

**IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND**

**PETITION OF** :  
 :  
**Town of Riverdale Park, Town of** :  
**University Park, Sonio O'Connell and** : **Case No.: CAL15-32787**  
**Stephan Rodusakis** :  
 :  
**Petitioners,** :  
 :  
**FOR JUDICIAL REVIEW OF THE** :  
**DECISION OF THE** :  
 :  
**Prince George's County Planning** :  
**Board Of The Maryland-National** :  
**Capital Park and Planning Commission** :  
 :  
**Respondent,** :  
**IN THE CASE OF: 7-Eleven, Inc.** :  
**Special Permit No. SP-150003;** :  
**PGCPB 15-94** :

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**ORDER**

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On June 10, 2016, this matter came before the Court on Petitioners Town of Riverdale Park, Town of University Park, Sonio O'Connell and Stephan Rodusakis' (hereinafter, "Petitioners") appeal of an October 7, 2015 decision by the Prince George's County Planning Board (hereinafter, "Planning Board") case number SP-150003. After reviewing the parties' memorandums and hearing the arguments made at the June 10, 2016 hearing, the Court will affirm the Planning Board's decision.

The property at issue in this case is .473 acres, located at 6315 Baltimore Avenue at the southeast corner of U.S. Route 1 and Sheridan Street in the Town of Riverdale Park (hereinafter, "the property"). The property is located in a zone referred to as a Mixed-Use Town Center (hereinafter "M-UTC"). The M-UTC zone requires a development

plan which regulates all development and use of land and building within a specific geographic area. The Prince George's County Council approved the Riverdale Park M-UTC zone on January 20, 2004 (see Exhibit 1). The adopted Development Plan applies to all new development and improvements on properties located within the zone.

Dependent upon the amount of increase in gross floor area proposed for the project, the Development Plan directs different types of review for a project's compliance with the Development Plan design standards:

Development that increases existing gross floor area (GFA) by 15 percent or 7,500 square feet, whichever is smaller, shall subject the site to full review for compliance with the design standards. Lesser changes to the site, and additions to single-family residential dwellings, shall not subject the entire site to review for compliance, only the portion **impacted by the improvement**. (see Development Plan, p. 28)

As required by the Development Plan, Respondent 7-Eleven submitted an application and renovation plans to the Riverdale Park Local Design Review Committee (hereinafter "the Committee"). The Committee voted to recommend denial of 7-Eleven's initial application. Its recommendation was based, among other things, on the fact that the application did not comply with Building Design, Building Openings, and Standards 1 and 10 (hereinafter "Design Standards 1 and 10). 7-Eleven subsequently applied for Departures to those standards as part of their Special Permit application. Thereafter, the Planning Board made the factual finding that 7-Eleven's proposed renovation to the existing building, namely the enclosure of the alcove, did not trigger the application of the Development Plan's Design Standards 1 and 10. As such, the Planning Board approved 7-Eleven's Special Permit and denied 7-Eleven's request for Departures to Design Standards 1 and 10 because they found they were not legally necessary.

### Question

Petitioners argued that the Planning Board erred as a matter of law when it granted a Special Permit to 7-Eleven when 7-Eleven Special Permit application did not comply with Design Standards 1 and 10. Respondents asserted the Planning Board factually found the Design Standards 1 and 10 do not apply to 7-Eleven's proposed improvements. The central dispute before this Court is whether the term "**impacted by improvement**" is a question of law or a question of fact.

### Standard of Review

In appeal of an administrative agency decision, the reviewing Court is limited to the record made before the administrative agency on matters of fact. In reviewing an administrative agency's decision, courts are limited to "determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions." *Salvatore Rivieri v. Baltimore Police Dept.*, 204 Md. App. 663, 668, 42 A.3d 686, 689 (2012), citing *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 57 (2002). "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Maryland Shipbuilding & Drydock Co. v. Maryland Comm'n on Human Relations*, 70 Md. App. 538, 551 (1987). Reviewing courts "must review the agency's decision in the light most favorable to it; the agency's decision is prima facie correct and presumed valid; and it is the agency's province to resolve conflicting evidence and draw inferences from that evidence." *CBA v. Comptroller*, 319 Md 687, 698 (1990) (quoting *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985)). A reviewing court should defer to the agency's fact-finding and drawing of

inferences if supported by the record. *Baltimore Police Department v. Ellsworth*, 211 Md. App. 198, 207 (2013). Matters of law are reviewed *de novo*. Nonetheless, Maryland Courts give some deference to an administrative agency's interpretation of the laws it administers because "the expertise of the agency in its own field should be respected." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999). If a statute needs to be interpreted, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature, *Bowen v. Smith*, 342 Md. 449, 454, 677 A.2d 81 (1996) (citing *Shah v. Howard County*, 337 Md. 248, 254, 653 A2d. 425 (1995)). The principal source for determination of legislative intent is the language of the statute itself. *Lovellette v. Mayor & City Council of Baltimore*, 297 Md. 271, 282, 465 A.2d 1141 (1983). If the statutory language is clear and unambiguous, we need not look beyond the language to determine legislative intent. *Marriott Employees Fed. \*\*678 Credit Union, supra* (citing *Kaczorowski v. Mayor and & City Council of Baltimore*, 209 Md. 505, 515, 525 A.2d 628 (1987)). If a statute is ambiguous, or susceptible to more than one meaning, "courts must consider not only the literal or usual meaning of the words but also the meaning of the words in light of the statute as a whole and within the context of the objectives and purposes of the enactment." \*305 *Marriott Employees Federal Credit Union, supra*, 346 Md. At 445, 697 A.2d 455 (citing *Romm v. Flax*, 340 Md. 690, 693, 668 A.2d 1 (1985)).

### Argument

At the June 10, 2016 hearing, Petitioners argued that the Planning Board's decision should be overturned because it approved 7-Eleven's application for the "Special Permit" despite 7-Eleven's concession that they did not comply with Design

Standards 1 and 10. Petitioners asserted the Planning Board erred as a matter of law for a number of reasons. First, Petitioners argued that when a statute is ambiguous or susceptible to more than one meaning, “courts must consider not only the literal or usual meaning of the words but also the meaning of the words in light of the statute as a whole and within the context of the objectives and purposes of the enactment. *Bennett v. Zelinski*, 163 Md. App. 292, 304-305 (2005). They further argued, the term “impacted” is not defined in the Prince George’s County zoning ordinance and must be ascertained with the intent of the legislature when the Development Plan was enacted.

Petitioners asserted that the Planning Board’s simple [www.dictionary.com](http://www.dictionary.com) definition of “impact” as meaning “to have a strong effect on” or “to hit (something with great force)” does not uphold the purposes and intent of the Plan. Rather, its decision is further inconsistent with the established principle that a dictionary definition should be consistent with the statutory purpose. *Montgomery County v. Deibler*, 423 Md. 54, 71 (2011). The Planning Board’s suggested definition requires a particular and dramatic type of improvement on the site before triggering any type of review for compliance with the Development Plan’s standards. Petitioners argued this undermines the Development Plan’s process for approving development within the M-UTC zone.

The Planning Board argued that 1) the language is not ambiguous and 2) the central question whether or not the site was impacted by the proposed modifications to any part of the building is a question of fact on the part of the administrative agency, which the reviewing court owes the highest level of deference. The Planning Board asserted it was not interpreting the actual standard in the Development Plan, but is rather applying the facts of a specific case to the legal standard already set out in the

Development Plan. Therefore, the Planning Board is required to interpret the Development Plan standards with the proposed plans for renovations. The application of the Development Standards ultimately becomes a question of fact: does the proposed improvement “impact” the site?

The Planning Board further claimed there is nothing in the Prince George’s County Code, the State Land Use Article, common law, or the Development Plan that requires the Planning Board to give any deference to the Committee’s recommendations. It maintained the Planning Board is deemed the expert administrative agency responsible for implementing plans and zoning decisions. *County Council of Prince George’s County v. Zimmer Development Company*, 444 Md. 490, 523-30 (2015). The Petitioners strongly disagreed with the Planning Boards’ diminished and devalued role of the Committee. For this review the arguments are not relevant.

The Planning Board found that the front and rear facades and walls were not impacted by the proposed improvements. The Planning Board asserts this was their factual determination to make and they factually determined, after reviewing the evidence presented on the record, that the proposed improvements were not significant enough to satisfy the definition of “impact.” The Planning Board and Counsel for the M-NCPPC recognized that the evidence presented could support a conclusion in either direction as to the applicability of the Development Plan Standards 1 and 10 and the 7-Eleven proposed improvements.

**Analysis**

This Court finds that the statutory review language is clear and unambiguous and the Planning Board applied the language to this specific application. The Planning Board

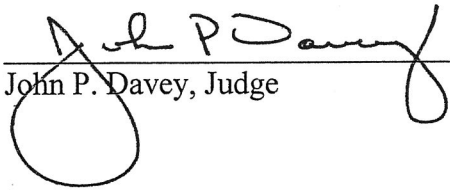
is responsible to interpret and apply the statutory scheme. In her motion to recommend approval, Commissioner Washington stated “Madam Chair I move that we adopt the findings of staff with the exception of Finding Number 6 and I would like to deny the request for departure from design standards because I do not believe that Standards 1 and 10 are applicable because we’re not replacing an entire wall of the building. And approve SP-150003, subject to the condition as outlined in staff’s report.” (see R. 1261, L. 10-16) When addressing questions from other Commissioners, Commissioner Washington further stated “I disapprove the departure from design standards which means because I don’t think it’s applicable based on advice from counsel, because the area that we have to concern ourselves with is that limited alcove and so the disapproval of the departure has to do with it not being applicable.” (see R. 1265, L. 3-8). Previously, M-NCPPC Counsel Borden outlined the choices before the Planning Board (see R. 1254 & 1255). Based upon the choices, the Planning Board made a factual finding relying on counsel and its technical staff report. As long as the matter is at least fairly debatable, the Court must affirm the administrative agency’s decision. *Communications Workers of Am. V. Pub. Serv. Comm’n of Maryland*, 424 Md. 418, 433 (2012). The Planning Board contended that just because the Petitioners’ disagreement with the Planning Board’s assessment is not a legal basis for the Court to substitute its judgment for that of the Planning Board’s. This Court agrees with the Planning Board’s contention.

This Court therefore finds that whether the enclosure of the enclave or the entire site was “impacted by the improvement” is a question of fact. This Court further finds the Planning Board had substantial evidence on the record to support a finding that the proposed changes to the existing building are not significant enough to trigger the higher

standards and therefore necessitate compliance with Design Standards 1 and 10. Whether this Court agrees or disagrees with the Planning Board's factual finding is not relevant nor is it a legal basis to overrule their judgment. This Court declines the Petitioner's invitation to review the various elevations depicted on Exhibit 2 because this Court cannot substitute its judgment of "impacted by improvements" for the Planning Board's determination. As the expert agency on planning and zoning decisions, Maryland Courts have ruled we owe the highest level of deference to the Planning Board on questions of fact.

WHEREFORE, it is, this 13<sup>th</sup> day of July 2016, by the Circuit Court for Prince George's County, Maryland, hereby

**ORDERED** that the Prince George's County Planning Board's decision is **AFFIRMED.**

  
John P. Davey, Judge

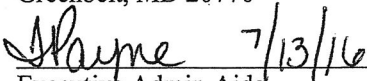
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