Circuit Court for Prince George's County
Case No. CAL 15-20113

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2756

September Term, 2015

THOMAS TERRY, *et al.*

v.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, SITTING AS THE DISTRICT COUNCIL, *et al.*

Graeff,
Kehoe,
Rodowsky, Lawrence F.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: July 31, 2019

This is an appeal from a judgment of the Circuit Court for Prince George's County, the Honorable Dwight D. Jackson presiding, that affirmed a decision of the County Council of Prince George's County, sitting as the District Council. The matter before the Council was an application for a special exception, "SE-4734," submitted by Wal-Mart Real Estate Business Trust to construct a Wal-Mart Super Center in Bowie, Maryland, which had been disapproved by a Zoning Hearing Examiner. The District Council approved SE-4734. The appellants are Thomas Terry and other owners of nearby property, and Earthreports, Inc., d/b/a Patuxent Riverkeeper, all of whom opposed the application. The appellees are Wal-Mart and the District Council.

Between them, the parties raise eleven issues, which we have reordered, rephrased, and consolidated:

1. Do appellants have standing?

2. Whether the Council's Final Order violated appellants' due process rights?

3. Whether the circuit court erred when it denied appellants' motion to require the Council to include in the administrative record a complete record of its proceedings regarding SE-4734?

4. Whether the Council's approval of SE-4734 was arbitrary and capricious?

5. Whether the Council violated the Open Meetings Act?

6. Whether the Council erred when it exercised original jurisdiction?

7. Whether the Council erred when it assigned the burden of proof to appellants?

8. Whether the Council erred by limiting its analysis regarding impacts to roadways and the farming community to only "adjacent" properties?

9. Whether the record lacks substantial evidence to support the conclusion that SE-4734 will not adversely affect the roadways and farming community in the neighborhood?

10. Whether the Council erred when it ruled that the Applicant satisfied the requirement in Section 27-348.02(a)(1) of the Prince George's County Code?

11. Whether the Council erred when it ruled that SE-4734 conforms to the land use recommendations of the Bowie Master Plan?

For the following reasons, we affirm.

Statutory Overview

Prince George's County derives its authority to engage in land use regulation from the Maryland-Washington Regional District Act (the "RDA").[1] *Prince George's County v. Zimmer Development*, 444 Md. 490, 524–25 (2015); *County Council of Prince George's County v. Brandywine Enterprises, Inc.*, 350 Md. 339, 342 (1998). The RDA is now codified as Division II of the Land Use Article ("LU") of the Maryland Code. Many of the provisions of the RDA are implemented by local legislation, in this case, the Prince George's County Zoning Ordinance, which is Article 27 of the Prince George's County Code ("PGCC").

The RDA assigns the primary responsibility for planning to the Maryland-National Park and Planning Commission (the "Commission"), which is a non-partisan body of ten

[1] The Maryland-Washington Regional District includes all of Montgomery County and Prince George's County "except for the City of Laurel, as its boundaries existed on July 1, 2008." Md. Code Ann., Land Use Article § 20-101(b)(2).

members, five chosen from Montgomery and five from Prince George's County. LU § 15-102. Among its other planning responsibilities, and at the direction of the appropriate district council, the Commission is charged with preparing a general plan for each county. LU § 21-103. The purpose of a general plan is to "(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district; (2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and (3) protect and promote the public health, safety, and welfare." LU § 21-101. A general plan is "'more than a detailed zoning map and should apply to a substantial area, be the product of long study, and control land use consistent with the public interest. An important characteristic of a general plan is that it be well thought out and give consideration to the common needs of the particular area.'" *Maryland-Nat. Capital Park and Planning Com'n v. Greater Baden-Aquasco Citizens Ass'n.*, 412 Md. 73, 85 (2009) (quoting E.C. Yokley, ZONING LAW AND PRACTICE § 5–2 (4th ed.2003)). The relevant general plan in the present case is the Plan Prince George's 2035, enacted by the Commission in 2014 (the "2014 General Plan").

Additionally, the Commission is required to divide each county into local planning

areas and to prepare area master plans for each planning area. LU § 21-105(b) and (c).[2] Currently, Prince George's County is divided into seven such areas, which are termed "subregions." The relevant area master plan in the present case is the 2006 Bowie and Vicinity Plan.

Area master plans "differ from General Plans 'in that master plans govern a specific, smaller portion of the County and are often more detailed in their recommendations than the countywide General Plan as to that same area.'" *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. at 89 (2009) (quoting *Garner v. Archers Glen Partners*, 405 Md. 43, 48 n. 5 (2008) (brackets omitted)). General plans and area master plans are adopted at different times. In order to minimize the possibility of conflicts between area master plans and general plans, a district council is authorized to designate an area master plan, or an amendment to a master plan, as an amendment to the general plan. LU § 21-105(d). Although there is no provision in the RDA that explicitly allows a district council to designate a general plan as an amendment to an area master plan, the Zoning Ordinance provides (emphasis added):

> When Functional Master Plans (and amendments thereof) and General Plan amendments are approved after the adoption and approval of Area Master Plans, *the Area Master Plans shall be amended only to the extent specified by the District Council in the resolution of approval*. Any Area Master Plan

[2] The RDA also authorizes district councils to adopt "functional master plans." LU § 21-106. As their name suggests, the scope of functional master plans are not limited to specific geographic areas of a county but rather address broader governmental activities, *e.g.*, transportation, public safety, etc. that have regional impacts.

> or Functional Master Plan (or amendment) shall be an amendment of the General Plan unless otherwise stated by the District Council.

PGCC § 27-640(a).

Prince George's County is divided into zoning districts. PGCC § 27-109. The zoning classification of the subject property is "Commercial Shopping Center" Zone ("C-S-C"). The purposes of the C-S-C district are:

> (A) To provide locations for predominantly retail commercial shopping facilities;
>
> (B) To provide locations for compatible institutional, recreational, and service uses;
>
> (C) To exclude uses incompatible with general retail shopping centers and institutions; and
>
> (D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

PGCC § 27-454(a)(1).

Regarding applications for special exceptions, LU § 22-301 states:

> (a)(1) A district council may adopt zoning laws that authorize the board of appeals, the district council, or an administrative office or agency designated by the district council to grant special exceptions and variances to the zoning laws on conditions that are necessary to carry out the purposes of this division.
>
> * * *
>
> (b) Subject to § 22-309 of this subtitle,[3] an appeal from a decision of an administrative office or agency designated under this subtitle shall follow the procedure determined by the district council.

[3] LU § 22-309 establishes the Prince George's County Board of Appeals. The Board plays no role in special exception cases. *See* LU § 22-310(a).

In summary, the responsibility for the review and possible approval of a special exception application is divided between the County Planning Board and the District Council. The Planning Board handles the review process. Its technical staff[4] reviews the application, and submits a proposed recommendation to the Board.[5] The Board holds a public hearing and makes a recommendation to the District Council.

Although the District Council retains the ultimate authority to grant or deny a special exception application,[6] it has delegated the responsibility of conducting evidentiary

[4] "Technical staff" is a term of art in the Zoning Ordinance. It means "[t]he staff of the Prince George's County Planning Board." PGCC § 27-311.

[5] *See* PGCC §§ 27-206 (form and contents of application) and 27-311 (report and recommendation).

[6] *See* PGCC § 27-314 ("The District Council may approve Special Exceptions, in accordance with the requirements of this Subtitle (subject to the delegation of this authority to the Zoning Hearing Examiner in Subdivision 7, above)").

hearings on special exception applications to the County's zoning hearing examiner.[7] The zoning hearing examiner conducts a public hearing on the application, prepares a written decision "containing specific findings of basic facts, conclusions of law, and . . . a recommended disposition of the case[.]" PGCC § 27-127(c). The zoning hearing examiner's decision becomes final unless a party to the proceeding files an appeal to the District Council or the District Council elects to review the decision, a process known as "calling up."[8] *See* PGCC § 27-312(a). Even though the District Council considers the case

[7] PGCC § 27-312 provides states in pertinent part:

> (a) The Zoning Hearing Examiner shall have the authority to approve or deny an application for Special Exception or variance in accordance with the following:
>
> (1) The Zoning Hearing Examiner shall have all the authority, discretion, and power given the District Council in this Part and in Part 3, Division 5, Subdivision 2, in the absence of a provision to the contrary.
>
> (2) The Zoning Hearing Examiner's decision on an application for Special Exception shall be final thirty (30) days after filing the written decision, except:
>
> (A) Where timely appeal has been made to the District Council pursuant to Section 27-131; [or]
>
> * * *
>
> (C) In any case where, within thirty (30) days after receipt of the Zoning Hearing Examiner's decision, the District Council, upon its own motion and by a majority vote of the full Council, elects to make the final decision on the case itself[.]
>
> * * *

[8] *See County Council of Prince George's County v. FCW Justice*, 238 Md. App. 641, 658–59 (2018).

upon the record developed before the zoning hearing examiner, it exercises "original jurisdiction" in its review of the zoning hearing examiner's decision. PGCC § 27-132(f).[9]

The standards for granting a special exception application are set out in PGCC § 27-317, which states in relevant part:

> (a) A Special Exception may be approved if:
>
> (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
>
> (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
>
> (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
>
> (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
>
> (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood . . . .
>
> * * *

Further, PGCC § 348.02 provides additional requirements for special exceptions for

[9] Section 27-132(f) states:

> (1) In deciding an appeal to the District Council, or Council election to review a decision made by the Zoning Hearing Examiner or the Planning Board, the Council shall exercise original jurisdiction. (2) For any appeal or review of a decision made by the Zoning Hearing Examiner or the Planning Board, the Council may, based on the record, approve, approve with conditions, remand, or deny the application.

what is at department or variety stores.[10]

[10] The Zoning Ordinance provides:

> (a) Department or Variety Stores and Department or Variety Stores combined with Food and Beverage Stores permitted in the use tables by Special Exception (SE) in the I-3, C-S-C and C-M zones shall be subject to the following requirements:
>
> (1) The site shall have frontage on and direct vehicular access to an existing arterial roadway, with no access to primary or secondary streets.
>
> (2) The applicant shall demonstrate that local streets surrounding the site are adequate to accommodate the anticipated increase in traffic.
>
> (3) The site shall contain pedestrian walkways within the parking lot to promote safety.
>
> (4) The design of the parking and loading facilities shall ensure that commercial and customer traffic will be sufficiently separated and shall provide a separate customer loading area at the front of the store.
>
> (5) All buildings, structures, off-street parking compounds, and loading areas shall be located at least:
>
> (A) One hundred (100) feet from any adjoining land in a Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan; and
>
> (B) Fifty (50) feet from all other adjoining property lines and street lines.
>
> (6) All perimeter areas of the site shall be buffered or screened, as required by the Landscape Manual; however, the Council may require additional buffering and screening if deemed necessary to protect surrounding properties.

(Footnote Continued. . . .)

A person aggrieved by a final decision by the District Council may seek judicial review of that decision by filing a petition in the Circuit Court for Prince George's County within 30 days of the decision. LU § 22-407(a)–(b). The court may:

> (1) affirm the decision of the district council;
> (2) remand the case for further proceedings; or
> (3) reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the district council's action is:
> (i) unconstitutional;
> (ii) in excess of the statutory authority or jurisdiction of the district council;
> (iii) made on unlawful procedure;
> (iv) affected by other error of law;
> (v) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
> (vi) arbitrary or capricious.

LU § 22-407(e).

If the District Council, applicant, or any aggrieved party to the circuit court proceedings is unsatisfied with the circuit court's decision, that party may appeal to the Court of Special Appeals. LU § 22-407(f)(1).

> (7) The building entrance and nearby sidewalks shall be enhanced with a combination of special paving, landscaping, raised planters, benches and special light fixtures.
>
> (8) The application shall include a comprehensive sign package and a comprehensive exterior lighting plan.
>
> (9) The applicant shall use exterior architectural features to enhance the site's architectural compatibility with surrounding commercial and residential areas.
>
> (10) Not less than thirty percent (30%) of the site shall be devoted to green area.

Background

Mill Branch Crossing, LLC owns a twenty-five-acre parcel in Bowie, Maryland, lying east of Route 301, south of Route 50, west of the Patuxent River, and north of Mill Branch Road (the "subject property"), and was annexed by the City of Bowie in 2011. Between the subject property and the Patuxent River lies agricultural land owned by Thomas Terry. In 2013, Wal-Mart Real Estate Business Trust submitted SE-4734 to construct a 186,933 square foot Wal-Mart Super Center on the subject property. The Super Center would combine three uses in one building: a grocery store, a general merchandise store, and a garden center. Additionally, SE-4734 includes a proposal for multiple retail tenants housed within the Wal-Mart store.

The County Technical Staff accepted SE-4734 and invited the City of Bowie to make comments. The Bowie Planning Board voted to recommend disapproval of SE-4734, but the Bowie City Council voted to recommend approval of SE-4734. Then, in December 2013, the Technical Staff recommended disapproval of SE-4734.

In February and March 2014, the Zoning Hearing Examiner for Prince George's County conducted a hearing on SE-4734. Evidence was presented by both Wal-Mart and appellants. The evidence presented by appellants largely consisted of testimony of neighboring land owners who opined that additional traffic along Mill Branch Road would pose problems with moving farm equipment around the area. In January 2015, the Zoning Hearing Examiner denied SE-4734.

In February 2015, Wal-Mart appealed the Zoning Hearing Examiner's decision to the District Council pursuant to PGCC § 27-314. Hearings on SE-4734 were conducted on April 13, May 11, June 8, and June 22, 2015. On June 26, the Council issued a 52-page Final Decision approving SE-4734.

In July 2015, appellants filed for judicial review in the circuit court, which affirmed the Council's decision. In February 2016, appellants filed a timely appeal to this Court.

We will provide additional facts as needed in our analysis.

Standards of Review

In a judicial review proceeding, the issue before an appellate court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (citations, internal quotation marks, and brackets omitted). For that reason, we "look through" the circuit court's decision in order to "evaluate the decision of the agency" itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

The scope of our review in judicial review proceedings is well-established:

> Judicial review of administrative agency action is narrow. The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. In our review, 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. As we have frequently indicated, the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven.

* * *

> Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.

People's Counsel for Baltimore County v. Loyola College, 406 Md. 54, 66–67 (2008) (cleaned up).

Appellants assert that the District Council violated Maryland's Open Meetings Act, Gen. Prov. §§ 3-101–501, in its decision-making process. As to this discrete contention, we do not review the decision of the District Council, because the Council did not address whether it complied with the Open Meetings Act. Instead, we assess the parties' contentions on a *de novo* basis based upon the record.

Analysis

1. Standing

We will first address the District Council's argument that appellants lack standing to seek judicial review because they were not aggrieved by the Council's decision.[11]

The Council's standing argument is founded on Land Use Article § 22-407(a), which authorizes the judicial review of land use decisions by the District Council. At the time that the circuit court entered its judgment, § 22-407 read in pertinent part (emphasis added):

> (a)(1) Judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by *any person or entity that is aggrieved by the decision of the district council* and is:

[11] The District Council did not file a cross-appeal, which normally would bar the Council from challenging any part of the circuit court's judgment. *See Joseph H. Munson Co. v. Secretary of State*, 294 Md. 160, 168, (1982), *aff'd sub nom. Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984) ("A party to a trial court proceeding, however, is not entitled to seek direct appellate review and reversal of the trial court's judgment unless he has filed a valid, timely order of appeal.). There is, however, an exception to this rule, as the *Munson* Court recognized:

> Under circumstances where absence of standing would present an alternate ground for upholding a trial court's judgment, an appellee is entitled to argue that ground in an appellate court. In such situation, a cross-appeal would be unnecessary and, in fact, would be improper. Moreover, in that situation, even if lack of standing were not raised by the appellee, an appellate court noticing the issue would normally consider it sua sponte under the principle that a judgment will ordinarily be affirmed on any ground adequately shown by the record, whether or not relied on by the trial court or raised by a party.

Id. at 167–68 (cleaned up). Because lack of standing on the part of appellants would have been an alternative ground to affirm the District Council's decision, the Council may raise standing to this Court. *See also Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 495-96 (2003); and *Sipes v. Board of Mun. and Zoning Appeals*, 99 Md. App. 78, 86-88 (1994).

> (i) a municipal corporation, governed special taxing district, or person in the county;
> (ii) a civic or homeowners association representing property owners affected by the final decision;
> (iii) the owner of the property that is the subject of the decision; or
> (iv) the applicant.

The flaw with the District Council's argument is that the current version of § 22-407(a) was not in effect on the date that appellants filed their judicial review action. On that date, LU § 22-407(a)(1) read as follows (emphasis added):

> Judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by:
> (i) any municipal corporation, governed special taxing district, or person in the county;
> (ii) a civic or homeowners association representing property owners affected by the final decision; or
> (iii) *if aggrieved, the applicant.*

In *Gosain v. County Council of Prince George's County*, 420 Md. 197, 208 (2011), the Court of Appeals held that the legislative history to the statutory predecessor to § 22-407(a) "make[s] it clear that, except for the applicant, aggrievement is not required for standing to bring a . . . judicial review action." Certainly, the current version of § 22-407(a) does require aggrievement but that amendment was effectuated by ch. 365 of the Acts of 2015, which became effective on October 1, 2015. This judicial review action was filed on April 24, 2015.

"[T]here is a general presumption in the law that an enactment is intended to have purely prospective effect. In the absence of clear legislative intent to the contrary, a statute is not given retrospective effect." *Grasslands Plantation, Inc. v. Frizz-King Enterprises,*

LLC, 410 Md. 191, 218 (2009) (quoting *Langston v. Riffe*, 359 Md. 396, 406 (2000)). There are exceptions to this rule. One is that statutes that modify "only procedures or remedies" will be afforded retroactive application. *Grasslands*, 410 Md. at 219 (quoting *Langston*, 359 Md. at 407–07). Another is that, in Maryland, there is a "general presumption *in favor* of retroactivity in zoning cases." *Grasslands*, 410 Md. at 220 (emphasis in original). These presumptions do not apply, however, when the change to the law affects substantive, as opposed to procedural, rights. *Id.* at 226. Applying these principles is not always easy in the context of judicial review proceedings. *Id.* at 221–26 (surveying cases). When a change is procedural, "the decision about retroactivity will turn on what aspect of the administrative/adjudication process is changed, at what point in the administrative/adjudication process the change is made, and the [substantive] question presented to the reviewing court." *Id.* at 227–28 (footnote omitted).

In the present case, the change in the law occurred on October 1, 2015—after the administrative proceeding was concluded, and after the judicial review action was filed. There is nothing in ch. 365 of the Acts of 2015 that suggests that the General Assembly intended its provisions to apply to pending judicial review actions. We conclude that the 2015 amendment to LU § 22-407(a) does not apply to the case before us.

2. Disqualification of a Council Member

Appellants argue that their due process rights were violated because Councilmember Todd Turner did not recuse himself from the hearings and decision on SE-4734. Some additional facts will put this issue into context.

Mr. Turner was a sitting member of the Bowie City Council in 2013, when the Council voted to recommend approval of the special exception application. In 2014, he was elected to the District Council, as councilmember for District 4, which includes the City of Bowie. On December 1, 2014, Mr. Turner began his term. When SE-4734 reached the District Council, appellants moved to disqualify Mr. Turner from the proceedings on the grounds that he had pre-judged the application as a member of the Bowie City Council. Mr. Turner declined to recuse himself, and, when the Council voted on SE-4734, Mr. Turner voted in favor of the application.

Appellants ask that we vacate the Council's decision to approve SE-4734 on the grounds that Mr. Turner should not have participated in the Council's review of SE-4734 because he had been a member of the Bowie City Council when it had reviewed the application. Appellants further contend that Mr. Turner's conduct was particularly egregious because SE-4734 is proposing to build a Wal-Mart Super Center in District 4,

the councilmanic district he represents.[12]

To determine if there was "either actual bias or an appearance of impropriety on the part of a decision-maker in a judicial or quasi-judicial proceeding, we begin with the presumption of impartiality." *Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 410 (1999). The Court of Appeals has explained:

> [T]here is a strong presumption in Maryland . . . and elsewhere . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified . . . . The recusal decision, therefore, is discretionary . . . and the exercise of that discretion will not be overturned except for abuse.
>
> * * *
>
> [T]he test to be applied is an objective one which assumes that a reasonable person knows and understands all the relevant facts. * * * We disagree with our dissenting colleague's statement that recusal based on an appearance of impropriety . . . requires us to judge the situation from the viewpoint of the reasonable person, and not from a purely legalistic perspective. Like all legal issues, judges determine appearance of impropriety—not by what a straw poll of the only partly informed man-in-the-street would show—but by examining the record facts and the law, and deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.

Jefferson-El v. State, 330 Md. 99, 107–08 (1993) (internal quotation marks and citations omitted).

[12] Appellants also assert that Mr. Turner is "the sole decision-maker in this case" because he was afforded councilmanic courtesy (as the member representing District 4 were the subject property lies) by moving that the Council grant SE-4734. Appellants cite no legal authority for this assertion, and, as such, the argument is meritless. Factually, we find the argument lacking in light of the fact that six other councilmembers also voted to approve SE-4734.

At issue in *Jefferson-El* was whether a judge should have recused him/herself from a criminal proceeding. In *Regan*, the Court "assume[d] for the purposes of this case," that "the 'appearance of impropriety' standard" articulated in *Jefferson-El* and other cases "is applicable generally to the participation of members of Maryland administrative agencies performing quasi-judicial or adjudicatory functions[.]" 355 Md. at 410. By that standard, that is, examining the record facts and the law, and deciding whether a reasonable person "knowing and understanding all the relevant facts" would consider Mr. Turner's participation improper, we conclude that there is no basis for us to disturb the Council's decision.

First, as to the law, "it is well established that bias or prejudice of an agency decision maker related to issues of law or policy are not disqualifying." *Colao v. County Council*, 109 Md. App. 431, 467 (1996) (citing *Turf Valley Associations v. Zoning Board of Howard County*, 262 Md. 632, 645 (1971)).

Appellants have not provided any evidence that Mr. Turner failed to act impartially in reviewing SE-4734. In fact, there is evidence to the contrary. The People's Zoning Council, in response to appellants' motion to disqualify Mr. Turner, conducted a *voir dire* of Mr. Turner on this issue:

> [People's Zoning Council]: So, Mr. Turner, I have to ask you a series of questions so that it's on the record as to what you will use as a basis of judging this particular case. Do you have, you or your immediate family members, have any financial interest in this case?
>
> Mr. Turner: No[.]

> [People's Zoning Council]: Do you or any of your immediate family members have a personal interest that is not financial in the outcome of this case?
>
> Mr. Turner: No.
>
> [People's Zoning Council]: Have you prejudged the merits of this case from any facts that you may have become aware of outside of the record created by the Zoning Hearing Examiner?
>
> * * *
>
> Mr. Turner: No.
>
> [People's Zoning Council]: So you are able to participate in this case and ask questions of the oral argument presenters and ultimately vote on this case in a fair, impartial and objective manner without prejudging any of the arguments that have been made?
>
> Mr. Turner: Yes, I believe I can.

That Mr. Turner, as a councilmember for the City of Bowie, voted to support the special exception application indicates nothing other than that he believed granting the application was in the best interests of the City. This is an expression of a viewpoint as to an "issue[] of law or policy" that is not disqualifying." *Colao v. County Council*, 109 Md. at 467. It does not, in our view disqualify him from participating in the Council's subsequent decision. Because there is absolutely no evidence that he was biased or that he or any family member had any personal interest in the project, there is no basis for us to conclude that his participation in the Council's decision-making process tainted the result.

3. Supplementing the Record

In the administrative record transmitted to the circuit court, the District Council included the transcript of the May 11, 2015 hearing, but not the transcripts of the relevant portions of three subsequent meetings, specifically, April 13th, in which the District Council heard argument on a request to postpone the Council's consideration of the application; June 8th, in which the District Council referred the matter to staff to prepare an order of approval; and June 22nd, in which the District Council voted to approve the application. After appellants filed their petition for judicial review, they asked the circuit court to supplement the record with transcripts of the relevant portions of each meeting, together with a video recording of the relevant parts of the latter two meetings. The circuit court denied the motion without explanation.

On April 1, 2017, "[f]or reasons that will be explained in an opinion that will be hereafter issued," this panel remanded the case to the circuit court without affirmance or reversal with instructions to supplement the record with the relevant transcripts and recordings. The circuit court complied with this directive. We will now provide the reason for our prior order.

It is well-settled law in Maryland that "a circuit court's review of an administrative agency decision is ordinarily restricted to evidence in the record developed before the agency." *Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 321 (1986). However, as the Court observed in that decision, there is a "narrowly prescribed" exception to the rule. *Id.* A circuit court can admit evidence outside of the administrative

record when that evidence "directly relate[s] to the arbitrary, capricious or discriminatory quality of the conduct of the zoning authority[.]" *Aspen Hill Venture v. Montgomery County*, 265 Md. 303, 317 (1972). To the circuit court, in their brief, and at oral argument, appellants argued that the transcripts and the video recordings support its contentions that: (a) the Council's decision was arbitrary and capricious because the Council never deliberated, and/or (b) to the extent that the Council deliberated, those deliberations violated the Maryland Open Meetings Act, *see* §§ 3-101–501 of the General Provisions Article. As we will explain, and with the benefit of the record as supplemented per our order, neither of these contentions is persuasive. But to reach that decision, we needed to review the transcripts and our decision must be necessarily based upon the record. The only way that the transcripts and the recordings can become part of the record of this case is if the circuit court so orders. This is why the circuit court erred in denying appellants' motion to supplement the record with this material.

4. An Arbitrary and Capricious Decision?

Next, appellants argue that the Council's approval of SE-4734 was arbitrary and capricious because no Council member (1) deliberated on the application prior to the vote, (2) provided any guidance to the Council's attorneys as to the basis of the approval of the application, or (3) read the Final Decision before voting to adopt it. Appellants rely on the April 13, June 8, and June 22 transcripts as proof that the Council did not deliberate on SE-

4734. Additionally, Appellants observe that the 52-page Final Decision was not read aloud or discussed at the June 22 hearing before the Council voted to approve it.

The arbitrary and capricious standard affords great deference to the agency's decision. "[S]o long as the actions of administrative agencies are reasonable or rationally motivated, those decisions should not be struck down as 'arbitrary or capricious.'" *Harvey v. Marshall*, 389 Md. 243, 299 (2005). A decision is arbitrary and capricious if it is "made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms." *Harvey*, 389 Md. at 299. In *Maryland Transportation Authority v. King*, 369 Md. 274 (2002), the Court of Appeals provided an explanation of the standard:

> As long as an administrative sanction or decision does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be "arbitrary or capricious."

369 Md. at 291.

Appellants have not provided any evidence from which we could conclude that the Final Decision exceeded the Council's authority, was unlawful, or not supported by competent evidence.

Nor have appellants provided any legal basis for their assertion that the Council must orally deliberate on the record concerning a special exception application. The law requires that:

> A contested application for a map amendment or special exception may not be granted or denied without written findings of material facts and conclusions.

LU § 25-204. *See also* PGCC § 27-141 ("The final decision in any zoning case shall be based only on the evidence in the record, and shall be supported by specific written findings of basic facts and conclusions."). Further, the record of Council hearing on a special exception must include:

> (1) the vote of each member;
> (2) whether the member abstained from voting; or
>
> (3) whether the member was absent.

LU § 25-205.

Appellants have not asserted that the Council violated any of these provisions. Indeed, the record is clear that the Council abided by these concepts. Thus, we do not agree with appellants' argument that the Council's deficiency to deliberate on SE-4734 on the record made its Final Decision arbitrary and capricious.

5. Compliance with the Open Meetings Act

Assuming that the Council did deliberate on SE-4734, appellants contend that the deliberation violated the Open Meetings Act. Appellants allege that "the record lacks evidence that the Council deliberated on SE-4734 prior to its vote to approve SE-4734," and that:

> [i]t is difficult, if not impossible, to imagine that there was no discussion or deliberation regarding the aspects of the 52-page District Council's Order of Approval given the level of detail provided for in the Order, which included

> detailed responses to specific determinations by the Zoning Hearing Examiner and Technical Staff.

Appellants assert that such a violation makes its approval of SE-4734 void *ab initio*. We do not agree.

The Open Meetings Act:

> is based on the philosophy that public business should be performed in a public manner, which is accessible to interested citizens, and that this type of open government is essential to the maintenance of a democratic society. Such open government ensures the accountability of government to the citizens of the State, . . . increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

Tuzeer v. Yim, LLC, 201 Md. App. 443, 464 (2011) (cleaned up). In relevant part, the Act requires that, subject to certain specific exceptions set out in the Act, "meetings" of public bodies subject to the Act—and the District Council indisputably falls into this category—must be conducted in "open session," that is, open to the general public. Gen. Prov. §§ 3-301 and 3-303(a). The Act specifically provides that, when public bodies meet to consider a "zoning matter," which includes special exception applications, they must do so in open session. Gen. Prov. § 3-103(b). The Act does not apply to a "chance encounter, a social gathering, or any other occasion that is not intended to circumvent this title." Gen. Prov. § 3-103(a).

In assessing the parties' contentions, we start with the presumption that no violation of the Act occurred. *See* Gen. Prov. § 3-401(c); *Tuzeer*, 201 Md. App at 465. Moreover, "a court may void an action violative of the Open Meetings Act only when the aggrieved party

demonstrates that a government body 'willfully failed to comply' with the requirements of the Act." *Id.* at 471 n.15; Gen. Prov. § 3-401(d)(4).

This brings us to what is at the core of appellant's contention, namely, what constitutes a "meeting" of a public body. The Act defines a meeting as the "conven[ing] of a quorum" of a public body, and a "quorum" as a majority of the members of a public body (unless the law requires a different number). Gen. Prov. § 3-301(k). Appellants hypothesize that, because there was no public discussion of the Council's written decision, there must have been non-public discussions between members of the Council. There is no evidence in the record that such a meeting occurred.

We recognize that it is *possible* that such a meeting occurred, but it is also possible, and in our view more likely, that counsel to the District Council prepared a draft decision and circulated it to the members of the Council prior to the meeting at which the decision was approved. If this occurred, there was no violation of the Open Meetings Act because there was no meeting of the Council. In any event, the mere possibility that there may have been a violation of the Act is not sufficient to rebut the presumption that the members of the District Council, as public officials, acted in accordance with the law. *Anne Arundel*

County v. Halle Dev., Inc., 408 Md. 539, 565 (2009).[13]

6. The Nature of the District Council's Jurisdiction

Appellants argue that the Council erred when it exercised original jurisdiction over SE-4734 and substituted its own factual findings for those of the Zoning Hearing Examiner. For support, appellants cite to portions of the Final Decision in which the Council disagreed or found unpersuasive the Zoning Hearing Examiner's findings and conclusions. If appellants are correct, then the District Council could reverse the hearing examiner's decision only if the latter "was not supported by substantial evidence, was arbitrary, capricious, or illegal otherwise[.]" *Zimmer*, 444 Md. at 584. Whether the District Council exercises original or appellate jurisdiction in a particular case is a legal issue which we decide *de novo*. *Zimmer*, 444 Md. at 553.

As we previously noted, PGCC § 27-132(f) states that the Council exercises original jurisdiction when it reviews decisions of the Planning Board or the Zoning Hearing Examiner. In *Zimmer*, the Court held that § 27-132(f) does not empower the District Council to exercise original jurisdiction if doing so would conflict with the Regional

[13] We are aware that, in an unreported opinion, a different panel of this Court addressed nearly identical contentions in a judicial review proceeding involving a different zoning decision by the District Council. *See Grant et al. v. County Council of Prince George's County, Sitting as the District Council, et al.*, No. 809, September Term, 2017, 2018 WL 6329825 (December 3, 2018), *cert. granted* 464 Md. 144 (2019). (The *Grant* opinion also considered whether the District Council exercises original or appellate jurisdiction when it reviews a decision of a zoning hearing examiner in a special exception case. We will address this issue in part 6 of its opinion.)

District Act. 444 Md. at 526 n.30. ("To the extent that the Charter, or the ordinances adopted thereunder, conflict with the RDA, the Charter and ordinances are invalid and the RDA governs." (citation omitted)). The *Zimmer* Court proceeded to hold that § 27-132(f) did not authorize the District Council to exercise original jurisdiction in reviewing Planning Board decisions to grant comprehensive design plan and specific design plan applications because the authority to grant those applications were local zoning functions not specifically excluded from the Planning Board's exclusive jurisdiction by the Regional District Act. *Id*. at 569–71. Appellants argue that we should extend *Zimmer's* holding to include cases, such as the present one, in which the District Council reviews zoning hearing examiner decisions to grant special exception applications.

We decline the invitation. As this Court has noted, the *Zimmer* Court's "analysis was primarily one of statutory interpretation," specifically LU §§ 20-202(b)(i). *County Council of Prince George's County v. FCW Justice*, 238 Md. App. 641, 668–69 (2018). In this regard, the *Zimmer* Court explained (emphasis added):

> LU § 20–202(b)(i) provides that the county planning boards have "exclusive jurisdiction" over "local functions," but does not detail each of the local functions within each jurisdiction. These functions may include any local matter related to planning, zoning, subdivision, or assignment of street names and house numbers. *See* LU § 20–202(a). The functions delegated to the county planning boards pursuant to LU § 20–207 are among the unlisted local functions over which the planning boards have exclusive jurisdiction. The Legislature did not itemize expressly or exhaustively each such intended function, for apparent good reason.
>
> The RDA makes particular provision for the local functions that the Legislature did not intend to be within the planning boards' exclusive jurisdiction. LU § 20–503(c) authorizes the District Council to refer for

> advice only some or all building permits to the Maryland–National Capital Park & Planning Commission for review and recommendation as to zoning compliance. LU § 22–208 requires referral to the county planning boards of applications for zoning map amendments for a "recommendation." Although unclear on its face as to the standard of review, LU § 25–210 authorizes, in Prince George's County, the District Council to "review" the "final decision" of the Planning Board, and issue a "final decision."
>
> [Comprehensive design plan] and [specific design plan] approvals were not among the local functions that the Legislature excepted from the planning boards' exclusive jurisdiction. Because no alternative provision was made, the RDA indicates to us that, like other unspecified local planning functions, the Planning Board is invested with exclusive original jurisdiction over the determination of CDPs and SDPs, subject to appellate review by the District Council.

444 Md. at 567–70 (footnotes omitted).

In contrast to *Zimmer*, there are no provisions in the Regional District Act that lead us to conclude that the General Assembly intended to vest the Planning Board with exclusive jurisdiction in special exception cases. In fact, LU § 22-301 explicitly authorizes the district councils to either decide special exception cases or to delegate that authority to an administrative agency. Moreover, the same statute provides that appeals from those agencies "shall follow the procedure determined by the district council." Thus, there is no conflict between PGCC § 27-132(f)—which authorizes the District Council to exercise "original jurisdiction" in appeals from decisions by the Zoning Hearing Examiner in special exception cases—and any provision of the Regional District Act. The policy concerns at the heart of the Court's analysis in *Zimmer* are simply not present when the District Council reviews a decision of a Zoning Hearing Examiner in a special exception case.

For these reasons, we will apply the long-standing principle that it is the final decision by an administrative agency that is entitled to deference. *See, e.g.*, *Anderson v. Dep't of Pub. Safety & Corr. Servs.*, 330 Md. 187, 212 (1993); *Board of Physicians v. Elliot*, 176 Md. App. 369, 402 (2006); *Dep't of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 296 (1994) ("[T]he substantial evidence standard is not modified in any way when the [agency] and its examiner disagree.") (quoting *Universal Camera Corp. v. National Labor Relations Bd.*, 340 U.S. 474, 496 (1951)). Accordingly, we find appellants' argument on this issue unpersuasive.

7. The Burden of Proof

Appellants assert that the Council erroneously assigned them the burden of proof for SE-4734 because the burden of proof in any zoning case is on the applicant. *See* PGCC § 27-142(a). For support, appellants point to statements made by the Council in its Final Decision: "we find it unpersuasive and insufficient to conclude that the traffic congestion or adversities to agricultural and commercial uses would actually occur at any specific property adjacent to the proposed use[,]" and "we are not persuaded that the effects of the adverse impact of the proposed commercial development would serve to affect adjacent properties more adversely in that particular site from anywhere else in the C-S-C Zone."

Appellants misrepresent the Council's statements. None of the statements cited to by appellants make any mention of the burden of proof, let alone placing it on them. Rather,

the statements demonstrate that the Council was simply disagreeing with the Zoning Hearing Examiner on specific pieces of evidence.

Perhaps more importantly, the Council expressly stated that the burden is on the applicant: "Based on the record before us, we are persuaded that the applicant has met its burden of producing evidence sufficient to meet the criteria for approval of a special exception . . . ." Thus, we find appellants' arguments on this issue unpersuasive.

8. Impact Upon Surrounding Properties

Appellants argue that the Council erred by limiting its analysis of the potential impacts of SE-4734 to the roadways of *adjacent* properties and to the farming communities of *adjacent* properties only. Appellants again rely on the Council's statements that "we find it unpersuasive and insufficient to conclude that the traffic congestion or adversities to agricultural and commercial uses would actually occur at any specific property adjacent to the proposed use[,]" and "we are not persuaded that the effects of the adverse impact of the proposed commercial development would serve to affect adjacent properties more adversely in that particular site from anywhere else in the C-S-C Zone." According to appellants, the Council's focus on only adjacent properties was in error because the law requires that the Council analyze the impacts of SE-4734 on the entire "neighborhood." *See Schultz v. Pritts*, 291 Md. 1, 11 (1981) ("If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his

burden."). The "neighborhood" for the subject property was defined by the Zoning Hearing Examiner as: "US 50 on the north, Patuxent River on the east, Rt. 214 (Central Ave.) and Queen Anne Bridge Road on the south, and US 301 on the west."

We disagree with appellants' argument for two reasons. *First*, the Council did consider more than just the properties adjacent to the subject property. The Council concluded: "we are not persuaded that the effects of the adverse impact of the proposed commercial development would serve to affect adjacent properties *more adversely in that particular site than anywhere else in the C-S-C Zone*." (emphasis added). As another example, the Council concluded that (emphasis added):

> Because SE-4734 has an approved preliminary plan in place and requires a detailed site plan process later in the development process, we find that in order to safeguard the public safety, health, and welfare of the citizens and residents in the area of the subject proposal, the conditions of approval within the Preliminary Plan 4-08052 will be incorporated as . . . conditions to SE 4734 to ensure continuity of site design and review as well as sustainable building design and *compatible with surrounding uses* . . . . *See* § 27-318 (When a special exception is approved, any requirements or conditions deemed necessary to protect adjacent properties *and the general neighborhood* may be added to those of this Subtitle.)

Thus, the Council did consider more than just the adjacent properties.

Second, given the circumstances of SE-4734, the Council did not need to look beyond those adjacent properties. The Council observed:

> [W]e find that there is an existing Wal-Mart store directly across the street from the proposed new structure, and it has an enclosed area of approximately 100,000 square feet of gross floor area as well as continuous operation since it was constructed and opened in 1993. The evidence also states that the Applicant intends to move and expand that department store to accommodate an existing customer base. Therefore, we are unable to

> conclude that the new facility will actually be more adverse than the adverse effects ordinarily associated with this in its current operation directly across US 301 from the subject property.

As the Council recognized, the purpose of SE-4734 was, in essence, to relocate the existing Wal-Mart on the west side of US 301 into a larger building just east of US 301. For that reason, traffic in the neighborhood would not necessarily increase, particularly because Wal-Mart planned to rely on the "customer base" that has existed in the area since 1993. Thus, the Council could reasonably scrutinize the impact of SE-4734 on adjacent properties more so than on the rest of the neighborhood.

9. Substantial Evidence

Appellants contend that the record lacks substantial evidence to support the Council's finding that SE-4734 will not adversely affect the roadways and farming community in the neighborhood. Appellants argue that a Wal-Mart Super Center conflicts with the neighborhood's current status as a primarily agricultural area, and that portions of the roads are too narrow for both farm equipment and a car travelling opposite directions to pass each other.

Our cases have emphasized that when an administrative body issues recommended findings of fact, and that recommendation conflicts with the findings of fact in the "final decision" reached by the agency, our focus must remain on deciding whether the final decision is supported by substantial evidence:

> Because the substantial evidence test remains the ultimate and absolutely controlling consideration on judicial review, it does not matter that the

> agency may have ignored the findings and the proposed decision of the [administrative law judge], even without having had any rational basis for doing so, just so long as there still exists some other basis for the agency's decision that would be enough, in and of itself, to satisfy the substantial evidence test.

Maryland Bd. Of Physicians v. Elliot, 170 Md. App. 369, 386 (2006) (emphasis added). Thus, for our analysis, it is immaterial how thoughtful, detailed, or well-reasoned the Zoning Hearing Examiner's decision was in issuing its approval of the application. Our task is to focus on whether the District Council's decision was supported by substantial evidence. "Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Becker v. Anne Arundel County*, 174 Md. App. 114, 138 (2007) (quoting *Snowden v. City of Baltimore*, 224 Md. 443, 448 (1961)). Under the substantial evidence test, we will only overturn the District Council's findings if those findings are "unsupported by competent, material, and substantial evidence in light of the entire record as submitted." *Elliot*, 170 Md. App. at 405–07.

We agree with the appellees that there was substantial evidence in the record to conclude that SE-4734 would not adversely impact the surrounding neighborhood. As we have already discussed, SE-4734 was designed to utilize the customer base for the existing Wal-Mart store on the west side of US 301, and thereby keep traffic low. The Technical Staff recognized this. The Staff limited the total development for the project to "606 AM peak-hour trips and 1,017 PM peak-hour (weekdays) vehicle trips, and 1,431 peak trips on Saturdays." Then, the Technical Staff found (emphasis added):

> Based on trip generation rates obtained from the Institute of Transportation Engineers (ITE) Trip Generation Manual 9th Edition, 2012, the proposed Wal-Mart Super Center is expected to generate 282 AM net peak-hour vehicle trips and 582 net PM peak-hour (weekday) trips, and 860 net peak-hour trips on Saturday. *This is within the cap set by this condition*.

Then, the Staff recognized that SE-4734 would require that the surrounding roadways be modified for the development. Thus, the Staff mandated that, prior to any building permits being issued, certain road improvements be made, including constructing additional lanes at the intersecting roads with 301, installing traffic signals, re-striping lanes, and providing a right-in, right-out access point on US 301 at the subject property's northernmost point.

Witnesses from the area also testified that they welcomed the proposed Wal-Mart Super Center. At a hearing before the Zoning Hearing Examiner, Carol Donahue, a resident in the County, opined that "[i]n this economic climate, ready access to quality affordable goods benefits each of us on a personal level. We can certainly gain this from a new store that will provide reasonably priced fresh produce, meats, groceries, health and beauty items, clothing etc." Then, Terry Terrell, a resident of Bowie, testified that she supported the proposed Wal-Mart Super Center because of the income and revenue it would bring to the City of Bowie. Numerous other residents in the area also testified as to the benefits a Wal-Mart Super Center would bring to the City of Bowie.

Then, Michael Birkland, a civil engineer who prepared the plans for SE-4734, testified. He testified that the setbacks, buffers, pedestrian walkways, and green areas proposed in SE-4734 meet the County requirements.

Based on this evidence, the Council also recognized that:

> the impacts from the proposed development, even if "adverse," are not the result of this specific special exception at this location. Rather, the testimony from both sides indicates that any site development, pursuant to the approved Preliminary Plan of Subdivision on this C-S-C zoned property, will lead to normal impacts associated, generally, with all development.

Further, the Council found the testimony of neighbors "unpersuasive and insufficient to conclude that the traffic congestion or adversities to agricultural and commercial uses would actually occur at any specific property adjacent to the proposed use." Further, the Council was "not persuaded that the effects of the adverse impact of the proposed commercial development would serve to affect adjacent properties more adversely in that particular site than anywhere else in the C-S-C Zone."

10. Direct Access to Route 301

Appellants argue that the Council erred in finding that SE-4734 satisfied PGCC § 27-348.02(a)(1). That section of the Zoning Ordinance provides:

> (a) Department or Variety Stores and Department or Variety Stores combined with Food and Beverage Stores permitted in the use tables by Special Exception (SE) in the I-3, C-S-C and C-M zones shall be subject to the following requirements:
>
> (1) The site shall have frontage on and direct vehicular access to an existing arterial roadway, with no access to primary or secondary streets.
>
> * * *

The Zoning Hearing Examiner observed, as do appellants, that Wal-Mart can only meet this requirement by having a direct access from the subject property to US Route 301.

Appellants indicate this can only be accomplished when Wal-Mart obtains approval to access Route 301 from the State Highway Administration. Appellants also indicate that the Administration has not approved access to US 301. From these allegations, appellants assert that the "the law requires that the Applicant have the required access *before* the Applicant obtains approval for SE-4734" (emphasis added), and that "the law does not authorize the Council to approve SE-4734 on the condition that the Applicant obtain access to US 301 at some unspecified date in the future."

On this issue, the Council looked at "other testimony in the record stating that the Applicant is aware of the requirement [of PGCC § 27-348.02(a)(1)] and is actively pursuing approval for that direct access with the State Highway Administration." For example, Mr. Birkland, the civil engineer who prepared the plans for SE-4734, testified that the applicant has submitted an application to the State Highway Administration to obtain access to US 301. He indicated that the State Highway Administration has not approved the application because it is the Administration's practice not to do so until a formal plan has been approved by the County. Evidence was also presented that a private roadway is proposed to connect the subject property to Mill Branch Road. Additionally, the State Highway Administration stated, in a letter dated May 8, 2009, that it would dedicate to construct two interchanges, one between Mill Branch Road and Route 301, and the other between Routes 301 and 197, which, when completed, would give the subject property access to an arterial roadway. The SHA's commitment was conditioned upon approval of the special exception application. It must also be noted that the 2006 Master

Plan envisioned that a permanent right-of-way be established from the subject property to US 301 at the time the property is developed.

Based on that evidence, the Council decided that, as a condition of approval for SE-4734, the applicant must "secure approval for direct access, as required by the Zoning Ordinance." The Council also observed that, as an alternative to meeting the requirements of PGCC § 27-348.02(a)(1), the applicant could seek a variance for those requirements:

> It is worth noting . . . that no variance from the strict application of the prescriptions of § 27-348.02 was sought by the Applicant in this case. Based on the Applicant's lack of title ownership to the easement that is between its property and US 301, in addition to the apparent fact that the holder of the easement is a public entity, a variance request pursuant to § 27-230 of the Zoning Ordinance is a viable alternative possibility to securing consent from SHA for direct vehicular access to US 301.

The Council's findings are not in conflict with the requirements of PGCC § 27-348.02(a)(1). In order for SE-4734 to be approved, the Council has explicitly ruled that Wal-Mart must first obtain approval from the State Highway Administration to access US 301, or, in the alternative, apply for a variance to the requirements of PGCC § 27-348.02(a)(1). Such conditional approval is expressly authorized in the Zoning Ordinance. *See* PGCC § 27-318 ("When a Special Exception is approved, any requirements or conditions deemed necessary to protect adjacent properties and the general neighborhood may be added to those of this Subtitle."); *see also* PGCC § 27-108.01(a)(10) ("The word 'approve' includes 'approve with conditions, modifications, or amendments.'"). Additionally, the Technical Staff recognized this point as well when it concluded the State Highway Administration's approval for the right-of-way be made at the time a detailed site

plan is approved by the Planning Board. Thus, we find no error in the Council's decision on this issue.

11. Compliance with the Area Master Plan

We come to appellants' final contention: that the Council erred when it concluded that SE-4734 conforms to the 2006 Bowie Area Master Plan. Specifically, appellants assert that the Council disregarded the size limitations imposed by the Master Plan and disregarded that Mill Branch Road is designated as a Scenic and Historic Road.

In 2002, the District Council evaluated the County's land use and development policies pursuant to LU § 27-103(b) and adopted the 2002 Prince George's County General Plan. That Plan designated the subject property within the "Developing Tier," which is a "viable residential community that provides low- to moderate-density suburban, and diverse residential development, renovated mixed-use activity centers, multimodal transportation, and a Regional Center connected to a major transit hub supported by the required public facilities."

Then, in 2006, in accordance with the RDA, the District Council approved the 2006 Bowie Master Plan and Sectional Map Amendment. In line with the Developing Tier designation of the 2002 General Plan for the subject property, the 2006 Master Plan rezoned the subject property from the Residential-Agricultural (R-A) Zone to the C-S-C Zone. Mill Branch Road, which forms the southern boundary of the subject property, was also designated as a scenic and historic road. The Master Plan provided that the subject property "should be developed with high-quality commercial retail uses, including a hotel.

Future development should . . . provide for the needs of the workers and residents in the area." The Master Plan specified that any development "should include quality department stores but should not include discount or 'big-box' commercial activities. No individual retail use, other than food or beverage stores (grocery store) shall exceed 125,000 square feet in size."

Finally, in 2014, in accordance with LU § 27-103(b), the District Council adopted the Plan Prince George's 2035 ("the 2014 General Plan"). That Plan was enacted as a "comprehensive 20-year . . . blueprint for long-term growth and development in Prince George's County." The General Plan categorized areas within Prince George's County into "classifications." The City of Bowie was classified as a "Suburban Town Center," which envisions:

> A range of auto-accessible centers that anchor larger areas of suburban subdivisions. Overall the centers are less dense and intense than other center types and may be larger than a half mile in size due to their auto orientation. The centers typically have a walkable "core" or town center. Often the mix of uses is horizontal across the centers rather than vertical within individual buildings.

As to SE-4734's conformance with the 2006 Bowie Master Plan, the Zoning Hearing Examiner found:

> The Master Plan's vision and desire for the ultimate development of this site is for something more than what is being proposed by the Applicant. A Wal-Mart Super Center . . . would seem to be the quintessential example of the big-box discount store being discouraged by the District Council. The Applicant is proposing a building that far exceeds the square footage recommendation for a single-use . . . . The Applicant explains [that] "the proposed building . . . does not impair this Master Plan suggestion. The proposed building and department store contains a number of retail uses. The

> store has three main entrances: one for general merchandize, one for grocery component, and one for the outdoor garden center. In addition, interior space is provided for tenants. Wal-Mart stores of this size typically include tenant space for additional uses such as fast food, banks, florists, beauty and health related operators." Notwithstanding the Applicant's explanations to the contrary, the Staff found this proposal to be a big-box discount development irrespective of the upgraded façade, multiple entrances, and other retail uses proposed within the building footprint and your Examiner agrees.

Then, the Zoning Hearing Examiner concluded:

> The proposed use and Site Plan do not serve the purpose of implementing the policies, Guidelines, and Strategies of the 2006 Bowie Master Plan and Sectional Map Amendment. In fact, they directly contradict almost every one of the site-specific design Guidelines contained in the Plan. Staff cannot find the use to be the level of quality specified by the Planning Board and District Council, nor does it find the architecture to be a level sufficient to set the tone for future development to follow, and your Examiner concurs.

The District Council disagreed with the Zoning Hearing Examiner. First, the Council concluded that SE-4734 "conforms to the land use development recommendations of the 2006 Bowie Master Plan and Sectional Map Amendment, particularly the language addressing the subject property that calls for rezoning the property to the C-S-C Zone, the recommendation for 'high quality retail uses, included a hotel' and 'quality department stores.'" According to the Council:

> Although the Master Plan Policies, Strategies, and Guidelines pertaining to the type of commercial building and uses specifically discourage "Big box" commercial uses, this language is a guide and is not regulatory. Thus, we find that the proposed development will not substantially impair the integrity of the 2006 Bowie Master Plan.

Second, the Council concluded that the provisions of the 2014 General Plan controlled SE-4734. The Council reasoned that as part of the Council's approval of the 2014 General Plan, it:

> declared that where approved General Plan recommendations conflict with existing area master plan and functional master plan recommendations, the 2014 General Plan update supersedes and amends any inconsistent provisions within said master plans, including the 2006 Bowie Master Plan and Sectional Map Amendment for the area of the subject property. *See* CR-26-2014, at 1; 2014 Plan Prince George's 2035, at 194.

As to the guidelines for the subject property set forth in the 2014 General Plan, the Council took administrative notice that the 2014 General Plan included the subject property within the Bowie Suburban Town Center designation, and concluded that it met the criteria for that designation.

There is, admittedly, a degree of tension between the provisions of the 2006 Area Master Plan and the 2014 General Plan. Development projects, particularly projects as significant as the proposed Wal-Mart, should comply with the General Plan and the applicable local area plan. Absent legal error, the absence of substantial evidence, or arbitrary and capricious decision-making, it is not the role of a court to substitute its judgment for that of the administrative agency. This particular aspect of the Council's decision was neither based upon legal error nor arbitrary or capricious. Moreover, it was supported by substantial evidence. There is no basis for us to disturb the Council's decision.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.