Circuit Court for Baltimore City
Case No. 24-C-15-006958

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 598

September Term, 2016

GLEN HAM BEL HAR COMMUNITY ASSOCIATION, ET AL.

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, ET AL.

Reed,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 31, 2018

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

This case involves a challenge to the decision of the Baltimore City Board of Municipal and Zoning Appeals (the "Board") to grant the conditional use application filed by Two Farms, Inc. ("Two Farms") to build a gasoline service station (a "gas station") at 5901 – 5921 Harford Road in Baltimore. The appellants, the Glen Ham Bel Har Community Association and others, claim to be adversely affected by the decision and, thus, desire to have it overturned. The appellees are Two Farms and the Mayor and City Council of Baltimore.

The appellants present three questions for our review, which we have reduced to two and rephrased:[1]

1. Did the Board misapply the law in granting Two Farms' conditional use application?

2. Did the Board err in failing to provide proper notice of the application hearing as required by § 2-114(a) of the Zoning Code of Baltimore City?

[1] The appellants present the following questions in their brief:

1. Based upon the facts found by the Board, did the Board apply the correct law in approving the gasoline station?

2. Based upon the facts found by the Board, should the approval of the gasoline station be reversed or, in the alternative, remanded to the Board with directions to apply the law to the facts found by the Board?

3. Did the Board fail to provide notice of the hearing on the merits as required by the Baltimore City Zoning Ordinance?

Because the first and second of these questions are essentially the same, we have condensed them into a single question.

For the following reasons, we answer the first question in the affirmative and the second question in the negative and, therefore, shall vacate the judgment below.

FACTUAL AND PROCEDURAL BACKGROUND

On January 22, 2013, Two Farms filed a conditional use application to build a Royal Farms gas station and convenience store at 5901 – 5921 Harford Road, Baltimore, Maryland 21214 (the "Property"). The Property is located in Baltimore City's B-3-1 Business District, which is governed by Title 6, Subtitle 4 of the Zoning Code of Baltimore City ("ZC" or the "Zoning Code"). Within the B-3-1 District, convenience stores are permitted uses, while gas stations are conditional uses. *See* ZC §§ 6-406 and 6-408. Thus, the only portion of the Royal Farms project that requires approval by the Board is the gas station. The Property is currently occupied by a vacant office building and concrete parking lots.

The Board held a public hearing on and voted to approve Two Farms' application on April 2, 2013. A little over a month later, on May 7, 2013, the Board issued a formal Resolution memorializing its decision. In that Resolution (the "First Resolution"), the Board stated that "[t]he opposition has not demonstrated that the location, construction, maintenance, and operation of the gasoline service station, as a conditional use in this district, will [have adverse effects] to this particular community 'above and beyond those inherently associated with the use.'" It further stated that its approval of the application was "subject to the condition that the realignment of Glenmore Avenue, as indicated in the drawings submitted to this Board, occurs."

On June 3, 2013, the Board issued a "Corrected Resolution" that was identical to the First Resolution with the exception of the Glenmore Avenue realignment condition, which was amended to indicate that "the portion of the property that is indicated on [Two Farms'] drawing to be used to realign Glenmore Avenue shall be donated to the City for that purpose." Those who opposed the conditional use application filed for judicial review in the Circuit Court for Baltimore City and, ultimately, appealed to this Court. In an unreported opinion, we held that the Board violated procedural due process by issuing a Corrected Resolution to address who would be responsible for the street realignment, and by doing so without a public hearing. *See Glen Ham Bell Har Cmty. Ass'n, et al. v. Mayor and City Council and Two Farms, Inc.* ("*Glen Ham I*"), No. 2086, Sept. Term, 2013 (filed Oct. 27, 2014). Therefore, we remanded the case to the circuit court "with instructions that the court remand it to the Board for the purpose of holding a new public hearing and deliberation regarding the Application, and so that a new resolution can be adopted that accurately addresses the issues before the Board." *Id.*, slip op. at 18.

After we issued our opinion in *Glen Ham I*, the Property was posted with a notice that a public hearing would be held on June 30, 2015, to establish the parameters of a new public hearing on the merits of the conditional use application. Following the June 30 hearing, the Executive Director of the Board sent counsel for the parties a letter scheduling the merits hearing for September 22, 2015. However, due to several postponement requests, the merits hearing was ultimately rescheduled for October 20, 2015.

At the outset of the October 20 hearing, counsel for the opponents argued, in the form of a preliminary motion, that the Board did not provide proper notice because it did

not post on the Property for the October 20 hearing like it did for the June 30 hearing. After entertaining argument from the other side, the Board denied the opponents' motion. Thereafter, the main point of contention was, as it had been throughout the prior history of this case, what impact Two Farms' proposal would have on traffic. The concerns about traffic stem from the fact that the Property is located just south of the five-point intersection of Harford Road, Glenmore Avenue, and Old Harford Road in northeast Baltimore. The intersection's main artery is Harford Road, which runs from the southwest to the northeast and vice versa. Glenmore Avenue cuts across Harford Road from the east and west. Old Harford Road begins—or ends, depending on which direction one is traveling—at the northwestern corner of the intersection of Harford Road and Glenmore Avenue, running away from it in the north-northwest direction. In addition to being the place where three roads meet instead of just two, the layout of the intersection is further complicated by the fact that the east and west legs of Glenmore Avenue are not evenly aligned with one another.[2]

In response to the opposition's concerns about traffic, Two Farms submitted revised site plans shortly before the October 20 hearing. Those plans included a 39.7% increase in "green space," the donation of a parcel of land at the Harford Avenue and Glenmore Avenue intersection to the City of Baltimore, the realignment of the intersection, the

[2] For an aerial view of the intersection, *see* Google Maps, https://www.google.com/maps/place/5901+Harford+Rd,+Baltimore,+MD+21214/@39.3563979,-76.5577009,415m/data=!3m1!1e3!4m5!3m4!1s0x89c805fa4d6f3537:0xf6a47a7ee6652abe!8m2!3d39.355861!4d-76.557606 (last visited March 28, 2017).

restriping of the intersection to create dedicated left turn lanes, improvements to the pedestrian crosswalks and ADA access ramps, and the replacement of the traffic signal, as well as an averment that Royal Farms would cover all costs associated with the aforementioned improvements. The Baltimore City Department of Transportation ("DOT") submitted a letter to the Board indicating that it had conducted a review of five years of crash data, and that the Harford Road and Glenmore Avenue intersection's "noticeable geometric deficiencies" caused it to see the "11th highest [number of crashes] among the 26 signalized intersections [along the five mile stretch of Harford Road from North Avenue to the Baltimore County line.]" The DOT concluded that "if the proposed modifications were implemented, there would likely be a reduction in crashes at the subject intersection." In addition, a representative of the Baltimore City Planning Department testified that "the Planning Department is fully in support of [the revised] proposal."

Three experts testified at the merits hearing—two for Two Farms and one for the opponents. Wes Guckert was Two Farms' traffic expert. He testified that Two Farms' revised site plans would "drastically improve the operation of the intersection" and "creat[e] a far better condition than has existed at this intersection for 50 years." When asked, "[W]ill the adverse effects that are associated with the development of a gasoline service station and convenience store at 5901 Harford Road be greater at this location than they otherwise would be at another location within the B-3 zoning district?," Mr. Guckert responded, "I don't see how it [sic] would be. You would, you would have generally the same amount of traffic, and the, the intersection is being improved. I, I just don't see how it [sic] would be greater." Two Farms' other expert, Steven Warfield, agreed. When asked

the same question as the one posed to Mr. Guckert regarding whether the adverse effects would be worse at this location than at another location within the B-3 district, Mr. Warfield answered, "No." The opponents' expert, Gerald Neily, also testified as to whether the adverse effects would be worse at the 5901 Harford Road location. He disagreed with Mr. Guckert and Mr. Warfield's conclusions, citing the unique nature of the intersection, but nevertheless opined that traffic at the intersection "won't go up a whole lot" as a result of the gas station and convenience store. At one point during the hearing, counsel for the opponents described the traffic problem at the intersection as "the heart of the case."

The Board also heard testimony from other witnesses in addition to the three experts. These other witnesses included Joseph "Jody" Landers, a businessman and lifelong resident of the area. Mr. Landers testified that the community was against the project and expressed the opinion that a gas station would bring "pollution, litter, trash and increased traffic through the nearby residential streets."

At the conclusion of the hearing, the Board entered into deliberations. It then voted 4-1 in favor of approving the application. The Board then issued a written Resolution on November 23, 2015, imposing on its approval the following conditions:

> (1) As agreed to by [Two Farms], the donation of a portion of the subject property to the City of Baltimore for the purposes as prescribed herein;
> (2) As agreed to by [Two Farms], the relocation and realignment of the intersection of Harford Road and Glenmore Avenue and incidental relocation of the traffic signal and associated intersection improvements to mitigate traffic concerns at this location; that mitigation is to be completed prior to issuance of the permits to operate the requested use;

(3) The proposed intersection improvement plans are subject to approval of the Department of Transportation;
(4) The green buffer areas as shown on the plans submitted on October 5, 2015, are to be planted with trees and other vegetation according to a landscape plan approved by the Department of Planning;
(5) The exterior lighting and signage on the property will be designed to minimize the amount of light reaching the residential area adjacent to the side and rear of the property;
(6) The number of pumps is limited to 4 pumps (8 fueling positions)[3]; and
(7) The applicant's final site plan much be submitted to and receive approval from the Site Plan Review Committee.

The Board explained:

> Under ZC § 14-204, the Board may not approve a conditional use unless, after public notice and hearing, and in consideration of the standards prescribed in Title 14, it finds that: (1) the establishment, location, construction, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, security, general welfare, or morals; (2) the use is not in any way precluded by any other law, including the Urban Renewal Plan; (3) the authorization is not otherwise in any way contrary to the public interest; and (4) the authorization is in harmony with the purpose and intent of Article 14.
>
> As stated above, this property is located within a B-3-1 Business District (Community Commercial District):
>
> > "The B-3 Community Commercial District is designed primarily to accommodate business, service, and commercial uses of a highway-oriented nature. The district provides for a wide range of necessary services and goods that do not involve local shopping and are not characteristic of business shopping areas." ZC § 6-401(a).

[3] Two Farms' revised site plan included 6 pumps, or 12 fueling stations, but Two Farms now agrees with the Board that it would be best for the number of pumps to be limited to 4.

Finally, the Board outlined its reasons for approving the conditional use for the gas station:

> [Two Farms] presented testimony and gave argument that a gasoline station, under ZC § 6-408 (conditional uses), is similar in nature to the myriad commercial uses that accompany "commercial uses of a highway-oriented nature." *See* ZC § 6-401(a). The opposition presented argument and testimony that a gas station presented significant risks to health and safety and would diminish the general welfare of the neighborhoods within close proximity to the site. Their testimony included facts such as the proximity of the site to a library and nearby elementary school, the presence of children in the neighborhood presenting pedestrian danger, the negative impacts of emitted light from a large scale 24-hour gas station, and the toxic nature of petroleum-based fuel products potentially just feet away from residential homes. While the Board has no doubt that these concerns are real and genuine, [Two Farms] countered that there are other gas stations in proximity to this site and that this property is located in a business district and not in a residential district. The Board finds [Two Farms'] counter argument more compelling than the arguments posed by the opposition. Moreover, much of the argument against the proposed use would apply equally well if the proposal were solely for the use of a convenience store (a permitted use that would not have to come before the B[oard] for approval) rather than the proposed use of a convenience store with accompanying gas station. The community would be dealing with the same safety concerns relating to ingress and egress, light emitting signs, loitering, and increased traffic relating to the convenience store with or without a gas station. Through consideration of the testimony of [Two Farms'] experts, Mr. Warfield and Mr. Guckert, and the opposition's expert, Mr. Neily, the Board is not convinced that the addition of the gas station portion of the proposed use would significantly increase these risks to public health, security, or general welfare any more than those risks already posed by what would be a large, bright, traffic-riddled, permitted "as of right" convenience store. The opposition did not submit any testimony or other evidence refuting this contention.
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> * * *

> Evidence pertaining to the Board's evaluation under ZC § 14-204(3) examining whether the requested use is contrary to the "public interest" is a more difficult standard to examine. Through testimony of community members, several elected officials, and argument contending that the use of a gasoline station on this property would be contrary to the narrow public interest of those living in the surrounding neighborhoods for reasons of density, traffic, public safety and health, and similar issues, the Board must weigh this testimony against [Two Farms'] evidence and argument that a gas station serves the broader public interest by providing commercial benefits such as employment and gasoline services. For similar reasons as explained above, many of the community's concerns and opposition to a gasoline station would likewise exist with the use of an "as of right" convenience store. Further, all parties agree that the current state of this intersection is a risk to public safety. Working in conjunction with the Department of Transportation, [Two Farms] has proposed the realignment, alteration, and restriping of this intersection to address the existing traffic and pedestrian safety concerns of the community. The evidence submitted shows that these concerns are valid and without a reconfigured intersection would continue to exist at this location. [Two Farms] has agreed to donate a portion of the property for this purpose and has agreed to cover the costs associated with these improvements. For these reasons, as well as the positive commercial benefits serving the broader public interest, the Board finds sufficient evidence to conclude that the authorization of a gasoline station on this property is "not otherwise in any way contrary to the public interest." ZC § 14-204(3).

Following the issuance of the Board's Resolution, the opponents filed a petition for judicial review in the Circuit Court for Baltimore City. On May 9, 2016, the circuit court affirmed the Board's decision, finding it to be legally correct and supported by substantial evidence. On June 2, 2016, the opponents noted a timely appeal to this Court.

STANDARD OF REVIEW

The standard of review that applies to decisions of local zoning boards is well-settled:

> ["T]he role of this court is essentially to repeat the task of the circuit court; that is, to be certain that the circuit court did not err in its review." *Mortimer v. Howard Research & Dev. Corp.*, 83 Md. App. 432, 442, 575 A.2d 750 (1990). Thus, we review the decision of the administrative agency, not the decision of the circuit court. *Abbey v. Univ. of Maryland*, 126 Md. App. 46, 53, 727 A.2d 406 (1999). We "recognize two standards of review of a decision of a zoning board: one for the board's conclusions of law and another for the board's findings of fact or conclusions of mixed questions of law and fact." *Eastern Outdoor Advert. Co. v. Mayor and City Council of Baltimore*, 128 Md. App. 494, 514, 739 A.2d 854 (1999). As to the Board's factual findings, we must determine "'whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions.'" *Stansbury v. Jones*, 372 Md. 172, 183, 812 A.2d 312 (2002) (quoting *White v. North*, 356 Md. 31, 44, 736 A.2d 1072 (1999); quoting in turn *Sembly v. County Bd. of Appeals*, 269 Md. 177, 182, 304 A.2d 814 (1973)).
>
> In reviewing the board's legal conclusions, however, "our review is expansive, and we owe no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299, 878 A.2d 670 (2005). "'Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.'" *Stansbury*, 372 Md. at 184, 812 A.2d 312 (quoting *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749 (1998)). In reviewing for legal error, we "'must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.'" *Eastern Outdoor Adver. Co.*, 128 Md. App. at 514, 739 A.2d 854 (quoting *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 652, 701 A.2d 879 (1997)).

Cinque v. Montgomery Cty. Planning Bd., 173 Md. App. 349, 359–60 (2007).

Moreover, "we may not uphold the final decision of an administrative agency on grounds other than the findings and reasons set forth by the agency." *Frey v. Comptroller of Treasury*, 422 Md. 111, 137 (2011) (citations omitted).

DISCUSSION

I. Grant of Conditional Use Application

A. Parties' Contentions

The appellants argue that the Board incorrectly applied the law, citing the Court of Appeals' holding in *Schultz v. Pritts*, 291 Md. 1 (1981), in approving the conditional use application for the gas station. They assert that the Board approved the conditional use on the grounds that the adverse effects of the gas station would not exceed those of the convenience store, which is a permitted use. According to the appellants, "*Schultz* expressly rejected th[is] test of comparing the conditional use to the effects under a permitted use." The appellants contend that what the Board should have done instead was consider "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 22-23.

In addition, the appellants contend that the Board committed an error of law where it dismissed the "narrow" public interest of the neighborhood residents in favor of the "broader" public interest. The appellants argue that this was directly contrary to *Schultz*, which held that "[t]he duties given the Board are to judge whether the neighboring

properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." *Id.* at 11.

Finally, the appellants assert that "the Board erred in dismissing the concerns [raised by the opponents of the application] because the site was within a business district rather than a residential district." The appellants describe this as "faulty reasoning," contending that "[t]o state [the Property's location within a business district] as a reason is to disregard the purpose of designating the use [of a gas station] as a conditional use."

The appellees respond that the appellants are misrepresenting the holding of *Schultz*. They argue that *Schultz* merely rejected the test this Court employed in *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410 (1975), a case from which that before us now is easily distinguished. The appellees assert that unlike *Gowl*, the present case involves a zoning application wherein a permitted use (the convenience store) is being paired with a conditional use (the gas station). Therefore, the appellees contend that it would have been error, *i.e.*, contrary to *Schultz*, had the Board penalized Two Farms' conditional use application based on adverse effects actually attributable to the permitted use portion of the project. Likewise, and for the same reason, the appellees argue that the Board properly considered whether the gas station portion of the project would have adverse effects beyond those associated with the convenience store.

The aforementioned distinction from *Gowl* notwithstanding, the appellees point out that the Board stated in its Resolution that despite the non-traffic related, negative impacts normally associated with gas stations, it found it "compelling" that there are "other gas stations in proximity to this site." Therefore, the appellees contend that the Board did, in

fact, apply the test that the appellants claim it overlooked, namely, whether the gas station would "have . . . adverse effect[s] above and beyond th[ose] ordinarily associated with such uses." *Schultz*, 291 Md. at 22. Moreover, the appellees argue that conditional uses are presumed to be valid, and that the evidence in this case was insufficient to negate that presumption.

Lastly, the appellees assert that the appellants' claim that the Board disregarded the "narrow" interests of the area residents is contradicted by the conditions the Board imposed, including the reduction of the number of pumps from 6 to 4, the implementation of sufficient "green space" to act as a buffer between the gas station/store and the nearby residential area, and the use of such lighting that would minimize the amount of light reaching points beyond the boundaries of the Property.

B. Analysis

As the Board correctly noted, it

> may not approve a conditional use unless, after public notice and hearing and on consideration of the standards prescribed in this title, it finds that:
>
> > (1) the establishment, location, construction, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, security, general welfare, or morals;
> >
> > (2) the use is not in any way precluded by any other law, including an applicable Urban Renewal Plan;
> >
> > (3) the authorization is not otherwise in any way contrary to the public interest; and
> >
> > (4) the authorization is in harmony with the purpose and intent of this article.

ZC § 14-204. The Board analyzed each of these elements, in order, before deciding to approve the gas station for a conditional use. In analyzing the elements contained in ZC §§ 14-204(1) & (3), the Board was persuaded by the fact that "[t]he community would be dealing with the same safety concerns relating to ingress and egress, light emitting signs, loitering, and increased traffic relating to the [permitted "as of right"] convenience store with or without the gas station." As for the element contained in ZC § 14-204(2), the Board found that the appellants did not present any evidence that the gas station was precluded by another law. Finally, with regards to ZC § 14-204's final element, ZC § 14-204(4), the Board pointed to the purpose of the B-3-1 District (". . . to accommodate business, service, and commercial uses of a highway-oriented nature." ZC § 6-401(a)) and found that Two Farms presented "compelling" relevant evidence that the appellants did not refute.

We shall first address whether the Board misapplied the applicable law where it found that the elements contained in ZC §§ 14-204(1) & (3) were satisfied because the gas station portion of the project would not create any adverse effects that would not already be present by virtue of the convenience store. In *Schultz v. Pritts*, *supra*, the Court of Appeals explained that

> [g]enerally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide

for coordinated, adjusted, and harmonious development of the district. P. Hagman, Urban Planning and Land Development Control Law 105 (1971). See Art. 66B, § 4.03.

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. *See City of Takoma Park v. Cnty. Bd. of Appeals for Montgomery Cnty.*, 259 Md. 619, 621, 270 A.2d 772, 773 (1970); *Creswell v. Baltimore Aviation Servs. Inc.*, 257 Md. 712, 719, 264 A.2d 838, 842 (1970); Art. 66B, § 1.00. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. For example, funeral establishments generally are designated as special exception uses. **Such uses may not be developed if at the particular location proposed they have an adverse effect upon a factor such as traffic because the legislative body has determined that the beneficial purposes that such establishments serve do not necessarily outweigh their possible adverse effects.**

More particularly, by definition, a permitted use may be developed even though it has an adverse effect upon traffic in the particular location proposed. By definition, a requested special exception use producing the same

> **adverse effect at the same location must be denied.** Thus, by definition, a church may be developed even if the volume of traffic that it generates causes congestion and unsafe conditions at the particular location proposed. By definition, however, a special exception use for a funeral establishment producing the same volume of traffic and, therefore, the same congestion and unsafe conditions at the particular location proposed must be denied. It is precisely because a permitted use may be developed even though it may have an adverse effect on traffic at the particular location proposed, whereas a special exception use may not, that to grant a requested special exception use on the ground that it generates traffic volume no greater than that generated by a permitted use is logically inconsistent and in conflict with previously established standards. Accordingly, the standard articulated in *Gowl* is inappropriate. **We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.** *Turner*[*v. Hammond*], 270 Md. [41,] 54-55, 310 A.2d [543,] 550-51 [(1973)]; *Deen*[*v. Baltimore Gas & Elec. Co.*], 240 Md. [317,] 330-31, 214 A.2d [146,] 153 [(1965)]; *Anderson*[*v. Sawyer*], 23 Md. App. [612,] 617-18, 624-25, 329 A.2d [716,] 720, 724 [(1974)].

Schultz, 291 Md. at 20–23 (emphases added).

The Board's reasoning in the case at bar is directly at odds with the Court of Appeals' holding in *Schultz*. The Board reiterated, time and time again, different versions of how

> much of the argument against the proposed use would apply equally well if the proposal were solely for the use of a convenience store (a permitted use) that would not have to come before the B[oard] for approval rather than the proposed use of a convenience store with accompanying gas station.

That test is the exact one the Court of Appeals rejected in *Schultz*. The appellees' attempt to distinguish this case from *Schultz* on the basis that Two Farms' application was for a conditional use on the same site as a permitted use is thought-provoking, but not persuasive. The holding of *Schultz* is clear and absolute:

> that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22–23. *See People's Counsel for Baltimore Cnty. v. Loyola College in Maryland*, 406 Md. 54 (2008). The Board did not apply this standard, but rather applied the standard *Schultz* rejected. Under the standard described in *Schultz*, the Board in this case should have determined whether the gas station at the proposed location would have created adverse effects "above and beyond those inherently associated with [gas stations elsewhere within the zone]." *Id.* Instead, it decided whether "the community's concerns and opposition to a gasoline station would likewise exist with the use of an 'as of right' convenience store." Therefore, we hold that the Board misapplied the law, particularly where it found that the elements contained in ZC §§ 14-204(1) & (3) were satisfied on the grounds that "[t]he community would be dealing with the same . . . [adverse effects] . . . with or without a gas station."

We shall now briefly address whether the Board erred with respect to the appellants' second and third arguments, which we outlined in Section I, A, *supra*. In summation, we

are not persuaded with respect to either of these arguments. First, we do not believe that the Board "disregarded" the narrow interests of the local residents in favor of the broader public interests. On the contrary, the Board imposed a number of conditions in direct response to the residents' concerns and found that "the proposed realignment, alteration, and restriping of this intersection" would "address the existing traffic and pedestrian concerns of the community." Clearly, the Board made its decision with the neighborhood's interests in mind. Second, we are not persuaded that the Board erred in stating that the Property is located in a business district. In light of the totality of the Resolution, we conclude that that innocuous statement, located on page 4, 8–9 lines from the bottom, was not the real reason the Board found the application satisfied ZC § 14-204(1). As we have already explained, the real reason the Board found that ZC § 14-204(1), like ZC § 14-204(3), was satisfied was because the gas station would not create adverse effects above and beyond those associated with the convenience store. It is for that reason the Board misapplied the law.

II. Notice

A. Parties' Contentions

The appellants argue that the Board violated the notice requirement of ZC § 2-114(a) because it did not post the Property with a notice for the October 20, 2015, hearing. The appellants acknowledge that they had actual notice of the October 20 hearing, but nevertheless assert that a proper posting was required to give notice to persons who were not parties at the time of the June 30, 2015, hearing, which was properly posted.

The appellees respond that the posting for the June 30 hearing was sufficient to comply with the notice requirement of the Zoning Code. In addition, the appellees argue that the appellants' admission that they had actual notice of the October 20 hearing, coupled with the large turnout at that hearing, shows that the appellants were in no way prejudiced by the error they now assign.

B. Analysis

We agree with the appellees that even if the notice for the October 20 hearing did not meet all of the technical requirements of ZC § 2-114, the appellants were not in any way prejudiced. At the October 20 hearing, a staff member of the Board stated that "[o]n the initial hearing back in May [sic], we had received in excess of 30 letters, a judicial petition with at least – with more than 60 signatures, and an electronic petition with 125 signatures and comments . . . against the proposal. Recently for this hearing we received 35 additional letters . . .against the proposal." Also at the October 20 hearing, the appellants' counsel stated "[w]e have a lot of people here that feel very, very strongly about this application." Therefore, there was clearly active participation by the opponents of the application at the October 20 hearing. In addition, the appellants concede that they had actual notice of the hearing by virtue of a scheduling letter sent to their counsel by the Executive Director of the Board. Therefore, we agree with Two Farms in that the "[a]ppellants' concession that they had actual notice of the hearings, coupled with their active participation in each hearing, confirms that [the a]ppellants were in no way prejudiced by the action they complain about." (Quotations and citations omitted). *See Bishop v. Bd. of Cty. Comm'rs of Prince George's Cty.*, 230 Md. 494, 503 (1963) (holding,

in a similar situation involving a second hearing before the Board on remand, that "advertising would not have been necessary so long as the parties had actual notice of the hearing."); *see also Clark v. Wolman*, 243 Md. 597, 600 (1966) ("In the instant case, the required notice to property owners within 175 feet was for the purpose of informing them of the hearing on the requested change. They had actual knowledge thereof and acted upon that knowledge. We hold that under the circumstances, Mr. and Mrs. Clark lost nothing from the failure to receive written notice of the hearing, and this failure did not invalidate the City's action."). Accordingly, we hold that the Board did not err in rejecting the appellants' notice argument.

CONCLUSION

For the reasons stated in this opinion, we hereby vacate the judgment of the circuit court and remand this case to that court with instructions to vacate the Board's decision and then remand the case back to the Board to properly apply the legal principle embodied in the holding of *Schultz v. Pritts*, 291 Md. 1 (1981).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES, TWO FARMS AND MAYOR AND CITY COUNCIL OF BALTIMORE CITY.