Md. App. 76, 85-86 (1974). It is beyond dispute that Reservoir --- the only protestant before us --- had actual notice of the proposed correction and took advantage of the opportunity to participate in the hearing before the Board.

Appellant also complains that, in giving notice to the council representative for the district, and not the entire County Council, as described in BCC § 32-3-232(b)(3), the County failed to provide the notice required by the BCC. We disagree. First of all, these proceedings were filed pursuant to BCC § 32-3-233, and the notice requirements for such a petition are found in § 32-3-234(a), which requires the County to "conspicuously post notice of a petition filed under this part on the property under petition for a period of at least 15 days following the filing of the petition." That occurred here. Second, assuming

that the County was also required to alert the County Council that a petition to correct the zoning map under § 32-3-233 had been filed, it was within the Board's discretion to recognize its own "long standing practice that in map correction matters," notifying the councilperson for the district in which the property is located satisfies that notice requirement.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**