

Case No.: SDP-1803
7-Eleven at Brandywine Village

Applicant: 7-Eleven, Inc.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

ORDER OF REMAND

IT IS HEREBY ORDERED, that Planning Board's decision to approve Specific Design Plan 1803 (SDP-1803), to construct a 3,062-square-foot food and beverage store and gas station in the Local Activity Center (L-A-C) Zone, is REMANDED, in accordance with specified grounds stated in this Order of Remand. PGCC §§ 27-523, 27-528.01.

Certain persons of record (Appellants) timely appealed the Board's decision to approve SDP-1803. Appeal, 10/15/2020. Appellants request that Council vacate and remand the Board's approval of SDP-1803 because:

- 1) Planning Board violated PGCC § 27-528(b) because it did not ensure that SDP-1803 would adequately safeguard the public's health, safety and welfare; and
- 2) Planning Board violated PGCC § 27-494 because it failed to ensure that SDP-1803 was compatible with surrounding uses, specifically, a neighboring playground and residences located adjacent to the approve site. Appeal at 7.

According to Appellants, because the Board disregarded the effect of the proposed gas station and convenience store on the health and welfare of the community, the decision is not supported by substantial evidence and is therefore arbitrary and capricious. Appeal at 7-18.

Under the Maryland-Washington Regional District Act (RDA), Planning Board is invested with exclusive original jurisdiction over the determination of a Specific Design Plan (SDP), subject to appellate review by Council. The standard of administrative appellate review used by Council mimics the standard of review that would be employed by courts for review of the same agency action. Because Planning Board is the *de novo* decision maker on the *merits* of an SDP, Council

may *not substitute* its judgment for that of the Board to approve an SDP. Council's review of the Board's decision to approve an SDP (as here), based on factual findings, and the application of law to those factual findings, is limited to determining if there is substantial evidence in the record as a whole to support the Board's findings and conclusions, and to determine if the Board's decision is based on an erroneous conclusion of law. Council must affirm the Board's decision if there is sufficient evidence such that a reasoning mind reasonably could have reached the factual conclusion the Board reached. Moreover, since the approval of an SDP is a matter committed to the discretion and expertise of the Board, the decision receives a higher level of deference than the Board's legal conclusions or factual findings, and Council may only reverse the Board's decision if it is arbitrary and capricious. *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 570-576, 120 A.3d 677, 725-729 (2015). Arbitrary and capricious means "unreasonably or without a rational basis;" "founded on prejudice or preference rather than on reason or fact;" and "characterized by or guided by unpredictable or impulsive behavior, . . . contrary to the evidence or established rules of law." *Cty. Council of Prince George's Cty. v. FCW Justice, Inc.*, 238 Md. App. 641, 193 A.3d 241 (2018) (quoting *Harvey v. Marshall*, 389 Md. 243, 884 A.2d 1171 (2005)).

If the administrative appellate review used by Council mimics the standard of review employed by courts to determine whether the Board's findings and conclusions are supported by the record, [Council] must be in a position to review findings and conclusions that are sufficiently specific. *Tron v. Prince George's Co.*, 69 Md. App. 256, 270-72, 517 A.2d 113 (1986). The appellate courts of this State have repeatedly held that if agency decisions are not sufficiently clear to allow for meaningful appellate review or fail to reflect findings or reasons, then the appropriate remedy is to remand the matter to the agency for the purpose of correcting the deficiency.

Montgomery Co. v. Stevens, 337 Md. 471, 486, 654 A.2d 877 (1995); *Atlantic Venture, Inc. v. Supervisor of Assessments of Baltimore City*, 94 Md. App. 73, 84, 615 A.2d 1210 (1992); *Colao v. County Council of Prince George's Co.*, 109 Md. App. 431, 454, 675 A.2d 148 (1996). *See also Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 594, 100 S. Ct. 1889, 1898, 64 L. Ed. 2d 525, 538(1980) (“court is not without recourse in the event it finds itself unable to exercise informed judicial review because of an inadequate administrative record. In such a situation, [the] court may always remand a case to the agency for further consideration.”); *Ford Motor Co. v. Labor Board*, 305 U.S. 364, 373, 83 L. Ed. 221, 59 S. Ct. 301 (1939) (“It is familiar appellate practice to remand causes for further proceedings without deciding the merits, where justice demands that course in order that some defect in the record may be supplied. Such a remand may be made to permit further evidence to be taken or additional findings to be made upon essential points.”).

Having reviewed the record, including consideration of oral arguments, Council is not positioned to conduct meaningful administrative appellate review of the Board’s decision to approve SDP-1803. The Board, as the *de novo* decision maker on the *merits* of SDP-1803, should, in the first instance, sufficiently address issues raised below by Appellants. Application Case File—SDP-1803, (7/16/2020, Tr.), PGCPB No. 2020-131, Appeal, 10/15/2020, (11/9/2020, Tr.).

Council will not vacate the Board’s decision to approve SDP-1803. Instead, without deciding the merits of the appeal, Council will remand SDP-1803 to the Board for further consideration.

On remand, the Board shall make findings and conclusions that are sufficiently specific on the following:

1. The applicability of PGCC § 27-528(b) during review and approval of SDP-1803. Findings and conclusions shall address and resolve health and safety issues raised below by Appellants in accordance with PGCC § 27-528(b).

2. The applicability of PGCC § 27-494 during review and approval of SDP-1803. Findings and conclusions shall address and resolve the issue of neighbourhood compatibility raised below by Appellants in accordance with PGCC § 27-494.

Ordered this 16th day of November, 2020, by the following vote:

In Favor: Council Members Anderson-Walker, Davis, Dernoga, Franklin, Glaros, Harrison, Hawkins, Ivey, Streeter, Taveras, and Turner.

Opposed:

Abstained:

Absent: Council Members Franklin and Hawkins.

Vote: 9-0.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Todd M. Turner, Council Chair

ATTEST:

Donna J. Brown
Clerk of the Council