

July 21, 2025

Christopher Alleva

The Howard County Board of Appeals

Testimony on Rules of Procedure Opening Statement

The Howard County Board of Appeals has a long and distinguished history. It is an institution we need that the public relies on. We need this institution to be above reproach. We need them to be respected and trusted. We need them to be above bias, taint and prejudice. We need this institution to be fair, just, even-handed and insulated from the vagaries of politics because the powers we give this Board are awesome. They have the power to confer and deprive people of valuable property rights and affect the public's physical welfare.

Regrettably, this Board also has a history of not meeting these critical standards. This Board has too often in the past shown bias and pre-judgement. And even more disturbing, some have attempted to shift the burden of bias to those impacted by that bias. This is a dangerous shifting of the burden. It is not the public's job to prove the bias shown by the Board did not influence decision making. It is the Board's job to prove to the public that this manifest bias was not outcome determinative. Bias and fairness cannot co-exist. There is a presumption that bias is unfair, and the burden is on the Board to ensure the hearings they conduct are fundamentally fair. Allowing the petitioner liberality in presenting their case in chief, while restricting the opposition case is not fundamentally fair.

The Board has not always lived up to the ideals of fundamental fairness and due process of law. Here are some examples:

1. In 2020, the Board was found guilty of violating the Open Meetings Act. The complainant alleged the Board cut off the recording during deliberations to cover up bias and discrimination against them.
2. These Board of Appeals Rules of Procedure have not been updated for decades. Among other things, there are mis-references to State law sections that have been repealed and replaced; there are no rules covering virtual hearings; the burden of proof for administrative appeals has no evidentiary standard and is conflicted with a vague reference to "other de novo appeals." This results in a bastardized hearing that is neither fish nor fowl hopelessly tainting the decisions.
3. Citizens often contact Council members with violation of due process allegations. How are these complaints handled? Who has jurisdiction? Can the Council be provided with this information?

4. Numerous appeals have been thrown out because the Board has improperly demanded citizens prove standing in original jurisdiction cases. The operative Local Government State law article 10-305.4 plainly states the only requirement is being an "interested person": *"a decision by the county board of appeals on petition of any interested person, after notice and opportunity for hearing, on the basis of a record before the board."* It is long held public policy in Maryland that zoning and land use disputes are best adjudicated in local Boards of Appeals like the one that you have been nominated. Given these non-case specific premises, how would you apply the law of standing to interested parties and appellants? Please distinguish original jurisdiction and administrative appeal matters, preferably with actual examples from past Board cases.

5. Are parties or the petitioner permitted to submit evidence into record outside the proceedings? If a party does this what are the consequences.

6. Do the Boards rules permit re-deliberation or re-voting? What recourse do parties have regarding Board misconduct?

7. Can the Board reopen the case after deciding and hear an oral unilateral reconsideration request without hearing from the other side?

Joel Hurewitz Public Feedback

Item Number	ROP Section	Type of Feedback	Proposal	Status	BOA Response
1	Definitions	Comment	Why were definitions put in front? Definitions should be alphabetized	Accepted/resolved	
2	Page 3, line 9	Comment	Board should only deal with land use appeals, why have this definition?		
3	Page 3, lines 12-13	Revision	Over-italicized	Corrected during public hearing	
4	Page 4, lines 11-16	Comment	Alternate members not authorized by the Code, same sufficiency concerns as OOL	Addressed	
5	Page 4, line 22-23	Comment	This term is defined in the Charter, why define it here?	Addressed	
6	Page 6, line 10	Revision	Ex parte definition should be the same as that of Zoning Board	Addressed	
7	Page 7, line 10	Revision	Majority vote should be three-fifths	Error was fixed during 1/30/25 public hearing	
8	page 9, line 3	Comment	Suggest rewording that definition or eliminating definition		
9	Alternate Members Section p 10 lines 1-22 to p 11, lines 1-12	Comment	Same sufficiency concerns as OOL, not authorized by Code	Addressed	
10	Page 12, lines 15-21	Comment	examples of good cause not defined	Addressed	
11	Page 13, lines 3-7	Comment	concern with record retention?	Addressed	
12	Page 15, line 15	Revision	needs to be semi-colon, not a period	Corrected during public hearing	
13	Page 23, line 21	Revision	24 hours to have agenda available inconsistent with Charter/Code, should be 3 days before	Addressed	
14	Page 25, lines 1-3	Comment	Wrong definition of ex parte, it's a "useless phrase"	Addressed	
15	Page 26, line 15	Revision	#3 is too big font needs revising	Corrected during public hearing	
16	Page 26, lines 18-21	Revision	suggest giving an accident as example of compelling circumstances	Addressed	
17	Page 27, line 2	Comment	What is meant by "another jurisdiction"? Not clear	Addressed	
18	Page 28, line 21	Comment/Question	what are the "distinct subcategories"?	Addressed	
19	Page 29, line 19	Comment/Question	Which "Court of Law"? The Circuit Court? Specify which court	Addressed	
20	Page 30, line 5	Comment/Question	same question about Court of Law	Addressed	
21	Page 31, lines 6-15	Comment	BOA doesn't deal with non land use appeals, legal sufficiency concern	Addressed	
22	Page 31, line 18	Clarification	flip between "Chairperson" and "Presiding official" here and throughout document	Addressed	
23	Page 33, lines 4-7	Comment	this is the purview of the Ethics Commission, not the BOA	Addressed	
24	Page 34, lines 10-16	Comment	Does this include videos or large books? Confused on the difference between reports vs technical reports	Addressed	Yes, but depends on each case
25	Page 35, lines 19-20	Comment	conflicts with previous section (Rule 9A) about reports, number of hard copies	Accepted	Change number of copies to 8 in Rule 9A and in this section and throughout
26	Page 36, lines 15-19	Comment	why is this section necessary?	Addressed	Change 21 days to 14 days (line 18)
27	Page 37, lines 15-16	Comment	suggest re-examining inconsistency between "days" and "business days"	Addressed	
28	Page 37, line 18	Comment	what is "block font"?	Addressed	
29	Page 38, lines 13-18	Comment	don't agree with this section, should only be a licensed attorney able to do this.	Addressed	
30	Page 39, line 22	Comment	other example of where "Chairperson" is used instead of "Presiding official"	Addressed	



HCCA

Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: 21 July 2025

Subject: HCCA Testimony Regarding CB57-2025 - Board of Appeals Revised Rules of Procedure

I am Stu Kohn from Scaggsville testifying as President on behalf of the Howard County Citizens Association, HCCA. Because of our extensive work on the Rules of Procedure and our involvement, our testimony for CB57 is much greater than the 5-minute allotment. Whenever you cut us off, please read the remainder and consider conducting a Work Session.

The HCCA is asking Council Members to incorporate a much better process for any party concerned in appealing a case. Raising the Board Members stipend as you did in July 2024 was not the answer as HCCA testified Against. We provided testimony to the Board of Appeals by composing 65 questions and suggestions for their initial revised Rules of Procedure. There are three areas we would like to highlight regarding the revision. They are the proposed Alternate Board Member which should not be considered as we don't understand the benefits. Is an Alternate Member required to listen to all cases as a means of attempting to be prepared to hear any given case? Will an Alternate Member be paid per session in attendance? The Office of Law has stated the Charter would have to be amended. See their major concerns in the Board of Appeals Memo, dated 10 April regarding the Alternate Member proposal. Secondly, there is not a section devoted to the process regarding Virtual or Hybrid mode as is described in the Zoning Board Rules of Procedure on pages 14 and 15 which HCCA noted in testimony. Thirdly, we are pleased the Board took action to have the filing of Subpoenas within a realistic timeframe whereby previously one had to file 21 days from the initial hearing. Refer to page 45, lines 22 and 23 and page 46, lines 1 thru 11.

We realize we are here to discuss the revisions of the Board of Appeals Rules of Procedure which haven't been updated in 35 years. The Chair of the Board stated they worked over 300 hours and spent 18 months working on the revision. How could so much time be devoted? Why do we have revised rules for the Planning, Hearing Examiner and Zoning Boards, which HCCA was very involved, and by the way no one ever testified from the development community? The format of these Rules of Procedure shouldn't be much different from these three entities. Why are the Board of Appeals Rules of Procedure three times the size of the Planning and Zoning Board and six times the Hearing Examiner? Yes - 65 pages compared to 23, 20 and 10 pages. Why? There should be as much standardization as possible. There is a Table of Contents associated with the Planning Board and ideally the others should have the same. Taxpayers have spent on this project approximately \$12,500 in expenditures based on each member receiving \$220 per session.

Note: 300 hours / 24 = 12.5 days and 13 months or \$220 times 5 = 1100 x 12.5 days = \$12,500 taxpayer dollars.

It is our observation the "Board of Appeals" should be eliminated because Members are simply not qualified. Many of your constituents who have experienced the Board of Appeals are extremely dissatisfied. The Board has no legal background, which is a major handicap and not educated in proceedings. Members are inexperienced and uneducated in the law. You saw the necessary critical requirements to approve members of the Inspector General Advisory Board. The same needs to be applied to the Board Members. Unfortunately, they are educated by on-the-job training and at times receive bad advice from the Office of Law. For example, this was true during the Lakeview case when oral "Reconsideration" was allowed during the ongoing case which is contrary to the Rules of Procedure. Yes - the Office of Law permitted this, which we testified to you. Furthermore, simply do a review over the years of the number of cases reversed. You will find it is minuscule.

Another example is the Go Kart case regarding the issuing of subpoenas. Reference page 8 under Section 2.208h1. The Chair stated on 5 June the Protestants should file a Subpoena to have the Department of Planning and Zoning explain their decision of stating the Applicant does not meet the requirements of his already constructed Go Kart facility in the existing zoning district. We asked the Board to file the Subpoena especially if they wanted to obtain all the facts. It just so happens the existing rules of 21 days to file gave no time as the next hearing is 26 June.

In the "About" section of the Board's website it states, "The Board may appoint a Hearing Examiner to conduct hearings and issue decisions, which can also be reviewed by the Board." This should be applied to save considerable time and your constituents paying exorbitant legal fees. Please refer to the proposed Rules of Procedure on page 14, lines 6 thru 13 where they also state the same. For your information, the Go Kart case has cost the proponents over \$20,000 and counting. Wow!

We suggest the following option be considered if you don't wish to abolish the Board of Appeals:

Cases should only be heard by those legally experienced which is the existing "Hearing Examiner." If you determine the Board of Appeals should not be abolished, then have the Appellant or Protestant choose if they want to go directly to the Hearing Examiner or be heard by what the Board of Appeals is proposed to be called the "Board of Grievance." The "Hearing Examiner" would be known as the "Hearing Examiner/Appeals Judge. "Any appeals would bypass the Board of Appeals and would go directly to Circuit Court as is the case because any appeal is heard in Circuit Court. Under this proposal all cases which are related to setbacks and/or variances will be heard as is today by the "Hearing Examiner." If a party does not agree with the decision of the Hearing Examiner it will go directly to Circuit Court. If you choose not to adopt this suggestion, then a recommendation is any grievances be heard first by what is currently the Board of Appeals which in the future could be known as the "Board of Grievances." An option would be to have the Petitioner choose if they want

to be first heard by the "Board of Grievances" or go directly to the "Hearing Examiner/Appeals Judge."

Another suggestion is cases currently going to the Board of Appeals should not be heard "De Nova." They should only be heard from the portion of the appeal of the Hearing Examiner's decision to save clients a considerable amount of lawyer's fee and time.

Please re-examine the current process as business as usual should not continue. We appeal to you that your decision will improve the negative factors of the Board of Appeals. Let it be part of your legacy.

A handwritten signature in black ink, appearing to read "Stu Kohn". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Stu Kohn
HCCA President

Written testimony on CB57

by Tara Innes <tinn12@gmail.com>

My comments are below. I registered to testify, so if you would please record this as my testimony. .

My concerns about the process for the racetrack at the board of appeals are centered on the necessarily legal nature of the issue, and the apparent lack of legal expertise of the board paired with a series of exclusions of evidence of the harmfulness of the racetrack while other evidence promoting the racetrack is included.

For example, the racetrack was constructed illegally, already in a wetland, and impacts of that illegal racetrack are already being felt. However any evidence pertaining to the current racetrack, or even the following iterations of racetrack plans are not being allowed on the grounds that it does not bear on the theoretical racetrack plan--which has been recreated multiple times during the process of the hearing--which will apparently be created in response to all the relevant regulations. Each iteration of the plan has been found to have elements in violation of regulation within a short period of time, despite the fact that the plans have not been publicly shared. Although I testified at the racetrack hearing, I do not have access to a current copy of the plan, and yet was restrained from discussing any version of the plan except for that most recent plan. This creates a catch-22 which hinders a fair hearing.

Evidence was not allowed, including covenants he has signed with his neighbors preventing conditional use, as well as peer reviewed academic research about the environmental impacts of racetracks. At other times, while the lawyer defending the neighborhood was aggressively prevented from introducing facts himself, the opposing lawyer readily and repeatedly introduced facts with no evidenciary support. For example, he implied that the evidence I had shared--a video recording of the racetrack being used--was altered automatically in my phone by something called audio-zoom. He asked me if I had turned off this functionality. In fact my phone does not have this capability, which I was not able to verify until after I was off the stand. No evidence was introduced to indicate any manipulation of the video I took aside from the assertion of the lawyer.

Lastly, as an environmental assessment professional, I would note that the standard environmental assessment procedures in place for infrastructure like an athletic field are wildly different than those necessary for a motorized racetrack. In ruling that this racetrack is an athletic facility, and as their lawyer asserts "all environmental permits and assessments will be completed as such", the board is ignorantly allowing significant environmental harm.

A rural residential area is full of groundwater wells, agriculture and livestock, and many of the neighbors purchased homes in this area specifically for the character of such a rural neighborhood. In allowing this violation of the local peace, the appeals board is opening up the door to a downward slide of all of our green towns, villages, and neighborhoods.

Thank you,
Tara Goldberg
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