Circuit Court for Baltimore County
Case No. 03-C-15-011811

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 676

September Term, 2016

SHERWOOD HILL IMPROVEMENT ASSOCATION, ET AL.

v.

TTV PROPERTIES III, LLC

Nazarian,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: January 26, 2018

This case arises from a petition for judicial review in the Circuit Court for Baltimore County, of the Baltimore County Board of Appeals' decision regarding a commercial property zoning dispute. Appellee/Cross-Appellant TTV Properties III, LLC sought to create an automobile dealership on their property, and applied for a limited exemption to the zoning restrictions. Appellants/cross-appellees, interested area citizens, sought review of the decisions by the County's Department of Permits granting appellees a special exemption and approving the development plan for the property. The Baltimore County Board of Appeals affirmed the administrative decisions, and denied a subsequent motion for reconsideration. The circuit court affirmed. Appellants then noted this timely appeal. Subsequently, on August 30, 2016, the Baltimore County Council rezoned the property and eliminated the zone classification at issue.

We have rephrased appellant's questions presented as follows:[1]

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[1] Appellants presented the following questions for review:

1. "Subsequent Baltimore County Comprehensive Rezoning of the Subject Property Resulted in Elimination of the B.M. Zone "Sliver" from the B.L. Zoned frontage). As a result, the automobile dealership is no longer permitted use in the B.L. Zone.

2. The rear of the property is zoned M.L., and the automobile Dealership inventory is not a permitted use under B.C.Z.R. § 253!

3. The Board mischaracterized Impermissible Car Dealership Inventory under the guise of principal "storage" of automobiles, a permitted M.L. Zone Use.

4. It was anyway not logical to interpret Bill 2-14 to allow such a "sliver" as the basis to expand B.M. Zoning rights for an automobile dealership into the predominant B.L. Zone where it is not ordinarily allowed! It violates the County Code §32-3-

1. Whether appellee vested the development plan, protecting the property from retrospective application of the zoning changes enacted by the Baltimore County Council?

2. Whether the Board of Appeals erred in determining that the storage of automobiles is permitted within a Manufacturing, Light - Industrial, Major zoning classification?

3. Whether Bill 2-14 as applied complies with the Baltimore County Zoning Regulations and Baltimore County Code, including the mandate of uniformity in Baltimore County Code § 32-3-201(b)(1)?

4. Whether the title of Bill 2-14 is incomplete and misleading in violation of Section 308(c) of the Charter of Baltimore County, Maryland and Article III, Section 29 of the Maryland Constitution?

On cross-appeal, appellees present the following question for our review:

5. Whether the Board of Appeals erred in denying appellee's request for an "A" exemption from a full developmental plan pursuant to BCC 32-4-106(a)(1)(vi)?

For the following reasons, we shall affirm in part and remand in part.

BACKGROUND

On March 20, 2014, appellee/cross-appellant TTV Properties III, LLC ("TTV" or "appellee") purchased a property ("the property") in Baltimore County, located at 10630 York Road in Cockeysville, Maryland. At the time of purchase, the property was a twenty-

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201(b) legislative mandate of uniformity for regulations within each zone if the B.M. Zone sliver is allowed effectively to overtake the more restrictive B.L. Zone!

5. Bill 2-14 conflicts with Maryland Constitution Article 29, Section 3 and Baltimore County Charter Section 308(c) because its title is materially incomplete and misleading, merely referring to the A.S. District, without mention of the change involving B.L. and B.M. split-zone use.

four hour car wash. Appellee owned and operated Bill Kidd's Toyota and Volvo car dealerships at a single location south of the property. Due to requirements from appellee's franchisor, Toyota International, appellee needed to relocate the Volvo dealership, thus necessitating the purchase of the 10630 location. TTV also maintains a large service department building on another property in the neighborhood, as well as an automobile storage lot nearby.

The property was split-zoned into three zoning classifications. In the front, the property was zoned Business, Local ("BL") with an Automotive Service ("AS") District Overlay ("BL-AS") and Business, Major ("BM") with an Industrial, Major ("IM") District Overlay ("BM-IM"). The rear was zoned Manufacturing, Light ("ML") with an IM District Overlay ("ML-IM").

Appellees proposed removing the existing car wash and building a 4,500 square foot showroom, with space for customer and employee parking, and storage of inventory. On April 1, 2014, appellee requested approval from the Development Review Committee ("DRC") of the Baltimore County Department of Permits, Approvals, and Inspections ("PAI") for a full, or "A," exemption from all developmental review process requirements.[2] By administrative order and decision dated May 12, 2014, the Director of PAI adopted the

[2] They argued their redevelopment constituted a "minor commercial structure" as provided in Baltimore County Code ("BCC") § 32-4-106 (a)(1)(vi). BCC § 32-4-106(a)(1)(vi) allows for a full exemption from the development review and approval process if the project proposed is for "construction of residential accessory structures or minor commercial structures."

recommendations of the DRC, granting a "B" exemption under Baltimore County Code ("BCC") § 32-4-106(b)(8), finding the project qualifies as a "minor development." Under a partial, or "B" exemption, a project that is a "minor development that does not exceed a total of three lots," is exempt from only "the community input meeting and the Hearing Officer's hearing."

TTV appealed the administrative order and decision to the Board of Appeals on May 21, 2014. They advised the Board that they had filed a Development Plan on August 13, 2014, and that it was under review by various County agencies. The Board, therefore, issued an order, on September 23, 2014, staying the appeal until appellees' final Development Plan had been approved. On February 23, 2015, TTV received approval for their Development Plan from PAI. Appellants[3] appealed the approval to the Board of Appeals on March 20, 2015, which was consolidated with appellee's appeal of the granting of the "B" exemption.

The Board held hearings on the respective appeals on April 30, 2015, and June 4, 2015. In its Opinion and Order, issued on June 15, 2015, the Board affirmed the order of the Director of PAI, granting a limited "B" exemption, and approved TTV's Final Development Plan.[4] Appellants filed a Motion for Reconsideration with the Board on June

[3]Appellants include Sherwood Hill Improvement Association, Inc. and individually, Becky Gerber, Jim McBean, Lisa McBean, Amy Spencer, John Spencer, Nancy Williams, Mitchell Williams, Mary Slafkosky, and Chris Bowman.

[4] Two of the Board members signed the Opinion, while one dissented.

26, 2015. TTV, on October 2, 2015, recorded a plat based on the approved Development Plan. The Board unanimously denied the Motion for Reconsideration and affirmed its decision on October 8, 2015.

Appellants then filed a petition for judicial review of the original Board Order and the Motion for Reconsideration to the Circuit Court for Baltimore County. After a hearing on April 27, 2016, the circuit court, in a Memorandum Opinion and Order entered May 20, 2016, affirmed the findings of the Board. The court found there was substantial evidence to support the Board's determinations regarding the exemption and approval of the developmental plan, that the Board did not err in determining that Bill 2-14 as applied did not violate the BCC or BCZR, and that Bill 2-14 did not violate Article III, Section 29 of the Maryland Constitution or § 308 of the Baltimore County Charter.

Both parties noted this timely appeal. Appellees, in accordance with the plat, obtained permits for the construction of the infrastructure to accommodate the sales facility between July and early August 2016. On August 30, 2016, the County Council of Baltimore County ("Baltimore County Council") rezoned the property to eliminate the small BM-IM zone from the property in the Comprehensive Zoning Map Process.

Additional facts will be added as they become relevant to the issues below.

STANDARD OF REVIEW

Appellate review of an administrative agency decision "generally is a 'narrow and highly deferential inquiry,'" wherein "[t]his Court looks 'through the circuit court's

decision and evaluates the decision of the agency,' determining 'if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632 (2011) (internal citations omitted).

DISCUSSION

I. Appellee vested the Development Plan, thereby protecting the property from retrospective application of zoning changes to the property.

Generally, all "statutes are presumed to operate prospectively." *Layton v. Howard Cty. Bd. of Appeals,* 399 Md. 36, 51 (2007) (internal citations omitted). However, Maryland courts recognize an exception, known as the *Yorkdale* rule, in which a "legislated change of pertinent [zoning] law[s], which occurs during the ongoing litigation of a land use or zoning case, generally, shall be retrospectively applied." *Layton*, 399 Md. at 577 (citing *Yorkdale Corp. v. Powell*, 237 Md. 121, 126–27 (1964)); *see also McHale v. DCW Dutchship Island, LLC*, 415 Md. 145 (2010). There are two exceptions to the *Yorkdale* rule: (1) if vested or accrued rights would be disturbed and (2) contrary legislative intent. *Layton*, 399 Md. at 586 (internal citations omitted); *see also McHale*, 415 Md. at 161.

The doctrine of vested rights, "which has a constitutional foundation, rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to

complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations." *Prince George's Cty. v. Equitable Trust Co., Inc.*, 44 Md. App. 272, 278 (1979) (internal citations omitted). Under the common law, rights vest in the construction context if the following three conditions are satisfied: "(1)…the actual physical commencement of some significant and visible construction; (2) the commencement must be undertaken in good faith, to wit, with the intention to continue with the construction and to carry it through to completion; and (3) the commencement of construction must be pursuant to a validly issued building permit." *Town of Sykesville v. West Shore Comm., Inc.*, 110 Md. App. 300, 305 (1996).

Appellants argue that appellee's Development Plan did not vest and, thus, was not protected from the retrospective application of the August 2016 zoning changes, which eliminated the BM-IM "sliver" from the instant site. They assert, therefore, appellees cannot construct an automobile sales facility, because it is not a permitted use on BL-AS or ML-IM zones, the applicable zones after August 30, 2016. Appellee contrarily argues that its Development Plan vested in accordance with BCC §§ 32-4-101(ccc) and 32-4-264, through the recordation of a plat on October 2, 2015. They assert that they complied with the statutory mechanism, a year prior to the August 2016 zoning changes.

We agree with appellees. On July 6, 2009, the Baltimore County Council enacted Bill 58-09, "[an act] concerning [d]evelopment" for the purpose of "providing for the manner and time of the vesting of development plans" and "providing limits on the vesting

of certain development plans[.]" This bill, which added BCC §§ 32-4-101 and 32-4-264, provided a new manner in which a party may obtain vested rights in Baltimore County. BCC § 32-4-101(ccc) provides that "[a] vested Development Plan shall proceed in accordance with the approved Plan and the laws in effect at the time Plan approval is obtained." A party "obtains vested rights for a Development Plan in accordance with Section 32-4-264 of this title," "Vesting of Development Plans," *Id.*, which provides that "[a] non-residential Plan for which a plat is recorded vests when the plat recordation occurs for any portion of the Plan." Section 32-4-264(b)(2).[5] Section 32-4-264(b)(1) states "a non-residential plan for which a plat is not recorded vests when substantial construction occurs for any portion of the plan."

The Development Plan in question constitutes a "non-residential plan."[6] TTV's Development Plan was approved on February 23, 2015, and recorded a plat based on the approved Development Plan on October 2, 2015, almost a year before the Baltimore

[5] BCC § 32-4-264 provides:

(a) *In general*. A Development Plan vests in accordance with the provisions of this section.

(b) *Non-residential Plan*.

(1) A non-residential Plan for which a plat is not recorded vests when substantial construction occurs with respect to any portion of the Plan.

(2) A non-residential Plan for which a plat is recorded vests when a plat recordation occurs for any portion of the Plan.

[6] BCC § 32-4-101(ddd) defines a "non-residential plan" as "a Plan of Development in which the dominant element of the plan is (1) a commercial development, (2) an industrial development, or (3) a senior house, assisted living, life care, continuing care or elderly housing facility, church, school, or other institutional use."

County Council updated the zoning ordinances. Clearly, under the plain language of both BCC §§ 32-4-101 and 32-4-264, appellees obtained a vested right under the zoning at the time their Development Plan was approved.

Appellants contend, however, that the Baltimore County Council did not intend to abrogate the common law vesting of rights, but meant only in the absence of litigation, rights could vest when a plat was recorded. There is, however, no indication in Bill 58-09, nor in BCC §§ 32-4-101, 32-4-264, or any of the relating ordinances, that this was the County Council's intention. The only indication of any 'pause' on the ability to obtain vesting comes in BCC § 32-4-205, regarding the comprehensive zoning map process. It states that, "[n]otwithstanding any other provision of law, if a Development Plan is subject to this section, a plat may not be accepted for filing, a limited exemption may not be approved, and a permit or other evidence of vesting may not be issued for the plan until after the effective date of the bill in which the [Baltimore] County Council adopts the comprehensive zoning map." Section 32-4-205 "applies to:

> (1) A Development Plan that is accepted for concept plan filing after September 1 of the year in which the comprehensive zoning map process begins; or
>
> (2) An application for limited exemption or waiver that is accepted for filing after September 1 of the year in which the comprehensive zoning map process begins; and
>
> (3) The plan or application includes a tract or parcel of land that the subject of or is included in a comprehensive zoning map issue that was raised by the Department of Planning, the Planning Board or the County Council."

The comprehensive zoning map process begins "[w]ithin each one-year period immediately preceding May 31st of every fourth year" after 2004.[7] As we know, the rezoning at issue in the case *sub judice* occurred in 2016. Under § 32-4-205, then, the comprehensive zoning map process that affected the property began on May 31, 2015. Both TTV's application for exemption (April 1, 2014) and Development Plan (February 23, 2015), were filed before September 1 of 2015. BCC §§ 32-4-205(1) & (2).

Therefore, the question becomes if the zoning change on the property "was raised by the Department of Planning, the Planning Board or the County Council." If so, then TTV's Development Plan could not have vested under 32-4-205 and the zoning ordinance change is applied retroactively. If, however, the rezoning of the property was raised by appellants, or any party other than those three entities, the Development Plan did vest, and we consider the zoning at the time appellee's petition was before the Board. However, because the issue of vesting was not before the Board or circuit court, there is no evidence available in the record as to who raised the property for rezoning.

Appellants argue, nevertheless, appellees were also required to vest under the common law, and, pursuant to *Powell v. Calvert County, Maryland et al.,* 368 Md. 400

[7] BCC § 32-212, "Changes in Zoning," states:

(a) *Duty of Planning Board to recommend revised map.* Within the one-year period immediately preceding May 31, 2004, and within each one-year period immediately preceding May 31st of every fourth year thereafter, the Planning Board, after completely reviewing the zoning map then in effect, shall recommend to the County Council a new or comprehensively revised version of the map in accordance with this subtitle."

(2002), and *Antwerpen v. Baltimore Cty.*, 163 Md. App. 194 (2005), vested rights cannot be established under common law until after the completion of all pending litigation involving the zoning ordinance from which the vested rights are claimed to have originated. Appellants' reliance, however, is misplaced.

In *Powell v. Calvert County*, the Court of Appeals addressed whether a landowner who sought a special exception that would allow him to store construction materials outdoors, had vested his right to do so before the county amended the zoning ordinances to prohibit such storage. 368 Md. 400, 412 (2002). The Board of County Commissioners for Calvert County granted him the special exception, which was affirmed by the circuit court. The circuit court's decision was then appealed to this Court. While his appeal in this Court was pending, the Board amended the zoning ordinances, so that the special exception was no longer available to the landowner.

This Court, finding that the state of the record prevented us from determining whether the Board's original decision was supported by sufficient evidence, reversed the circuit court's judgment, and instructed the court to vacate the Board's decision and remand to the Board for further proceedings. The Board then, stating that it was strictly following this Court's opinion, did not reopen the record, and instead proposed to adopt its previous findings of facts with amendments. The findings of fact were adopted and the special exception was then approved by the Board pursuant to the law as it existed at the time of

the original hearing. The Board, importantly, did not consider the ordinance as it existed at the time of its final decision.

A petition requesting judicial review was again filed. The circuit court found that, although there was a change to the zoning ordinance so that a special exception could not have been granted, the landowner had obtained a vested right which protected him from the intervening change. The court remanded the case to the Board for the purpose of addressing a different issue, which they found the Board had failed to properly consider. This Court then filed an opinion which affirmed all of the Board's decisions.

The Court of Appeals began their review by noting that "[i]n the case *sub judice*, a special exception approval, whose validity is being litigated, is not finally valid until all litigation concerning the special exception is final." 368 Md. at 410. The Court found the landowner "never obtained a final valid exception prior to the change in the law and, therefore, never obtained a vested right." *Id.* "Until all necessary approvals, including all final court approvals, are obtained, nothing can vest or even begin to vest." *Id.* at 409. "[E]ven after final court approval is reached, additional actions must sometimes be taken in order for rights to vest." *Id.* "In *Sykesville v. West Shore Communications, Inc.*[,] a case in which rights were found to have vested, the Court of Special Appeals noted the standard for 'vesting' in the zoning context [was that]:

> 1) there must be the actual physical commencement of some significant and visible construction; 2) the commencement must be undertaken in good faith, to wit, with the intention to continue with the construction and to

> carry it through to completion; and 3) the commencement of construction must be pursuant to a validly issued building permit."

Powell, 368 Md. at 409 (citing 110 Md. App. 300, 305 (1996)). The Court noted that in a "recent case…[they] [had] further examined the doctrine of vested rights[:]"

> "By a per se vested rights case we mean one invoking '[t]hat doctrine, which has a constitutional foundation [and which] rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations."

Powell, 368 Md. at 410 (discussing *Marzullo v. Kahl*, 366 Md. 158, 192-93 (2001), which quoted *Prince George's County v. Sunrise Development Limited Partnership*, 330 Md. 297, 312-13 (1993)). The Court continued that "[i]n *Rockville Fuel & Feed Co. v. Gaithersburg*, 266 Md. 117[, 127] (1972), we said that 'such a 'vested right' could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted.'" *Powell*, 368 Md. at 411 (discussing *Marzullo*, 366 Md. at 192-93).

The Court concluded, therefore, that the landowner "did not obtain a vested right because he never used his property for the storage of materials under a valid special exception." *Powell*, 386 Md. at 412. "Under the facts of the case at bar, [the landowner] had not obtained a 'valid permit' or in this case, a valid special exception." *Id.* at 414. The

Court then pointed to the decision of this Court to vacate the Board's initial grant of the special exception. "Upon the case being remanded, the [amendment] to the law was in effect and should have been applied by the Board." *Id.* at 416. Thereafter, under the ordinances in place at the time of the second hearing, the Board should not have granted the special exception. "At no time was [the landowner] proceeding under a 'valid permit[;]' [h]is right to the special exception was, at all times, in litigation."

This Court's decision in *Antwerpen v. Baltimore County* concerned much the same issue. 163 Md. App. 194 (2005). The landowner in *Antwerpen*, in August of 2001, applied for a special hearing to determine if it was permissible for it to operate a used car lot in a B.M. zoned property. At the time the petition was filed, "the Baltimore County zoning office had, for a number of years prior to [the landowner's] petition for a special hearing, taken the position that [the ordinances at issue] permitted sales of new but not used automobiles in a B.M. zone." *Id.* at 196.

On September 4, 2001, the Baltimore County Council passed a bill, whose purpose was "to make it clear 'that *new* car sales are permitted as of right in the B.M. zone but that used-car outdoor sales areas were permitted in the B.M. zone only by special exceptions as part of a commercial planned unit development." *Id.* at 197 (emphasis in original). The bill was to take effect on October 19, 2001.

On September 11, the deputy zoning commissioner held a hearing on Antwerpen's request for a hearing, during which the new bill was not discussed. The deputy zoning

commissioner, on September 18, 2001, granted Antwerpen a hearing. The Office of People's Counsel for Baltimore County thereafter filed a notice of appeal on September 28, 2001. On the same day, the State of Maryland issued a license allowing the sale of used automobiles on the property. On October 10, 2001, the property began to be used to sell used cars.

While the matter was before the Board, the People's Counsel filed a motion to dismiss Antwerpen's petition for a special hearing. The People's Counsel asserted that, under *Powell*, the Board was required to apply the law as it presently stands, and that, under the new bill proposed by Baltimore County, used car sales were allowed in a B.M. zone only by special exception. As Antwerpen had not obtained, nor requested, a special exception, under the current law, Antwerpen had no right to operate a used car lot on the subject property and the request for a special hearing should be dismissed. Antwerpen, however, argued that at the time the petition for a hearing was filed, operating a used-car lot on the property was legal, and in the request for a special hearing, they simply wanted the deputy zoning commissioner to confirm the fact that he had a right to do so. Moreover, he argued that by the time the new bill went into effect, he had already established a nonconforming use, and, "[i]n other words…had vested rights to continue using the property for used-car sales." 163 Md. App. at 200.

The Board agreed with the People's Counsel and dismissed Antwerpen's request, "find[ing] that the new law…is controlling," and that "[t]he appeal of [the Deputy Zoning

Commissioner's] decision by the People's Counsel brought the matter before the Board in a *de novo* posture," and, therefore, "[h]is ruling could not be effective pending the decision of this Board." 163 Md. App. at 202. The Board also found that Antwerpen had not established a vested right, in order to protect the property from the subsequent zoning change, because Antwerpen had not established a non-conforming use. However, there was no support in the record, nor did the People's Counsel suggest, that Antwerpen had not been operating a used car lot on the facility prior to the effective date of the zoning change.

The circuit court affirmed the Board's decision, citing that Antwerpen had failed to show a nonconforming use and, absent that, the reviewing court was required apply the law in effect at the time of its decision. Therefore, Antwerpen had no right to use the land in question as a used-car lot.

This Court ultimately found that *Powell* controlled the case. 163 Md. at 210. Reiterating *Powell*'s holding "that 'vested right[s] [do] not come into being until the completion of any litigation involving the zoning ordinance from which the vested right is claimed to have originated," we found "[h]ere, the vested rights claimed by appellants were based on Section 233.2, which was amended prior to the completion of the subject litigation." *Id.* "By the time the *de novo* appeal was heard [by the Board], the amended ordinance was in effect." *Id.* "Because the Board was required to apply the law in effect on the date it heard the case, *Mandel v. Board of County Comm'rs of Howard County*, 238

Md. 208, 215 (1965), the Board had no choice but to reject the zoning commissioner's conclusion that used-car sales were permitted on the property." *Id.*

Neither case is applicable to the case *sub judice*. "Where a statute and the common law are in conflict, or where a statute deals with an entire subject-matter…the statute is generally construed as abrogating the common law as to that subject." *Robinson v. State*, 353 Md. 683, 693 (1999). The Baltimore County Council clearly intended Bill 58-09 and BCC § 32-4-264 to "provid[e] for the manner and time of the vesting of development plans" in Baltimore County. The Council specifically included in BCC § 32-4-264(b)(1) that when the new method of vesting is *not* followed, the common law requirement of substantial construction still stands.[8] It is clear, therefore, that BCC § 32-4-264 abrogates the common law requirements to vest a Development Plan with a plat recordation alternative. Neither *Powell* nor *Antwerpen* address BCC §§ 32-4-264, or a similar statutory method, but instead focus on vesting under the common law. Currently in Baltimore County, the only 'pause' on vesting, whether or not the subject property is in litigation,

[8] BCC § 32-4-264 provides:

(a) *In general*. A Development Plan vests in accordance with the provisions of this section.

(b) *Non-residential Plan*.

(1) A non-residential Plan for which a plat is not recorded vests when substantial construction occurs with respect to any portion of the Plan.

(2) A non-residential Plan for which a plat is recorded vests when a plat recordation occurs for any portion of the Plan.

comes in § 32-4-205. The ability to vest during litigation under the common law, therefore, is inapposite.

Moreover, even assuming *arguendo* that appellees did still have to vest under the common law, both *Powell* and *Antwerpen* are distinguishable. In both cases, the decision was still pending before the County zoning entities when the change in the zoning ordinances occurred. In *Powell*, the landowner had not received any permits, nor did they begin any use or construction, before the change in the zoning took effect. In *Antwerpen*, the matter had not yet been reviewed by the Board when the permit was issued, and, at the time the permit was issued, the zoning ordinance had already taken effect.

In the instant case, conversely, the Board of Appeals denied appellee's motion for reconsideration and affirmed their finding granting TTV their limited exemption, on October 8, 2015, almost a year before the change in the zoning ordinances. TTV recorded their plat on October 2 of that year. They also received their permits and began construction before the change in the zoning took effect.

Both *Powell* and *Antwerpen* imply that rights cannot vest *without the acquisition of a valid permit and substantial construction* "[u]ntil all necessary approvals, including all final court approvals, are obtained." *Layton v. Howard Cty. Bd. of Appeals*, 399 Md. 36, 595 (2007) (citing *Powell*, 368 Md. at 409) (emphasis added). Otherwise, given the small deadline before which one must file an appeal, an individual might never be able to vest rights in order to insulate themselves from subsequent changes in zoning. This is especially

true considering that appeals can go on for years, during which time there can be multiple zoning changes.

This also takes into account the Court's lengthy explanation in *Powell* of our common law requiring a lawful permit and substantial construction for vesting. As the Court affirmed, "we [have] said that '[a] 'vested right' could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted.'" *Powell*, 368 Md. at 411 (discussing *Marzullo v. Kahl*, 366 Md. 158, 192-93 (2001) (citing *Rockville Fuel & Feed Co. v. Gaithersburg*, 266 Md. 117, 127 (1972))). The Court acknowledged again in *Layton*, that appellate courts use the law in existence at the time of their review unless there are "intervening vested rights." 399 Md. 36, 588.

If this was not the case, the effect of *Powell* and *Antwerpen* would be to find that a permit obtained before a change in a zoning ordinance can be found retroactively invalid years later, and our previous case law would be rendered meaningless. *See Powell*, 368 Md. at 410 (discussing *Marzullo v. Kahl*, 366 Md. 158, 192-93 (2001), which quoted *Prince George's Cty. v. Sunrise Dev. Ltd. P'ship*, 330 Md. 297, 312-13 (1993)) ("when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that

structure cannot be affected by any subsequent change of the applicable building or zoning regulations.").

We know that appellees obtained a lawful permit before the zoning change took effect. Again, however, because the issue of vesting was not before the circuit court, we cannot make a determination whether there was sufficient construction to satisfy the common law requirement for vesting.

Regardless, we find that BCC § 32-4-264 abrogated the common law in Baltimore County. We remand, therefore, only for the determination of whether the zoning change on the property "was raised by the Department of Planning, the Planning Board or the County Council." If so, then the Development Plan has not vested, and the ordinance is applied retroactively. If not, then the Development Plan has vested, and the ordinance can only be applied prospectively.

II. The Board of Appeals did not err in finding that the storage of automobiles is permitted within a ML - IM zoning classification.

Appellants argue the Board erred in its finding that the storage of automobiles was a permitted use in the ML-IM zoned portion of the property. They contend the Board previously held the storage of automobiles is not a permitted use in an ML zone in *In the Matter of the Application of Auto Properties, LLC*, Case Nos. 03-360-SPHA and 06-109-SPH, 03-C-07-4792, and, therefore, the Board's finding otherwise in the matter *sub judice* was error. Appellee conversely argues that the Board correctly determined the storage of automobiles is a permitted use in an ML zone because (1) the storage of automobiles as

inventory is permitted by right in a ML zone pursuant to Baltimore County Zoning Regulation ("BCZR") §§ 253.1.A.2 and 253.1.B.16 and (2) the Board of Appeals decision in *In the Matter of the Application of Auto Properties, LLC* is not applicable to the instant case.

A majority of the Board found "as a matter of pragmatic logical thinking that the storage of automobiles would be permitted in the [M.L.] zone," given that, under BCZR § 253.1.A.2, the assembly of automobiles is permitted by right. On motion for reconsideration, the Board agreed with its earlier finding, adding "additional legal analysis in further support" of its earlier decision. They held that under BCZR § 2531.B.2 "storage of automobiles is permitted as 'storage…use,' 'sales yard, general.'" A majority of the Board "also found that storing automobiles is permitted under BCZR § 253.1.B.16 which allows for the 'storage…of any produce whose…final processing or production is **permitted** as of right as a principal use in the M.L. zones." (emphasis in original). "In plain words, Subsection B.16 provides that the product (Volvo automobiles) can be 'stored' on M.L.-I.M. zoned land as long as *the right to assemble an automobile is **permitted** by right in a [M.L.] zone*." (emphasis in original).

The Board also noted that "the County Council separated the types of uses allowed in [M.L.] zones" including "'storage uses' under § 253.1.B ('B. The following transportation, storage or quasi-public uses or utilities.')." "In doing so, it is clear to the Majority Board that 'storage' was a distinct use which further confirms the County

Council's intent to allow the storage of automobiles on the M.L. land." Finally, "the Majority Board notes in reviewing the *auxiliary retail uses* in an [I.M.] district (M.L.-I.M. zone here) under § 253.1.C the County Council included other nearly identical uses involving the storage of automobiles on a lot such as: automobile rental agencies (§ 253.1[.]C.1); parking lots or garages (§ 253.1.C.18); truck rental and truck trailer rental agencies (§ 253.1.C.27); and service garages provided the land is assigned with a combination of an A.S. and I.M. District (§ 253.1.C.29.)." (emphasis in original)

BCZR § 253.1.A.2, "Manufacturing, Light (M.L.) Zone Use Regulations" provides that "automobile assembly" is an "industrial use" "permitted as of right in M.L. zones."[9] BCZR § 253.1.B[10] allows certain "transportation, storage or quasi-public uses or utilities,"

[9] BCZR § 253.1.A states: "Uses permitted as of right. The uses listed in this section, only, shall be permitted as of right in M.L. Zones, subject to any conditions hereinafter prescribed.

A. The following Industrial Uses:

1. Airplane Assembly.
2. Automobile assembly.

…

57. Neighborhood car rental agency, subject to Section 408A. [Bill No. 122-2005]."

[10] BCZR § 253.1.B states: "The following transportation, storage or quasi-public uses or utilities:

1. Bus Terminals.
2. Building materials storage or sales yard, general.
3. Construction equipment storage yards.

…

8. Freight storage.

…

10. Heliports, Type I.
11. Heliports, Type II.

including "[s]torage, warehousing or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M.L. Zones."

The Board's legal conclusions may be reversed when they "are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.'" *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632-33 (2011) (internal citations omitted). "'[A] degree of deference should often be accorded the position of the administrative agency whose task it is to interpret the ordinances and regulations the agency itself promulgated." *Id.* at 633 (citing *Maryland-Nat'l Capital Park & Planning Com'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 84-85 (2009)).

We find that the Board's original decision and their decision on reconsideration were not premised on an erroneous conclusion of law. *See Marzullo*, 366 Md. at 177. The Board's interpretation and application of the plain language of the applicable BCZR

12. Helistops.
13. Railroads.
14. Rail passenger stations, subject to Section 434 [Bill No. 91-1990]

…

16. Storage, warehousing or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M.L. Zones; public warehousing."

regulations was not erroneous, especially given the explicit language of BCZR § 253.1.B.16.

Moreover, we are not convinced that *In the Matter of the Application of Auto Properties, LLC*, Case Nos. 03-360-SPHA, was applicable to the case *sub judice*. As the Board noted in their motion for reconsideration, "*Auto Properties* concerned [a] D.R. 5.5 zoned land with a small sliver of B.M." Because of that particular zoning:

> the applicant needed a use permit and variances to park the Honda automobile inventory there. The applicant discovered an old use permit which permitted business parking on the residential lot but it was subject to certain requirements and approvals. The facts showed that, because those conditions were never satisfied, we held that there was no vested right in the parking permit and therefore it could not be used by the applicant. Since the issue here involves the storage of automobiles on M.L.-I.M. zoned land, our decision in *Auto Properties* is not applicable.

Given the above, we affirm the findings of the Board.

III. Bill 2-14 as applied to the property complies with the BCZR and BCC, including the mandate of uniformity in BCC § 32-3-201(b)(1).

Bill 2-14, enacted by the Baltimore County Council on January 22, 2014, concerns "A.S. (Automotive Services) Overlay District[s]," "[for] the purpose of amending the A.S. (Automotive Services) Overly District to permit certain uses under certain circumstances; and generally relating to the A.S. (Automotive Services) Overlay District." Bill 2-14 repealed and reenacted BCZR § 259.2.B, "Statements of Legislative Intent for districts," for the A.S. district. It states:

> The A.S. District may be applied within the urban-rural demarcation line (URDL) to certain parcels of land zoned B.L., B.M., or B.R., which are

> appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover, such as fuel service stations or car wash operations. Any land heretofore classified as C.N.S., C.S.A., C.S.-1 or C.S.-2 on the effective date of Bill 172-1993 shall hereby be classified an A.S. District. FOR A PARCEL OF LAND THAT IS ASSIGNED WITH A COMBINATION OF B.M.-I.M. AND B.L.-A.S. ZONING, A USE PERMITTED IN THE B.M.-I.M. ZONE WILL ALSO BE PERMITTED ON THE B.L.-A.S. ZONED PORTION OF THE LAND.

A new automobile sales facility is a use permitted by right in a B.M. zone. BCZR § 233.1.B. After Bill 2-14, therefore, a new automobile sales facility is now permitted in the BL-AS zone portion of the property. BCZR § 259.2.B.

The Board concluded that while an automobile sales facility is not a permitted use in a B.L. zone under BCZR § 230.1, which governs permissible uses for B.L. zones, Bill 2-14 ensures that § 259.2.B prevails over § 230.1. Consequently, the Board found that the use of the B.L. and B.M. portion of the proposed property for the sale of automobiles and customer parking to be lawful and appropriate within the BCZR.

Appellants argue that this interpretation of Bill 2-14 violates the BCC and BCZR as a whole by allowing a "'sliver' of a B.M. zone to transform a property predominantly zoned B.L. to the more expansive and intense B.M. zone," undermining the function of zoning. We disagree.

"[Z]ones are intended to provide broad regulation of the use of land, in accordance with comprehensive plans." BCZR § 100.1.A.1. Districts are superimposed on zones and "further the purposes of zones" by "provid[ing] greater refinement in land regulation." BCZR § 100.1.B.1. The uses "applicable in the underlying zone(s) or district(s) upon

which the district is superimposed shall govern except as may specifically be enlarged, modified, or limited by the district regulations in this section." BCZR § 259.1. BCZR § 259.1 also specifically states that if there is "a conflict between the provisions of the underlying zone and overlaying district(s), the most recently enacted provision shall prevail." Bill 2-14 and BCZR § 259.2 were more recently enacted than § 230.1. By the BCZR's very language, therefore, Bill 2-14 supersedes the restrictions in § 230.1. "The application of Bill 2-14 to the Property is clearly appropriate and comports with the purpose of districts, as stated in the [BCZR]." We also note that, under § 230.1, B.L. zoned properties may be used as recreational vehicle parking lots, and pursuant to § 230.3, may be used as an automotive-service station, boatyard, car wash, and garage service, if granted a special exception. Clearly, then, the County Council contemplated the possibility that a B.L. zoned property may be used in a manner involving a large number of vehicles parked on the property. The Board's conclusions, therefore, are not based on an erroneous interpretation or application of the zoning regulations. *See Miller*, 200 Md. App. at 632-33.

Appellants, however, specifically contend that Bill 2-14 further violates the uniformity requirement in BCC § 32-2-201(b)(1) because, in application, it changes the permissible uses of the B.L. zone in the subject property, in contrast with other B.L. zoned properties. Appellees argue that where a zoning regulation is uniformly applicable to all properties similarly situated, but results in variations in application across different

properties, then uniformity is not violated. They contend that since Bill 2-14 applies with equal effect to other properties across Baltimore County with the same zoning as the property *sub judice*, it complies with the requirement for uniformity.

BCC § 32-3-201(b)(1) provides that Baltimore County "shall adopt regulations that are uniform for each class or kind of building or structure throughout each district, division, or zone." As appellants themselves admit, the uniformity requirement is not violated when properties within a zoning district are subjected to uniformly applicable regulations that, in application, create disparate results for certain properties. *See Montgomery Cty. v. Woodward & Lothrop, Inc.*, 280 Md. 686, 718-23 (1977); *see also Anderson House, LLC v. Mayor and City Council of Rockville*, 402 Md. 689, 719-19 (2008) (internal citations omitted) ("In other words, regulations concerning a zoning district that are uniformly applicable may result in application in varying restrictions for individual properties without violating the uniformity requirement."). "The focus is upon the terminology of the ordinance, rather than upon its application." *Woodward*, 280 Md. at 720 (internal citations omitted).

Bill 2-14 applies equally to all properties in Baltimore County that are zoned B.M.-I.M. and B.L.-A.S. The Board heard the testimony of Jeff Mayhew, from the Baltimore County Department of Planning, that at least one other property is similarly zoned, and

affected, by Bill 2-14.[11] Appellant's own expert, Michael Pierce, confirmed Mayhew's testimony. Therefore, there was substantial evidence to support the Board's conclusion that Bill 2-14 did not violate the requirement for uniformity.

IV. Bill 2-14 does not violate Baltimore County Charter Section 308(c) or Article III, Section 29 of the Maryland Constitution.

Article III, Section 29 of the Maryland Constitution provides that "every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." Section 308 (c) of the Baltimore County Charter similarly provides that "[e]ach law enacted by the county council shall embrace but one subject, which shall be described in its title." Appellants argue that the title of Bill 2-14, "An ACT concerning A.S. (Automotive Services) Overlay District," is incomplete and misleading in violation of Article III, Section 29 and Section 308(c) because the title makes reference only to A.S. District Overlays and omits the substantive effect of the law. Appellee, however, argues that "[g]iven the application of Bill 2-14 within the A.S. Overlay District, its labeling as falling within the A.S. District Regulations was appropriate and in conformance" with Maryland's requirements for titling.

"Statutes are presumed valid, and a statute will not be invalidated for defective titling unless 'it plainly contravenes a provision of the constitution.'" and "a reasonable

[11] Appellant's also argued that if Bill 2-14 only applied to the subject property, it would be a "special zoning law" in violation of the Maryland Constitution. This is clearly not the case, and therefore, we need not address this further.

doubt in its favor is enough to sustain it." *Eubanks v. First Mount Vernon Indus. Loan Ass'n, Inc.*, 125 Md. App. 642, 669 (1999) (quoting *Magruder v. Hall of Records Comm'n*, 221 Md. 1, 6 (1959)). If the title of the bill is "not deceptive, or grossly inadequate as a description of the subject of the act," and where "the matters dealt with are germane to a single subject," then the statute will be sustained. *Kelly v. State*, 139 Md. 204, 208 (1921). The title "need not be an index to all that [a bill] contains." *Eutaw Enterprises, Inc. v. City of Baltimore*, 241 Md. 686, 699 (1966). "It is a label and need only set forth its object, not its product." *Id.*

The legality of the titling of Bill 2-14 was not addressed by the Board. However, the circuit court held that "[t]he law does not require that the title of Bill 2-14 indicate that B.M. zone uses are permitted on property zoned with a combination of B.M.-I.M. and B.L.-A.S." "The title of the law need not be, as [appellant's] seem to assert, as specific and descriptive as the substance of the law itself." "Bill 2-14 applies to the Automotive Service Districts, and its title reflects this, without being 'deceptive or grossly inadequate.'" "Thus, Bill 2-14 complies with the lenient requirements of Article III, Section 29 of the Maryland Constitution and Section 308(c) of the Baltimore County Charter."

We agree. The title of Bill 2-14 sufficiently and accurately describes its subject without being "[deceptive] or grossly inadequate." *Kelly*, 139 Md. at 208. Therefore, we find the title of Bill 2-14 to be valid and affirm the finding of the circuit court.

V. The Board of Appeals did not err in denying appellee's request for an "A" exemption from a full developmental plan pursuant to BCC 32-4-106(a)(1)(vi).

Finally, appellee cross-appeal the denial of their request for a full, "A," exemption from the development review process. They contend their proposed development constitutes a "minor commercial structure" under BCC § 32-4-106(a)(1)(vi). They contend that "minor commercial structure" is not defined in either the County Code or BCC, but that "utilizing a reasonable interpretation of the words used in the language of the [exemption]," their 4,500 square feet, one story structure is "clearly modest in size, area, and height." TTV also introduced the testimony of Mr. Fisher supported the idea that their proposed building should be considered 'minor.' Appellants did not address appellee's cross-appeal.

BCC § 32-4-106(a)(1)(vi) allows for a full, or "A," exemption from the development review and approval process if the project proposed is for "construction of residential accessory structures or minor commercial structures." BCC § 32-4-106(b)(8), provides for a partial, or "B" exemption from "the community input meeting and the Hearing Officer's hearing" for a "minor development that does not exceed a total of three lots."

After "listening to the relevant testimony as to this issue presented to the Board, although the term 'minor commercial structure' is not clearly defined in the code," the Board found that "the development contemplated for this site is not a minor commercial

structure." "However, the Board does find that an exemption is appropriate pursuant to BCC § 32-4-106(b)(8)[, a 'B' exemption,] as the contemplated development does comport with the definition of a minor development as defined in BCC § 32-4-101(aa)(1)." A minor development is defined as: "(1) a development without a public works agreement; (2) a residential development with a public works agreement involving only road widening; or (3) a development in which the improvements are determined by the Director of PAI as minimal under § 32-4-304(e) of this title." The Board continued that the finding was supported by the testimony of appellee's expert "that this property was already served by public utilities and no public works agreement ("PWA") is required."

The Board's legal conclusions may be reversed when they "are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.'" *Miller*, 200 Md. App. at 632-33 (internal citations omitted). "'[A] degree of deference should often be accorded the position of the administrative agency whose task it is to interpret the ordinances and regulations the agency itself promulgated." *Id.* at 633 (citing *Maryland-Nat'l Capital Park & Planning Com'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 84-85 (2009)).

We find that the Board's conclusion that a 'B' exemption, rather than an 'A' exemption, was applicable is not based on an erroneous interpretation or application of the zoning statutes at bar. The Board's determination that TTV's proposed development met

the definition of a minor development is reasonable, and supported by the testimony of appellee's own expert. Therefore, we shall affirm the finding of the Board.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND REMANDED IN PART FOR FURTHER CONSIDERATION CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT.