

Circuit Court for Prince George's County
Case No. CAL1811495

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2960

September Term, 2018

GENON ASH MANAGEMENT LLC

v.

PRINCE GEORGE'S COUNTY COUNCIL,
ET AL.

Fader, C.J.,
Kehoe,
Berger

JJ.

Opinion by Berger, J.

Filed: March 2, 2020

*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.

This appeal arises from a decision of a Zoning Hearing Examiner (“ZHE”) for Prince George’s County to approve, subject to several conditions, an application for a special exception filed by Appellant, GenOn Ash Management LLC (“GenOn”) for a sanitary landfill for fly ash disposal.¹ Thereafter, the Prince George’s County District Council (the “District Council” or “Council”), Appellee, elected to make the final decision on GenOn’s application and reversed the decision of the ZHE. GenOn filed a petition for judicial review in the Circuit Court for Prince George’s County, which affirmed the decision of the District Council. GenOn raises two issues on appeal, which we have rephrased as follows:

1. Whether the District Council acted within the applicable time limit to review GenOn’s application for a special exception.
2. Whether the District Council’s findings were supported by substantial evidence and premised upon accurate conclusions of law.

For the foregoing reasons, we hold that the District Council acted outside of the applicable time period. Accordingly, we need not address whether the District Council’s findings were supported by substantial evidence and premised upon accurate conclusions of law. We, therefore, reverse the judgment of the Circuit Court for Prince George’s County, and remand the case to that court with instructions to reinstate the ZHE’s approval of the special exception subject to the conditions imposed by the ZHE.

¹ GenOn informed this Court, on September 3, 2019, of its name change from NRG MD Ash Management to “GenOn MD Ash Management LLC.”

BACKGROUND AND PROCEDURAL HISTORY

GenOn operates a sanitary landfill for the disposal of fly ash, a by-product created by the combustion of coal during the production of electrical energy at coal-burning power stations.² The landfill is located in the Open Space Zone at 11710 North Keys Road in Brandywine, Maryland.³ The area surrounding the site includes the Mattaponi Creek tributary along with two unnamed tributaries, a Potomac Electric Power Company transmission line, two forested parcels, a closed landfill, residential dwellings, and a former sand and gravel mining operation and wet processing facility.⁴ Recently, the nature of the neighborhood around the landfill has changed. Maryland Parks and Planning constructed

² The Prince George’s County Code of Ordinances (“PGCC”) defines a sanitary landfill as follows:

A planned, systematic method of refuse disposal where waste material is placed in the earth in layers, compacted, and covered with earth or other approved covering material at the end of each day's operation, or any method of in-ground disposal of sludge other than for fertilization of crops, horticultural products, or floricultural products in connection with an active agricultural operation or home gardening. A "Sanitary Landfill" includes a "Rubble Fill" for construction and demolition materials. PGCC § 27-107.01(a)(205).

³ The purpose of the Open Space Zone is “[t]o provide for low density and development intensity as indicated on the General or Area Master Plans” and “provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.” PGCC § 27-425(1). Additionally, it is “intended to promote the economic use and conservation of agriculture, natural resources, residential estates, nonintensive recreational uses, and similar uses.” PGCC § 27-425(2).

⁴ The Mattaponi Creek is a tributary of the Patuxent River.

Brandywine-North Keys Community Park, which includes several sports fields, walking trails and a playground. In addition, new residential homes have been constructed in the surrounding area.

The site has been used for fly ash disposal since 1971 and has operated under four previous special exceptions. On July 10, 2007 the District Council approved the most recent special exception prior to the application for the special exception at issue in 2015. Its approval was subject to four conditions, including the following:

This special exception shall expire eight years after final District Council approval action, or upon reaching site capacity to accept fly ash rubble, whichever date occurs first. Applicant shall notify [Department of Environmental Resources] and the District Council in writing, upon cessation of the use.

The conditional approval also required that the existing and proposed ash mounds at the site were -- or would be -- unacceptably high and would detract from view of the site on nearby roads and properties. Thus, the District Council required all future mounds to be no more than 40 feet above the original grade and that all existing mounds be at or below their current height.

The most recent special exception that was approved prior to the application for the instant special exception expired on July 10, 2015. Although GenOn began submitting new application materials in December of 2014, the completed application was not filed until December 14, 2015. The special exception application currently at issue (“S.E. 4765”) requested a ten-year extension to continue the disposal operation. At the time the

application materials were submitted, the north and west portions of the landfill had been filled (“Phase I”) and the filling of the southeastern portion (“Phase II”) was ongoing.

Pursuant to the relevant Prince George’s County Code of Ordinances (“PGCC”), GenOn was required to submit various materials to the Prince George’s County Planning Board (the “Planning Board”) in connection with its application for S.E. 4765. GenOn was also required to submit a “Corporate Applicant Affidavit” with its application. As part of its application package, GenOn transmitted a “Corporate Applicant Affidavit” to the Planning Department on July 15, 2015. The affidavit was filed on the State Ethics Commission form that was used at that time. The form used for the affidavit had been in use since August 28, 2006. On June 16, 2016 the Environmental Planning Section of the Maryland-National Capital Park and Planning Commission recommended approval of the application, subject to numerous conditions and exceptions.

The ZHE held hearings on the application for S.E. 4765 on November 16, 2016, January 25, 2017, and July 19, 2017. Several witnesses testified on behalf of GenOn’s application, including an expert traffic planner, GenOn’s senior environmental engineer, and an expert in land use planning. Appellee, Patuxent Riverkeeper, a non-profit organization dedicated to the conservation and protection of the Patuxent Watershed, was one of several groups that contested the application. Additionally, two environmental experts testified in opposition to the special exception. On September 28, 2017, the ZHE issued her decision, approving S.E. 4765, subject to an 8-year validity period or upon the site reaching capacity, as well as numerous other conditions.

On August 28, 2015, the State Ethics Commission began using an updated version of the “Corporate Applicant Affidavit,” which was originally submitted by GenOn on the form used at that time on July 15, 2015. At oral argument, counsel for GenOn and the District Council represented that someone from the office of the Clerk of the County Council likely directed GenOn to submit a new affidavit on the new form. The new form, titled “Business Entity Affidavit,” was filed with the Office of the ZHE on September 27, 2017, the day before the ZHE issued her decision approving the extant special exception.

Thereafter, the Clerk of the Council issued a memorandum to the District Council on October 4, 2017 regarding S.E. 4765. The memorandum advised the District Council that the Clerk’s office was in receipt of the ZHE’s notice of decision, but that the transmittal from the ZHE did not comply with affidavit requirements. As a result, the Clerk of the Council notified the Council that it was extending the 30-day review period for the District Council to elect to make the final decision on the special exception. The October 4, 2017 memorandum from the Clerk of the Council advised the Council that:

This item will be placed on the District Council agenda under Pending Finality on November 6, 2017. Please note that the 30-day appeal period will end on October 30, 2017. The original transmittal did not comply with affidavit requirements. Thus, the Council’s 30-day review period ends on November 27, 2017.

The District Council elected to make the final decision on GenOn’s application for S.E. 4675 on November 6, 2017. On February 26, 2018, the District Council held oral argument on the application for the special exception. After oral argument, the District Council held the application requesting approval of the special exception under

advisement. Thereafter, the District Council denied the application on April 11, 2018. GenOn sought judicial review of the District Council’s denial of the special exception. Thereafter, the Circuit Court for Prince George’s County affirmed the denial on October 17, 2018.

We must decide whether the Council erred in its treatment of the 30-day review period for the District Council to elect to make the final decision on the special exception. Critical to that analysis is which affidavit controls our analysis, the affidavit submitted with the application on July 15, 2015 or the affidavit submitted by GenOn at the direction of the Clerk of the County Council on September 27, 2017.

The Maryland Public Ethics Law “recognizes that the people's confidence and trust are eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence.” Md. Code (2014), § 5-102(a)(2) of the General Provisions Article (“GP”). In order to guard against improper influence, certain government officials are required “to disclose their financial affairs and to set minimum ethical standards for the conduct of State and local business.” GP § 5-102(b). Indeed, the General Assembly set forth “special provisions” for Prince George’s County pertaining to land use applications in Subtitle 8 of the General Provisions. GP § 5-833 et seq.

Pursuant to GP § 5-835, when applying for a special exception, “[a]n applicant or agent of the applicant may not make a payment to a member or the County Executive, or a slate that includes a member or the County Executive, during the pendency of the application.” GP § 5-835, § 5-833. The law, therefore, requires applicants to submit an

affidavit with their application, disclosing any payments made or solicited by the applicant or a member of their household “to a member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application.” GP § 5-835(c). Notably, “[t]he affidavit shall be filed at least 30 calendar days before consideration of the application by the District Council.” GP § 5-835(c)(2).

STANDARD OF REVIEW

“On appellate review of the decision of an administrative agency, this Court reviews the agency's decision, not the circuit court's decision.” *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273 (2012). “In reviewing the decision of an agency, our role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 279, 152 (2017) (citations and quotations omitted). “The substantial evidence test is defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018), *cert. denied*, *Paul v. Brandywine Senior Living*, 460 Md. 21 (2018) (citations and quotations omitted). In applying this test, the Court of Appeals has emphasized that “a court should [not] substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken.”

Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC, 410 Md. 191, 204 (2009) (alteration in original) (citations and quotations omitted).

We review the agency’s conclusions of law *de novo*. *Brandywine, supra*, 460 Md. at 211. Indeed, “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 Cty. v. Loyola Coll. in Maryland*, 406 Md. 54, 68 (2008). We do, however, “give an administrative agency's interpretation and application of the statute which the agency administers, considerable weight.” *Assateague Coastkeeper v. MDE*, 200 Md. App. 665, 690 (2011) (citations omitted).

DISCUSSION

Before reaching the merits, we must first address whether the District Council acted within the applicable time limit to review GenOn’s application. The following timeline is helpful in understanding this issue:

July 15, 2015: GenOn files its first Affidavit with the Planning Department.

August 28, 2015: The Ethics Commission publishes an updated affidavit form.

September 27, 2017: GenOn files its second Affidavit at the direction of the Clerk of the Council on the updated form with the Office of the ZHE.

September 28, 2017: The ZHE files her decision with the District Council.

October 4, 2017: The Clerk of the Council indicates that it is in receipt of the ZHE’s decision, and notifies the District

Council that the matter has been placed on the November 6, 2017 agenda.

November 6, 2017: The District Council elects to make the final decision.

April 12, 2018: The District Council issues its denial of GenOn’s application for a special exception.

At issue in this case is the sufficiency of the ethics affidavit and the timing of the filing of the Affidavit in relation to the District Council’s election to make the final decision on GenOn’s application for a special exception. In order to resolve whether the District Council acted within applicable time limits, we first determine which ethics affidavit controls our analysis.

I. GenOn filed a timely affidavit on July 15, 2015.

GP § 5-835(c)(1) addresses the requirements of the ethics affidavits that must be filed by all applicants. Applicants must file an affidavit under oath, stating that they have not made payment to or solicited “any person or business entity to make a payment to a member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application.” GP § 5-835(c)(1)(i)(1), 5-835(c)(1)(ii)(1). If a payment or solicitation was made, the applicant must disclose “the name of the member to whose treasurer or continuing political committee, or slate to which the member belongs or belonged during the 36-month period before the filing of the application, the payment was made.” GP § 5-835(c)(1)(i)(2), 5-835(c)(1)(ii)(2). The affidavit must also disclose the same

information if a member of the applicant’s household has made a payment. GP § 5-835(c)(1)(iii).

This affidavit must “be filed at least 30 calendar days before consideration of the application by the District Council.” GP § 5-835(c)(2). An applicant is required to file a supplemental affidavit “whenever a payment is made after the original affidavit was filed.” GP § 5-835(c)(3). Additionally, the Ethics Commission publishes a form that applicants are required to use in filing their affidavits. GP § 5-835(c)(4). The form provides that it must be filed with the Clerk of the County Council. Notably, GP § 5-835 does not contain such a requirement.⁵

GenOn maintains that it was not necessary to file a second affidavit. Further, even if it was required to do so, GenOn argues that it was prompted to file the second affidavit by the Clerk of the Council and did so promptly on September 27, 2017. It contends that because it filed a valid affidavit in 2015, and no payments or solicitations had been made since it filed its initial affidavit, it was not required to file another affidavit on the updated form.⁶ The District Council and the Patuxent Riverkeepers, however, assert that GenOn’s

⁵ § 5-838(c)(1), however, requires that affidavits “shall be filed in the appropriate case file of an application.” A special exception application must be filed with the Planning Board, as required by PGCC § 27-296. We therefore, reject the District Council’s argument that the form was filed with the incorrect entity.

⁶ All parties agree that there were no payments made by GenOn to any County Executive.

original affidavit did not comply with state law, and a new affidavit was required to be filed on the updated form.

We agree with GenOn that it was not required -- by law -- to file the second affidavit on September 27, 2017. When GenOn filed the affidavit with its initial application, the affidavit was filed on the form in use by the Ethics Commission at that time.⁷ Critically, there were no payments made after the filing of this affidavit, which is the only reason for an applicant to file an updated form. Therefore, the July 15, 2015 affidavit satisfied the requirements of the Public Ethics Law, and the time of the filing of the first affidavit controls our analysis.

II. The District Council acted out of time.

We next turn to whether the District Council acted within the appropriate time period to elect to make the final decision on this special exception. The District Council has established the Office of the Zoning Hearing Examiner and has appointed Hearing Examiners to conduct public hearings in zoning cases. PGCC § 27-126. PGCC § 27-312 outlines the authority of a ZHE with respect to special exception applications:⁸

⁷ The form was updated pursuant to § 5-838(b), which was amended in 2014 to require additional disclosures for corporations. The Ethics Commission, however, did not update the form for over a year after the effective date of this provision. Moreover, GenOn and its predecessors are not corporations, but LLCs. Section 5-838(b), therefore, is not applicable to GenOn's application for a special exception.

⁸ For a discussion of the procedure that governs PGCC § 27-312(a)(2)(C), *see Cty. Council of Prince George's Cty. v. Billings*, 420 Md. 84, 105 (2011). The Court of Appeals in *Billings* addressed issues different from the issues presented in this appeal. Nevertheless, *Billings* is helpful to an understanding of special exception proceedings in Prince George's County.

- (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;
 - (B) In those cases described in Sections 27-132(c)(1)(D) and 27-301. For these cases the Zoning Hearing Examiner shall transmit specific findings of fact, conclusions of law, and a recommended disposition of the case to the District Council for final decision;
 - (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; or
 - (D) If the applicant, all persons of record, and the People's Zoning Counsel waive (in writing) their right of appeal, and the District Council, by majority vote of the full Council, has waived its right to make the final decision on the case pursuant to subparagraph (C), above. For these cases, the Zoning Hearing Examiner may direct that the decision become effective

immediately, unless it is a case referred to
in subparagraph (B), above.

PGCC § 27-312.

Pursuant to PGCC § 27-312(a)(2), a decision by the ZHE becomes final 30 days after it is filed, except in certain limited circumstances. One of those limited circumstances is if the District Council elects to make the final decision on the case pursuant to PGCC § 27-312(a)(2)(C). In that event, the District Council must elect to make the final decision on the case “within thirty (30) days after receipt of the Zoning Hearing Examiner’s decision.” PGCC § 27-312(2)(C).

GenOn argues that pursuant to PGCC § 27-312(a)(2) and § 27-312(a)(2)(C), the ZHE’s decision became final 30 days after she filed her decision with the District Council. It avers that the District Council could not elect to make the final decision after that date, which occurred on October 28, 2017. The appellees, however, contend that the District Council could not take any steps in consideration of GenOn’s application for 30 days after the proper affidavit was filed, which would have been on October 27, 2017. Additionally, the appellees maintain that the District Council could not be in “receipt” of the ZHE’s decision until that date.⁹ The Council, therefore, argues that it had 30 days from October 27, 2017 to elect to make the final decision, pursuant to PGCC § 27-312(a)(2)(C). The District Council further contends that if it had convened any earlier to elect to make

⁹ The Clerk of the Council, however, acknowledged receipt of the decision on October 4, 2017.

the final decision, it would have “considered” the application, in violation of GP §5-835(c)(2).

At issue in this case is the interplay between the mandatory 30-day timing provisions in GP § 5-835(c)(2) and PGCC § 27-312(a)(2)(C). The question before us is whether the District Council’s time to elect to make the final decision was extended by the filing of the second affidavit by GenOn on September 27, 2017. Notably, there is nothing in the express language of GP § 5-835(c)(2) or PGCC § 27-312(a)(2)(C) that supports the position of the District Council. The District Council, however, relies upon the Attorney General’s interpretation of GP § 5-835 and a letter to the Clerk of the County Council from the Executive Director of the Ethics Commission, Michael W. Lord, Esquire. The Attorney General concluded the following regarding special exceptions:

The timing requirements are fairly easy to administer with respect to special exceptions, zoning map amendments, variances, and other quasi-judicial land use matters, where the proceeding before the District Council is initiated by an applicant’s submission of a written application that seeks an action specific to the applicant’s land. In those situations, the applicant can submit the affidavit with the application, and the District Council can ensure compliance with the statute by waiting 30 days before taking up the matter. *The timing requirements are more difficult to apply, however, when it comes to area master plans and sectional map amendments—quasi-legislative actions that are formally initiated by the District Council, not an applicant.*

100 Md. Att’y. Gen. Op. 55, 56 (2015) (emphasis added). The opinion further interprets the meaning of the word “consideration” and interprets GP § 5-835(c)(2) as imposing a requirement on the District Council to wait 30 days after an affidavit is filed to consider a

matter. *Id.* at 84. This interpretation, however, was not in the context of cases involving special exceptions, but those matters initiated by the District Council, not by the applicant:

[W]e believe that a narrow interpretation of “consideration” to exclude the early stages of the District Council’s proceedings, whether in a meeting or by other action of that body, would weaken the disqualification requirement, run counter to the General Assembly’s likely understanding of the word when it enacted the law, and conflict with the statutory requirement that the Ethics Law be construed “liberally” to achieve its purposes. Given the shared purpose of Part V and the Open Meetings Act to enhance public faith in government through disclosure requirements, and the General Assembly’s consideration of both laws as a way of addressing the influence of campaign contributions on the District Council’s land use decisions, we believe that the *New Carrollton* definition of “consideration” applies here. In our opinion, then, “consideration” for purposes of Part V means the Council’s “deliberative and decision-making process in its entirety.”

* * *

In our view, the Council lacks the power to proceed with the application of a person who has failed to timely file the required affidavit. Although Part V does not explicitly provide as much, we believe the District Council is not authorized to proceed in the face of an applicant’s or agent’s violation of Part V.

100 Md. Att’y. Gen. Op. 55, 78-79, 81 (2015) (emphasis added).

Based on the Attorney General’s interpretation of the Public Ethics Law, Executive Director of the Ethics Commission, Michael W. Lord instructed the Clerk of the County Council as follows:

In light of the Attorney General’s opinion on the definition of “consideration[,]”[] the District Council may not move forward with an application if the affidavit was not filed at least 30 days prior to the matter coming before the District Council.

Accordingly, in order to ensure the application process proceeds in an orderly fashion and comports with the requirements of the Law, your office should not accept any applications that are transmitted to the District Council from the Planning Board or the Zoning Hearing Examiner if the transmission does not contain the necessary affidavit, to include an indication that it was filed at least 30 days prior to your receipt of the transmission. If you receive an application which does not contain a timely-filed affidavit, you are to return it to the appropriate entity with the direction to retransmit the application to your office 30 days after a proper affidavit has been filed.

(Emphasis added). Here, the Clerk of the Council informed the District Council on October 4, 2017 that it was in receipt of the ZHE’s decision. The Clerk further informed the District Council that the affidavit contained in the original transmittal from the ZHE was insufficient, and therefore, its 30-day review period would end on November 27, 2017. Thus, even if the Clerk of the Council relied upon Mr. Lord’s letter for guidance, the Clerk did not follow that direction. Contrary to Mr. Lord’s letter, the Clerk held onto the application until 30 days after a second affidavit was filed, when it then began to run the 30-day review period of the District Council.

Notably, GP §5-835(c)(2) and PGCC § 27-312(a)(2)(C) are devoid of any language which adds an *extra* thirty days into the District Council’s review period. Critically, “when construing two statutes that involve the same subject matter, a harmonious interpretation of the statute is strongly favor[ed].” *Harvey v. Marshall*, 158 Md. App. 355, 364–65 (2004), *aff’d*, 389 Md. 243, (2005) (alterations in original) (citations and quotations

omitted). We, therefore, endeavor to reconcile the mandatory 30-day time periods contained in both provisions.¹⁰

In our view, the District Council erred in waiting 30 days from the filing of the second affidavit to begin counting its 30-day review period. We are unpersuaded by the District Council’s argument that pursuant to the Open Meetings Act, and its long-range calendar, the first time it could meet was on November 6, 2017.¹¹ The District Council avers that the 30-day period following the decision of the ZHE fell on a Saturday, and, that the District Council was not scheduled to meet until the following Monday. It, therefore, contends that it correctly placed the item on its agenda for November 6, 2017, which was the date of its next scheduled meeting. Indeed, were we to accept this position, the mandatory timing provisions of PGCC § 27-312 would be rendered meaningless by the scheduling of meetings beyond the 30-day period for the Council to “elect to make the final decision.”

In light of our determination that the July 15, 2015 affidavit controls our analysis, the 30-day period for the Council to “elect to make the final decision” on the special exception expired 30 days after the ZHE filed her written decision pursuant to

¹⁰ We, therefore, must reject the position of the District Council that it could not be in “receipt” of the ZHE’s decision until 30 days following the filing of the second affidavit. Indeed, the Clerk of the Council even acknowledged that it was in receipt of the decision on October 4, 2017.

¹¹ Pursuant to GP § 3-103, when a public body is meeting to consider a special exception, it is subject to the Open Meetings Act and must meet in open session. *See also* GP § 3-301.

PGCC § 27-312(a)(2). The ZHE issued her decision on September 28, 2017 and therefore, her decision became final on October 28, 2017. As a result, the District Council acted out of time for its review when it elected to make the final decision on November 6, 2017.¹²

In light of our holding that the District Council acted out of the applicable time limitations to elect to make the final decision, we need not address whether there was substantial evidence in the record to support the District Council’s decision. In sum, we hold that the District Council acted out of time when it elected to make the final decision on this special exception. We, therefore, reverse the judgment of the Circuit Court for Prince George’s County, and affirm the decision of the ZHE.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED. CASE REMANDED TO THAT
COURT WITH INSTRUCTIONS TO
REINSTATE THE ZONING HEARING
EXAMINER’S APPROVAL OF SPECIAL
EXCEPTION 4765 SUBJECT TO THE
CONDITIONS IMPOSED BY THE ZONING
HEARING EXAMINER IN HER
SEPTEMBER 28, 2017 DECISION. COSTS
TO BE PAID BY APPELLEE.**

¹² We hold that, under the circumstances of this case, the District Council was precluded from making the final decision. Nevertheless, we note that the District Council was not acting in any nefarious way nor guided by an improper motive by extending the review period for the District Council to “elect to make the final decision.” Indeed, the Clerk of the Council was simply trying to comply with the directive of the State’s Ethics Commission as the Clerk of the Council understood it to mean.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2960s18cn.pdf>