Circuit Court for Prince George's County
Case No. C-16-CV-23-003272

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1703

September Term, 2024

IN THE MATTER OF THE IRMGARD H. HAWKINS BY-PASS TRUST

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: May 12, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case grows out of the historic practice in Prince George's County, prevalent when the prior zoning ordinance was in effect, of adding "footnote exceptions" to the prior ordinance's Tables of Uses. Those footnotes appeared as small superscripted numbers in, and were repeated with text at the bottom of, each Table of Uses. The footnotes added exceptions, some quite specific in their applicability, to the uses otherwise prohibited or permitted in the County's various zones. Thus, with footnote exceptions, the District Council could alter a zone's allowable uses without amending the text of the relevant provision in the zoning ordinance. The County's new zoning ordinance, which took effect on April 1, 2022, ended the practice of footnote exceptions in its Tables of Uses.[1] It was during the transition from the prior zoning ordinance to the new zoning ordinance that this case began.

Here, after the County's new zoning ordinance was adopted, but before it took effect, a real estate developer wanting to build townhouses contracted to purchase about twenty acres of land that fronted on a busy two-road intersection. At the time, because the land was zoned in a manner that did not allow townhouses, the contract was contingent on the developer's being able to have the land rezoned. A footnote exception was then added to the prior zoning ordinance. That exception would have accommodated the development. After the new zoning ordinance took effect, the developer applied for

[1] *Prince George's Cnty. Council v. Concerned Citizens of Prince George's Cnty.,* 485 Md. 150, 185 n.23 (2023) ("[T]he enactment of the new zoning ordinance was largely motivated by a desire to streamline zoning and do away with such [footnote] exceptions.").

approval, relying on the footnote exception. This appeal is from the District Council's conclusion, later affirmed by the Circuit Court for Prince George's County, that the Planning Board erred in finding that the footnote exception from the prior zoning ordinance was available to the developer under the new zoning ordinance.

The Appellant, the Irmgard H. Hawkins By-Pass Trust ("the Trust"), is the Property owner that contracted to sell to the developer, Timberlake Homes, BT ("Timberlake"). The Appellees are the Prince George's County District Council, and several homeowners' associations located adjacent to the Property—Fairwood Community Association, Inc., Wingate Homeowners Association, Inc., and Gabriel's Run Homeowner's Association, Inc.[2] After the District Council disapproved Timberlake's Detailed Site Plan ("DSP-22028") for the Property, Timberlake petitioned for judicial review before the circuit court, terminated its sales contract, and substituted the Trust in. After the circuit court affirmed the District Council, the Trust noted this appeal and Appellees cross-appealed.

The Trust presents the following questions for our review,[3] which we rephrase as follows:

[2] We refer to the homeowner association appellees as "Community Appellees."

[3] The Trust presents its questions as:

I. Whether the District Council erred as a matter of law in determining that the Planning Board's approval of DSP-22028 was arbitrary, capricious, and illegal as a result of the

I. Did the District Council err in reversing the Planning Board's decision as to DSP-22028 as arbitrary, capricious, and illegal in reliance on Council Resolution 005-2023, Council Bill 012-2023, and Council Bill 053-22023?

II. Did the District Council err in finding that a conceptual site plan was required for the approval of DSP-22028?

III. Did the circuit court err in denying the Trust's request to consolidate this matter with other pending cases regarding CB-12-2023 and CB-53-2023?

On cross-appeal, Appellees[4] present the following questions for our review,[5] which we rephrase as follows:

adoptions of Council Resolution 005-2023, Council Bill 012-2023, and Council Bill 053-2023.

II. Whether the District Council erred as a matter of law in determining that DSP-22028 required a conceptual site plan as a condition of its approval.

III. Whether the circuit court erred or abused its discretion in denying Appellant's request to consolidate this action with the pending judicial review cases challenging CB-12-2023 and CB-53-2023.

[4] Although these parties are the Cross-Appellants for the purposes of the cross-appeal, we will refer to them throughout as "Appellees" for the sake of clarity.

[5] Appellees present their questions as:

I. Whether the circuit court erred when it denied the motion to dismiss the petition for judicial review.

II. Whether the circuit court erred when it denied the motion to strike notice of substitution of party and line regarding substituted party.

I. Did the circuit court abuse its discretion in denying Appellees' motion to dismiss the petition for judicial review?

II. Did the circuit court abuse its discretion in denying Appellees' motion to strike notice of substitution of party and line regarding substituted party?

Below, we start with some milestones, reminding the reader about when the County started to overhaul its zoning ordinance and subdivision regulations, when those changes were adopted, and when they took effect. We also define how we refer to the old and the new. We then describe the County's transition between the prior zoning ordinance and prior subdivision regulations and the new zoning ordinance and new subdivision regulations.

We then return to the facts of this case and the parties' arguments here. Ultimately, we answer the Trust's first and third questions, and both of Appellees' questions, in the negative.[6] Accordingly, we affirm the judgment of the circuit court.

PRINCE GEORGE'S COUNTY SUBDIVISION REGULATIONS & ZONING ORDINANCES

In October of 2018, the Prince George's County Council, sitting as the District Council,[7] passed legislation aimed at overhauling the county's existing subdivision

[6] Regarding the Trust's second question, we agree that because the Planning Board's decision that the Trust did not need to file a conceptual site plan was not properly before the District Council, it having not been appealed, that the District Council erred by finding that the Trust should have filed a conceptual site plan. But because we otherwise affirm the District Council's disapproval of DSP-22028, this error does not affect our conclusion here.

[7] "The Prince George's County Council, sitting as the District Council, is authorized to adopt and amend zoning ordinances and the accompanying zoning maps for

regulations and zoning ordinances. The subdivision regulations found under Subtitle 24 of the county code were repealed and reenacted by Council Bill 015-2018 (CB-015), while the zoning ordinance found under Subtitle 27 was repealed and reenacted by Council Bill 013-2018 (CB-013). Although both bills were passed by the District Council on October 23, 2018, the amended laws did not take effect until April 1, 2022, after the District Council passed a corresponding Countywide Sectional Map Amendment (CMA).[8]

Here, we refer to the laws in effect before April 1, 2022, as the "prior ordinances," "the prior zoning ordinance," or "the prior subdivision regulations" as appropriate to the context. We refer to the ordinances in effect as of April 1, 2022 as the "new ordinances," "the new zoning ordinance," or "the new subdivision regulations" also as appropriate to the context.

To ease the transition between the prior and the new ordinances and the prior and new subdivision regulations, the new ordinances and new regulations each included two groups of transitional provisions, or four groups altogether. The first two groups of

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that portion of the County located in the Regional District." *County Council of Prince George's County v. Robin Dale Land LLC*, 491 Md. 105, 121 (2025).

[8] A countywide sectional map amendment was necessary to implement the new zoning ordinances because the new ordinances "created a new process by which over 300,000 properties would be transferred from the prior zoning categories to the new ones," under CB-014-2018. This process of transferring properties to new zoning categories is referred to as the Countywide Sectional Map Amendment or "CMA," and was codified in PGCC § 27-1900 *et seq.*, of the *prior* zoning ordinance—not to be confused with the transitional provisions in PGCC § 27-1900 *et seq*., of the new ordinance. *Robin Dale Land LLC*, 491 Md. at 139–40.

transitional provisions apply to development, permit, and subdivision applications filed before April 1, 2022. These transitional provisions were implemented in order to avoid widespread invalidation of applications fitted to the prior law that were already in the approval pipeline at the time the new law took effect. *See* PGCC §§ 24-1902, 27-1701, 27-1901.[9] The first group, which is found in the new zoning ordinance at PGCC § 27-

[9] PGCC § 24-1902 states,

> Notwithstanding any other provision set forth within this Part, the County Council finds that there is a need to retain certain procedures, regulations, zones, uses, and/or other aspects embodied within the prior Subdivision Regulations (being also Subtitle 24, Prince George's County Code, 2019 Edition, 2021 Supplement) for purposes of sustaining and/or minimizing wholesale abandonment, for proposals for the development of land in Prince George's County. In approving CB-015-2018, it is the intent of the District Council to prospectively implement the provisions of this Subtitle in furtherance of the orderly growth and development of land, as well as the protection of the public health, safety, morals, and general welfare of citizens and residents, in Prince George's County. However, based on significant public testimony received during consideration of these Regulations, the Council recognizes that such immediate, wholesale implementation of this Subtitle may not be feasible or appropriate in all circumstances. Accordingly, the purpose of this Section is to provide, for a limited time period, a process to apply the requirements of the prior Subdivision Regulations set forth in Subtitle 24 of the 2019 Edition of the Prince George's County Code (2021 Supplement).

Similarly, PGCC § 27-1701 reads,

> Notwithstanding the provisions set forth within this Part, the District Council finds that there is a need to apply certain procedures, regulations, zones, uses, and/or other aspects embodied within the prior Zoning Ordinance (being also Subtitle 27, Prince George's County Code, 2019 Edition) for the purpose of allowing the owners of properties with development and/or development applications of any type approved and/or constructed under the prior Zoning Ordinance or Subdivision Regulations, including development applications approved pursuant to the provisions of Section 27-1900, Development

1700 *et seq*., applies to development applications and permit applications that were "filed and accepted before April 1, 2022." The second group, found under PGCC § 24-1700 *et seq.*, is in the subdivision regulations, and applies to "[a]ny subdivision application submitted and accepted as complete before April 1, 2022, but still pending final action as of that date[.]"

The third and fourth groups apply to development, permit, and subdivision

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> Pursuant to [p]rior [o]rdinance, to proceed to utilize the prior Zoning Ordinance and Subdivision Regulations as "grandfathered" developments. In addition, until April 1, 2032, and in some cases until April 1, 2042 or later, the owners of properties subject to this Section 27-1700 shall be entitled to obtain approvals for uses permitted in the zones under which their properties were subject on March 31, 2022 (with some exceptions as specified below) and to make revisions or amendments as further provided herein.

PGCC § 27-1902 states,

> (a) Notwithstanding the provisions set forth within this Part, the District Council finds that there is a need to retain certain procedures, regulations, zones, uses, and/or other aspects embodied within the prior Zoning Ordinance (being also Subtitle 27, Prince George's County Code, 2019 Edition) for purposes of sustaining and/or minimizing wholesale abandonment, for proposals for the development of land in Prince George's County.
>
> (b) In approving CB-013-2018, it is the intent of the District Council to prospectively implement the provisions of this Subtitle in furtherance of the orderly growth and development of land, as well as the protection of the public health, safety, morals, and general welfare of citizens and residents, in Prince George's County. However, based on significant public testimony received during consideration of this Ordinance, the Council recognizes that such immediate, wholesale implementation of this Subtitle may not be feasible or appropriate in all circumstances. Accordingly, the purpose of this Section is to provide, for a limited time period and subject to Section 27-1905 of this Subtitle, a process to apply the requirements of the prior Zoning Ordinance (Subtitle 27, Prince George's County Code, 2019 Ed.).

applications filed on April 1, 2022, or thereafter. These function as choice-of-law provisions, permitting some applicants to elect to have their applications reviewed under the prior zoning ordinance or the prior subdivision regulations. The third group, found in PGCC § 27-1900 *et seq.*, was in the zoning ordinance and allowed development applicants for some properties to elect to have their development applications reviewed under the prior zoning ordinance. The fourth group, found in PGCC § 24-1900 *et seq.*, was in the subdivision regulations and allowed some development proposals and permit applications to utilize the prior zoning ordinance or prior subdivision regulations "for development of the subject property."

But the ability to elect review under on the prior zoning ordinance was limited. As the District Council would later state, "the new Zoning ordinance expressly encourages development in accordance with the new Zoning ordinance, rather than the limited authority of the prior [o]rdinance provided by the Council in Part 1[10] of the Zoning Ordinance." Thus, developers could not elect to use the prior zoning ordinance and prior subdivision regulations in perpetuity. Three years after the new zoning ordinance took effect, the third and fourth groups, or the transitional choice-of-law provisions, i.e., PGCC § 27-1900 *et seq.*, and PGCC § 24-1900 *et seq.*, were to be "of no further force and effect [.]".[11] PGCC §§ 27-1901, 24-1901.

[10] "Part 1" of the zoning ordinance refers to the "General Provisions" portion of the new zoning ordinance, found under PGCC §§ 27-1100–27-11000 *et seq.*

[11] This transition period was later extended by another two-year period, allowing the prior ordinances to be utilized until 2026. CR-022-2024; CR-25-2024.

Footnote exceptions were also overhauled. Thus, any footnote exception that was "not carried forward in the new Zoning Ordinance [was] superseded by operation of law." Regarding the existing footnote exceptions in the prior ordinance, the District Council began to "eliminate uses permitted in the prior [o]rdinance by way of Footnoted exceptions within the Use Tables of the Zoning Ordinance." The District Council found these exceptions to be "inconsistent with County policies." The prior zoning ordinance included 378 footnote exceptions in the Tables of Uses, 148 of which applied to Residential Estate ("R-E") zones. One of the footnote exceptions that the District Council eliminated was Footnote 144, the footnote exception Timberlake pointed to for approval of its project.

This case hinges on whether Footnote 144, which had allowed for mixed uses in R-E zones under the prior ordinance, was available to Timberlake. The exception did not appear in the new zoning ordinance's Tables of Uses. The issue here is whether, under the County's transitional provisions, Timberlake could look to Footnote 144 from the prior zoning ordinance.

BACKGROUND

The Real Property

The property at issue comprises three parcels in Bowie, Prince George's County, Maryland ("the Property"). The total acreage is 22.29 acres. All three parcels lie at the southeast quadrant of the intersection of MD 450 (Annapolis Road) and MD 193 (Enterprise Road) and are zoned Residential Estate. Timberlake contracted to purchase the Property from the Trust on January 12, 2021. At the time, the townhouse

development that Timberlake envisioned was not permitted in an R-E zone. Moreover, on January 12, 2021, the new laws had not yet taken effect, and the old laws were still in place.

The Trust's Application for Development of the Subject Property & Piecemeal Changes to the Zoning Ordinance

For the Property, Timberlake envisioned a townhouse development known as "Fairwood Square." Because the Property's zoning did not allow for such development when Timberlake contracted to purchase it, the contract was contingent on the Property being rezoned under the new zoning ordinance. Thus, Timberlake promised to diligently pursue rezoning of the Property from R-E to Mixed-Use – Transportation Oriented ("M-X-T") or Commercial, General and Office ("C-G-O"), "under the new Zoning Ordinance once the Countywide Map Amendment is implemented[,]" and to do so "at the earliest possible date." To do so, Timberlake committed to seeking a text amendment, and to apply to rezone the Property, and, if an earlier opportunity presented itself during the adoption of the Countywide Map Amendment, to seek C-G-O zoning during that process.

Before the new zoning ordinance took effect, however, the District Council adopted Footnote 144,[12] the footnote exception that Timberlake would later point to when it applied for development approval of Fairwood Square. Specifically, on November 16, 2021, the District Council adopted Council Bill CB-050-2021 ("CB-50"),

[12] When the District Council introduced the bill that added Footnote 144, it was then called Footnote 143. Although it now exists in the prior ordinance as Footnote 144, this footnote exception is sometimes referred to as Footnote 143 throughout the record.

which added the footnote to the prior zoning ordinance's Tables of Uses.[13] Footnote 144 permitted in R-E zones "any use allowed in the M-X-T Zone (excluding those permitted by Special Exception)[,]" provided that the land be at least twenty acres and have frontage at two intersecting roadways classified as "arterial" or higher, among other criteria. In other words, applicants who received approval under Footnote 144 could construct mixed-use developments in R-E zones. Footnote 144 (via CB-50) took effect forty-five calendar days after it was enacted. Thirteen days after Footnote 144 was enacted, the CMA was approved. About four months later, on April 1, 2022, the new subdivision regulations and new zoning ordinance took effect.

On July 20, 2022, Timberlake filed its Preliminary Plan Subdivision ("PPS 4-21058") with the Prince George's County Planning Board of the Maryland-National Park and Planning Commission ("Planning Board").[14] As allowed by the choice-of-law

[13] Under the prior zoning ordinance, no "use" was allowed in a Residential Zone "except as provided for in the Table of Uses." PGCC § 27-441(a). Listed "uses" were either permitted ("P"), permitted subject to various enumerated restrictions ("PA" or "PB"), or permitted subject to approval of a special exception or special permit ("SE" or "SP"). Uses that were listed with an "X," or not listed at all, were prohibited. PGCC § 27-441(a)(5) and (a)(7) (prohibiting "X" and unlisted uses, respectively). In addition, the Table of Uses also contained a number of footnotes that were exceptions to the "uses" prescribed by the letter (if any) in the Table. As we have explained, these were known as "footnote exceptions." The section that pertained to Residential Zones (including the zone applicable to the Property) contained 148 such footnote exceptions.

[14] As explained in *County Council of Prince George's County v. Zimmer Development Company*,

> The Maryland–National Capital Park & Planning Commission ("Commission" or "MNCPPC"), as its name suggests, administers parks,

provisions in the new subdivision regulations, PGCC § 24-1903(b), Timberlake elected to have PPS 4-21058 reviewed under the prior subdivision regulations and zoning ordinances.

With PPS 4-21058, Timberlake sought approval for development of 200 single-family townhouses, along with private streets, recreation areas, and plans for 5,000 square feet of future commercial development. Based in part on Footnote 144, the Planning Board approved PPS 4-21058 on November 10, 2022. Timberlake then applied for Detailed Site Plan (DSP)[15] approval on December 5, 2022.

> public recreation, and, in conjunction with the governments of Prince George's and Montgomery counties, and their respective Planning Boards (which are constituent parts of the Commission), participates in the planning of development within the Regional District. . . .
>
> . . . [T]he planning board for a county consists of the commissioners of the MNCPPC appointed from that county. The planning boards are responsible for planning, subdivision, and zoning functions that are primarily local in scope, and not otherwise placed under another agency's purview."

444 Md. 490, 526–28 (2015) (cleaned up).

[15] Detailed Site Plans are required for "certain types of land development [that] are best regulated by a combination of development standards and a discretionary review...." *Cnty. Council of Prince George's Cnty. v. FCW Just., Inc.*, 238 Md. App. 641, 656 (2018). Where required, Detailed Site Plans generally must be approved before a final plat of subdivision or grading, building, or use of occupancy permits may be approved or issued. The general purposes of Detailed Site Plans are:

> (A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;
>
> (B) To help fulfill the purposes of the zone in which the land is located;

On December 12, 2022, the District Council introduced and adopted Council Resolution 005-2023 (CR-005), which suspended the operation of eighteen bills, thirteen of which had created footnote exceptions, in the prior zoning ordinance's Tables of Uses, including Footnote 144.[16] On January 17, 2023, the District Council introduced and enacted Council Bill 012-2023 (CB-12),[17] which made permanent portions of CR-005.

> (C) To provide for development in accordance with the site design guidelines established in this Division; and
>
> (D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.

Zimmer Dev. Co., 444 Md. at 559–60. Additionally, as noted by the District Council in its "Final Decision – Disapproval of Detailed Site Plan,"

> Under the New Zoning Ordinance (New ZO), which took effect April 1, 2022, a "Detailed Site Plan" is abbreviated as DET to distinguish it from DSP—the abbreviation used under the Prior Zoning Ordinance (Prior ZO). Here, because the application was filed under the Prior ZO, the appropriate abbreviation for the application is DSP.

[16] Specifically, CR-005 suspended CB-050-2021, the council bill that had added Footnote 144 to the prior zoning ordinance.

[17] CB-12 stated, in part,

CB-12 amended the new zoning ordinance to add PGCC § 27-1903(f), removing Footnote 144's allowance for M-X-T uses in R-E zones and four other footnote exceptions from the exceptions available to applicants electing to proceed under the prior ordinance after April 1, 2022.

One day after the enactment of CB-12, on January 18, 2023,[18] the Planning Board accepted Timberlake's Detailed Site Plan, DSP-22028, for review. DSP-22028, like PPS 4-21058, sought approval under the prior subdivision regulations and zoning ordinances. On April 13, 2023, the Planning Board held a public hearing to discuss the merits of DSP-22028. Representatives for Timberlake and the Planning Board's Technical Staff testified in support, while representatives for Appellees, the Fairwood Community Association, the Wingate Homeowners Association, the Gabriel's Homeowner

> For the purpose of limiting the authority in the Zoning Ordinance for development under the prior [o]rdinance superseded by the revised Subtitle 27 of the Prince George's County Code, being also the Zoning Ordinance of Prince George's County.
>
> . . . Unless an application for development is already filed and accepted and/or constructed, the following enactments are ineligible for processing under the prior [o]rdinance:
>
> CB-50-2021 (Chapter 39, 2021 Laws of Prince George's County, Maryland) AN ORDINANCE CONCERNING R-E ZONE for the purpose of amending the residential table of uses to permit development of a mix of residential and commercial/retail uses in the R-E (Residential Estate) Zone of Prince George's County, under certain circumstances.

[18] Through much of the duration of this matter, the date of acceptance for DSP-22028 has been in dispute. The initial Resolution issued by the Planning Board stated the date of acceptance as January 17, 2023. However, the District Council found that the date listed in the Resolution was an error and the correct acceptance date was January 18, 2023. The Trust does not dispute that the correct date is January 18, 2023.

Association, and various members of the public, testified in opposition.

At the April 13, 2023 public hearing, both sides debated how, or if, the January 17, 2023 removal of Footnote 144 would affect Timberlake's application. In other words, Timberlake, and those who opposed its development application, disagreed about the effect that the newly enacted CB-12 would have on Timberlake's ability to build a mixed-use development in an R-E zone.

Following the hearing, the Planning Board approved DSP-22028, concluding that it was filed before the removal of Footnote 144 took effect, had been filed under the applicable transitional provisions, i.e., PGCC § 27-1704(b), and had received prior development approval. The Planning Board explained:

> This application was filed on January 17, 2023, in accordance with the provisions of Section 27-1704(b) of the Zoning Ordinance. This section allows valid projects that received development or permit approvals under Subtitles 27 and 24, of the prior Prince George's County Code, to proceed to the next stages of the development approval process.
>
> On October 20, 2022, the Planning Board approved PPS 4-21058 (PGCPB Resolution No. 2022-108). Later, on January 17, 2023, the District Council enacted CB-12-2023, which made CB-50-2021 inapplicable to applications filed and accepted under Section 27-1900 of the Zoning Ordinance, unless such applications were already filed and accepted.
>
> Staff find that CB-12-2023 is not applicable to the subject application, as this application was filed under the provisions of Section 27-1704(b), not 27-1900, and is a project that received prior development approval. Therefore, this DSP application can proceed to be developed, in accordance with the prior Zoning Ordinance, including the requirements of CB-50-2021.

The Planning Board concluded that DSP-22028 was in compliance with the prior zoning ordinance's Tables of Uses, specifically Footnote 144.

Following the Planning Board's approval of DSP-22028, on April 25, 2023, the

District Council introduced Council Bill 053-2023 (CB-53). For development applications proceeding under the prior ordinance, under either group of transitional provisions, that did not have vested rights, CB-53 removed four footnote exceptions from the prior zoning ordinance's Tables of Uses. One of the eliminated footnote exceptions was Footnote 144, meaning that for projects without vested rights, and that had elected review under the prior zoning ordinance, M-X-T uses could no longer be approved in R-E zones.

Upon introducing CB-53, the District Council scheduled it for an expedited hearing. The District Council accomplished this by voting to suspend its rules to allow for expedited scheduling of the hearing on the bill.[19] A month later, on May 30, 2023, the District Council held a public hearing on CB-53-2023.[20] The District Council once again suspended its rules to "allow for an effective date on the date of adoption," and CB-53 was officially enacted after a vote by the District Council.[21]

In the meantime, on May 15, 2023, i.e., between the introduction of CB-53 and its enactment, the District Council elected to "call-up" DSP-22028 to review the Planning

[19] *See* CB-53-2023, Prince George's County Council (2023), https://perma.cc/4XN4-V7US.

[20] *See id.*

[21] *See id.*

Board's approval.[22] A public hearing was held by the District Council on July 5, 2023 to receive commentary on their review of DSP-22028. Like at the Planning Board's earlier public hearing on the DSP, Representatives for Timberlake testified in support of approval, while representatives for Appellees the Fairwood Community Association, the Wingate Homeowners Association, the Gabriel's Homeowner Association, and various members of the public testified in opposition. There was much debate on both sides about the effect of CB-12 and CB-53 on the proposal, as well as with regards to whether the Trust's application was grandfathered into the prior ordinance due to the approved PPS.

Following that hearing, on July 11, 2023, the District Council reversed the Planning Board's approval, concluding, in essence, that Footnote 144 was not available under the applicable transitional provisions. Specifically, the District Council concluded that the Planning Board's approval of DSP-22028 was "arbitrary, capricious, and otherwise illegal." The District Council stated that,

> [T]he [Planning] Board had no statutory authority to accept and approve this site plan on January 18, 2023, because almost a month earlier on December 12, 2022, the District Council adopted Council Resolution (CR)-5-2023, which suspended the legal efficacy of CB-50-2021—pending final action on companion legislation to prohibit development projects pursuant to the Old ZO from being eligible to utilize CB-50-2021. CR-5-

[22] In addition to hearing appeals from decisions of the Planning Board, the District Council may also elect, on its own, to review Planning Board decisions on Detailed Site Plans. In this regard, PGCC § 27-3301(b) provides: "To exercise its authority in accordance with State law, the District Council shall have the following powers and duties under this Ordinance: . . . (2) To hear and decide appeals, elect to review, and decide the following: . . . (B) Detailed Site Plans." *See also Zimmer Dev. Co.*, 444 Md. at 536 ("Any person of record before the Planning Board may appeal the decision to the District Council . . . , or the District Council may elect on its initiative to review ('call up') the decision . . . .").

2023 at 3-4.

> Moreover, on January 17, 2023 (before the Board formally accepted the site plan on January 18, 2023), the District Council took final action on companion legislation, Council Bill (CB)-12- 2023, which repealed and reenacted certain Transitional Provisions in § 27-1900 *et seq.*, of the New ZO—to prohibit development projects pursuant to the Old ZO from being eligible to utilize CB-50-2021. CB-12-2023 at 4-5. Alternatively, even if this site plan could have been filed pursuant to Transitional Provisions in § 27-1700 *et seq.*, of the New ZO, as the Board concluded, the District Council recently adopted Council Bill (CB)-53-2023—to extend the prohibition on development applications filed pursuant to Transitional Provisions in § 27-1700 *et seq.*, of the New ZO—from being eligible to utilize CB-50-2021.

The District Council also stated that, in the alternative, even if the updated ordinances did not prevent approval of this project, DSP-22028 could not be approved because Timberlake had not submitted a Conceptual Site Plan (CSP) prior to the approval of its PPS as required by CB-50-2021.

The Trust's Petition for Circuit Court Review of the District Council's Denial of DSP-22028[23]

On July 18, 2023, a week after the District Council issued its order denying the approval of DSP-22028, Timberlake petitioned for judicial review in the Circuit Court of Prince George's County. On October 2, 2023, a few days after the District Council transmitted the agency record to the circuit court, Timberlake terminated its sales contract for the Property for failure to obtain development approval. Timberlake irrevocably assigned "[a]ll right title and interest to the deposit and any studies or drawings commissioned by Timberlake Homes, Inc." to the Trust. A later "Confirmation of

[23] As discussed in further depth below, while we refer to the Petition for Judicial Review as "the Trust's," it was originally filed by Timberlake, who later substituted the Trust in as the named party.

Assignment and Transfer of Rights and Interests" signed by Timberlake on May 2, 2024 clarified that the Termination Letter had been intended to "transfer[] and assign[] all right, title, and interest [Timberlake] held in the Subject Property, the Development Project, and the Judicial Review Proceedings" to the Trust.

On October 30, 2023, the deadline for Timberlake to file the memorandum of law required by Maryland Rule 7-207(a), Timberlake moved to extend the deadline. Timberlake made no mention to the court that it was no longer the owner of the property at issue. The motion was granted and the deadline was extended to January 8, 2024. After Timberlake filed another motion to extend the deadline for its Rule 7-207(a) memorandum, the court extended the deadline a second time until February 26, 2024. On that date, the Trust filed a memorandum in support of judicial review. No such memorandum was ever filed by Timberlake.

The District Council then moved to dismiss the case, objecting to the Trust filing the 7-207 memorandum rather than Timberlake. The motion was denied by the court. On April 3, 2024, Timberlake filed a notice of substitution of party, naming the Trust as petitioner and removing itself as a party to the case. On April 5, 2024, Timberlake moved to consolidate this action with two other pending petitions for judicial review regarding the legal legitimacy of CB-12 and CB-53. That motion was denied by the court on May 14, 2024.[24] The District Council and the Community Appellees also moved to strike

[24] The three petitions that Timberlake requested to consolidate were this matter, *Petition of Timberlake Homes, BT*, Case No. C-16-CV-23-003272 (concerning DSP-

Timberlake's Notice of Substitution. This motion was also denied by the court.

On July 25, 2024, after a hearing, the circuit court affirmed the District Council's disapproval of DSP-22028. This appeal and cross-appeal then followed.

DISCUSSION

I. Land-Use & Zoning in Prince George's County

To analyze the propriety of the District Council's decision with regards to DSP-22028, we must first discuss the zoning authority granted to the District Council. Local governments, like the District Council of Prince George's County, possess no inherent power to regulate land use, and are instead limited to powers granted to them by the State. *Zimmer Dev. Co.*, 444 Md. at 504. "The very essence of zoning is territorial division according to the character of the land and its peculiar suitability for uses, and uniformity of use within the zone." *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 531 (2002) (cleaned up). "These powers are exercised, in the main, through the implementation of what is known as the planning and zoning process." *Id.*

"There exists a distinction between zoning and what commonly is called land use planning, both as a practical matter and as a function of different statutory grants of

22028); *Petition of Timberlake Homes, BT*, Case No. C-16-CV-23-000766 (concerning CB-12-2023); and *Petition of Timberlake Homes, BT*, Case No. C-16-CV-23-002991 (concerning CB-53-2023). Although the court denied the motion to consolidate this matter, the other two cases, C-16-CV-23-000766 and C-16-CV-23-002991, were consolidated as C-16-CV-23-000766. Argument was heard in the consolidated case on October 25, 2024 and taken under advisement by the court. No decision has been issued as of the date of this opinion.

power and delegations of duties." *Id.* at 527–28. Our Supreme Court laid out in *Zimmer Development Company*, the comparison between zoning and planning functions.

> Zoning is the more finite term. Generally, the term "zoning" is used to describe the process of setting aside disconnected tracts of land varying in shape and dimensions, and dedicating them to particular uses designed in some degree to serve the interests of the whole territory affected by the plan. The territorial division of land within a jurisdiction is the very essence of zoning. Parcels must be put to use in compliance with their zoning, excepting legal non-conforming uses.
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> Planning is the broader term. Planning concerns the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience. Unsurprisingly, the making of plans falls clearly under the ambit of planning.
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> Included in the zoning or planning powers is also the authority to enforce zoning and planning actions and decisions. For example, Maryland courts recognize the requirement and issuance of building and occupancy permits as part of the zoning power, and subdivision controls as an element of the exercise of the planning power. Just as the power to zone implies more than establishing classifications and placing them on an official map, so too does the planning power encompass more than merely producing plans and acting on subdivision applications. Because planning and zoning complement each other and serve certain common objectives, some implementation and enforcement procedures may have both planning and zoning aims.

444 Md. at 505–06 (cleaned up).

Local bodies that have received zoning authority from the State, such as the District Council, exercise these powers primarily through three processes: original zoning, comprehensive rezoning, and piecemeal rezoning. *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 176. Original zoning refers to the legislators' initial designation of large areas of land with regards to the allowable uses. *Id.* The zoning body engages in comprehensive rezoning when it categorizes into zones large areas of land

which had already received an original zoning designation. *Id.* "Piecemeal rezonings, in contrast, concern an individual property (or a relatively finite assemblage of properties) that is rezoned through a deliberative fact-finding process." *Zimmer Dev. Co.*, 444 Md. at 508. "The fundamental distinction between these three processes is that original zoning and comprehensive rezoning are purely legislative processes, while piecemeal rezoning is achieved, usually at the request of the property owner, through a quasi-judicial process leading to a legislative act." *Robin Dale Land LLC*, 491 Md. at 118.

Here, because the Property is located within the portion of Prince George's County that is part of the Maryland-Washington Regional District,[25] the District Council derives its zoning authority from the Maryland-Washington Regional District Act ("RDA"), codified previously in Article 28 of the Maryland Code, and codified now in Division II of Maryland's Land Use Article of the Maryland Code. *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 177. The zoning power granted to the District Council by the RDA includes "divid[ing] the portion of the regional district located within its county into districts and zones of any number, shape, or area it may determine." Md. Code Ann., Land Use Article ("LU") § 22-201. Further, the District Council may "adopt and amend the text of the zoning laws"[26] and their accompanying maps to regulate,

[25] The Maryland-Washington Regional District includes all of Prince George's County except for "the City of Laurel as it existed on July 1, 2013." Md. Code Ann., Land Use Article ("LU") § 20-101(b)(2).

[26] "Importantly, a text amendment is not a piecemeal rezoning, as it does not change the assigned zone of any parcel. Instead, it amends the regulations that apply to a particular zone." *Concerned Citizens of Prince George's Cnty.,* 485 Md. at 177.

among other things: "the location, height, bulk, and size of each building or other structure"; "the density and distribution of population"; "the location and uses of buildings and structures"; and "the uses of land[.]" LU § 22-104. The RDA also places guidelines upon the District Council's authority; for example, "zoning laws shall be uniform for each class or kind of development throughout a district or zone." LU § 22-201(b)(2)(i).

The District Council, pursuant to its authority under the RDA to adopt and amend the text of zoning laws, frequently used footnotes to alter the allowable uses in a given zone. *See Concerned Citizens of Prince George's Cnty.*, 485 Md. at 175. These amendments, referred to as "footnote exceptions," allowed the District Council to substantively amend the Tables of Uses in various zones by inserting a footnote rather than amending the actual text of the relevant provision. The prior zoning ordinance included 378 footnote exceptions to its Tables of Uses, 148 of which applied to R-E zones. For example, CB-50 added Footnote 144, permitting mixed uses, including townhouses, to be developed in R-E zones.

When the District Council acts in a legislative capacity, such action "enjoys a strong presumption of validity; we do not substitute our policy judgments for those of the legislature, and we assume as the action's basis any reasonably conceived state of facts that would sustain it." *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 178–79. On appeal, "the challenger to the law or regulation carries the heavy burden of establishing, by clear and affirmative evidence the invalidity of the action." *Id.* at 179

(cleaned up).

With regards to application of the zoning and planning laws, under the RDA, the Planning Board has original jurisdiction to review and approve development applications, while the District Council's authority is appellate in nature. *Zimmer*, 444 Md. at 568–71. Further, the District Council possesses only limited appellate review over decisions by the Planning Board and may only reverse such a decision if it is "not authorized by law, is not supported by substantial evidence of record, or is arbitrary or capricious." *Id.* at 573, 584. Like other appellate bodies, when the District Council acts in its appellate capacity, its review is limited to evidence in the record before the Planning Board. *Id.* at 576–77.

"When acting in its zoning capacity, the [Prince George's County] District Council acts as an administrative agency." *Grant v. Cnty. Council of Prince George's Cnty.*, 465 Md. 496, 503 (2019). Further, in reviewing the final decision of an administrative agency, "the court looks through the circuit court's . . . decision[], although applying the same standards of review, and evaluates the decision of the agency." *People's Couns. for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007).

With regards to adjudicatory actions by the District Council,

> [j]udicial review of administrative agency action is narrow. The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. In our review, we inquire whether the zoning body's determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion. As we have frequently indicated, *the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based*

upon the facts proven.

Md. Reclamation Assocs., Inc., v. Harford County, 414 Md. 1, 25 (2010) (cleaned up) (emphasis added).

With these basics in mind, we turn to the parties' arguments in this appeal.

II. Given that the footnote exception, which allowed M-X-T uses in R-E zones was unavailable to Timberlake, DSP-22028 was properly rejected.

We discern no error in the District Council's disapproval of DSP-22028. The Property was zoned Residential Estate. With DSP-22028, Timberlake applied for a mixed use of the Property, a use that the new zoning ordinance no longer allowed when DSP-22028 was filed and accepted by the Planning Board. The Planning Board's approval of DSP-22028 was based on the old zoning ordinance, in which the Tables of Uses, specifically Footnote 144, would have permitted a mixed use in a R-E zone provided that use complied with Footnote 144. But, because DSP-22028 could no longer be "processed" under the prior zoning ordinance when DSP-22028 was accepted, the Planning Board erred by approving DSP-22028. The District Council recognized as much in disapproving DSP-22028.

The District Council's disapproval was based on two changes to the zoning ordinance that limited the use of footnote exceptions. These changes were CB-12, effective January 17, 2023, and CB-53, effective May 30, 2023. We address CB-12 first and turn to CB-53 further below.

CB-12 amended transitional provision PGCC § 27-1903, adding Subsection (f). For development applications filed after April 1, 2022, and that elected review under the

prior zoning ordinance, as DSP-22028 had, Subsection (f) eliminated the availability of several footnote exceptions from the prior zoning ordinance, including Footnote 144. Specifically, CB-12 established that CB-50, which was the council bill that lead to Footnote 144, was "ineligible for processing under the prior [o]rdinance[,]" unless a development application was "already been filed and accepted and/or constructed[.]" In pertinent part, CB-12 provided

> For the purpose of limiting the authority in the Zoning Ordinance for development under the prior [o]rdinance superseded by the revised Subtitle 27 of the Prince George's County Code, being also the Zoning Ordinance of Prince George's County . . .
>
> *Unless an application for development is already filed and accepted and/or constructed, the following enactments are ineligible for processing under the prior [o]rdinance:*
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> . . .
>
> *CB-50-2021* (Chapter 39, 2021 Laws of Prince George's County, Maryland) AN ORDINANCE CONCERNING R-E ZONE for the purpose of amending the residential table of uses to permit development of a mix of residential and commercial/retail uses in the R-E (Residential Estate) Zone of Prince George's County, under certain circumstances.

(Emphasis added.) This meant that after January 17, 2023, a developer whose application was not filed and accepted (or constructed) could no longer rely on Footnote 144 (permitting a mixed use in an R-E zone) for approval, even if the developer's application was being reviewed under the prior zoning ordinance. With DSP-22028, and Fairwood Square, Timberlake was such a developer.

Below, we address the Trust's arguments and explain why they do not persuade us that the District Council erred in disapproving DSP-22028.

A. The approval of PPS 4-21058 did not entitle Timberlake to bypass the transitional provisions under the new zoning ordinance.

The Trust argues that with the approval of PPS 4-21058, its project was "grandfathered" into being able to use the prior zoning ordinance "for all future zoning approvals." The Trust had elected to have PPS 4-21058 reviewed under the prior subdivision regulations, and because PPS4-21058 was approved under the prior subdivision regulations, the Trust was entitled to have DSP-22028 reviewed under the prior zoning ordinance. The Trust concludes that because the prior zoning ordinance included the possibility of mixed uses in R-E zones, the Planning Board did not err in approving DSP-22028.

For this argument, the Trust relies on two transitional provisions found under the subdivision regulations, PGCC § 24-1903 and PGCC § 24-1704(b). The Trust argues that the choice of law transitional provision in the subdivision regulations, particularly PGCC § 24-1903, "grandfathered" Timberlake's subdivision application (PPS 4-21058) into the groups of transitional provisions that typically applied to applications that had received development approval prior to April 1, 2022. PGCC § 24-1903 provides that:

> (a) Development proposals or permit applications may utilize the prior Zoning Ordinance (with the exception of the LCD, LMXC, and LMUTC Zones) or Subdivision Regulations for development of the subject property.
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> (b) Once approved, development *applications that utilize the prior Subdivision Regulations shall be considered "grandfathered" and subject to the provisions set forth in Section 24-1704 of this Subtitle.*

(Emphasis added.)

The Trust then points to PGCC § 24-1704(b) and argues that "[d]espite being a subdivision regulation, [PGCC] § 24-1704 contains the critical provision authorizing subsequent zoning applications, such as DSP-22028, to be filed during the remainder of the project under the Prior Zoning Ordinance[.]" PGCC 24-1704(b) provides that:

> With the exception of public facility adequacy determinations, until and unless the period of time under which the subdivision approval remains valid expires, the project may proceed to the next steps in the approval process (including any zoning steps that may be necessary) and *continue to be reviewed and decided under the Subdivision Regulations and Zoning Ordinance in effect immediately prior to the effective date of the County Subdivision Regulations and Zoning Ordinance.* If the approval pertains to any public facility (including, but not limited to, establishment of public facility capacity or conditions for improving facilities to mitigate the impact of the approved development), the project will be granted a certificate of adequacy pursuant to Section 24-4503(a)(4).

PGCC § 24-1704(b) (emphasis added). The Trust concludes that "New SR § 24-1704 ensures that the necessary zoning applications that accompany the development project after subdivision approval can also be filed, for consistency purposes, under the Prior Zoning Ordinance."

The difficulty with the Trust's argument is that because PPS-21058 was filed after April 1, 2022, it was subject to the new subdivision regulations. Those regulations provided that "[n]o actions in accordance with these Subdivision Regulations shall exempt land from compliance with the requirements of Subtitle 27: Zoning Ordinance or Subtitle 5B: Chesapeake Bay Critical Area of the County Code or Section 9-206 of the

State Environmental Article." PGCC § 24-1401(c).[27] Thus, even though the approval of PPS-21058 "grandfathered" the Timberlake's project into being "reviewed and decided" under the prior subdivision regulations and prior zoning ordinance, that PPS approval, i.e., "the action" that, in the words of the Trust, "automatically triggered" that "grandfathering," could not have exempted the project from complying with subsequent changes to the zoning ordinance. As of January 17, 2023, compliance with the zoning ordinance meant no mixed uses in R-E zones. Because DSP-22028 was based on a mixed use, it did not comply with the zoning ordinance.

B. CB-053's prohibition on mixed uses in R-E zones may properly be applied to this case.

Even if CB-12 did not prevent the approval of DSP-22028, CB-53 certainly did. CB-53 rendered CB-50, i.e., Footnote 144, inapplicable to any development application filed pursuant to the transitional provisions, unless the project had "vested rights." CB-53 stated,

> For the purpose of limiting and prohibiting the authority in the Zoning Ordinance for certain uses, under certain circumstances, in the former R-E (Residential Estate) Zone, R-A (Residential Agricultural) Zone, C-O (Commercial Office) Zone and I-1 (Light-Industrial) Zone of Prince George's County, utilizing the prior [o]rdinance['s] Table of Permitted Uses for such Zones as enacted under CB-08-2021, CB-50-2021, CB-54-2020, CB-88-2018, and CB-89-2018.
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> . . .

[27] We take Section 24-1401(c)'s reference to "Subtitle 27: Zoning Ordinance" to mean the zoning ordinance in effect after April 1, 2022. When referring to the zoning ordinance in effect prior to that date, the new subdivision regulations say, "Zoning Ordinance in effect immediately prior to the effective date of the . . . Zoning Ordinance." *See, e.g.,* PGCC 24-1704(b). The Trust does not contend otherwise.

> *Notwithstanding any other provision of this Ordinance, unless a development has vested rights under Maryland law, the following laws shall not apply to any development application, including a permit application, filed pursuant to 27-1703, 27-1704, 27-1903, or 27-1904. Any uses previously approved below are strictly prohibited and ineligible for processing using the prior Zoning Ordinance:*
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> . . .
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> *CB-50-2021* (Chapter 39, 2021 Laws of Prince George's County, Maryland) AN ORDINANCE CONCERNING R-E ZONE for the purpose of amending the residential table of uses to permit development of a mix of residential and commercial/retail uses in the R-E (Residential Estate) Zone of Prince George's County, under certain circumstances.

(Emphasis added.) Here, there was no dispute that when the District Council disapproved DSP-22028, the project had not acquired vested rights. Accordingly, because CB-53 eliminated the applicability of the footnote exception upon which DSP-22028 hinged, i.e., CB-50's Footnote 144, the District Council did not err in disapproving DSP-22028 based on CB-53.

In an attempt to overcome this conclusion, the Trust challenges the validity of CB-53. The Trust contends that the law was not yet effective at the time of the District Council's review because the District Council improperly hastened the ordinance's effective date. Specifically, the Trust contends that the District Council improperly suspended their Rules of Procedure to make CB-53 immediately effective on the day of enactment so that it could be considered at the time of their review, rather than the required forty-five calendar days later. Given our standard of review, these irregularities, if they are irregularities, do little to advance the Trust's position.

"Although the general rule in Maryland is that statutes are presumed to operate prospectively[,] the courts have long recognized an alternative approach for zoning and land use matters." *Matter of Northpoint Realty Partners, LLC*, 265 Md. App. 270, 291 (2025) (quoting *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 159–60 (2010)). For zoning and land use matters, courts will apply substantive changes to a statute during litigation retrospectively unless vested or accrued rights would be disturbed. *Yorkdale Corp. v. Powell*, 237 Md. 121, 124 (1964).

CB-53's removal of the possibility of M-X-T uses in R-E zones, i.e., of Footnote 144, was a substantive change in the law because it altered a property owner's right to employ certain uses. A law is considered substantive "if it creates rights, duties, and obligations," whereas a procedural change "simply prescribes the methods of enforcement of those rights."[28] *Langston v. Riffe*, 359 Md. 396, 419 (2000). CB-53 was a

[28] Although our courts have begun to soften *Yorkdale*'s distinction between substantive and procedural changes with regards to retrospectivity, these changes have largely served to provide further avenues to apply procedural laws retrospectively rather than changing the analysis for substantive changes. *See Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 226–28 (2009) ("We can fathom no sensible reason for drawing a wholesale distinction between new procedural zoning/land use legislation and new substantive zoning/land use legislation, and applying to the former more restrictively than other procedural legislation, when we still apply the latter less restrictively than other substantive legislation. . . . We believe the analysis is slightly more complex, *i.e.,* if the new law is procedural, the decision about retroactivity will turn on what aspect of the administrative/ adjudication process is changed, at what point in the administrative/adjudication process the change is made, and the question presented to the reviewing court."). As such, we continue to analyze a change in law for substantive effect.

substantive change in law, requiring us to apply it retrospectively. *See Yorkdale Corp.*, 237 Md. at 124.

Moreover, at the time DSP-22028 was before the District Council, Timberlake had not yet acquired any vested right to development that would prohibit a retrospective application of CB-53.[29] *Yorkdale Corp.* provides that a substantive change in the zoning law will only be applied retrospectively if the affected applicant has not acquired vested rights. 237 Md. at 124. In zoning matters, vested rights are acquired when, "(1) there is actual physical commencement of some 'significant and visible construction,' (2) the construction was commenced in 'good faith,' with the intention to complete the construction, and (3) the construction was commenced 'pursuant to a validly issued building permit.' " *Sizemore v. Town of Chesapeake Beach*, 225 Md. App. 631, 648 (2015).

Here, the Trust does not have any vested rights in the project, as they have not yet obtained permits for construction, let alone commenced significant and visible construction. *See Yorkdale Corp.*, 237 Md. at 126–28 (providing that developer's prior approval before zoning board and circuit court did not create a vested right, such that the development was subject to changes in legislation taking effect during pendency of litigation). Even if CB-53 should not have been effective until forty-five calendar days

[29] Had Timberlake acquired "vested rights under Maryland law," CB-53, by its own language, would not have applied to Timberlake's project. *See* CB-53-2023 ("Notwithstanding any other provision of this Ordinance, unless a development has vested rights under Maryland law, the following laws shall not apply to any development application.").

after it was passed, it is effective now. Therefore, we move to considering the Trust's substantive challenges to CB-12 and CB-53, in other words to the zoning ordinance as it exists now, after CB-12's and CB-53's changes became law.

C. CB-12 and CB-53 are not illegal special laws.

The Trust next argues that the laws limiting M-X-T uses in R-E zones, CB-12 and CB-53, were invalid as illegal special laws. Specifically, the Trust contends that each law was "directed at stopping [the Trust's] development," arguing that each was specifically drafted and proposed to burden the Trust, which was the only applicant for development actually affected by the change in law.

The Maryland Constitution prohibits "special laws." Specifically, it says,

> The General Assembly shall not pass local, or special Laws, in any of the following enumerated cases, viz.: For extending the time for the collection of taxes; granting divorces; changing the name of any person; providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal, or invalid deeds or wills; refunding money paid into the State Treasury, or releasing persons from their debts, or obligations to the State, unless recommended by the Governor, or officers of the Treasury Department. And the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law. The General Assembly, at its first Session after the adoption of this Constitution, shall pass General Laws, providing for the cases enumerated in this section, which are not already adequately provided for, and for all other cases, where a General Law can be made applicable.

Md. Const. art. 3 § 33. A special law is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class. *Cnty. Comm'rs of Prince George's Cnty. v. Balt. & O. R. Co.*, 113 Md. 179, 183 (1910). This court has held that county zoning laws are subject to the prohibition on special

laws.[30] *See Howard County v. McClain*, 254 Md. App. 190, 204 (2022) (holding that a zoning ordinance enacted by a County Council was an illegal special law).

"The definition of a special law does not provide a mechanical rule of thumb for deciding cases, because it depends on what constitutes a 'class.'" *Id.* at 197 (cleaned up). "[T]o determine whether an enactment affects less than an entire class and, therefore, meets the special law requirements[,] courts look to the purpose of § 33's constitutional prohibition." *Id.* (cleaned up). "The purpose of § 33 is to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others[.]" *Md. Dep't of the Env't v. Days Cove Reclamation Co.*, 200 Md. App. 256, 265 (2011).

Nonetheless, not all special laws are unconstitutional. In determining whether a law is an impermissible special law, Maryland courts look to a variety of considerations and factors such as:

> (1) whether the underlying purpose of the legislative enactment was actually intended to benefit or burden a particular member or members of a class instead of an entire class;
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> (2) whether particular individuals or entities are identified in the statute;
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> (3) the substance and practical effect of an enactment;
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> (4) if a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation;

[30] *See* Dan Friedman, *The Special Laws Prohibition, Maryland's Charter Counties, and the "Avoidance of Unthinkable Outcomes,"* 83 Md. L. Rev. Online 28, 28, 33 (2023) (arguing that, "although no appellate decision has clearly held that the special laws prohibition applies to charter counties or articulated a clear interpretive theory or mechanism by which it would apply," courts "can and should reach this result" so as to avoid unthinkable outcomes).

> (5) the public need and public interest underlying the enactment, and the inadequacy of the general law to serve the public need or public interest; and
>
> (6) whether the legislative enactment is arbitrary and without any reasonable basis.

McClain, 254 Md. App. at 198 (cleaned up). No one factor is dispositive. *Id.*

In reviewing whether the District Council erred in applying the prohibition on M-X-T uses in R-E zones to disapprove DSP-22028, we once again "look through" the decision of the circuit court to review the decision of the District Council. *Surina*, 400 Md. at 681. With respect to the court's determination of legal questions or conclusions of law, we apply a *de novo* standard of review to determine whether the court's conclusions are legally correct. *Carroll Indep. Fuel Co. v. Washington Real Est. Inv. Tr.*, 202 Md. App. 206, 224 (2011).

We must therefore determine whether the District Council erred in deciding that CB-12 and CB-53 were not illegal special laws. To be sure, the District Council did not address the special law issue in its written decision. However, ruling bodies are "presumed to know the law and to apply it properly." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007). Therefore, because Timberlake raised the issue before the District Council, which then made its decision in reliance upon the challenged laws, we assume that the District Council rejected the special laws argument.

1. Whether the Underlying Purpose of the Ordinances Was Actually Intended to Benefit or Burden a Particular Member of a Class Instead of an Entire Class

The Trust argues that the bills were "specifically designed to burden Fairwood Square," as evidenced by a social media post made by Councilmember Blegay of the

District Council that urged constituents opposed to the Fairwood Square development to speak in favor of CB-53.[31] The Trust further argues that the expedited passage of CR-005, CB-12, and CB-53 during the pendency of their development application means that the legislation was intended to burden their application specifically. We disagree.

We look to the effect of the law in order to determine whether its underlying purpose is to improperly burden or benefit a sole party. *See, e.g., Days Cove*, 200 Md. App. at 266–71. Several cases demonstrate the premise that, even where only one entity is immediately affected by a change in the law, the law is not invalid if it could have affected, or in the future did affect, others.

In *Potomac Sand & Gravel Company v. Governor of Maryland*, Potomac Sand & Gravel challenged a local law that prevented the dredging of certain wetlands in Charles County, arguing that the law was a special law because Potomac Sand & Gravel was the only entity that would be affected. 266 Md. 358, 379 (1972). The Court held that the law was not intended to burden a particular member of a class, explaining that

> [The dredging prohibition] does not provide relief of a particular named party. It is true that Potomac Company may be the only party affected by [the law], but if others wished to dredge the wetlands of Charles County, they too would be prohibited from doing so. [The dredging prohibition] is applicable to all persons, but is limited to Charles County because the wetlands sought to be protected by [the dredging prohibition] are located in Charles County.

[31] This post was not part of the record before the circuit court nor on appeal. The Trust requested that the circuit court take judicial notice of the post, to which the court did not respond. The Trust now requests that we take judicial notice of the post, which the Trust reproduces at page 11 of its Brief. We take judicial notice that the post appeared on social media. Md. Rule 5-201(f) (permitting a court to take judicial notice "at any stage of the proceeding").

Id. at 379 (cleaned up).

Days Cove, a later case, relied upon *Potomac Sand* to reach a similar conclusion. 200 Md. App. at 267–68. In *Days Cove*, the prospective operator of a rubble landfill in Queen Anne's County sued the Maryland Department of Environment, challenging a law that prohibited the issuing of permits for the construction or operation of a rubble landfill within a certain proximity to particular waterways. *Id.* at 259. Days Cove argued that since it had the only pending application for a rubble landfill in an affected area, the practical effect of the new law was to burden its development—a "closed-class-of-one." *Id.* at 266. The court rejected the argument, repeating the reasoning from *Potomac Sand* to hold, "because others who may wish to establish a rubble landfill within the defined areas in Queen Anne's and Prince George's Counties would be prohibited from doing so, [the challenged law], likewise, is applicable to all persons[.]" *Id.* at 267.

Here, the laws were broadly applicable to all properties in four different types of zones in the County. As in *Days Cove*, even though Timberlake was the only property then attempting to develop a mixed use in an R-E zone,[32] the fact that many other properties *could* be affected by the elimination of the affected footnote exceptions indicates a lack of intent to burden the Trust specifically. In addition to M-X-T uses in R-E zones, CB-12 and CB-53 also eliminated, among other things, townhouse uses from

[32] Despite a lack of evidence in the record on this point, below, the parties appeared to assume that Timberlake's project was the only pending one that was affected by the elimination of Footnote 144. For the purposes of this analysis, we will make the same assumption.

Commercial Office zones, concrete recycling facility uses from Light-Industrial zones, or Class 3 fill reclamation uses from Residential Agricultural zones. The broad application of CB-12 and CB-53 to all properties in multiple zones indicates that the underlying purpose of these bills was the stated goal of limiting the usage of footnote exceptions and easing the transition to the new zoning ordinance, not to burden one project.

The Trust's reliance on the social media post by Councilmember Blegay does not persuade us otherwise. "It is well-settled that when the judiciary reviews a statute or other governmental enactment, either for validity or to determine the legal effect of the enactment in a particular situation, the judiciary is ordinarily not concerned with whatever may have motivated the legislative body or other governmental actor." *Days Cove*, 200 Md. App. at 270. In *Days Cove*, the court "attached no significance" to the fact that only Days Cove was mentioned in the legislative testimony on the challenged bill because "there was no other entity actively planning, at that time, to construct a landfill in any of the areas covered by" the challenged bill. *Id.* at 270–71. Similarly, here, we attach no particular significance to the fact that Councilmember Blegay named only this development in her promotion of CB-53, because there was apparently no other entity actively attempting to make use of the allowances prohibited by the new legislation. We do not find any evidence to suggest that CB-12 and CB-53 were actually intended to burden the Trust alone.

2. Whether CB-12 and CB-53 Identify Particular Individuals or Entities

There is no dispute that neither law identifies Timberlake or Fairwood Square specifically. Instead, the Trust argues that the District Council's expedited passage of CB-53 makes clear that "Fairwood Square was the intended target."[33] We disagree.

"If an act expressly states that it applies only to a particular, named individual or entity, it may run afoul of Article III, § 33. So may equivalent means of identifying a particular entity." *Days Cove*, 200 Md. App. at 271 (citing *Reyes v. Prince George's County*, 281 Md. 279, 305–06 (1977)). However, "[w]e accord limited weight to this factor because it can be easily manipulated by using narrow descriptive criteria," and as such it "has rarely been considered the tipping point in the [special law] analysis." *McClain*, 254 Md. App. at 200.

We disagree that CB-12 and CB-53 used narrowly descriptive criteria, or any other method, to single out Timberlake or the Trust specifically. As we have stated above, although Timberlake was the only pending application which CB-12 and CB-53 affected at the time of enactment, both laws were broadly applicable and did not rely upon narrow criteria to enforce restrictions on a small subset of properties. In each of the several zones to which CB-12 and CB-53 applied, the rights of every property owner were implicated.

[33] The Trust's argument on this factor again relies upon the social media post that references the Property and CB-53. As noted above, we take judicial notice that the post appeared on social media. *See* Md. Rule 5-201(f) (permitting a court to take judicial notice "at any stage of the proceeding"). However, the existence of this post does not change our analysis on this factor.

3. Whether a Particular Entity Sought and Received Special Advantages from the Legislature, or Other Similar Entities Were Discriminated Against by CB-12 and CB-53; and Whether the Substantive and Practical Effects of CB-12 and CB-53 Single Out a Particular Person or Entity, from a General Category, for Special Treatment

The Trust blends these two factors, arguing that "[a]s to the third and fourth factors . . . the substantive and practical effect of both bills was clearly to target the Fairwood Square," because, as the only applicant who had utilized CB-50, they would be the only development immediately affected.

With regards to the fourth factor,[34] the Trust argues that the practical effect of CB-12 and CB-53 singled out their application because

> [a]s a result of the enactment of CB-12-2023, there would be no other eligible properties, other than the Subject Property, that would be able to utilize CB-50-2021 under New ZO §§ 27-1900 *et seq.*, provisions of the New Zoning Ordinance. Appellant is the only applicant who has utilized the lawfully enacted provisions of CB-50-2021. The Council is therefore attempting to only block the ability of Appellant from being able to rely on the provisions in CB-50-2021 under the prior ordinance.

"Closed-class-of-one" arguments, such as this one, fail. *See Days Cove*, 200 Md. App. at 266–67.

[34] Because the Trust makes no specific argument as to the third factor, we do not address it. *See* Md. Rule 8-504(a)(6) (requiring that appellate briefs contain legal argument). Even if we were to address this factor, we would have concluded that it does not advance the Trust's position because it is inapplicable to this situation. Typically, this factor arises when, at the behest of a particular party, the legislature adopts a law that benefits that party or allows that party to avoid a detriment faced by other similar parties. *See McClain,* 254 Md. App. at 202 (finding a special law where a private school requested and received a zoning regulation amendment that benefitted the school and no other properties). Here, the Trust (nor Timberlake) did not seek CB-12 nor CB-53 and does not claim to have received a benefit (or avoided a detriment) from these laws.

As discussed above, *Days Cove* held that even if only a single entity was actively attempting to establish a rubble landfill in a given area— the activity prohibited by the challenged law—the fact that others who may have wished to do the same would also have been prohibited from doing so means that the law was generally applicable and not a special law.

Here, the fact that Timberlake was the only developer with an actively pending application reliant on a use now prohibited by CB-12 and CB-53 does not make Timberlake the only developer to whom the ordinances applied. Instead, CB-12 and CB-53 restricted the use of several different footnote exceptions in the prior ordinance, not just Footnote 144. These changes eliminated footnoted uses (all different) in four different zones.

To borrow the reasoning from *Days Cove*, it is true that Timberlake was the only party with a pending development application that implemented M-X-T uses in an R-E zone, but if other properties attempted to do the same—or implement a variety of other uses in a variety of other zones—they too would be prohibited from doing so. We reject the Trust's closed-class-of-one argument. CB-12 and CB-53 are generally applicable to all properties located in four different zones and do not, in their effect, single out a single member of a class.

4. Whether There Exists a Public Need and Public Interest Underlying CB-12 and CB-53, and the Inadequacy of the General Law to Serve That Interest; and Whether the Distinctions Drawn by CB-12 and CB-53 Are Arbitrary and Without Any Reasonable Basis

The Trust, once again blending factors, claims that under the fifth and sixth factor, "there is no reasonable or rational public basis that has been articulated for adopting CB-12-2023 or CB-53-2023. The only bases for adopting them was to stop development of [the Property]." We disagree.

Laws that promote uniformity are typically considered to be in the public interest, as "the elimination or mitigation of nonconforming uses is, as a general matter, a valid public purpose." *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 184. Both the text of CB-12 and CB-53 explicitly state the purpose,

> For the purpose of limiting the authority in the Zoning Ordinance for development under the prior [o]rdinance superseded by the revised Subtitle 27 of the Prince George's County Code, being also the Zoning Ordinance of Prince George's County.
>
> . . . [T]he Council has reviewed the array of legislative enactments approved within the prior [o]rdinance, and it has determined that certain specific prior enactments therein are inconsistent with County policies; and . . . and there is a need to further clarify the intention of the Council in defining the terms of the authority for development using the prior [o]rdinance based on certain "Footnote" exceptions to the Table of Permitted Uses in the prior [o]rdinance[.]

The laws were intended to limit the "footnote exception" uses, uses that had not been permitted uses in the effected zones, and thereby increase zoning uniformity. Further, the distinctions drawn by the laws, i.e., the stated purposes of the laws, were reasonable, not arbitrary. The stated purpose was to "limit[] the authority in the zoning ordinance for development under the prior ordinance[,]" thereby resolving issues arising

from the transition period between the prior and new zoning ordinance. The old uses prohibited by CB-12 and CB-53 were not arbitrarily chosen, but rather ordinances permitting atypical uses in given zones by way of a footnote exception. *See* CB-12; CB-53.

To conclude, none of these factors weighs in favor of finding that CB-12 or CB-53 was an illegal special law.

D. The ordinances prohibiting M-X-T uses in R-E zones do not violate zoning uniformity.

Finally, the Trust argues that CB-12 and CB-53 were invalid as a violation of the zoning uniformity requirement. Specifically, the Trust contends that "[t]he Council is treating [the Trust] and the Subject Property different from other properties in the County in the utilization of the new zoning ordinance transitional provisions. There is no valid purpose in burdening [the Trust] and the Subject Property in this way." Again, we disagree.

Under Maryland law, "[z]oning laws shall be uniform for each class or kind of development throughout a district or zone." LU § 22-201(b)(2)(i). This statute, "reassure[s] property owners that they will not be subject to "arbitrary" or "invidious" discrimination or government favoritism or coercion[.]" *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 180 (cleaned up). Indeed, "[m]odern courts, including [our Supreme Court], understand [zoning] uniformity as a state law counterpart to the constitutional equal protection prohibition against purely arbitrary zoning classifications and restrictions, and generally apply similar principles of review." *Id.*

As text amendments, CB-12 and CB-53 are legislative actions that "enjoy[] a strong presumption of validity; we do not substitute our policy judgments for those of the legislature, and we assume as the action's basis any reasonably conceived state of facts that would sustain it." *Id.* at 178–79. "The challenger to the law or regulation 'carries the heavy burden of establishing, by clear and affirmative evidence' the invalidity of the action." *Id*. at 179 (citing *Anderson House, LLC v. Mayor of Rockville*, 402 Md. 689, 724 (2008).

"Regulations that draw classifications between properties within a zone are, as a general matter, permissible." *Id.* at 181. Such regulations do not violate uniformity when "reasonable and based upon the public policy to be served," *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 720 (1977), and when "similarly situated properties are treated the same[,]" *Anderson House, LLC*, 402 Md. at 715.[35] In this regard, "[w]e may consider direct and circumstantial evidence, including 'the historical background of the decision under legislative challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by the members of the decisionmaking body.'" *Concerned Citizens of Prince George's Cnty.*, 485 Md. at

[35] We may also consider whether a law is facially neutral. A law's facial neutrality, though not a complete defense, is relevant to the analysis. *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 189 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993)). Here, the Trust makes no argument about CB-12's and CB-53's facial neutrality. Accordingly, we address this factor no further. *See* Md. Rule 8-504(a)(6).

181 (quoting *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 540 (describing the standard of review in an equal protection challenge)).

Here, the Trust does not meet the "heavy burden" of showing that CB-12 and CB-53 violate Maryland's uniformity requirement. Before the District Council, there was "a state of facts reasonably [] conceived that would sustain" CB-12 and CB-53.[36] *See Concerned Citizens of Prince George's Cnty.*, 485 Md. at 183. Specifically, the District Council considered:

1. An emphasis by county planning officials calling for a "comprehensive, wholesale revision and update of the Zoning Ordinance, Subdivision Regulations, and other County regulations to ensure consistency with current general plan growth management goals, vision, and policies."
2. An overhauled zoning ordinance and subdivision regulations, implemented with the "unambiguous intent to eliminate uses permitted in the prior [o]rdinance by way of Footnoted exceptions within the Use Tables of the Zoning Ordinance."
3. A series of 378 footnote exceptions to the table of uses in the prior ordinance, none of which were carried forward into the new zoning ordinance.
4. A rising need, given that footnote exceptions were inconsistent with the goals for the new ordinance, to "modify the amount of development authorized under the prior [o]rdinance to be consistent with longstanding County land use and development vision."

[36] The District Council—and the circuit court—also heard the issue of the validity of CB-12 and CB-53 in separate cases. However, because the transcripts from those hearings were not included in the record before us, we cannot say for certain exactly what facts were before the District Council when it made a decision as to the uniformity violation in those cases. Although the District Council did not address the uniformity issue in its written decision, it was raised by Timberlake below. However, ruling bodies are "presumed to know the law and to apply it properly." *Skevofilax*, 396 Md. at 426. Therefore, because Timberlake raised the issue before the District Council, which then made its decision in reliance upon the challenged laws, we assume that the District Council rejected the uniformity violation argument.

5. A finding by the Council that "certain specific prior enactments are inconsistent with County policies," therefore requiring further amendment.

The Trust's contention, i.e., that its project is being treated differently than others and that there is no valid purpose in doing so, does not overcome this conclusion. "Our duty is not to weigh public opinion or debate public policy, but to determine only whether specific legislation reasonably serves a public purpose." *Concerned Citizens of Prince George's Cnty.*, 485 Md. at 185–86. Although the Trust may disagree with the District Council's wish to eliminate footnote exceptions from the County's zoning ordinance, the Trust cannot reasonably contend that CB-12 and CB-53, which simply write out Footnote 144 (and other footnote exceptions) from the Tables of Uses, are not reasonably conceived ways of achieving the District Council's goal.

With CB-12 and CB-53, we see no violation of the doctrine of zoning uniformity. We find no error in the District Council's disapproval of DSP-22028 and therefore affirm.[37]

III. The circuit court committed no abuse of discretion throughout the judicial review process.

A. The circuit court did not abuse its discretion in denying Appellees' Motion to Strike Notice of Substitution of Party and Line Regarding

[37] The Trust also challenges the District Council's alternative grounds for disapproval of DSP-220228. In its final order reversing approval of DSP-22028, the District Council held that even if its conclusion as to the validity and applicability of CB-12 and CB-53 was erroneous, in the alternative, the denial of DSP-22028 was still proper because Timberlake failed to file a Conceptual Site Plan ("CSP") prior to submitting and receiving approval for PPS-421058. The Trust now argues that because the PPS approval was never appealed, this challenge, i.e. the failure to file a CSP, cannot be raised now. Because we affirm the District Council's decision on the primary grounds for disapproval, we decline to reach this alternative ground.

Substituted Party nor in denying Appellees' Motion to Dismiss for Failure to File a 7-207 Memorandum.

Appellees raise two questions on cross appeal, both of which arise from Timberlake's termination of its sales contract with the Trust after Timberlake petitioned the circuit court for judicial review of the District Council's disapproval of DSP-22028. First, Appellees contend that the circuit court should have dismissed Timberlake's judicial review petition because it was the Trust (and not Timberlake) that filed the requisite memorandum, doing so at a time when the Trust was not yet a party to the case. Second, Appellees contend that when Timberlake subsequently substituted out in favor of the Trust, the circuit court should have disallowed the substitution because as the legal title holder to the Property, the Trust was ineligible to substitute in, having opted not to participate in the case at the administrative level. Because these procedural questions are somewhat intertwined, we take them up together, but first review the rules that pertain to both.

In Maryland, and with some exceptions that are not applicable here, "[e]very action shall be prosecuted in the name of the party in interest." Md. Rule 2-201.[38] A "real

[38] Rule 2-201 states,

> Every action shall be prosecuted in the name of the real party in interest, *except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought.*

(Emphasis added.)

party in interest" is "[a] person entitled under the substantive law to enforce the right sued upon and who generally, but not necessarily, benefits from the action's final outcome." *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 428 (2012) (cleaned up). "Rule 2-201 is a rule of standing." Paul V. Niemeyer & Linda M. Schuett, MARYLAND RULES COMMENTARY 268 (6th ed. 2024).

If an action is commenced by a plaintiff who is not a real party in interest, Rule 2-201 envisions that "the real party in interest will step into the shoes of the plaintiff who commenced the action." *Morton v. Schlotzhauer*, 449 Md. 217, 240 (2016) (cleaned up). Moreover, "a circuit court must provide a reasonable opportunity to allow the real party in interest to join the action as a co-plaintiff or to take the place of the plaintiff who commenced the action before the court may terminate the action." *Id.* "The joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." Md. Rule 2-201; *Schlotzhauer*, 449 Md. at 240 n.14, 243–45 (applying the relation-back doctrine under Rule 2-201 where the suit was commenced by the real party in interest whose status later changed).

By contrast, Rule 2-241 applies after suit is filed if the status of a properly-joined party changes. Niemeyer & Schuett, *supra*, at 316. Rule 2-241(a) provides that "[t]he proper person may be substituted for a party" under enumerated circumstances. Md. Rule 2-241(a). "If a substitution is not made[,] . . . the court may dismiss the action, continue the trial or hearing, or take such other action as justice may require." Md. Rule 2-241(d). "Any order to cause the substitution to be made is consistent with similar concepts in

Rule 2-201 that a real party in interest be joined[.]" Niemeyer & Schuett, *supra*, at 318. "Dismissal [for failure to substitute parties] is rarely appropriate in the absence of prejudice." *Id.* (citing *Grimstead v. Brockington*, 417 Md. 332, 349–50 (2010)).

A judicial review petitioner must file a memorandum in conjunction with their petition.[39] In pertinent part, Maryland Rule 7-207(a) provides,

> Within 30 days after the clerk sends notice of the filing of the [administrative] record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on.

Md. Rule 7-207(a). The purpose of this requirement is to "inform the opposing parties and the trial court of the issues involved in the case . . . in sufficient time for the opposition to respond in kind and for the court to make an informed decision." *Swatek v. Bd. of Elections of Howard Cnty.*, 203 Md. App. 272, 277 (2012). "If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the moving party." Md. Rule 7-207(d).

We review a circuit court's decisions regarding party substitution and dismissal for failure to file a Rule 7-207(a) memoranda with the same standard of review—abuse of discretion. *See People's Counsel v. Public Service Comm'n*, 52 Md. App. 715, 721 (1982), *cert. denied*, 295 Md. 441 (1983) (under precursor to Rule 7-207, circuit court did

[39] This requirement does not apply to "an action for judicial review of a decision of the Workers' Compensation Commission where the review is de novo." Md. Rule 7-207(b). This is not such an action.

not abuse its discretion in declining to dismiss judicial review petition for late-filed memorandum); Md. Rule 2-241.[40]

We discern no abuse of discretion in the circuit court's decision (1) not to dismiss Timberlake's (which became the Trust's) judicial review petition for Timberlake's failure to file a Rule 7-207(a) memorandum or (2) its denial of Appellees' Motion to Strike Timberlake's Notice of Substitution. Working backwards, by the time the circuit court denied Appellees' dismissal motion, the Trust had filed a Rule 7-207(a) memorandum and had properly substituted in for Timberlake. Certainly, things could have gone smoother if the Trust had substituted in before it filed a Rule 7-207(a) memorandum. But we cannot say, on the facts of this case, that the circuit court abused its discretion in overlooking the odd order in which things happened. We explain.

Under Rule 2-241(a)(3), substitution is permissible "for a party who: (3) transfers an interest in the action, whether voluntarily or involuntarily." Md. Rule 2-241(a)(3). Here, Timberlake was the real party in interest when, on July 18, 2023, it petitioned the circuit court for judicial review. When, on April 3, 2024, Timberlake filed to substitute in the Trust, Timberlake could no longer have had an interest in the action, having terminated its sales contract with the Trust six months earlier on October 2, 2023. This

[40] Appellees' contention that the court's decision to deny their motion to strike notice of substitution is subject to de novo review is incorrect. The use of the language "the proper person *may* be substituted" in Rule 2-241 indicates the decision is committed to the discretion of the circuit court. Further, "[w]e will only reverse a trial court's discretionary act if we find that the court has abused its discretion." *Gray v. State*, 388 Md. 366, 383 (2005).

termination meant that Timberlake's equitable interest in the Property, i.e., the only interest Timberlake had in the Property, reverted to the Trust. On May 2, 2024, after Appellees questioned the breadth of the October 2, 2023 transfer, Timberlake and the Trust confirmed that Timberlake's October 2, 2023 termination meant that Timberlake assigned and transferred equitable title in the Property to the Trust, along with Timberlake's interest in the project, and in the judicial review proceedings, such that "the Hawkins Trust is the real party in interest" in the proceedings.

That the Trust did not itself petition for judicial review does not prevent Timberlake from substituting the Trust in its stead. We have said,

> A plaintiff who originally filed the claim need not remain as plaintiff on that claim in order for the new party to have the benefit of the relation back doctrine, so long as the rationales for the application of the doctrine—e.g., notice of the claim and operative facts—pertain.

Schlotzhauer, 449 Md. at 244. Like Timberlake, the Trust was challenging the District Council's disapproval of DSP-22028 after the Planning Board had approved it. And the Trust, as the Property's owner, had the standing to do so. LU § 22-407(a)(1)(iii) (permitting an entity that owns the subject property, and is aggrieved by the District Council's decision, to request judicial review).[41] Accordingly, the Trust's claim related

[41] This section provides in full:

> (a)(1) Judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by any person or entity that is aggrieved by the decision of the district council and is:
>
> (i) a municipal corporation, governed special taxing district, or person

back to Timberlake's timely judicial review petition.[42]

That the Trust held legal title to the Property before it received Timberlake's interest is also of no consequence. Appellees concede that Timberlake could have substituted in a subsequent contract purchaser to whom it had assigned its rights. But Rule 2-241(a)(3) does not limit transfers to "subsequent contract purchasers." It merely requires that there be a transfer of an interest in the action. By the time the circuit court ruled on Appellees' Motion to Strike, Timberlake confirmed that it had transferred its interest in the action to the Trust. Accordingly, we agree with the circuit court that the Trust was entitled to substitute in for Timberlake.[43]

Regarding Timberlake's failure to file a Rule 7-207(a) memorandum, Appellees'

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in the county;

(ii) a civic or homeowners association representing property owners affected by the final decision;

(iii) *the owner of the property that is the subject of the decision*; or

(iv) the applicant.

LU § 22-407(a)(1) (emphasis added).

[42] Appellees do not contend that they were without notice of Timberlake's (and then the Trust's) claim. Indeed, after Timberlake petitioned for judicial review, it was the Trust that filed a Rule 7-207(a) memorandum on February 24, 2024, outlining why it contended that the District Council's disapproval of DSP-22028 was wrong.

[43] Appellees also argue procedural error in that the named party was substituted in MDEC only two days after Timberlake's notice of substitution was filed, without providing a 15-day period for Appellees to object as is allowed under Maryland Rule 2-241(c). We find no error in this procedure. Rule 2-241(c) mandates that any objection to a substitution be filed within fifteen days. But the rule does not include any mandate that the court wait fifteen days to implement the substitution, and doing so does not prevent the opposing party from moving to strike the notice of substitution, as Appellees did here.

evident aggravation is understandable. Having terminated its sales contract with the Trust on October 2, 2023, Timberlake did not substitute in the Trust for six months. During this time, the Trust filed a Rule 7-207(a) memorandum, but Timberlake did not. Instead, Timberlake asked the court for, and got, two extensions of its Rule 7-207(a) memorandum deadline. Going forward, therefore, what Appellees saw was no memorandum from a party that was in the case (Timberlake) and a memorandum from an entity (the Trust) that was not in the case. It was only on May 2, 2024, after Timberlake confirmed that the October 2, 2023 termination was an assignment of its rights to the Trust, that the Trust's status as a real party in interest became clear.

Nonetheless, because Appellees were not prejudiced by Timberlake's failure to file a Rule 7-207(a) memorandum, the circuit court was well within its discretion in declining to dismiss the judicial review petition. *See* Md. Rule 7-207(d) ("If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the [party moving for sanctions for the petitioner's failure to file or timely file]."); *Gaetano v. Calvert County*, 310 Md. 121, 124 (1987) (holding, under the predecessor to Rule 7-207, that dismissal is not a mandatory sanction for failing to file a Rule 7-207(a) memorandum). As the Trust points out, the District Council was obligated to produce the agency record regardless of whether it was Timberlake or the Trust that filed the Rule 7-207(a) memorandum that followed. Md. Rule 7-206(d) ("The agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings

within 60 days after the agency receives the petition for judicial review."). Moreover, because the Trust filed a Rule 7-207(a) memorandum, therein challenging the same District Council action that Timberlake had challenged below, i.e., the disapproval of DSP-22028, Appellees had the opportunity to, and did, respond to the Trust's arguments.

Ultimately, the circuit court is to "look at the purpose of the rule or statute in light of the circumstances of its violation to determine the appropriate sanction for its violation." *Gaetano v. Calvert County*, 310 Md. at 125–26. The purpose of Rule 7-207 "is to inform the opposing parties and the trial court of the issues involved in the case, and the appellants' arguments on appeal, in sufficient time for the opposition to respond in kind and for the court to make an informed decision." *Id.* at 126. In declining to dismiss Timberlake's (and, subsequently, the Trust's) judicial review petition, we see nothing to suggest that the circuit court failed to appreciate the purpose of Rule 7-207 in determining not to sanction the Trust for Timberlake's failure to file a Rule 7-207(a) memorandum.

B. The circuit court's denial of the motion to consolidate was not an abuse of discretion.

The Trust next asserts that the circuit court abused its discretion in denying the Trust's motion to consolidate its judicial review petition in this matter with its judicial review petitions in two other matters, Case Nos. C-16-CV-23-000766 and C-16-CV-CV-23-002991.[44] The Trust contends that in these cases, it petitioned for judicial review of

[44] On appeal from a petition for judicial review, procedural issues at the circuit court level are typically not within the scope of our review. "When we review the

CB-12 and CB-53, respectively. The Trust argues that consolidation was necessary because all three matters involved the same facts, law, and subject matter,[45] and the resolution of the matters regarding CB-12 and CB-53 were necessary to this case because the District Council relied upon the ordinances in coming to the decision before us here.[46] We cannot agree.

Consolidation of cases pending in the circuit court is not required. Md. Rule 2-503(a) ("When actions involve a common question of law or fact or a common subject matter, the court, on motion or on its own initiative, *may* order a joint hearing or trial or

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decision of an administrative agency or tribunal, we assume the same posture as the circuit court and limit our review to the agency's decision." *Sugarloaf Citizens Ass'n v. Frederick Cnty. Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (cleaned up). In other words, our role is to determine whether the administrative agency erred, and not whether the circuit court erred. *Bayly Crossing, LLC v. Consumer Prot. Div.*, 417 Md. 128, 136 (2010). "Even though our mandates in administrative law cases remand, affirm, reverse, or modify the circuit court's judgment, we are reviewing the agency's decision, not that of the circuit court." *Bond v. Dep't of Pub. Safety and Corr. Servs*., 161 Md. App. 112, 122 (2005) (citation omitted). However, because Appellees have not challenged whether this issue falls within the proper scope of review, we address this issue.

[45] Because the record from the other cases is not included in the record before us here, we cannot say whether the other cases and this case "involve common questions or law or fact." *See* Md. Rule 2-503(a).

[46] *Jenkins v. City of College Park*, 379 Md. 142 (2003), the case on which the Trust relies to argue that failure to consolidate here was an abuse of discretion, was limited to "the specific facts in [that] case." *Id*. at 153. There, the circuit court declined to consolidate three quiet title actions that pertained to the same property. Our Supreme Court concluded that that denial was an abuse of discretion because consolidation was the "only way in which to resolve the factual issues and ultimate question of who owns legal title to the property is to have all three cases presented to the same trier of fact within one case." *Id.* at 165–66. Here, and as we discuss below, the Trust has made no real showing that consolidation was necessary to resolve the legal issues it presented to the circuit court in its judicial review petition in this case.

consolidation of any or all of the claims, issues, or actions." (emphasis added)). Nor is the circuit court's decision on whether to consolidate pending cases one that we review de novo, substituting our judgment for that of the circuit court. Instead, consolidation is a procedural issue, and the circuit court's ruling on a motion for consolidation will only be overturned upon a clear abuse of discretion, in other words, for a decision that is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Jenkins*, 379 Md. at 164–65 (cleaned up).

Below, Appellees offered a number of reasons for why consolidation would have been inappropriate. These were that consolidation would force the Community Appellees (all judicial review petition respondents below) to expend resources to participate in cases that they had not participated in at the administrative level; that the standards of review for Case Nos. C-16-CV-23-000766 and C-16-CV-CV-23-002991 are different from that applicable here; and that the District Council's disapproval of DSP-22028 was based on CR-5-2023, not on the council bills that were the subject of C-16-CV-23-000766 and C-16-CV-CV-23-002991. Presumably, the circuit court found merit in one (or more) of these reasons. *See Fischbach v. Fischbach*, 197 Md. App. 61, 77 (2009) (holding that, where the trial court denies summary judgment but does not state the grounds on which it relied, it is presumed that the trial court "carefully considered all of the asserted grounds and determined that all or at least enough of them were meritorious" (cleaned up)).

Here, the Trust has not addressed the reasons against consolidation that Appellees offered below, let alone shown that the circuit court's decision to rely on one (or more) of

them was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *See Jenkins*, 379 Md. at 164–65. Accordingly, we discern no abuse of discretion in the circuit court's decision denying consolidation.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.