Circuit Court for Baltimore City
Case No. 24-C-19006602

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 131

September Term, 2021

THE COUNCIL OF UNIT OWNERS OF THE MILLRACE CONDOMINIUM, ET AL.

v.

BALTIMORE CITY PLANNING COMMISSION, ET AL.

Fader, C.J.,
Graeff,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Wright, J.

Filed: March 17, 2022

*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 case arises out of a decision by the Baltimore City Planning Commission ("the Planning Commission") to approve a townhome development in a Baltimore City community known as Clipper Mill. In October 2019, the owner and developer, VS Clipper Mill, LLC[1] ("the Developer"), petitioned the Planning Commission for approval of a minor change and final design approval for the Clipper Mill Planned Unit Development and for approval of major subdivision final plans with certain specified waivers. The Council of Unit Owners of the Millrace Condominium, the Homes at Clipper Mill Homeowners Association, Inc., Jessica Meyers, and Jeffrey K. Pietrzak, appellants, opposed those requests. On November 14, 2019, the Planning Commission held a hearing after which it approved the Developer's petition.

Appellants filed in the Circuit Court for Baltimore City a petition for judicial review and, later, an amended petition for judicial review and administrative mandamus. After a hearing on June 25, 2020, the circuit court remanded the case to the Planning Commission to make findings of fact and conclusions of law. On August 20, 2020, the Planning Commission held a hearing, made findings of fact, and again approved the application that had been submitted by the Developer. Appellants again sought administrative mandamus in the Circuit Court for Baltimore City on the ground that the Planning Commission did not have authority to decide the matter before it. The Developer, the Mayor and City

[1] VS Clipper Mill, LLC transferred its interest in this action to MCB Woodberry Developer, LLC. Pursuant to Md. Rules 8-401(b) and 2-241, a notice of substitution of parties was filed in this Court and no opposition was filed. MCB Woodberry Developer, LLC, submitted to the jurisdiction of this Court and has been substituted as an appellee in this action. For ease of reference, we shall refer to both VS Clipper Mill, LLC and MCB Woodberry Developer, LLC as "the Developer."

Council for Baltimore City, and the Planning Commission, appellees herein, opposed the request for administrative mandamus. After a hearing on March 4, 2021, the circuit court denied the request for administrative mandamus and affirmed the decision of the Planning Commission. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented by appellants for our consideration is whether the addition of thirty townhomes and the elimination of forty-eight parking spaces constituted a major change to the Clipper Mill Planned Unit Development according to the criteria contained in the Baltimore City Code. For the reasons set forth below, we shall affirm in part and reverse in part the Planning Commission's finding that the Developer's proposal did not constitute a major change to the Clipper Mill Planned Unit Development.

FACTUAL AND PROCEDURAL BACKGROUND

In 2003, the Baltimore City Council passed Ordinance 03-590 (the "Ordinance"), which approved the Clipper Mill Planned Unit Development ("PUD") and authorized the redevelopment of a 17.4 acre abandoned industrial site, located in northern Baltimore City along the Jones Falls, as a mixed use community comprised of residential, retail, and office space. The Woodberry light rail station is located on the east side of the site. Some of the redevelopment within the PUD area involved the renovation and conversion of historic mill buildings, including the Artisan, Assembly, Foundry, Stable, and Tractor Buildings. The project also included the construction of new commercial and residential units, including townhomes and semi-detached homes.

A. The Planned Unit Development

The Court of Appeals has defined a PUD as follows:

> A PUD is a relatively modern zoning concept created to provide a degree of flexibility in uses and design not available under strict Euclidean zoning. Essentially, a PUD, when approved by a governmental body, grants a variety of uses within a development that would otherwise not be permitted under the pre-existing or, in the case of Baltimore City's zoning regulations, underlying Euclidean zoning of the pertinent parcel or assemblage of land.

Maryland Overpak Corp. v. Mayor & City Council of Baltimore, 395 Md. 16, 22 n.4 (2006).

Stated otherwise, a PUD is a zoning planning tool used to allow more flexibility than would be otherwise allowed under lot-by-lot zoning. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 514-15 (2015) (citing *Mayor & City Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 539 n.15 (2002)). The main purpose of a PUD is to "'promote[ ] the creation of well-planned communities.'" *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's Cnty.*, 138 Md. App. 589, 624 (2001) (quoting *Woodhouse v. Bd. of Comm'rs*, 299 N.C. 211, 261 S.E.2d 882, 891 (N.C. 1980)). PUDs are often used "to allow the development of specialized or mixed uses." *Cnty. Council of Prince George's Cnty.*, 444 Md. at 515. "A distinguishing feature of PUDs is the incorporation of a form of site planning requirement at its inception and/or in the latter stages of the overall approval process, if that process is multi-tiered." *Maryland Overpak Corp.*, 395 Md. at 22 n.4. Once a parcel is qualified to be rezoned as a PUD, a legislative act amends the official zoning map. *Cnty. Council of Prince George's Cnty.*, 444 Md. at 515.

In enacting the Ordinance establishing the PUD at issue in the instant case, the Baltimore City Council established certain development parameters and permitted the Developer to make other development determinations subject to review by the Planning Commission. The Ordinance provided that all plans for the construction of permanent improvements on property in the PUD would be subject to review and final design approval by the Planning Commission. The Ordinance also provided that "the Planning Department may determine what constitutes minor or major modifications to the Plan. Minor modifications require approval by the Planning Commission. Major modifications require approval by Ordinance."

The Ordinance established that the "overall density of the PUD is 1,500 square feet per dwelling unit." The Ordinance also established specific off-street parking requirements in the PUD, as follows:

> SECTION 45. AND BE IT FURTHER ORDAINED, That off-street parking requirements for the Planned Unit Development are as follows:
> (a) office use: 1 space per 800 square feet in excess of 2,000 square feet of floor area;
> (b) retail use: 1 space per 300 square feet in excess of 1,000 square feet of floor area;
> (c) industrial use: 1 space per 4 employees plus 1 space per company or business vehicle maintained on the premises;
> (d) artists studio: live/work – 1 space per unit;
> (e) residential use:
> (1) townhouses and single-family dwellings – 1.5 parking spaces per dwelling unit;
> (2) apartments (multiple family dwellings) – 1 space per dwelling unit.

B. Lots 2001-03 and 2005-07

The case at hand involves a vacant lot within the PUD that, at various times, was used for vehicular parking by tenants of some commercial buildings, residents, and visitors to the area. At the time the Ordinance was approved, access to that lot was addressed. It was anticipated that the Developer would acquire lots identified as 2001-03 Druid Park Drive, which were contiguous to the northeast corner of the PUD. Section 6 of the Ordinance provided:

> That the property known as 2001-2003 Druid Park Drive is to accommodate a 20-foot access drive only to the parking lot, provided that the developer acquires the property, which shall become, upon acquisition, part of the Planned Unit Development.

The Developer's anticipated purchase of 2001-03 Druid Park Drive was also addressed in a note included on Sheet C2 of the PUD Plan adopted by the Ordinance (the "Note"), which provided:

> UPPER PARKING LOT:
>
> CRC, ITS AFFILIATES, SUCCESSORS AND ASSIGNS, WILL NOT UTILIZE THE EXISTING ALLEY SYSTEM FOR ACCESS TO THE PROPOSED PARKING LOT AT THE NORTHEAST CORNER OF THE PROPERTY IF CRC IS ABLE TO PURCHASE THE LOT AT 2001-2003 DRUID PARK DRIVE. IF CRC PURCHASES 2001-2003 DRUID PARK DRIVE AND DECIDES NOT TO BUILD A PARKING LOT IN THE NORTHEAST CORNER OF THE ENTIRE LOT, IT WILL HAVE THE OPTION OF CONSTRUCTING TOWNHOUSES ON THE PARKING LOT, SUBJECT TO REVIEW BY THE PLANNING DEPARTMENT. IN THE EVENT CRC IS ABLE TO PURCHASE THE LOT AT 2001-2003 DRUID PARK DRIVE, SUCH LOT SHALL BECOME PART OF THE PUD AND MAY BE USED FOR ACCESS OR PARKING.

At some point prior to filing its petition in the instant case in October 2019, the Developer purchased 2001-03 Druid Park Drive. Although the parties failed to provide

detailed information in their briefs or record extract, they do not dispute that at some time prior to that purchase, 2001-03 Druid Park Drive had been consolidated with property known as 2005-07 Druid Park Drive. Subsequent to the consolidation, the entire lot became known as 2001-03 Druid Park Drive.

C. Transform Baltimore

The Millrace, a residential condominium, and The Homes at Clipper Mill, a residential community of townhomes and duplex dwelling units, were developed in the early stages of the PUD. Thereafter, in 2016, Baltimore City enacted comprehensive rezoning legislation known as "Transform Baltimore."[2] The PUD was "grandfathered" into the new zoning ordinance, subject to certain "Transition rules." *See* Baltimore City Code, Article 32, Baltimore City Zoning Ordinance ("BCZO"), §§ 2-203(h) & 13-102. Per the new zoning ordinance, amendments to existing PUDs are to "be categorized as either engineering corrections, minor changes, or major changes" and must follow "the corresponding approval procedure." BCZO § 13-102(b). Major changes are defined as follows:

> (a) *Scope of section.*
> This section applies to the following major changes:
>
> (1) a 10% increase or 25% decrease in the approved number of dwelling units;
> (2) a 10% increase or a 25% decrease in the maximum building heights in the approved planned unit development;

[2] Transform Baltimore was enacted by the Baltimore City Council in 2016, by Baltimore City Ordinance 16-581, and took effect on June 5, 2017. The Court of Appeals provided a detailed discussion of the legislative history of the comprehensive rezoning in *Floyd v. Mayor & City Council of Baltimore*, 463 Md. 226, 232 (2019).

> (3) a change in the type, location, or arrangement of land use within the development, as shown on the previously approved final development plan;
>
> (4) a change in the boundaries of the planned unit development;
>
> (5) a decrease in open space that had been included as a public benefit or amenity under § 13-204 {"Exceptions from district regulations"} of this title; and
>
> (6) any change:
>
> (i) that fails to substantially comply with the PUD master plan or City regulations; or
>
> (ii) that violates:
>
> (A) the underlying zoning;
>
> (B) an approved exception;
>
> (C) a condition of approval attached to the planned unit development, with the exception of modifications to the planned unit development's phasing schedule; or
>
> (D) a provision of the ordinance that approved or amended the planned unit development.

BCZO § 13-403(a).

"A major change requires introduction and enactment of an ordinance to approve an amendment to the planned unit development and PUD master plan." BCZO § 13-403(b).

D. The Townhome Project

The instant case has its origins in the Developer's 2017 plan[3] to, among other things, construct a townhome development with thirty dwelling units ("the Townhome Project") on a vacant lot located to the north of the Poole & Hunt Building. The lot had

[3] The Developer filed two requests with the Planning Commission. The first was titled "Minor Change and Final Design Approval/Clipper Mill Planned Unit Development #121-2001 Druid Park Drive" and the other was titled "Major Subdivision Final Plans with Waiver/2007, 2010, and 2039 Clipper Park Road; 2001 Druid Park Drive[.]"

approximately forty-seven parking spaces[4] and, at various times, was used for vehicular parking by some commercial tenants, residents, and visitors to the area. The Developer proposed one group of twenty-two dwelling units and another group of eight dwelling units. Parking for the group of eight units would be provided via nine surface parking spaces. Parking for the group of twenty-two units was to be located in garages located behind the townhomes which would be accessed from a twelve-foot wide alley extending off Druid Park Drive. South of existing rear lot lines for the property known as 2001-2003 Druid Park Drive, the western half of the alley's width was owned by the Developer and the eastern half of the alley's width was public. The Developer proposed to widen the alley to twenty feet. Although the majority of the alley would remain privately owned, it would have an access easement for use by adjacent property owners facing Clipper Road.

Residents from the two existing residential communities within the PUD opposed the Townhome Project, both individually and through their homeowners' and condominium associations, which we shall refer to collectively as "the HOAs." The residents and HOAs took the position that the proposed changes constituted major changes to the PUD and, as a result, required approval by the Baltimore City Council.

E. Planning Commission Staff Report

In response to the Developer's requests, the Planning Commission prepared a Staff Report, signed by Director Chris Ryer, in which it argued that the proposal constituted a minor change to the PUD. Director Ryer wrote:

[4] In various places in the record, the number of parking spaces available in the vacant lot that is the subject of this case is stated as forty-seven or forty-eight spaces.

> This proposal is not proposing to increase or decrease the approved number of dwelling units. There are no maximum building heights established by this PUD. There is no change in the type, location, or arrangement of land use within the development, as dwellings are allowed generally throughout the PUD area (Ordinance Section 3, paragraph 3). There is no change proposed for the boundaries of the PUD (2001-2003 Druid Park Drive[)] were added to the PUD boundary by operation of law (Ordinance Section 6). There is no proposed reduction in open space or reduction of a public benefit or amenity. This proposal complies with the PUD master plan and City regulations. The proposal does not violate the underlying zoning (which would allow unlimited density), any approved exceptions, conditionals of approval, or any other provision of the PUD. For these reasons, this proposal may be considered a Minor Change to the PUD.

The Staff Report also addressed residential density and parking issues, stating:

> Section 3, paragraph (c) of the Ordinance provides an overall residential density of 1,500 square feet of land area within the PUD per dwelling unit. This results in a maximum density of 505 dwelling units that may be developed. The proposed thirty dwelling units will be added to the existing 169 dwelling units, for a total of 199 dwelling units throughout the PUD. Section 5, paragraph (e) requires 1.5 parking spaces for townhouses and single-family dwellings. A parking table provided on the development plan shows that with this proposed development, a total (which varies by type as indicated in the Ordinance) of 392 parking spaces are required, and a total of 451 parking spaces will be provided throughout the PUD. The proposed development will therefore satisfy the PUD requirements for residential density and parking.

The Planning Commission recognized that residents had a major concern with the Note included in the PUD Plan, which addressed the parking lot, but concluded that the Note "was intended to provide a set of options for the developer at the time the PUD was first created, where the immediate future wasn't clear." The Staff Report provided:

> Staff sees the intent as solving an immediate concern of traffic in the alley by encouraging the developer to acquire additional property (2001-2003 Druid Park Drive) and to use that land for access to the parking lot instead of the adjacent alley. The Note further offered the developer the option of developing townhomes (one of several potential options available under the PUD), which would be then reviewed by the Planning Department in a Final

> Design Approval. That review was delegated to the Departmental staff as opposed to being required to return to the Planning Commission for a Minor Amendment, as would normally have been needed at that time, indicating the Planning Commission (and by extension, Mayor and City Council) were comfortable with that option. Then the Note reaffirms the provisions of the Ordinance's Section 6 that these lots become part of the PUD upon acquisition, which prevents the need for an Ordinance to amend the boundaries of the PUD.
>
> Staff has heard varying interpretations of the Note, which is poorly worded, from those opposed to development on this site. If a development plan for this portion of the property is approved, then the Note will have no further force and may be disregarded entirely.

The Staff Report also addressed the alley and access to the parking lot as follows:

> Aside from the automatic inclusion of the property into the PUD area, Section 6 requires that access to the parking lot (if that were the option selected by the initial developers) would need to be provided from their newly acquired property, and not from the adjacent alley. Staff have heard from concerned residents that they interpret this Section to prevent all use of these properties other than as an access drive, and only for a parking lot, to the exclusion of other uses (including the proposed residential development). Staff disagrees, and while the wording is poor, it clearly does not state that the parcel may only be used for an access drive to the parking lot and nothing else. The shifting of "only" earlier in the sentence might have accomplished that form of prohibition, but that is not what the sentence reads. In any case, the 2001-2003 Druid Park Drive properties have only been recently acquired, and with this proposed development replacing the parking lot, this Section is no longer relevant.

The Staff Report recommended approval of the Developer's requests.

F. Planning Commission Hearing

A hearing on the Developer's requests was held before the Planning Commission on November 14, 2019.[5] Mr. Eric Tiso, from the Department of Planning, presented the Staff Report, which had been prepared in advance of the hearing. Through the use of a

[5] We note that the hearing was informal and that witnesses did not testify under oath.

slide presentation, Mr. Tiso explained the proposed development. Among other things, he explained the plan to construct thirty townhomes with "access coming off of a driveway off of Druid Park Drive." Mr. Tiso argued that the proposed Townhome Project did not meet the criteria set forth in BCZO § 13-403 for a major change. He asserted that the PUD established "an overall density of the PUD area divided by 1500 square feet per dwelling unit, that yields a total of 505" dwelling units. At the time of the hearing, 169 dwelling units existed, and the plan was to add thirty more. Mr. Tiso explained that parcel known as 2001-03 Druid Park Drive "was brought into the PUD by operation of law[,]" and that there was no request to change the PUD's boundaries.

With regard to parking, Mr. Tiso argued that "the combination of all the uses" within the entire PUD would require "a total of 392 parking spaces[,]" and that, if approved, the plan would provide 451 spaces. He maintained that PUDs are "designed to be flexible" and that it was up to the property owners to determine where those parking spaces would be located. Mr. Tiso acknowledged that if the townhomes were built on the vacant lot, there would be an issue of parking for the people who were, at that time, parking on the vacant lot, but he maintained that that was "a private property owner discussion" and the "concern for PUD purposes" was "that bottom line number[,]" and the total number of parking spaces required to be provided.

According to Mr. Tiso, at the time the PUD was established, there was an intent to keep the vacant lot for parking with an understanding that it might be developed in the future. Some residents were concerned that an alley that ran behind some homes might be used to gain access to the parking lot. For that reason, the Planning Commission

"encouraged the developer at the time to purchase that 2001, 2003 Druid Park Drive" lot and, once it was acquired, to use it as a driveway to access the parking lot. The 2001-03 Druid Park Drive lot was not acquired until the Spring of 2019. Mr. Tiso argued that Section 6 of the Ordinance which established the PUD specifically addressed the acquisition of 2001-03 Druid Park Drive. Acknowledging that the language of Section 6 was not as clear as it might have been, Mr. Tiso argued that the language indicated an intent "to accommodate a 20-foot access drive only to the parking lot." Mr. Tiso explained:

> That means that access drive can only go to a parking lot. It can't go anywhere else. It does not mean that the property is only to accommodate an access drive and a parking lot.

Jon Laria, an attorney for the Developer, spoke in favor of the petition. He pointed out that the PUD was located near a light rail station, in an area zoned for transit-oriented development. Mr. Laria agreed with Mr. Tiso's statement that the addition of thirty townhomes would result in a total of only 199 units within the PUD, which was significantly less than the more than 500 units that were permitted. He also concurred with Mr. Tiso's interpretation of the language concerning the access drive to the parking lot.

Mr. Larry Jennings, one of the founders of ValStone Partners, one of the developers, also spoke in support of the petition, stating that it was "extremely thoughtful[,]" that it included widening an alley that was "currently dysfunctional[,]" and that the proposed plan did not approach the maximum allowed density.

John Murphy, an attorney representing the two HOAs, argued against approval of the subdivision and the Townhome Project. He asserted that because the changes constituted major changes, a City Council ordinance was required and the Planning

Commission did not have authority to approve the Developer's proposed changes. Mr. Murphy addressed the parking situation within the PUD. He argued that there was a need for 196 parking spaces, but only 147 parking spaces existed, which constituted a deficiency of forty-nine spaces. He noted that the Woodberry Kitchen restaurant, which is located in the Foundry Building within the PUD, is "a very active use, particularly in the evening[,]" and that guests of the restaurant park in the lot where the proposed townhomes would be built.

Mr. Murphy argued that the approval of thirty townhomes constituted a major change because that number would constitute more than a ten percent increase in the approved number of dwelling units. He pointed to the fact that the Planning Commission had approved seventy-one townhome and/or duplex units, sixty-two units in the Millrace Condominiums, thirty-six units in the Assembly Building, and ninety units in the Tractor Building, for a total of 259 units, and argued that that was the number from which the ten percent increase should be calculated.

Mr. Murphy also argued that a City Council ordinance was required because the proposed development plan would involve a change in the land use from the previously approved development plan, specifically, the conversion of the forty-seven parking spaces to thirty townhomes.

Mr. Murphy argued that a City Council ordinance was also required because the PUD boundaries had expanded from the original 2003 boundaries by the acquisition of the 2001-03 Druid Park Drive lot which, at the time it was purchased by the Developer, included the lot previously identified as 2005-07 Druid Park Drive. Although the Note on

the original development plan anticipated the acquisition of 2001-03 Druid Park Drive, there was no mention of 2005-07 Druid Park Drive and, as a result, there was an expansion of the PUD area that required approval by a City Council ordinance.

Lastly, Mr. Murphy argued that the language in the Ordinance establishing the PUD in 2003 provided that if 2001-03 Druid Park Drive was acquired, the alley shall not be used. He maintained that the language used in the Ordinance constituted an approved condition, that the proposed plan involved use of the alley, that any change to the approved condition would require a City Council ordinance, and that the Planning Commission did not have the discretion to change the approved condition.

In response to Mr. Murphy's argument about the consolidation of 2005-07 Druid Park Drive into 2001-03 Druid Park Drive, Mr. Laria stated that his client acquired the lots "in order to make the site plan work[,]" and that they "assumed that having them in the PUD would be better because it would subject everything to this process." He acknowledged that "maybe it was a mistake to include" 2005-07 in the PUD, and that his clients "certainly do not want to fail to get an approval because of that[,]" but that the lots could still be consolidated and built upon. No material change would occur if 2005-07 Druid Park Drive was not included in the PUD.

A number of residents spoke in opposition to the proposed change. In addition, the Planning Commission received twenty-four letters from individuals with regard to the issues before it, twenty-three of which were in opposition and one of which was in support of the proposals. At the conclusion of the hearing, the commissioners voted unanimously

to adopt the Planning Department's recommendation that the Developer's requests be approved. The Commission did not make any findings of fact or conclusions of law.

D. Administrative Mandamus

Appellants filed a petition in the Circuit Court for Baltimore City seeking judicial review and administrative mandamus. After a hearing on June 25, 2020, the court declined to reach the merits and issued a limited remand to the Planning Commission for findings of fact and conclusions of law in support of its decision. On remand, the Planning Commission made findings of fact and conclusions of law and reaffirmed its earlier ruling that the changes to the PUD were, in its view, minor.

In reaching its decision, the Commission considered each of the factors set forth in BCZO § 13-403 for determining if a proposed change to a PUD is minor or major. The Commission found that the Developer's proposal did not exceed the maximum density of 505 homes by ten percent and that the appellants' method of calculating the permitted increase in density was incorrect. The Commission also found, among other things, that there was no building height limitation in the PUD, that "there was no change in the type, location, or arrangement of land uses within the PUD[,]" that there was no change in the boundaries of the PUD, that there was no proposed change to the open space and no open space requirements were included in the original PUD, that the removal of the existing parking lot for the development of the proposed townhomes would not result in noncompliance with the PUD master plan, that the underlying zoning permitted greater density than the PUD, and that "[n]o provision of the ordinance in the original PUD was violated."

The case came before the circuit court for a second time. Appellants, the Developer, and the Mayor and City Council filed memoranda in support of their positions. Appellants argued that the Planning Commission did not have authority to approve the Developer's plan to change the parking lot to a townhome development because to do so constituted a major change. They maintained that the Developer's proposal would increase the approved number of dwelling units by more than ten percent, that changing the parking lot to townhomes constituted a change in the type, location or arrangement of land within the PUD, that adding 2005-07 Druid Park Drive to the PUD resulted in a change in the boundaries of the PUD, that the PUD ordinance required the parking lot, and that the use of the existing alley, a part of the townhome development, violated a condition of approval attached to the PUD. In addition, appellants argued that the Planning Commission did not follow quasi-judicial procedures because it was furnished with the Staff Report before the hearing started and any evidence was introduced and based its decision on that Report.

The Developer, the Mayor and City Council, and the Planning Commission argued that appellant Meyers did not own any real property in the PUD and, as a result, she did not have standing. They also argued that no substantial rights were prejudiced by the Planning Commission's decision because none of the appellants had any right to park in the lot where the proposed townhomes were to be built. In addition, they argued that the proposed changes constituted minor changes under BCZO § 13-403.

In a written memorandum, the circuit court determined that appellants had standing to maintain their action. The court wrote that their personal property rights were "specifically and adversely affected by the ongoing actions because they all live within the

PUD site." The court explained that "[d]ue to the landlocked location of the PUD, the lack of parking, narrow streets, increase in traffic, and the loss of 47 parking spaces would greatly affect them specifically."

The court also determined that the Planning Commission did not exceed its statutory authority or jurisdiction, that the parties were given due process, that the Commission's decision was constitutional, and that the Commission's decision was within its statutory authority, was not arbitrary or capricious, and did not result from an unlawful procedure. The court concluded that the Commission's decision "was supported by competent, material, and substantial evidence[.]" The court denied appellants' request for a writ of administrative mandamus and affirmed the decision of the Planning Commission.

STANDARD OF REVIEW

Administrative mandamus is a remedy that authorizes judicial review of administrative decisions where there is "'both a lack of an available procedure for obtaining review *and* an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.'" *Wilson v. Simms*, 380 Md. 206, 228 (2004) (quoting *Goodwich v. Nolan*, 343 Md. 130, 146 (1996)) (emphasis in original). "An action for a writ of administrative mandamus is available for 'review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.'" *Headen v. Motor Vehicle Admin.*, 418 Md. 559, 567 n.4 (2011) (quoting Md. Rule 7-401). An "administrative agency" is defined as "any agency, board, department, district, commission, authority, Commissioner, official, or other unit of the State or of a political subdivision of the State." Md. Rule 7-401(b). Maryland Rule 7-403 provides:

> The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:
>
> (A) is unconstitutional,
> (B) exceeds the statutory authority or jurisdiction of the agency,
> (C) results from an unlawful procedure,
> (D) is affected by any error of law,
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
> (F) is arbitrary or capricious, or
> (G) is an abuse of its discretion.

In considering an appeal from the denial of a petition for writ of administrative mandamus, we apply the standard of review developed in judicial review proceedings. *See Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 667-68 (2006) (standard of review is "essentially the same" in judicial review and administrative mandamus proceedings). We determine the legality of the administrative agency's decision and whether there was substantial evidence in the record as a whole to support it. *Comm'r of Labor & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019). Purely legal questions are reviewed *de novo*, with considerable weight afforded to the agency's experience in interpretation of a statute that it administers. *Id.* (quoting *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005)). "Substantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]'" *Id.* (quoting *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978)). "Under the substantial evidence test, we may not substitute our own judgment" for that of the agency. *Dakrish, LLC v. Raich*, 209 Md. App. 119, 142 (2012) (citing *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 623-

24 (2000)). Our task is to "determine whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Singley v. Cnty. Comm'rs of Frederick Cnty.*, 178 Md. App. 658, 675 (2008) (internal quotations and citations omitted). We will "'not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.'" *Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 667 (2021) (quoting *United Steelworkers v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)).

DISCUSSION

A. Standing

Appellees argue that appellants lacked standing to maintain their action below and to proceed with this appeal because they cannot establish any right, let alone a substantial right, to park in the vacant lot where the proposed Townhome Project was to be constructed. They argue that appellants did not present any facts to establish that a clear legal right or protected interest was prejudiced by the Planning Commission's decision or that they each suffered an injury "different in character and kind from that which the general public will suffer[.]" Appellees also contend that appellant Meyers lacks standing because she is a renter, not an owner, of real property within the PUD. In addition, appellees assert that the Clipper Mill HOA's Charter precludes it from "engaging in the very activities that gave rise to its Petition[.]" We disagree and explain.

There is "a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision." *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 285 (1996), *partially*

abrogated by statute, Md. Code (1982, 2013 Repl. Vol.), § 5-204(f) of the Environmental Article (*recognized in Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588 (2014)). The "requirements for administrative standing under Maryland law are not very strict[,]" and, "[a]bsent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily." *Id.* at 286. The Court of Appeals has explained:

> Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings.

Med. Waste Assocs., Inc. v. Maryland Waste Coal., Inc., 327 Md. 596, 611-12 (1992) (quoting *Morris v. Howard Rsch. & Dev. Corp.*, 278 Md. 417, 423 (1976)).

In order to have standing to petition for judicial review, a party must have been a party to the administrative board's proceedings and be "aggrieved" by the final decision of the agency. *Id.* at 611; *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 143 (1967), *partially abrogated by statute*, Md. Code (1982, 2013 Repl. Vol.), § 5-204(f) of the Environmental Article, *as stated in Patuxent Riverkeeper v. Maryland Dep't of Env't*, 422 Md. 294, 298 (2011). With regard to land use and zoning decisions[6], an

[6] "[A] land use decision is a decision (typically an ordinance or regulation) enacted or promulgated by a legislative or administrative body for the purpose of directing the development of real estate." *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 524 (2014) (quotations and citation omitted). *See generally* § 4-306 of the Land Use Article of the Maryland Code, setting forth appeal procedures.

"aggrieved party" is "one whose personal or property rights are adversely affected by" the administrative board's decision. *Bryniarski*, 247 Md. at 144. The administrative board's decision must affect the petitioner specifically, "in a way different from that suffered by the public[.]" *Id.* "The circumstances under which this occurs have been determined by the courts on a case by case basis, and the decision in each case rests upon the facts and circumstances of the particular case under review." *Id.*

Certain principles have evolved over time to offer guidance in a determination of what constitutes an "aggrievement." *Id.* "An adjoining, confronting or nearby property owner is deemed, *prima facie*, to be specially damaged and, therefore, a person aggrieved." *Id.* at 145. A protestant is almost *prima facie* aggrieved when he or she "is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action . . . *and* offers 'plus factors' supporting injury." *Anne Arundel Cnty. v. Bell*, 442 Md. 539, 559 (2015) (quotations and citation omitted). Almost *prima facie* aggrievement has been found to apply to property owners who live 200 to 1,000 feet away from the subject property, but there is no bright-line rule delineating such boundaries. *See id.* (citing *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 91 (2013)); *Greater Towson Council of Cmty Ass'ns v. DMS Dev., LLC*, 234 Md. App. 388, 411 (2017).

If a party is not *prima facie* aggrieved, that party can still prove "special aggrievement," by offering competent evidence of: (1) "personal or property rights" that would be "adversely affected by the decision of the board[;]" and (2) how a decision "personally and specially" affects that party in a "way different from that suffered by the public generally." *Bryniarski*, 247 Md. at 144-45. In *Ray*, the Court made clear that

proximity is the most important factor and beyond that, special aggrievement must be shown:

> A review of our cases, where standing to challenge a rezoning action was at issue, reveals one critical point: proximity is the most important factor to be considered. The relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property. There is, however, no bright-line rule for exactly how close a property must be in order to show special aggrievement. Instead, this Court has maintained a flexible standard, finding standing in cases that do not quite satisfy the "adjoining, confronting or nearby" standard of *prima facie* aggrievement, but are nudging up against that line. Protestants in such cases will be considered to pass the standing threshold if they allege specific facts of their injury. In other words, once sufficient proximity is shown, some typical allegations of harm acquire legal significance that would otherwise be discounted. But in the absence of proximity, much more is needed.
>
> For example, an owner's lay opinion of decreasing property values and increasing traffic has been considered sufficient for special aggrievement when combined with proximity that is almost as great as in cases where properties are "adjoining, confronting, or nearby."
>
> Conversely, without sufficient proximity, similar facts will only support general aggrievement. For example, when the affected properties are not sufficiently close to the site to qualify as almost *prima facie* aggrieved, claims of increasing traffic, change in the character of the neighborhood, lay opinion projecting a decrease in property values, and limited visibility have been held to show only general aggrievement.

Ray, 430 Md. at 82-85 (internal footnotes and citations omitted).

We have recognized that a non-property owner could conceivably show aggrievement. In *T&R Joint Venture v. Office of Planning & Zoning of Anne Arundel County*, 47 Md. App. 395, 396 (1980), we considered whether the Anne Arundel Office of Planning and Zoning, which at that time, did not have an explicit right of appeal to the Board, was aggrieved by a decision of a Zoning Hearing Officer. The Office of Planning

and Zoning did not own any property in sufficient proximity to the land at issue. Nonetheless, we wrote:

> Appellant suggests that under *Bryniarski* it is necessary for the protestant to be a nearby property owner in order to have standing as an "aggrieved" person, and that such requirement applies equally to county agencies as it does to private individuals. Certainly, the basic equation is correct; as the statutes and ordinance (prior to the 1979 ordinance) are worded, county officials and agencies have no better or different inherent standing than do private individuals. But the underlying test is not so stringent. *Bryniarski* does not require the ownership of nearby property as the exclusive prerequisite. It also speaks of alternative "personal or property rights" that may provide an adequate interest in the proceeding.

Id. at 402. *See also Ray v. Mayor & City Council of Baltimore*, 203 Md. App. 15, 23 (2012) (stating in dicta that an individual who rents property "may not, *ipso facto*, be disqualif[ied]" from aggrievement); *Chesapeake Bay Found., Inc. v. Clickner*, 192 Md. App. 172, 188-90 (2010) ("property ownership is not a prerequisite to aggrievement").

There was no evidence provided by the parties as to the exact distance between the vacant lot that was the site of the proposed Townhome Project and the residents' homes and the HOAs. As a result, no appellant established *prima facie* aggrievement. There was, however, substantial evidence to show special aggrievement. Appellants showed that their personal or property rights would be adversely affected by the Planning Commission's decision and that they would be personally and specially affected in a way that was different from that suffered by the public generally.

Appellants Jeffrey Pietrzak and Jessica Meyers as well as the HOAs established, through the evidence presented and the testimony of residents, that their personal property rights were specifically and adversely affected by the loss of the parking spaces and

construction of thirty townhomes. The evidence showed that the entire PUD consisted of only 17.4 acres, that the area was almost fully developed and densely populated, and that there existed issues with narrow streets, traffic, and a shortage of public parking spaces. The close proximity between the vacant lot and the Millrace Condominiums and other homes in the PUD was shown on maps. In fact, the vacant lot is clearly within walking distance of the condominiums and other homes in the PUD. This conclusion is supported by Mr. Tiso's presentation to the Planning Commission, in which he stated that there would be "a pathway connection" between the Townhome Project and "the rest of the Clipper Mill development."

Jeff Pietrzak, a townhome resident in the Clipper Mill community, testified that the parking lot at issue was used by residents at one time. At some point, when the Developer purchased all of the commercial properties, it exercised its "legal right to take away the parking for the residents." According to Mr. Pietrzak, that "affected primarily the folks of Millrace, the condominium building, because, the condos, many of those people have more than one car. So those folks are feeling the squeeze for parking right now." At the time of the hearing, the parking lot was owned by the Developer and used by businesses and area restaurants, not residents. Mr. Pietrzak expressed concern about the elimination of the parking spaces, stating:

> And I think that's – the home – we have parking, but it's about the commercial properties. What to do about the businesses, and then the restaurant parking at night. And again, if you just travel through the community one time, you can't help but notice that it's tight, and it's going to be made further tight by the addition of more people, more cars, and the taking away of those spots as well.

Jessica Meyers, a resident of the Millrace Condominium for more than 10 years, testified that parking in the area was "scarce" and "barely adequate," that the proposed plan would eliminate forty-seven parking spaces, and that Clipper Park Road "is often blocked with cars, and delivery trucks, or bikes. It's busy." According to Ms. Meyers, the elimination of the forty-seven parking spaces raised the "real practical" issue of where the businesses that use that lot will park their vehicles particularly when people cannot count on parking in the surrounding area.

Jared Block, a resident in the Millrace Condominium, testified that he and his wife take turns parking their cars on the street because they have only one space in the condominium building. He stated, "[t]here's no parking. And so the fact that, you know, we're looking at this plan, and you're moving the 47 spots to another location, there is no other location on the property."

Sandy Goolsby, a resident in the Millrace Condominium, echoed Mr. Pietrzak's testimony that many residents have two cars but only one assigned parking spot and that residents are not permitted to park in certain parking lots. She specifically stated that her granddaughter lived with her, and that they parked one car in the assigned space in her condominium building, and they "scramble to figure out" where the other car will be parked. She explained that residents needed vehicles because the public transportation options were limited.

All of the appellants reside within the landlocked, 17.4 acre PUD site and have close proximity to the location of the proposed Townhome Project. The testimony of Ms. Meyers, Mr. Pietrzak, Mr. Block, and Ms. Goolsby, makes clear that the loss of the parking

spaces combined with the limited number of parking spaces provided for residents of the existing condominiums and other residential dwellings, the existing lack of public parking, the narrow streets, and commercial and residential traffic, would change the existing parking situation by making it more difficult for residents to find public parking spaces. In this way, appellants' personal and property rights would be adversely affected by the decision of the Planning Commission. They are aggrieved and have standing because they are all specially affected in a way that is different from that suffered by the public generally.

Appellees argue that "Appellant Clipper Mill HOA is specifically precluded from engaging in the very activities that gave rise to its Petition" by Article 4 of its Corporate Charter, which provides, in relevant part, that the HOA may not "carry on any propaganda or otherwise attempt to influence any legislation or any public administrative action[.]" A plain reading of the Corporate Charter provision does not support appellees' argument. Attempting to influence a public administrative action is not the same thing as maintaining or defending an action. There is nothing in Article 4 to suggest that the HOA is prohibited from maintaining or defending this action.

B. Minor or Major Changes

Appellants make several arguments in support of their contention that the Planning Commission erred in granting the Developer's petition for the minor change and final design approval because the proposed plan constituted a major change that required approval by the Baltimore City Council. We shall address each argument separately.

1. Change in Land Use

Appellants argue that the construction of thirty townhomes, and the resulting loss of approximately forty-seven parking spaces, constituted "a change in the type, location, or arrangement of land use within the development, as shown on the previously approved final development plan" and, therefore, under BCZO § 13-403(a)(3), was a major change that required approval via a Baltimore City Council ordinance. Appellants take issue with the Planning Commission's finding that the "original PUD development plan was very general in nature and did not delineate specific uses for specific portions of the property." They argue that the PUD Plan was "exceedingly detailed" and point out that it identified proposed townhomes and apartment dwellings, restaurants, roads, a swimming pool, and parking spaces. Specifically, the plan identified the lot in question as a parking lot. We disagree.

In its Findings of Fact, the Planning Commission referenced Mr. Tiso's presentation and, specifically, slides 24 and 25 of his presentation, which illustrated alternative site plans. The Planning Commission "agreed with Mr. Tiso's representation of the PUD plans as being general in nature and therefore found that there was no change in the type, location, or arrangement of land uses within the PUD." Indeed, Mr. Tiso testified that "PUD's are designed to be flexible." In discussing that flexibility, specifically with respect to parking, Mr. Tiso testified that there were no "particular restrictions" on the approved uses for "any particular area." He referenced a chart that showed various uses within the PUD and the number of parking spaces generated by each type of use. He stated that a total of 392 parking spaces were required but, if the proposed amendment was approved, there would

be 451 parking spaces." He also stated that decisions as to where parking spaces are provided and how they are to be used were left to the property owners and that the concern "for PUD purposes" was the total number of spaces provided. With respect to flexibility within the PUD, Mr. Tiso pointed to the Note, which specifically referenced the possibility that the property owner might "decide[ ] not to build a parking lot[.]" The Note expressly provided that the owner would have "the option of constructing townhouses on the parking lot subject to review by the Planning Department."

Based on Mr. Tiso's testimony and the slides he presented, the Planning Commission rejected appellant's argument that the proposal constituted a change in the type, location, or arrangement of land use within the development. Because substantial evidence supported the Planning Commission's conclusion that the proposal did not constitute a major change, reversal is not required.

2. Expansion of the PUD Area to Include 2005 Druid Park Drive

Appellants contend that the addition of lot 2001-03 Druid Park Drive to the PUD constituted an expansion of the PUD boundaries. They maintain that because lot 2005-07 Druid Park Drive had been merged into lot 2001-03 many years after the Note had been drafted, the boundaries of the PUD were expanded beyond what was originally intended and, therefore, constituted a major change under BCZO § 13-403(a)(4). We agree.

In its Findings of Fact, the Planning Commission wrote that it "believe[d] that the purpose of the [N]ote was to allow the subsequent inclusion of this area into the PUD should they be purchased by [the Developer] without having to go back thru [sic] the

legislative process." Therefore, the Commission found that there was no change in the boundaries of the PUD. This finding is not supported by substantial evidence.

The Note specifically permitted the PUD to be expanded by the addition of lot 2001-03 Druid Park Drive. That lot was a clearly identifiable area at the time the Ordinance was enacted. When that specific area was acquired by the Developer, it came into the PUD automatically, by virtue of the original Ordinance establishing the PUD. There is nothing in the record before us to show that the lot previously identified as 2005-07 Druid Park Drive came into the PUD by virtue of the Ordinance. The inclusion of that additional area of land into the PUD constituted a physical expansion of the PUD beyond what was originally intended. It was, therefore, a major change requiring the approval of the Baltimore City Council.

3. Use of the Alley

Appellants argued below that the Note dealing with the acquisition of 2001-03 Druid Park Drive contained a statement that the Developer "will not use the existing alley system for access to the proposed parking lot." At the Planning Commission hearing, Mr. Tiso argued that "[t]here is no prohibition on using that alley." He explained that the Developer was permitted to use the alley and that the proposal was to widen it and provide an access easement for neighbors to traverse it. He explained that the public portions of the alley would remain public.

Appellants contend that per the statement in the Note, the alley could not be used for the development. They maintain that the proposed plan to use the alley constituted a major change under BCZO § 13-403(a)(2)(ii)(C), because it violated a condition of the

original approval for the PUD. Appellants argue that the Planning Commission failed to address the alley in its decision even though it was clearly raised at the hearing and was included in the PowerPoint presentation made by appellants' counsel. We are not persuaded.

With respect to an alleged violation of BCZO § 13-403(a)(2)(ii)(C), the Planning Commission made the following findings of fact:

> No condition of approval attached to the PUD has been violated. Opponents claimed that the applicant had to obtain approval by the National Park Service for new construction, however, the Commission was persuaded by the applicant that the approval by the Maryland Historic Trust, the Commission for Historic and Architectural Preservation (CHAP) and the Planning Commission meet the intent of this additional requirement.

Contrary to appellants' contention, the finding that "[n]o condition of approval attached to the PUD has been violated[,]" established that the Planning Commission rejected appellants' interpretation of the language, that the alley could not be used if the Developer used the vacant lot for something other than parking, and agreed with the Developer's interpretation. That finding was supported by substantial evidence, specifically, the wording of the Note itself.

4. Expansion of Number of Approved Dwelling Units by More Than Ten Percent

Appellants assert that the Developer's plan to add thirty townhouses would result in an increase of ten percent or more in the number of approved dwelling units and, as a result, an ordinance of the Baltimore City Council was required. In support of their argument, appellants point to the language of BCZO § 13-403(a)(1), which provides that "a 10% increase or 25% decrease in the approved number of dwelling units" constitutes a major

change requiring an ordinance of the Baltimore City Council. Appellants maintain that the approved development plan showed 220 units and that the addition of thirty new units would exceed that amount by more than ten percent. They argue that the Planning Commission erroneously relied on Section 3(c) of the ordinance that adopted the PUD, which provided that the "overall density of the PUD is 1,500 square feet per dwelling unit." The Planning Commission used the total area of the PUD, 17.4 acres, divided by the maximum density of 1,500 square feet, to determine that the number of dwelling units, at maximum density, was 505 units. Appellants argue that the use of 505 units was erroneous because maximum density does not equate to approved dwelling units.

Appellants obtained the number of 220 dwelling units from data listed on the development plan. They argue that § 9-107(11)(ii) of the Baltimore City Code required the development plan to include statistical data on, among other things, the "proposed number of residential units, by type[.]" The development plan that was approved by the Baltimore City Council included a "Building Tabulation" chart that appellants argue showed 220 dwelling units. Using that number, appellants assert that the thirty approved townhomes resulted in an increase of more than ten percent of the number of dwelling units. We disagree and explain.

In its Findings of Fact, the Planning Commission addressed the expansion of the approved number of dwelling units as follows:

> The total number of units permitted for this PUD is determined by dividing the total site area by 1,500 square feet. This yields 505 units. The total number of units developed in the PUD including the proposed townhomes is 199 units. There are remaining sections of the PUD to be developed, but the current proposal does not exceed the maximum density of

> 505 homes by 10%. During the public testimony, the opponents stated that the proposed 30 townhomes would exceed the total number of units that had been developed to date by 10%. Although true, this is an incorrect application of the permitted density. The Commission found that the 30 proposed homes does not increase the total permitted residential density of 505 homes by more than 10%.

This finding is supported by the ordinance approved by the City Council at the time it enacted the PUD in 2003, which set the maximum residential density, thereby approving construction of no more than 505 dwelling units. It is also supported by Mr. Tiso's presentation, in which he stated that "the overall density within the Planned Unit Development was set from the beginning, lot area of the entire PUD divided by 1500 yields 505 units, so we're well below that." Evidence presented at the hearing before the Planning Commission established that with the thirty proposed townhomes, there would be a total of 199 dwelling units in the PUD, obviously less than the 505 units that were permitted.

We note that appellants did not raise before the Planning Commission their argument about the statistical data and "Building Tabulation" chart. Even if that issue had been raised at the hearing, appellants would fare no better. The "Building Tabulation" chart contained a note that clearly provided, "ACTUAL NUMBER TO BE DETRMINED BASED ON USE." For that reason, appellants' reliance on 220 dwelling units is unsupported by the record.

5. Violation of the Parking Requirements of the PUD Plan

Appellant's final argument is that the approved plan does not comply with the parking requirements of the PUD plan. On this issue, the Planning Commission found as follows:

> Opponents argued that the removal of the existing parking lot for the development of the proposed townhomes renders the PUD in noncompliance with the PUD master plan. Based on the evidence provided, and as previously stated, the Commission found that the original PUD was a general plan and that all the developer needs do is provide the total number of spaces based on the existing and proposed uses, as outlined in the approved PUD. This has been accomplished as evidenced on slide 28 of Mr. Tiso's presentation and the Commission therefore found the proposed PUD complies with the original PUD.

According to appellants, the assertion that a PUD is "general" in nature is belied by the fact that the plan showed the subject lot as a parking lot. In addition, appellants challenge Mr. Tiso's reliance on a chart showing the number of spaces required by the plan because the chart does not account for any new dwelling units that might be constructed in the Tractor Building, the last building in the PUD that remains to be developed. We are not persuaded.

At the hearing before the Planning Commission, Mr. Tiso testified that the Developer was not required to provide parking for a building or specific use in a particular location. Rather, the PUD provided the Developer with the flexibility to provide the minimum number of required parking spaces as it saw fit within the overall project. Mr. Tiso testified:

> The parking count has a chart of uses and the number of parking spaces that are generated by that type of use. This is an updated chart showing how that will land. Looking at the table at the bottom, the combination of all the uses yields a total of 392 parking spaces. The total that will be provided after this, if approved, will be 451.
>
> Again, PUD's are designed to be flexible. So where those parking spaces are provided, how those parking spaces are used, are not for this Commission, or anyone else to really determine. This is for the property owners in and amongst themselves to figure out who gets what, where.

Mr. Tiso's presentation included a chart that identified the parking requirements set forth in the PUD plan, listed the number of residential units and the square footage of office and retail space, and the number of employees for the industrial uses within the PUD. The chart indicated that a total of 392 parking spaces were required within the PUD and that, upon completion of the Townhome Project, a total of 451 parking spaces would be provided. In addition, counsel for appellants acknowledged at the hearing that although a certain number of parking spaces were required for each use within the PUD, the decision as to where those spaces would be located was left to the Planning Commission. For these reasons, we conclude that there was substantial evidence to support the Planning Commission's decision with regard to the location of parking spaces.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BALTIMORE CITY PLANNING COMMISSION FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID ONE THIRD BY APPELLEES AND TWO-THIRDS BY APPELLANTS.