

Lisa Markovitz

President, The People's Voice, Ellicott City MD

CB 41 - Support with amendment request

We are hopeful that the position of Zoning Navigator will assist the public regarding their rights, and the way the procedures and policies work with all county zoning matters of a quasi-judicial nature. Presently, the role of Zoning Counsel does answer the public's questions about procedure, but only appears at Zoning Board piecemeal rezoning hearings, to officially defend the underlying zone.

There are many other types of hearings that need clarifying in each case, and this position would be embraced by the community. We would like to see the position be more clearly defined as an advocate however, who can provide procedural instruction to the Boards, be allowed to object to any representative or witness actions that break procedure and can provide not legal advice, but procedural advice to all. Being allowed to object and help the Boards to keep policy enforced is important and not biased toward a side, as it could be done at anytime procedure is broken. This takes the onus off our busy volunteer appointed Boards, from having to constantly enforce policies, maybe even not doing so trying to be more cordial.

This should be a Zoning Advocate, who works for the community and the Boards, enforcing policies and rules for all, and advising any in need of education in these areas. Someone with this knowledge would be preferable, but educating on it is certainly possible.

We request that any delay will be brief, in reorganizing and hopefully making some changes to the Planning Board procedures and means of enforcement. It is a busy month yes, but we would like to see that goal attained in not a year, but maybe a few months, as this commendable goal in this Bill doesn't really resolve those issues, just adds another person who has to deal with them.

Thank you Council Member Yungmann, for this Bill, and we look forward to working with this advocate who will obviously not have any fiscal conflict, past or present, as we all have conflicts of opinion at times, but not financial ones, past or present.



HOWARD COUNTY COUNCIL  
AFFIDAVIT OF AUTHORIZATION  
TO TESTIFY ON BEHALF OF AN ORGANIZATION

I, Lisa Markowitz, have been duly authorized by  
(name of individual)

The People's Voice to deliver testimony to the  
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB-41-2019 to express the organization's  
(bill or resolution number)

support for / opposition to / request to amend this legislation.  
(Please circle one.)

Printed Name: Lisa A. Markowitz

Signature: [Handwritten Signature]

Date: 9/10/19

Organization: The People's Voice

Organization Address: 3600 Saint Johns Ln Ste D

Ellicott City MD 21042

Number of Members: 3251

Name of Chair/President: Lisa Markowitz

*This form can be submitted electronically via email to [councilmail@howardcountymd.gov](mailto:councilmail@howardcountymd.gov) no later than 5pm the day of the Public Hearing or delivered in person the night of the Public Hearing before testifying.*



**HCCA**

**Howard County Citizens Association**

*Since 1961...*

*The Voice Of The People of Howard County*

Date: 16 September 2019

Subject: HCCA Testimony for CR41-2019

Good evening. I am Hiruy Hadgu representing the Howard County Citizens Association, HCCA as a member of the Board.

Imagine sitting in a courtroom.

This particular courtroom hears cases on zoning and land-use. From time-to-time, the court makes a determination on whether a proposal is "guilty" or "not guilty" of violating the criteria set forth by the "statute" or zoning law.

There are two parties to the case.

On one side is the Petitioner, represented by a very experienced land-use and zoning attorney. The Petitioner is well-funded, has all the experts at his or her disposal, and the attorney is steeped in the arcane procedures of a court trial.

On the other side is the community stakeholder - perhaps living in close proximity to the proposed development. This stakeholder is sometimes very knowledgeable of zoning and has perhaps served on various committees and task-forces within the county related to zoning and land-use.

Most times however, the community stakeholder has minimal knowledge of the issue. Also, the stakeholder is not an attorney and yet he or she will serve as the opposition "attorney".

This is strikingly unusual, because in court proceedings, even attorneys are advised against representing themselves.

So even before the trial starts, the imbalance is already baked-in.

Lets say that the Judge - personified by the Howard County Planning Board - is composed of civic-minded volunteers who are taking time out of their busy lives to serve their community.

In previous cases, this Judge has demonstrated a clear bias in decisions toward the Petitioner. On case-after-case, the Judge votes on the side of the Petitioner. The Judge is not a lawyer either, has zero experience in trial proceedings, and has as much understanding of the zoning laws as the community stakeholder. If not lower.

Lets say the Law Enforcement is personified most prominently by the Department of Planning and Zoning (DPZ), but there are also other parties - the County Executive, Parks and Recreation, Department of Public Works, etc.

The Law Enforcement or DPZ gathers pertinent evidence on the proposal and provides a "police report" or recommendation to the court for trial. Historically, these reports have been favorable to the Petitioner and there is a clear impression that the Law Enforcement division does not think that there is such a thing as a "bad petitioner".

This is the backdrop against which most zoning and land-use proceedings take place in Howard Country.

The Howard County Citizen's Association is encouraged by Councilman Yungmann's proposal to employ a Community Zoning Case Navigator. It is a step in the right direction. However, we think it does not go far enough to address the imbalance and lack of procedural fairness present in these proceedings.

The citizen and taxpayer who ultimately pays for the mistakes made during these proceedings deserves as competent a representation as the Petitioner.

In conjunction with a competent zoning attorney, we think the ability to require the Department of Planning and Zoning designees to appear at quasi-judicial Planning Board hearings under oath to be questioned by the counter-parties as proposed in CB32 would also benefit these proceedings.

Additionally, HCCA has presented the council with an extensive list of proposals to improve the planning board that would go a long way to address this imbalance.

In addition to these major changes, we also request the annual report described in the legislation to be available to the public.

Thank you.

Hiruy Hadgu

HCCA Board of Directors



# HCCA

**Howard County Citizens Association**

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Date: 16 July 2019

Subject: **Potential Areas for Planning Board (PB) Reform**

The following are talking points for potential areas of improvement regarding PB reform. This might assist in discussions if a Group is formed.

**Questions:**

- What are the real benefits of the assemblage of the PB?
- Do we need it and why?

**Suggestions for Improvement:**

- Need to expand the qualifications – currently only states a PB member only needs to be a HC resident.
- Need to identify the composition of the PB to only permit one member per District who resides in the same given location. Each District shall have a PB Member residing in a unique location. Currently there are 3 members of the PB who reside in Columbia.
- Chairperson of PB needs to adhere to the Rules of Procedure – “Order of Presentation.” Examples – Royal Farms and Rolling Acres.
- The Decision and Order do not have to be rendered the same night as to the hearing / meeting as the PB needs to weigh all the evidence presented to them.
- All the facts need to be presented to the PB to obtain Due Process for ALL parties. Case in point was the Settlement of Savage. The key factor involving the Land Swap was not allowed to be introduced into evidence. Why?
- PB should not default to the Technical Staff Report (TSR), all testimony should be considered. The PB Members have stated they heavily rely on the TSR to make their decisions.

- Asking pertinent questions to DPZ as the Zoning Board (ZB) members and the public as we can now do in ZB cases is no reason not to do the same in PB cases. What if anything can be done to allow this at the PB? We don't care if DPZ is under oath or not we are only seeking pertinent information.
- The PB should not default to the TSR, ALL testimony should be considered.
- Do not allow the PB (or the petitioner's attorney) to reference former (possibly very incorrect) decisions they have made on other cases. They are NOT a court so this doesn't fall in the category of precedent or 'case law'. When a mistake has been made, it should not be repeated.
- 'We think so' or 'don't think so' are NOT acceptable responses from DPZ to the PB. If further research is needed to categorically support their conclusion, then the case should be delayed until they can do so.
- Don't let, "we don't have that here" be accepted as a response from DPZ, the petitioner's witnesses or the petitioner's attorney. Don't let them obfuscate with that defense. Delay until the needed data can be obtained and shared.
- DPZ should provide ongoing skill development training to PB members in both the proper conduct of a meeting, the fine points of our zoning codes and development regulations and how to formulate good questions to get clarification.
- Shorten the term of PB members to 3 years with a maximum of 2 terms.
- Ultimately, the evaluation criterion needs to also reference the INTENT of the zoning. This should be closely examined in any code rewrite.
- There needs to be established criterion for FDP approvals and not use SDP criteria.
- Protestants should NOT need to pay an attorney to participate on a more level playing field.
- The written Decision and Orders should be delivered in a more timely manner and come with complete instructions on how to appeal a decision.
- The Planning Board chair should refrain from seeking advice from the petitioner's attorney!

- The Office of Law attorney present should intervene when the proceedings are going improperly, rather than wait to be asked for a very specific opinion.
- Petitioners should provide more visuals to facilitate the PB and the audience to develop a greater understanding of the plans. There is no reason to continue to allow non-specific references when a projected map or illustrations would make info more concrete.



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AFFIDAVIT OF AUTHORIZATION  
TO TESTIFY ON BEHALF OF AN ORGANIZATION**

I, HIRSHY HADGU, have been duly authorized by  
*(name of individual)*

Howard County Citizens Association (HCCA) to deliver testimony to the  
*(name of nonprofit organization or government board, commission, or task force)*

County Council regarding CB41-2019 to express the organization's  
*(bill or resolution number)*

support for / opposition to / request to amend this legislation.  
*(Please circle one.)*

Printed Name: HIRSHY HADGU

Signature: [Handwritten Signature]

Date: 09/16/19.

Organization: HCCA

Organization Address: P.O. Box 89, ELIZABETH CITY, MD 21041.

Number of Members: 500.

Name of Chair/President: Stuart Kohn.

***This form can be submitted electronically via email to [councilmail@howardcountymd.gov](mailto:councilmail@howardcountymd.gov) no later than 5pm the day of the Public Hearing or delivered in person the night of the Public Hearing before testifying.***



September 16, 2019

Howard County Council  
George Howard Building, 1<sup>st</sup> Floor  
3430 Courthouse Drive  
Ellicott City, MD 21043

Re: Council Bill 41-2019, Community Zoning Case Navigator Position

I am writing to oppose CB 41 in hopes that this legislation will be rewritten with more clarity. I commend Councilman Yungman for the intention behind this legislation; however, I would like to see this role strengthened or explained in more detail.

The process for which a community member must navigate in order to have their voice heard appears complex and overwhelming. Having a designated person walk through that process would be nice but what is the limitation of this position? If questions about the process turn into questions regarding advice on how best to proceed, will the navigator be able to do this?

I still feel very “green” when I attend hearings on land development or zoning change issues. I have been learning as I go. However, I have found what is missing most is representation. I do not solely need a navigator through the process, but I need an ADVOCATE in the process.

Having a quasi-judicial process be a fair process is a farse. The most frustrating piece of this process is that the person who would be most suited to be our representative and understands our community is our elected councilmember. However, it is not allowed to email or even discuss with a council member what our feelings are or ask clarifying questions.

The community members must decide amongst themselves who is the representative, even though they may have slightly different opinions on matters or views that are equally important to share. Zoning matters can affect different areas of the community in differing ways. We cannot be expected to coordinate a composed, eloquent testimony that involves witnesses and cross-examinations. We need representation. We need someone to consult for advice. We need an advocate.

Will this navigator be this forthcoming with advice?

The process appears on paper to have many caveats for community input, but to what degree is this input substantiated?

Matters that may make or break a community can be variances or zoning changes. Look at what is happening to the East side of the county: large developments and infills on any scrap parcel of land that can be found. The community shows up to a hearing, the community sends in testimony, the community speaks with council members (when allowed), the community educates their neighbors. The community is navigating the process. The process is not allowing the entire community to be heard as evidence from very few individuals who participate.

Testimony Regarding CB41-2019  
Dawn Popp, District 1

Good evening. My name is Dawn Popp and I am here to testify regarding CB41-2019, establishing a Community Zoning Case Navigator position. I am grateful that Councilman Yungmann is looking for ways to improve the County's Zoning Board process, and I am supportive of the philosophy underlying this bill, which seeks to improve community access to this process by establishing a resource to help community members better understand how to navigate that process.

However, while I agree that the County's Zoning Board process is exceedingly complicated, I am not convinced that lack of information about, or understanding of, the process is the main problem most community members face with respect to the process. Sadly, I believe that the ultimate result of having a Community Zoning Case Navigator would be to allow community members to better understand just how biased the current process is against them.

As I see it, the problem is two-fold. First, the process is a quasi-judicial process, which treats the landowner or developer as one party, and everyone else as another, collective, party. This process is heavily weighted toward the landowner or developer, who is likely represented by counsel who regularly participates in the process and is familiar with the rules of procedure, rules of evidence, burden of proof, etc. Meanwhile, members of the community who may oppose the petition are collectively treated as one "opposing party," despite the fact that they may have a variety of different viewpoints, and indeed may not even know each other. Thus, in most cases, it is all but impossible for them to retain counsel (for both resource and coordination reasons) or to present a unified case. Quite simply, the deck is stacked against them.

Second, as you know, County Council members also sit as the Zoning Board, but because the Zoning Board process is a quasi-judicial proceeding, you are prohibited from any ex parte communications regarding matters before the Zoning Board. This means that community members, who may be accustomed to reaching out to their respective Councilperson for assistance with concerns relating to county government, are left without an advocate to turn to.

Thus, while I appreciate the worthy goal underlying this bill, I do not believe that it addresses the main problem most community members have with the Zoning Board. I would encourage you to explore other ways to improve the process, either by eliminating the "quasi-judicial proceedings" and moving to a process more closely resembling the public hearing process, or by removing Zoning Board responsibilities from the Council and delegating them to an independent Zoning Board.

Thank you for your consideration.